AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

5-17-85
Vol. 50 No. 96
Pages 20543-20740

federal register

Friday
May 17, 1985

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Chemicals
Environmental Protection Agency

Electric Power Rates
Western Area Power Administration

Fisheries
National Oceanic and Atmospheric Administration

Food Additives
Food and Drug Administration

Food Assistance Programs
Food and Nutrition Service

Inventions and Patents
Air Force Department

Marine Safety
Coast Guard

Marketing Agreements
Agricultural Marketing Service

Nuclear Power Plants and Reactors
Nuclear Regulatory Commission

Postal Service
Postal Service

Reporting and Recordkeeping Requirements
Food and Nutrition Service

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Selected Subjects

Savings and Loan Associations
Federal Home Loan Bank Board

School Breakfast and Lunch Programs
Food and Nutrition Service

Wine
Alcohol, Tobacco and Firearms Bureau

Contents

Federal Register
Vol. 50, No. 96
Friday, May 17, 1985

The President
PROCLAMATIONS
20543 Science Week, National (Proc. 5339)

Executive Agencies

Agricultural Marketing Service
RULES
20739 Lemons grown in California and Arizona

Agricultural Trade and Export Policy National Commission
NOTICES
20577 Meetings

Agriculture Department
See Agricultural Marketing Service; Food and Nutrition Service; Soil Conservation Service.

Air Force Department
RULES
Claims and litigation:
20563 Licensing government-owned inventions

Alcohol, Tobacco and Firearms Bureau
RULES
Alcohol; viticultural area designations:
20560 Northern Sonoma, CA

Blind and Other Severely Handicapped, Committee for Purchase From
NOTICES
20578 Agency information collection activities under OMB review

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
20577 Iowa
20577 Kentucky; time and place change
20577 Louisiana (2 documents)
20577 New Mexico
20578 West Virginia

Coast Guard
RULES
Regattas and marine parades:
20566 Great Chattanooga Raft Race

Commerce Department
See National Oceanic and Atmospheric Administration; Travel and Tourism Administration.

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
20579 Coffee, Sugar and Cocoa Exchange

Customs Service
NOTICES
Customhouse broker license cancellation, suspension, etc.:
20644 Baker, Michael Alan

Defense Department
See also Air Force Department; Engineers Corps.
NOTICES
Meetings:
20581 Electron Devices Advisory Group (2 documents)

Drug Enforcement Administration
NOTICES
Registration applications, etc.; controlled substances:
20632 Marion Laboratories, Inc.

Employment and Training Administration
NOTICES
Adjustment assistance:
20633 Pako Corp.

Employment Standards Administration
NOTICES
20706 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions (DC, FL, IL, IN, KS, MI, NY, OH, TN, UT, WA, WI, and WY)

Energy Department
See also Energy Research Office; Federal Energy Regulatory Commission; Western Area Power Administration.
NOTICES
Meetings:
20582 National Coal Council

Energy Research Office
NOTICES
Meetings:
20582 Energy Research Advisory Board

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
20581 Winfield, Cowley County, KS

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
20568 Indiana
Toxic substances:
20662 Ethyltoluenes, trimethylbenzenes, and C9 aromatic hydrocarbon fraction; testing requirements
20652 Test rule development and exemption procedures; interim
PROPOSED RULES
Toxic substances:
20691 Bisphenol A; testing requirements

20678 2-Ethylhexanoic acid; testing requirements
NOTICES
Environmental statements; availability, etc.:
Agency statements—
20599 Comment availability
20600 Weekly receipts
Pesticide programs:
20600 Montana Department of Livestock et al.; specific exemption applications to use strychnine; inquiry
Toxic and hazardous substances control:
20596 Premanufacture notices receipts
Water pollution control:
20602 Disposal site determinations; Bayou aux Carpes swamp, LA

Farm Credit Administration
NOTICES
20646 Meetings; Sunshine Act

Federal Aviation Administration
RULES
20558, 20559 Transition areas (2 documents)

Federal Communications Commission
NOTICES
20609 Agency information collection activities under OMB review
Hearings, etc.:
20606 Iowa Telephone Association
20603 Weiner, Allan H. et al.

Federal Deposit Insurance Corporation
NOTICES
20609 Banking system; disclosure by FDIC of statutory enforcement actions; policy statement

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
20583 Florida Power & Light Co. et al.
Hearings, etc.:
20591 Hydraco Power, Inc.
20592 Roaring Creek Ranch
20592 Tampa Electric Co.
20592 Texas Eastern Transmission Corp.
20593 Williston Basin Interstate Pipeline Co. (2 documents)
Natural gas certificate filings:
20585 United Gas Pipe Line Co. et al.

Federal Home Loan Bank Board
RULES
Federal Savings and Loan Insurance Corporation:
20555 Conversions from mutual to stock form; conversion proxy solicitations
20550 Subordinated debt securities; issuance and use

Federal Maritime Commission
NOTICES
Casualty and nonperformance, certificates:
20620 Carnival Cruise lines, Inc., et al.
20620 Exploration Cruise Lines
20620 North Star Cruises Ltd. et al.

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
20620 Comerica Inc.; correction

Fish and Wildlife Service
NOTICES
Fishery resources program:
20628 Statement of responsibilities and role

Food and Drug Administration
RULES
Food additives:
20560 Polymers; hexamethylene bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)
NOTICES
Food additive petitions:
20623 Calgon Corp.
20624 General Electric Co.
20624 McCormick & Co., Inc.
20625 Petrolite Corp.
20625 Toyobo Co., Ltd.
Meetings:
20622 Advisory committees, panels, etc.
Memorandum of understanding:
20624 National Cancer Institute; subsequent cancer incidence in women treated by irradiation with x-rays for infertility study

Food and Nutrition Service
RULES
Child nutrition programs:
20545 School lunch and breakfast programs; sale of foods of minimal nutritional value
Food stamp program:
20547 State agency reporting requirements
PROPOSED RULES
Child nutrition programs:
20572 Child care food program; seriously deficient institutions; determinations, etc.

General Services Administration
NOTICES
Environmental statements; availability, etc.:
20621 Hoskins Park Housing Area et al., RI
Property management:
20621 Union City Dam Project, PA; wildlife order conveyance

Health and Human Services Department
See also Food and Drug Administration; Health Care Financing Administration; Public Health Service.
NOTICES
20621 Agency information collection activities under OMB review

Health Care Financing Administration
RULES
Medicare:
20570 Health maintenance organizations and competitive medical plans, payment; correction

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; National Park Service.
NOTICES
20626 Agency information collection activities under OMB review

Interstate Commerce Commission
NOTICES
Motor carriers:
20631 Finance applications
Railroad services abandonment:
20632 Baltimore & Ohio Railroad Co.
20632 Missouri, Pacific Railroad Co.

Justice Department
See Drug Enforcement Administration.

Labor Department
See also Employment and Training Administration; Employment Standards Administration.
NOTICES
20632 Agency information collection activities under OMB review
Procurement:
20633 Commercial activities, performance; inventory review schedule (OMB A–76 implementation)

Land Management Bureau
NOTICES
Classification and sale of public lands:
20627 California
Leasing of public lands:
20626 California
Meetings:
20626 Prineville District Grazing Advisory Board
Survey plat filings:
20626 Colorado

Management and Budget Office
NOTICES
20716 Budget rescissions and deferrals; cumulative reports

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
20570 Ocean salmon off coasts of Washington, Oregon, and California
NOTICES
Marine mammal permit applications, etc.:
20578 U.S.S.R. Embassy

National Park Service
NOTICES
Environmental statements; availability, etc.:
20630 Lake Mead National Recreation Area, AZ and NV
Land protection plans; availability, etc.:
20631 Lyndon B. Johnson National Historical Park, TX

Nuclear Regulatory Commission
PROPOSED RULES
Production and utilization facilities, domestic licensing:
20574 Codes and standards for nuclear power plants; ASME light-water-cooled plant components code, etc.
NOTICES
Applications, etc.:
20635 Houston Lighting & Power Co. et al.
20634 John C. Haynes Co.
20635 Northeast Nuclear Energy Co. et al.
Meetings:
20634, 20635 Reactor Safeguards Advisory Committee (2 documents)

Postal Service
RULES
Domestic Mail Manual:
20567 Third-class bulk rates; annual fees

Public Health Service
NOTICES
Meetings; advisory committees:
20621 June

Securities and Exchange Commission
NOTICES
Applications, etc.:
20636 American Electric Power Co., Inc., et al.
20637 Columbia Gas Transmission Corp. et al.
20639 Indiana & Michigan Electric Co.
20639 Kohl, Atlee M.
20640 Middle South Utilities, Inc., et al.
20646 Meetings; Sunshine Act
Self-regulatory organizations; proposed rule changes:
20641 National Association of Securities Dealers, Inc.

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
20576 Finesville Recreational Field, NJ
20576 Spring Valley Reservoir, ID
20576 Winters Road, NJ

Tennessee Valley Authority
NOTICES
20646 Meetings; Sunshine Act

Transportation Department
See also Coast Guard; Federal Aviation Administration.
NOTICES
Aviation proceedings; hearings, etc.:
20643 Skystar International, Inc.

Travel and Tourism Administration
NOTICES
Meetings:
20578 Travel and Tourism Advisory Board

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; Customs Service.
NOTICES
Bonds, Treasury:
20643 2044 series
Notes, Treasury:
20644 B–1995 series
20644 S–1988 series

Veterans Administration
NOTICES
20645 Advisory committees, annual reports; availability
Meetings:
20645 Readjustment Problems of Vietnam Veterans Advisory Committee

Western Area Power Administration
PROPOSED RULES
20732 Boulder Canyon Project; power sale charges

NOTICES
Power marketing plans:
20596 Diamond Fork Power System and Jordanelle Powerplant; extension of time
Transmission rate adjustments:
20593 Thermopolis-Alcova-Casper transmission line project, WY

Separate Parts in This Issue

Part II
20652 Environmental Protection Agency

Part III
20706 Department of Labor, Employment Standards Administration, Wage and Hour Division

Part IV
20716 Office of Management and Budget

Part V
20732 Department of Energy, Western Area Power Administration

Part VI
20739 Department of Agriculture, Agricultural Marketing Service

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

5339 20543

7 CFR

210 20545
220 20545
272 20547
273 20547
274 20547
277 20547
282 20547
910 20739

Proposed Rules:

226 20572

10 CFR

Proposed Rules:

50 20574
904 20732

12 CFR

561 20550
563 20550
563b 20555
569 20555

14 CFR

71 (2 documents) 20558, 20559

21 CFR

177 20560

27 CFR

9 20560

32 CFR

841 20563

33 CFR

100 20566

39 CFR

111 20567

40 CFR

52 20568
790 20652
799 20662

Proposed Rules:

798 20678
799 (2 documents) 20678, 20691

42 CFR

417 20570

50 CFR

661 20570

Federal Register
Vol. 50, No. 96
Friday, May 17, 1985

Presidential Documents

Title 3—

The President

Proclamation 5339 of May 14, 1985

National Science Week, 1985

By the President of the United States of America

A Proclamation

We live in an age when rapidly changing science and technology are transforming our economy and our way of life. But this is nothing new for Americans, because we have always been inventors and explorers who looked to science as a way of achieving a better future.

Today the pace of scientific discovery has accelerated, and its effects are being felt worldwide. No nation or group of nations has a monopoly on the world's scientific talent, so no nation can take for granted that it will remain in the forefront of technological change just because it has been in the past. America must continually strive to undertake basic research in science as well as to develop new technological applications of scientific ideas.

In order to do this, it is particularly important that we provide our young people with good scientific education. Even those who do not pursue careers in science should understand the scientific method and appreciate the contributions science and technology make to our way of life.

Americans are coming together to meet the challenges that the rapid advance of scientific knowledge creates for us. As we have so many times before in our history, we see these challenges as opportunities. Our businesses, universities, and State and local governments are working in partnership with the Federal government to meet our needs through research and education. As these cooperative relationships develop, we can look forward with confidence to an era of scientific discovery and technological innovation unimagined only a few years ago.

In recognition of the importance of science, technology, and science education, and to draw public attention to the great works being accomplished in these fields, the Congress, by Senate Joint Resolution 59, has designated the period from May 12 through May 18, 1985, as "National Science Week" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 12 through May 18, 1985, as National Science Week. I urge the people of the United States to observe this week and participate in the many activities planned by universities, businesses, State and local governments, and the Federal government during this period.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth 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. 85-12153
Filed 5-16-85; 9:16 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 50, No. 96
Friday, May 17, 1985

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program; Competitive Foods

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for the National School Lunch Program and the School Breakfast Program to implement the decision by the U.S. Court of Appeals for the District of Columbia Circuit in the case of *National Soft Drink Association v. Block, et al.*, respecting the sale of foods of minimal nutritional value in schools participating in these programs. The court found that the Department had exceeded its rulemaking authority when it promulgated the "time and place" regulations restricting the sale of foods of minimal nutritional value *throughout* the school from the *beginning* of the school day until after the end of the last food service period. Therefore, in this final rule the Department amends the regulations to control the sale of competitive foods and foods of minimal nutritional value only during breakfast and lunch periods in food service areas. In other words, restrictions on foods sold on school premises outside the food service area may now be imposed at State or local discretion, but are no longer imposed by the Department.

EFFECTIVE DATE: June 17, 1985.

FOR FURTHER INFORMATION CONTACT: Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302; (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under Executive Order 12291 and has been classified as "not 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 result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

This rule is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See 7 CFR Part 3015, Subpart V (48 FR 29112, June 24, 1983).

This rule has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant adverse economic impact on a substantial number of small entities.

This rule imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3587).

Background

On March 13, 1984, the Department published a proposed competitive foods rule at 49 FR 9426 which would amend the "time and place" portion of the rule to restrict the sale of foods of minimal nutritional value only during meal hours in meal service areas. This change responds to a decision by the U.S. Court of Appeals for the District of Columbia in the case of the *National Soft Drink Association* v. *Block, et al.*, 721 F.2d 1348 (D.C. Cir. 1983). In that case, the court ruled that the Department had exceeded its rulemaking authority when it promulgated the "time and place" portion of the competitive foods rule, restricting the sale of carbonated beverages throughout the school from the beginning of the school day until after the last lunch period. The court found that an examination of legislative history led to the conclusion that Congress intended to authorize the Secretary to restrict the sale of foods of minimal nutritional value only in the food service areas during periods of meal service.

In response to the court's decision, the proposed rule was intended to limit federal control of competitive foods sales to the food service areas during meal hours.

Comment Summary

The proposed rule provided for a 60-day comment period which ended on May 14, 1984. During that period, 858 comments were received of which 823 commenters opposed the proposal, 21 commenters favored the proposal, and 14 comments were unclear or uncommitted.

Supportive comments—Personal freedom of choice was the reason most cited by the 21 commenters favoring the proposed rule. Although some felt that there should not be a competitive foods rule at all, they said that the proposal was an improvement on the 1980 rule. Another reason cited by commenters favoring the rule was that competitive foods sales were crucial to school fund raising drives, and that if the school did not sell restricted items, the students would buy from someone else. One school official stated that competition was healthy, and would force school cafeterias to improve their services.

Opposing comments—Over 95 percent of the commenters were opposed to the proposal and most cited the same two objections: (1) Income issues (55%) and (2) nutritional issues (70%).

Income Issues—Those commenters concerned about income to the school food service believed that the proposal would encourage competition against the school's nonprofit lunch program by allowing all types of food to be sold by anyone just outside of the cafeteria during meal hours. Many commenters feared that this would considerably reduce student participation in the programs and ultimately reduce school food service income. The appeals court opinion stated:

> The statute provides in the first sentence that the Secretary may regulate the sale of foods offered in competition to the food served in the subsidized school food programs . . . We cannot however ignore the second sentence of the statute. In that sentence the authority of the Secretary to

regulate the sale of competitive foods is restricted to the sale of competitive foods in "food service facilities or areas during the service of food" under the school nutritional program. (*National Soft Drink Association* v. *Block, et al.*, 721 F.2d 1348, 1352 (D.C. Cir. 1983).)

The court concluded that Congress intended federal control over the types of foods sold in schools to extend only to food service areas during meal service periods. Although the U.S. Court of Appeals was addressing foods of minimal nutritional value, specifically carbonated beverages, the issue is time and place rather than a specific food item. The court did not specifically address the issue of income from the sale of food outside the food service area. However, it is our view that a reasonable interpretation of the ruling would extend the "time and place" restrictions to the Department's authority to control not only the sale but the income from the sale of foods outside the food service area. Hence, under this final rule the Department no longer regulates sales or income on sales occurring on school campuses outside the food service area, unless the income is earned by the school food service as explained below. The Department's position is that income earned outside the cafeteria may be subject to restrictions and may be controlled by the school food service, but such restrictions and controls must be imposed by the State or local level governments or school officials. The same interpretation of the court's ruling holds true regarding restrictions on the individuals, organizations and companies allowed to sell products on school campuses outside the food service area.

The Department now leaves such restrictions up to State and local level officials.

The revised accountability rules published on September 6, 1983, at 48 FR 40194, set forth definitions for nonprofit school food service and for revenues to such food service and require School Food Authorities to maintain appropriate revenue and expenditure records in order to substantiate the nonprofit status of their school food service. Under § 210.7(b) of those rules, all income to the nonprofit school food service must be used only for the operation or improvement of that food service. Income from all food sales conducted by the nonprofit school food service are subject to this provision whether or not the sales occur within the lunchroom or during meal service periods.

Income from food sales not conducted by the nonprofit school food service are subject to federal restriction only if such sales meet the definition of competitive foods—meaning they are sold in the food service area during meal periods. Under this final rule, the definition of competitive foods has been substantially narrowed to comply with the court's decision. Therefore, the Department will not stipulate to whom income from food sales *outside* of the lunchroom or outside meal service periods may accrue, unless the sale is conducted by the nonprofit school food service. However, all income from the sales of competitive foods *within* the food service area during meal periods, even if not conducted by the nonprofit school food service, must accrue to the benefit of the nonprofit school food service, to the school, or to student organizations approved by the school.

In summary, the Department does not regulate the sale of foods *outside* the food service area or where the income from such sales go; *except* that the regulations continue to require that income earned by the nonprofit school food service, even outside the food service area, such as in hallways, *must* be used only for the operation or improvement of the nonprofit school food service.

The Department encourages parents, students, school officials, teachers, school food service personnel, and nutrition experts to work together to design local policies. The school nutrition programs are a partnership of local, State and federal agencies. Local and State officials have the authority to implement a more comprehensive competitive foods rule that accommodates local needs and exceeds the Department's minimum rule concerning the treatment of income, areas, time, and restricted foods.

Some commenters expressed concern that the proposed rule lessened the authority of State agencies and local schools to impose restrictions on competitive foods beyond the minimum imposed by the federal government. As stated in the preamble to the proposed rule, the proposal was not intended to limit State or local authority in this area. States and local school food authorities have always had, and will continue to have, the authority to impose restrictions on the sale of foods on their school campuses which are more stringent or detailed than those imposed by this Department. Because many commenters believed the proposed rule deprived schools and States of this authority, the final rule maintains the current language which specifically requires States and School Food Authorities to establish such rules or regulations as are necessary to control the sale of foods in competition with meals served under the Program. The determination as to how far to regulate beyond the minimum federal requirement remains with the State and local officials as it did in the previous rule. As further clarification, this final rule specifies that State agencies and school food authorities may impose additional restrictions on the sale of and income from foods sold anywhere in schools.

Nutritional Issues

The reason most cited by commenters opposed to the proposal (70%) was that nutrition efforts in the school system should not be weakened. Another major concern was that the proposal undermined the nutrition education efforts of parents and schools. The Department recognizes these commenters' concerns. However, the Department anticipates that nutritional concerns will be foremost in the minds of State and local officials who establish controls on competitive foods. Since State and local school food officials have the authority to impose further restrictions on the sale of all competitive foods, including foods of minimal nutritional value, schools and parents, through their local school officials, can use this control to reinforce their nutrition education efforts. We are confident that school officials, with the help of their community, can effectively influence the food habits of their students. The Department encourages schools and public officials to include publicity about the nutritional superiority of school lunches in their educational activities. For years the Department has mandated that schools actively seek to involve parents and students in their school meal programs. Local public concern about food issues in schools should encourage involvement by students and parents in the decisionmaking process regarding competitive foods sold on school campuses.

Definitions—The proposed rule did not define the terms "food service area," "lunch period" and "breakfast period" because those terms are self-descriptive. Since less than 20 commenters requested that the terms be defined, we continue to believe that regulatory definitions are unnecessary and that the proper application of these terms is best left to State agencies and local School Food Authorities who are familiar with local circumstances. Generally, the food service area will be the cafeteria or other areas in the school where meals subsidized by the National School Lunch and School Breakfast Program are

served and eaten. The "lunch period" and "breakfast period" are generally the times designated for the service and/or consumption of meals.

The proposed definition of "competitive foods" included a reference to "foods of minimal nutritional value" which confused some readers. We agree that even without the reference to "foods of minimal nutritional value," the definition clearly encompasses those foods. The reference is therefore redundant. The definition of competitive foods in this final rule is simply stated as any foods sold in competition with the Program to children in food service areas during the meal periods.

List of Subjects

7 CFR Part 210

Food assistance programs, National school lunch program, Grant programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Food assistance programs, School breakfast program, Grant programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Parts 210 and 220 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Sec. 2–12, 60 Stat. 230, as amended; Sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; (42 U.S.C. 1751–1760, 1779), unless otherwise noted.

2. In § 210.2, paragraph (c–3) is revised and paragraph (c–4) is removed.

§ 210.2 Definitions.

* * * * *

(c–3) "Competitive foods" means any foods sold in competition with the National School Lunch Program to children in food service areas during the lunch periods.

* * * * *

3. In § 210.15b, paragraph (a) is revised to read as follows:

§ 210.15b Competitive foods.

(a) State agencies and School Food Authorities shall establish such rules or regulations as are necessary to control the sale of foods in competition with lunches served under the Program. Such rules or regulations shall prohibit the sale of foods of minimal nutritional value, as listed in Appendix B of this part, in the food service areas during the lunch periods. The sale of other competitive foods may, at the discretion of the State agency and School Food Authority, be allowed in the food service area during the lunch period only if all income from the sale of such foods accrues to the benefit of the nonprofit school food service or the school or student organizations approved by the school. State agencies and School Food Authorities may impose additional restrictions on the sale of and income from all foods sold at any time throughout schools participating in the National School Lunch Program.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for Part 220 continues to read as follows:

Authority: Secs. 4 and 10, 80 Stat. 886, 889; (42 U.S.C. 1773, 1779), unless otherwise noted.

2. In § 220.2, paragraph (c–1) is revised and paragraph (c–2) is removed.

§ 220.2 Definitions.

* * * * *

(c–1) "Competitive foods" means any foods sold in competition with the School Breakfast Program to children in food service areas during the breakfast period.

* * * * *

3. § 220.12, paragraph (a) is revised to read as follows:

§ 220.12 Competitive foods.

(a) State agencies and School Food Authorities shall establish such rules or regulations as are necessary to control the sale of foods in competition with breakfasts served under the Program. Such rules or regulations shall prohibit the sale of foods of minimal nutritional value, as listed in Appendix B of this part, in the food service areas during the breakfast periods. The sale of other competitive foods may, at the discretion of the State agency and the School Food Authority, be allowed in the food service area during the breakfast period only if all income from the sale of such foods accrues to the benefit of the nonprofit school food service or the school or student organizations approved by the school. State agencies and School Food Authorities may impose additional restrictions on the sale of and income from all foods sold at any time throughout schools participating in the School Breakfast Program.

* * * * *

Dated: May 10, 1985.

John Bode,

Deputy Assistant Secretary for Food and Consumer Services.

[FR Doc. 85–11828 Filed 5–16–85; 8:45 am]

BILLING CODE 3410–30–M

7 CFR Parts 272, 273, 274, 277, and 282

[Amdt. No. 253]

Food Stamp Program; Amendments to the Requirements for State Agency Reporting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The FNS–256/388 reporting system provides Food Stamp Program participation and coupon issuance data necessary for the Secretary to fulfill the requirements of section 18(a) of the Food Stamp Act. On May 27, 1983, the Department issued a proposed rule to amend this reporting system. Comments on the proposal were solicited through July 26, 1983. This final rulemaking, which will revise the 256/388 reporting system, takes the comments received into account.

The revisions to the reporting system are intended to improve the utility of the participation and issuance data reported to FNS as well as to reduce the burden placed on State agencies which report the data. Thus, the monthly FNS–388 report of coupon issuance and participation will be expanded to contain three months' data instead of the two on the current report. Additionally, twice each year, for the months of January and July, State agencies will be required to provide data on the number of non-assistance (NA) and public assistance (PA) households and persons that participated. Offsetting this, however, the form FNS–256, Project Area Participation and Coupon Issuance report, will be eliminated. In its place, a project area level breakdown of the NA/PA data for the months of January and July will have to provide as an attachment to the March and September FNS–383 reports.

EFFECTIVE DATE: June 17, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, Issuance and Benefit Delivery Section, Program Design and Rulemaking Branch, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756–3427.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The final rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified "not major." This rule will not have an annual effect on the economy of $100 milion or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Because this rule will not affect the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This final rule has been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164). 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.

Recordkeeping Requirements

The reporting requirements contained in the rule (§ 274.8(a)(6)) have been approved by the Office of Management and Budget (OMB), under OMB number 0584-0081.

Background

This final rule addresses the provisions contained in the proposed rule of May 27, 1983 (48 FR 23825). The revised procedures contained in this rulemaking are intended to improve the utility of the participation and coupon issuance estimates reported to FNS. We received a total of 23 comment letters on the proposed rules. In light of the comments, the final rules are modified such that the major concerns are eliminated. This preamble addresses the changes made to the proposed rules and the controversial provisions that were not changed.

The proposed rules would have modified the FNS-388 report to include a third column for the State agencies to report the actual Statewide total number of households and persons for the second preceding month. Further, the proposed rules would have modified the FNS-256 report by requiring non-assistance (NA) and public assistance (PA) breakdowns of the number of households and persons that participated in the project area and the totals of NA/PA coupon issuance. In addition, the Department proposed to collect on the FNS-256, NA/PA certification and application processing activity. It was also proposed that the FNS-256 be submitted twice annually for the months of January and July.

Most of the comments on the proposed rules concerned the collection of certification and application processing data on the Project Area Participation and Coupon Issuance report, Form FNS-256. These final rules eliminate Form FNS-256, although the required submission of the data currently collected on the FNS-256 is retained. As a result of these changes to the proposed rules, a response to most of the comments is deemed unnecessary. Thus, only the comments relative to the reporting system outlined in the final rules will be addressed. Since the explanation of many of the provisions of the final rules are set forth in the proposed rules, it may be necessary to refer to that publication for a full understanding of the reporting requirements contained in the final rules.

Commenters expressed concern that the requirement to report State and local level participation figures would possibly be a duplication of effort. However, the timeliness of the Statewide totals enables us to fulfill the requirement, mandated by section 18(a) of the Act, that the Department report by the 15th day of each month the best estimate of the second preceding month's expenditure and a statement as to whether there is reason to believe that reductions in the value of food stamp allotments will be necessary. The greater breakdown of the data by project areas is needed for special studies and to respond to Congressional and other inquiries.

While the coupon issuance data collected on the FNS-388 may be considered a duplication of reporting since similar data is collected on the FNS-250, Food Stamp Accountability Report, the difference between the data on the two reports warrants the continued data collection from the two systems. The issuance data reported on the FNS-250 is collected after the end of each issuance month and is derived from the reconciled allotments issued to households and from an inventory check on the number of coupons issued. However, the FNS-388 issuance and participation data is collected earlier in the issuance process. It is calculated from the authorization documents before households are issued their allotments. This means that the data on the FNS-388 report can be reported much more quickly, thereby satisfying the need for quick readings of program expenditures for the current and preceding months. The data for the second preceding month, however, can be taken from the FNS-250 report since it will be available by this time. Therefore, States do not need to report actual Statewide issuance totals for the second preceding month. Instead, the Department will use the issuance total reported on line 19 of the FNS-250 report.

The revision of the proposed Form FNS-388 requires that NA/PA Statewide totals of the number of participating households and persons be reported on the March and September reports for the actual second preceding months of January and July. Also, the Statewide total number of participating households and persons shall be reported for the second preceding month. Additionally, this rule requires that State agencies submit project area breakdowns of coupon issuance and the NA/PA household and person participation total for the months of January and July as an attachment to the March and September FNS-388 reports.

The actual participation and issuance data reported for the FNS-388 system shall be figures calculated from the manual or automated issuance documents from which households received their allotments. For issuance systems that require the household to transact an ATP, actual issuance means the value of coupons reflected on the transacted ATP's (including altered, counterfeit, duplicate, expired, supplemental allotments, and stolen ATP's). For other issuance systems, actual issuance means the value of coupons distributed to households as reflected on authorization documents, tape rosters or other authorization devices, (such as a video monitor in an on-line issuance system) used to distribute allotments. In the case of some newly developed automated systems, such as the electronic benefit transfer system, actual issuance is the value of the allotment as credited to the household's account.

Report Due Dates

Due to the necessity of receiving the Form FNS-388 data to meet the mandated timeframe for the Department's report to Congress, the current FNS-388 reporting timeframe is unchanged. However, this rule requires that project area data be provided as an attachment to the March and September FNS-388 reports. Compared to the current 45-day requirement to mail the

FNS–256 reports, the new requirement allows an additional 4 days.

Definition of PA and NA Households

To ensure consistency of the data reported nationwide for this rulemaking, commenters suggested and the Department agrees that a clear definition of public assistance (PA) and non-assistance (NA) households is necessary. Therefore, for the reporting requirements of this rule: (A) "PA households" are those food stamp households in which *all* members are receiving income from the Aid to Families with Dependent Children (AFDC) program, the Supplemental Security Income (SSI) program, or a General Assistance (GA) program that uses formalized application procedures and eligibility criteria that test levels of income and resources; and, (B) "NA households" are those food stamp households containing at least one member not receiving income from the AFDC, SSI, or a means-tested GA program.

Acceptable Tolerance Levels

A commenter suggested that the Department retain in this final rule, the tolerance level provisions which are currently used as standards for accuracy of participation estimates submitted on the FNS–388 report, and that acceptable standards be incorporated for the issuance estimates as well. As proposed, the accuracy standards for the FNS–388 issuance and participation estimates are retained to encourage the State agencies to achieve and sustain a high degree of accuracy in their monthly estimates. The Department will use the accuracy standard to monitor the effectiveness of State agencies' estimation techniques. Whenever a State agency fails to report data within the standards, the Department will work with the State agency to improve its performance.

Implementation

State agencies shall implement the new requirements the first month beginning on or after the 90th day following publication of this final rule in the **Federal Register**. The first revised FNS–388 report shall provide the actual second preceding month data. The initial semiannual coupon issuance and NA/PA household and person participation data shall be provided in September 1985 for the month of July 1985. The State agencies will cease submission of the FNS–256 report as of July 1985. All State agencies shall provide the new reports in accordance with the requirements contained in this rule.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs, Social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 277

Food stamps, Government procedure, Grant programs-social programs, Investigations, Records, Reporting and recordkeeping requirements.

7 CFR Part 282

Food stamps, Government contracts, Grants programs-social programs, and research.

Accordingly, 7 CFR Parts 272, 273, 274, 277, and 282 are amended as follows:

1. The authority citation for Parts 272, 273, 274, 277, and 282 continues to read:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2027), unless otherwise noted.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1 a new paragraph (g)(65) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(65) Amendment 253. The provisions of § 274.8(a)(6) (i), (ii), and (iii) shall be implemented the first month beginning on or after the 90th day following publication of this final rule. In that month, the FNS–388 report shall provide the actual second preceding month data. The initial semiannual coupon issuance and NA/PA household and person participation data shall be provided in September 1985 for the month of July 1985. State agencies will cease submission of the FNS–256 report as of July 1985.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.10, paragraph (g)(3)(ii)(A) is amended by replacing the third sentence with two new sentences which read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(g) *Certification notices to households.* * * *

(3) *Identification (ID) Cards.* * * *

(ii) *Mandatory Photo ID Cards.*

(A) * * * FNS will evaluate the January participation data reported as an attachment to the March FNS–388 report. Based on the analysis, FNS will notify State agencies at the beginning of each fiscal year of any areas that either require or no longer require the use of photo ID cards. * * *

* * * * *

PART 274—ISSUANCE AND USE OF FOOD COUPONS

4. In § 274.8, paragraph (a)(6) is revised to read as follows:

§ 274.8 State agency reporting and destruction of unusable coupons.

(a) *State agency reporting.* * * *

(6) State agencies shall report information regarding coupon issuance and participation on the Form FNS–388 report as follows:

(i) State agencies shall telephone the FNS–388, State Coupon Issuance and Participation Estimates, data and mail the reports to the FNS regional office no later than the 19th day of each month. When the 19th falls on a weekend or holiday, the FNS–388 data shall be reported by telephone and mailed on the first work day after the 19th. The FNS–388 report shall be signed by the person responsible for completing the report or a designated State agency official.

(ii) The FNS–388 report shall provide Statewide estimated totals of issuance and participation (persons and households) for the current month, revised estimates or actual totals for the preceding month, and actual participation totals for the second preceding month. In addition to the participation totals for the second preceding months of January and July, provided on the March and September reports, Statewide non-assistance (NA) and public assistance (PA) household and person participation breakdowns shall be provided. As an attachment to the March and September FNS–388 reports, State agencies shall provide project area breakdowns of coupon issuance and NA/PA household and person participation data for the second preceding months of January and July.

(iii) State agencies shall submit any proposed changes in their estimation procedures to be used in determining the FNS–388 data to the FNS regional office for review and comment. FNS shall

monitor the accuracy of the estimated dollar value of coupons issued as reported on the FNS–388 against the Statewide total dollar value of coupon as reported by the issuance agents on the FNS–250, Food Stamp Accountability Report, for the corresponding month. FNS shall monitor the accuracy of the Statewide estimated number of households and persons participating as reported on the FNS–388 report against the Statewide actual total participation as reported on succeeding FNS–388 reports and against the semi-annual project area participation totals attached to the March and September FNS–388 reports. The FNS accuracy standards for the issuance and participation estimates are that estimates for the current month be within (+) or (−) 4 percent and the estimates for the previous month be within (+) or (−) 2 percent of the actual levels. State agencies shall explain any unusual circumstances that cause coupon issuance and/or participation data to not meet these accuracy standards. If a State agency fails to meet these accuracy standards, FNS shall notify the State agency and assist the State agency in revising its estimating procedures to improve its reporting.

* * * * *

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

§ 277.18 [Amended]

5. In § 277.18, paragraph (c)(2)(vii)(A) is amended by adding the word "and" after the semicolon, paragraph (c)(2)(vii)(B) is removed, paragraph (C)(2)(vii)(C) is redesignated as (B), and the newly designated (B) is amended by adding the word "State" before the word "coupon".

PART 282—DEMONSTRATION, RESEARCH, AND EVALUATION PROJECTS

6. In § 282.12, paragraph (l)(2)(i) and paragraph 17.(a) of Section B of the Appendix to § 282.12 are revised to read as follows:

§ 282.12 SSI/Elderly cash-out demonstration project.

* * * * *

(l) *Records and reports.* * * *

(2) * * *

(i) A monthly project area report, providing the following data: * * *

* * * * *

Appendix—Notice of Intent. * * *

B. *State agency responsibilities.* * * *

17. * * *

(a) A monthly project area report of participation and coupon issuance shall be provided. The report shall include the total number of households and persons participating for aged only, SSI aged, and SSI blind and disabled, the total value of monthly benefits issued, and the average monthly benefit for each group of households indicated above;

* * * * *

(Catalog of Federal Domestic Assistance Program No. 10.551, Food Stamps)

Dated: May 13, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85–11954 Filed 5–16–85; 8:45 am]

BILLING CODE 3410-30-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561 and 563

Amendments Relating to the Issuance and Use of Subordinated Debt Securities

Dated: April 18, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is amending its regulations pertaining to the issuance and use of subordinated debt securities as regulatory net worth by institutions the accounts of which are insured by the FSLIC ("insured institutions"). The changes are intended to eliminate the use of techniques that tend to overstate the capital adequacy of insured institutions and therefore increase FSLIC risk. Four principal changes have been made. First, the amendment provides that for subordinated debt issued after December 5, 1984, the amount includable as net worth must be amortized pursuant to a schedule which permits 100 percent to be included when the years to maturity are greater than or equal to seven, and decreases by approximately one-seventh each year thereafter. Second, the amendment prohibits an insured institution from selling subordinated debt securities to other insured institutions or their corporate affiliates and including the subordinate debt as part of its regulatory net worth. The amendment does not, however, prohibit sales of subordinated debt to the issuer's corporate affiliates or sales to diversified savings and loan holding companies and their non-insured-institution subsidiaries. Third, the amendment requires that the subordinated debt certificate and any related document include specified language regarding the rights of the FSLIC in determining the treatment of subordinated debt liabilities of an insured institution which is in receivership. Fourth, the amendment delegates to the Principal Supervisory Agents the authority to approve most subordinated debt applications. Subordinated debt applications involving novel policy issues or offerings circulars for subordinated debt to be sold in a public offerings will continue to be received at the Board. Finally, a number of technical and clarifying changes have been made.

When this amendment was proposed on November 30, 1984, the Board notified the public that it was proposing to use as an effective date the publication date of the proposal. Accordingly, the effective date of this amendment is December 5, 1984.

EFFECTIVE DATE: December 5, 1984.

FOR FURTHER INFORMATION CONTACT: James H. Underwood, Attorney, Office of General Counsel, (202) 377–6649, or Francis M. Passarelli, Deputy Director, Office of Examinations and Supervision, (202) 377–6493, or Joseph A. McKenzie, Economist, Office of Policy and Economic Research, (202) 377–6763, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: By Resolution No. 84–680, dated November 30, 1984 (49 FR 47499), the Board proposed revisions to its regulations concerning the issuance and inclusion of subordinated debt as regulatory net worth ("the proposal"). As part of the proposal, the Board proposed revisions to the subordinated debt and regulatory net-worth regulations, to: (1) Provide that the amount of subordinated debt includable as net worth would be amortized by approximately one-seventh each year beginning when the term to maturity of the subordinated debt is less than seven years; (2) prohibit the sale of subordinated debt to insured institutions or their corporate affiliates (excluding corporate affiliates of the issuer) if such subordinated debt is to be included in the issuer's regulatory net worth; (3) clarify the rights of the FSLIC in determining the treatment of subordinated debt liabilities of an insured institution which is in receivership; and (4) delegate to the Principal Supervisory Agents the authority to approve most subordinated debt applications. In addition, the Board proposed a number of technical and clarifying changes to 12 CFR 563.8 and 563.8–1, the Board's regulations

pertaining to general borrowings and subordinated debt offerings.

As indicated in the proposal, the Board does not believe that subordinated debt should be treated as the equivalent of retained earnings and capital stock for purposes of complying with the Board's net-worth requirement. Although the Board recognizes that subordinated debt affords protection to the FSLIC in the event of insolvency of an insured institution, the proposal reflects the Board's belief that the use of an amortization schedule which reduces the amount of subordinated debt includable as net worth as the subordinated debt approaches maturity appropriately recognizes that subordinated debt is a non-permanent liability which must be repaid upon maturity.

Similiarly, the proposed revision to the subordinated debt regulation to prohibit subordinated debt that has been issued to other insured institutions or their corporate affiliates from being included as regulatory net worth was intended to recognize the economic reality that no risk has been transferred outside the group of institutions with FSLIC-insured accounts when the purchaser of the subordinated debt security is another insured institution or a corporate affiliate thereof. Finally, the third major change set forth in the proposal, which would clarify the rights of the FSLIC to determine the treatment of subordinated debt liabilities in receivership cases, was intended to ensure that subordinated debt which is included as part of an insured institution's regulatory capital will help to reduce the FSLIC's costs in receivership cases and that the investing public will be aware of the treatment afforded such securities in the event of receivership.

Summary and Discussion of Comments Received on the Proposal

The Board received fifteen public comments in response to its proposal. Ten of the comments were received from savings and loan associations and Federal savings banks. Of the remainder, two were from law firms, and three from trade associations. Four commenters generally endorsed the proposal. Of those commenters who were opposed to all or part of the proposal, one was generally opposed to the proposal, eight were in general agreement with the proposal but objected to certain of its provisions, and two expressed no opinion on the proposal as a whole but objected to particular provisions.

Three commenters objected to the proposed requirement of a phased reduction in the amount of an subordinated debt issue qualifying as net worth, because no exemption was provided for subordinated debt issued with a sinking fund or serial maturity feature. These commenters argued that adoption of such a rule would result in duplicative reductions to net worth because of the net-worth amortization schedule and the fact that the scheduled prepayments or redemptions would reduce the amount of subordinated debt outstanding to which the amortization schedule would apply. Because of these features, it was argued that the proposed regulation would create disincentives to issuing subordinated debt with a sinking fund or a serial maturity feature.

As the commenters correctly pointed out, one of the issues addressed by the proposal was the Board's concern that the current regulation, which permits 100 percent of a subordinated debt issue to be included as net worth until the remaining period to maturity is less than one year, does not take into account the fact that the degree of protection provided to the FSLIC by subordinated debt diminishes as the subordinated debt issue approaches maturity. Because the amount of a subordinated issue outstanding, and the amount includable as net worth, would be reduced over time for those subordinated debt issues with a sinking fund or a serial maturity feature, the commenters suggested that there was no need for those types of subordinated debt issues to be subject to the amortization schedule.

What was ignored by the commenters, however, was the second issue addressed by the Board in its proposal, concerning the significant leveraging potential of a subordinated debt issue as it approaches maturity. The Board believes that this leveraging potential should be reduced by a phased reduction in the proportion of the then-outstanding subordinated debt issue that can qualify for regulatory net worth. For a subordinated debt issue without a sinking fund or other required prepayments, the amount of money at risk, until the debt matures, is the original issue size.

On a subordinated debt issue with a sinking fund or serial maturity feature, however, the amount of money at risk, and the protection afforded the FSLIC, is gradually reduced as the sinking fund or serial payments are made. By not applying the phased-reduction requirement prepayments, the Board would be permitting, in effect, 100 percent of a shrinking issue to count as regulatory net worth while constantly reducing the qualifying regulatory-net-worth proportion of a larger and longer maturity non-sinking-fund issue. After consideration of these factors, the Board does not believe that it would be appropriate to distinguish between subordinated debt issues with a sinking fund or serial maturity feature and those without such features.

Several commenters suggested revisions to the seven-year amortization schedule. For example, one suggested that 100 percent of the subordinated debt issue be included as regulatory net worth during the first five years that the issue is outstanding, then be reduced on a straight-line basis for the remaining term of the issue, while another commenter suggested that the amortization schedule only take effect over the last half of the maturity schedule. After further consideration of this issue, the Board believes that the proposed seven-year amortization schedule is appropriate because it provides for a more gradual reduction of the issuer's regulatory net worth, thus giving the issuer more time either to replace the regulatory capital by the issuance of additional capital stock and/or subordinated debt or to adjust the amount of its liabilities to compensate for the reduction in its regulatory net worth. In addition, the seven-year amortization schedule encourages the issuance of longer-term subordinated debt, which affords the FSLIC a greater degree of protection.

One commenter asked the Board to explicitly address the treatment of subordinated debt that was either approved before December 5, 1984, the proposal date, or for which a substantially complete application was on file prior to that date. Although the Board indicated in the preamble of the proposal that subordinated debt which had previously been approved or for which a substantially complete application was filed by December 5, 1984, would be permitted to be included as regulatory net worth in accordance with the regulation as then in effect, this "grandfathering" provision has been incorporated in the final regulation.

Two commenters suggested that the prohibition on sales of subordinated debt to other insured institutions or their corporate affiliates be modified to permit such investments in *de minimis* amounts, e.g., one percent of assets. In addition, one commenter suggested that there should be no prohibition of sales to insured institutions if the transaction is not part of any related transaction between the insured institutions involving the purchase or sale of other assets. As indicated in the proposal, the Board does not believe that subordinated debt which has been

issued to other insured institutions or their corporate affiliates should be included as regulatory net worth since no risk has been transferred to a third party outside of the group of FSLIC members. The Board notes, however, that the final rule allows for a waiver of the restriction on the sale of subordinated debt to other insured institutions where unusual circumstances would justify such a waiver.

Two commenters also objected to a restriction on sales of subordinated debt to other insured institutions because the effect would be to prohibit the use of a subordinated debt security as collateral for a loan from any insured institution. For the reasons discussed above, the Board does not believe that subordinated debt which is held by other insured institutions should be permitted to be included as part of the issuer's regulatory net worth, and it sees no reason to make an exception to permit the use of subordinated debt as collateral for a loan from an insured institution. In such a case, default by the borrower would result in the insured lender holding subordinated debt issued by another insured institution, to the ultimate detriment of the FSLIC.

In connection with the proposal, the Board specifically requested comments on two issues: (1) With regard to the treatment of subordinated debt as regulatory net worth, whether subordinated debt that is convertible into common stock should be treated differently from non-convertible subordinated debt, and (2) in connection with the proposed prohibition of the sale of subordinated debt to other insured institutions or their corporate affiliates, whether any distinction should be made between sales of subordinated debt to diversified and non-diversified savings and loan holding companies. With respect to the first issue, the Board received only one comment. The commenter suggested that convertible subordinated debt not be subject to the seven-year amortization schedule but failed to provide any reasoned basis for the distinction. Upon further consideration of this issue, the Board has determined that there is no need to make any distinction in the regulation between convertible and non-convertible subordinated debt. Upon proper application, however, the Board would be disposed to permit subordinated debt which automatically converts to permanent capital stock to be 100-percent includable as regulatory net worth and not subject to any net-worth amortization schedule.

The Board received no comments on the second issue. The Board recognizes that the purchase of subordinated debt by a diversified savings and loan holding company (or one of its non-insured-institution subsidiaries) involves the risk that the issuing insured institution may fail and negatively affect the financial strength of the holding company. The Board believes, however, that diversified savings and loan holding companies, unlike non-diversified holding companies, will usually have sufficient financial strength to absorb potential losses resulting from the failure of the issuing insured institution and still ensure the capital adequacy of their own insured subsidiaries. The final rule, therefore, permits insured institutions to issue subordinated debt to diversified savings and loan holding companies and their non-insured-institution subsidiaries and to include the subordinated debt as part of their regulatory net worth.

One commenter also requested that the Board address the issue of whether an insured institution may sell subordinated debt to its service corporation or finance subsidiary and include the subordinated debt as part of its regulatory net worth. Although the final rule does not prohibit an insured institution from selling subordinated debt to its service corporation or finance subsidiary, the Board would not generally approve the inclusion of the subordinated debt as regulatory net worth since the transaction does not result in any risk being transferred outside of the FSLIC insurance system, or, in this case, outside the insured institution itself. If the service corporation or finance subsidiary were merely being used as a conduit for the transfer of funds from an independent third party, however, the Board, under circumstances where no assets of the parent savings and loan association were being transferred to the finance subsidiary or service corporation and which resulted in a transfer of risk to parties other than FSLIC members, may be willing to approve the use of the subordinated debt as regulatory net worth.

The Board is aware that during the past year many institutions have issued subordinated debt to "limited purpose" finance subsidiaries which obtained the funds to purchase the subordinated debt by issuing preferred stock to independent third parties. These transactions were typically structured so that, prior to the issuance of the preferred stock, the parent savings and loan institution would transfer to a second-tier finance subsidiary interest-earning assets with a market value in excess of the redemption price of the to-be-issued preferred stock. The finance subsidiary would then issue preferred stock to the public and use all or part of the net proceeds to purchase subordinated debt of the parent savings and loan institution. In addition, once the preferred stock was issued, the finance subsidiary would be obligated to maintain assets having a market value equal to or in excess of the amount necessary to pay the redemption price of the preferred stock.

After careful consideration of the issues involved in these transactions, the Board has concluded that the parent savings and loan association should not be permitted to include as part of its regulatory net worth the subordinated debt issued to its finance subsidiary. The basis for the Board's conclusion is that the transaction, when viewed as a whole, does not result in any transfer of risk from the FSLIC to an independent third party since the holders of the preferred stock will have priority in liquidation over the FSLIC with regard to the assets of the finance subsidiary in the event that the parent savings and loan association becomes insolvent and is placed in receivership.

Because there may be other transactions involving the issuance of subordinated debt to a service corporation or finance subsidiary which the Board may be willing to approve, the Board does not believe that it would be appropriate to include as part of the final rule a flat prohibition on these types of transactions. Instead, the Board intends to retain the flexibility to review applications involving the issuance of subordinated debt to a service corporation or a finance subsidiary on a case-by-case basis. To address the Board's concern, as discussed in the preamble of the proposal, that issuance of subordinated debt should result in a transfer of risk to parties outside the FSLIC insurance system, the text of the final rule is clarified to specifically require that issuance of subordinated debt must result in the transfer of risk outside the FSLIC insurance system in order for the subordinated debt to qualify as net worth.

The Final Rule

The Board notes that the final rule being adopted today is substantially similar to the proposal. Section 561.13 has been modified to make clear that subordinated debt approved pursuant to § 563.8–1 prior to December 5, 1984, or for which a substantially complete application was on file prior to that date, would be 100-percent includable as

regulatory net worth until the remaining period to maturity is less than one year. The proposed change to § 563.8–1 has been modified to clarify that the prohibition on sales of subordinated debt to insured institutions or their corporate affiliates does not extend to corporate affiliates of the issuer or to diversified savings and loan holding companies and their non-insured-institution subsidiaries.

As discussed previously, the effective date of this rule is December 5, 1984, the date the proposed rule was published in the **Federal Register** (49 FR 47499). The Board is aware that several applications have been filed and approved since the date of the publication which conformed with the proposed rule. Although the final rule is substantially similar to the proposed rule, questions have arisen as to whether the changes being made by today's action will have any effect on those applications which were approved during the interim period. The Board wishes to take this opportunity to confirm that applications which were in conformity with the proposed rule and were approved during the period since December 5, 1984, will not be affected by the final rule. Similarly, institutions which have issued subordinated debt during the interim period which was in conformity with the proposed rule but have not yet filed an application pursuant to § 563.8–1 will not be required to amend their certificate forms or related indentures or purchase agreements in order to obtain approval of the subordinated debt application.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (1980), the Board is providing the following regulatory flexibility analysis.

1. *Need for and objectives of the rule.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION.**

2. *Issues raised by public comments and agency assessment and response.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION.**

3. *Alternative to the final rule.* There are no alternatives to the elimination of techniques that overstate the capital adequacy of small institutions and cause greater risks to the FSLIC that would be less burdensome in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

Lists of Subjects in 12 CFR Parts 561 and 563

Insurance of accounts, Savings and loan associations.

Accordingly, the Board hereby amends Parts 561 and 563, Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

1. The authority for 12 CFR Parts 561 and 563 will continue to be: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Secs. 2 and 5, 48 Stat. 128 and 132, as amended (12 U.S.C. 1462 and 1464); Sec. 409, 94 Stat. 160, Sec. 5A, 47 Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1464); secs. 401, 402, 403, 405, 406, 407, 48 Stat. 1255, 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1724, 1725, 1726, 1729, 1730), Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071; sec. 4, 80 Stat 824, as amended (12 U.S.C. 1425a).

PART 561—DEFINITIONS

2. Amend § 561.13 by revising paragraph (a); redesignating paragraph (c) as new paragraph (d) and revising the text thereof; and adding new paragraph (c); as follows:

§ 561.13 Regulatory net worth.

(a) The term "regulatory net worth" means the sum of all reserve accounts (except specific or valuation reserves), retained earnings, common stock, preferred stock, mutual capital certificates (issued pursuant to § 563.7–4 of this subchapter), securities which constitute permanent equity capital in accordance with generally accepted accounting principles (if approved by the Corporation), appraised equity capital (as defined in § 563.13(c) of this subchapter), and any other nonwithdrawable accounts of an insured institution: *Provided,* that for any non-permanent instrument qualifying as regulatory net worth under this section, either (1) the remaining period to maturity or required redemption (or time of any required sinking fund or other prepayment or reserve allocation, with respect to the amount of such prepayment or reserve) is not less than one year, or (2) the redemption or prepayment is only at the option of the issuer and such payments would not cause the institution to fail to meet its net-worth requirement under § 563.13 of this subchapter; and *Provided further,* that capital stock may be included as net worth without limitation if it would otherwise qualify but for either (i) a provision permitting redemption in the event of a merger, consolidation, or reorganization approved by the Corporation where the issuing institution is not the survivor, or (ii) a provision permitting a redemption where the funds for redemption are raised by the issuance of permanent stock.

* * * * *

(c)(1) The term "regulatory net worth" also includes subordinated debt securities issued pursuant to § 563.8–1 of this subchapter: *Provided,* that an institution whose application to include subordinated debt in net worth pursuant to § 563.8–1 was approved prior to December 5, 1984, shall be permitted to continue to include 100 percent of the principal amount of such subordinated debt as regulatory net worth until the remaining period to maturity (or time of any required sinking fund or other prepayment or reserve allocation, with respect to the amount of such prepayment or reserve) is less than one year; *Provided further,* that an institution that had filed a substantially complete application pursuant to § 563.8–1 prior to December 5, 1984, shall be permitted to include 100 percent of the subordinated debt issued pursuant to such application as regulatory net worth until the remaining period to maturity (or time of any required sinking fund or other prepayment or reserve allocation, with respect to the amount of such prepayment or reserve) is less then one year if such subordinated debt otherwise is in compliance with the requirements of § 563.8–1 and if such application is not amended in any material respect subsequent to December 5, 1984; and *Provided further,* that except as otherwise provided in this paragraph (c)(1) and unless otherwise approved by the Corporation in writing, subordinated debt securities issued pursuant to § 563.8–1 after December 5, 1984, may be included as regulatory net worth only in accordance with the following schedule:

Years to maturity of outstanding subordinated debt	Percent included in net worth
Greater than or equal to 7	100
Less than 7 but greater than or equal to 6	86
Less than 6 but greater than or equal to 5	71
Less than 5 but greater than or equal to 4	57
Less than 4 but greater than or equal to 3	43
Less than 3 but greater than or equal to 2	29
Less than 2 but greater than or equal to 1	14
Less than 1	0

(2) For purposes of determining the principal amount outstanding of an obligation issued at a discount which exceeds 10 percent of the face amount, the issuing institution shall treat as principal only the gross consideration actually received upon issuance plus the accured interest not payable until maturity, as of the date of the

computation. In the case of an instrument sold at a discount which exceeds 10 percent and which bears no stated rate of interest, the amount which can be added to principal each period is an amount equal to the accured interest payable computed on the "level-yield" or "interest" method.

(3) For purposes of computing the amount of subordinated debt includable as regulatory net worth pursuant to this paragraph, the issuing institution must determine the effective maturity of each portion of the principal amount outstanding of the subordinated debt which is subject to required sinking-fund payments, other required prepayments and required reserve allocations, and calculate the percentage amount of each portion of the principal amount outstanding which may be included pursuant to the schedule set forth in this paragraph.

(d) Unless the context indicates otherwise, the term "net worth" whenever used in this subchapter shall mean "regulatory net worth" as defined in this section, except that the term as used in § 563.8–4 shall not include items permitted to be used pursuant to § 563.13(c).

PART 563—OPERATIONS

3. Amend § 563.8 by revising paragraph (f)(l); removing the word "or" at the end of paragraph (f)(2)(i)(*b*), substituting a semi-colon for the period at the end of paragraph (f)(2)(i)(*c*), and adding paragraph (f)(2)(i)(*d*); revising the introductory text of paragraph (f)(2)(ii); and revising paragraphs (g) and (h) as follows:

§ 563.8 Borrowing limitations.

* * * * *

(f) *Minimum denominations of securities evidencing outside borrowings.*

(1) *General.* The minimum denomination of the security shall be $100,000, and the purchase price upon original issue shall be at least $90,000.

(2) *Exceptions.*

(i) * * *

* * * * *

(*d*) Distributed exclusively abroad to foreign nationals, provided the offering is made subject to safeguards reasonably designed to preclude distribution or redistribution of the securities within, or to nationals of, the United States. Such safeguards include, without limitation, measures that would be sufficient such that registration of the offering would not be required if the issuer were subject to the Securities Act of 1933.

(ii) The minimum denomination may be $1,000 (without regard to purchase price) if the securities are not offered or sold at any office of the institution or any of its affiliates, and

* * * * *

(g) *Disclosure.* No insured institution shall, directly or indirectly in connection with the offer, sale, or issuance of a security evidencing a borrowing pursuant to this section, make any statement that: (1) Is false or misleading with respect to any material fact; or (2) omits to state any material fact (i) necessary in order to make the statements made, in light of circumstances under which they were made, neither false nor misleading, or (ii) during the period the securities are being offered, necessary to correct any earlier statement made in the offering materials that has subsequently become false or misleading.

(h) *Offering Circular.* (1) *Review.* No final offering circular shall be furnished to purchasers under paragraph (f)(2)(ii)(*b*) of this section unless it is filed with the Corporate and Securities Division of the Board's Office of General Counsel, and declared effective by the General Counsel or his designee, prior to its use.

(2) *Content.* A final offering circular under this section shall be in a form satisfactory to the Corporation. At a minimum, it shall contain information in detail comparable to that required under the Securities Act of 1933, General Form of Registration S–1, or such other form as would be appropriate if the issuing institution meets the eligibility requirements prescribed by the Securities and Exchange Commission for use of that form, and Item 7 of Form PS as prescribed in Part 563b of this subchapter.

(3) *Financial statements.* A final offering circular under this section shall contain financial statements required by the appropriate form under the Securities Act of 1933 which the insured institution would be eligible to use. Such financial statements shall be prepared in accordance with the requirements of § 563c.1 of this subchapter. The issuer shall make available promptly upon request to each purchaser of a security issued subject to the requirements of paragraph (f)(2)(ii)(*b*) (including purchasers upon resale) while the securities are outstanding, audited annual statements of condition and operation, and comparative unaudited quarterly statements of condition and operations for the first three quarters.

* * * * *

4. Amend § 563.8–1 by substituting a semi-colon for the period at the end of paragraph (b)(2)(iv) and adding new paragraphs (b)(2)(v) and (b)(3); revising the introductory text of paragraph (d); revising paragraphs (d)(1)(i) and (d)(1)(v); adding new paragraph (d)(1)(vi); revising paragraph (d)(3); and adding new paragraph (i), as follows:

§ 563.8–1 Issuance of subordinated debt securities.

* * * * *

(b) *Eligibility requirements.** * *

(2) * * *

(v) The subordinated debt securities have been issued, or are proposed to be issued, to an institution whose accounts are insured by the Corporation, or a corporate affiliate thereof. This requirement, however, shall not apply to any corporate affiliate of the issuer or to any diversified savings and loan holding company or any non-insured-institution subsidiary thereof.

(3) Whether the issuance of such securities by the applicant in the transaction and any related transactions will result in a transfer of risk from the Corporation to parties other than insured institutions.

* * * * *

(d) *Requirements as to securities.* Subordinated debt securities issued pursuant to this section shall meet all of the following requirements unless one or more of such requirements, not including paragraphs (1)(i)(*a*) and (1)(ii) of this section which are not eligible for waiver, are waived by the Corporation.

(1) *Form of certificate.** * *

(i) Bear on its face, in bold-face type, the following legends: (*a*) "This security is not a savings account or deposit and it is not insured by the Federal Savings and Loan Insurance Corporation"; and (*b*) "This security is not eligible for purchase by any institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation or a corporate affiliate thereof, except that this security may be purchased by a corporate affiliate of the issuer or by any diversified savings and loan holding company and any non-insured-institution subsidiary thereof."

* * * * *

(v) Be in a minimum denomination of at least $100,000 (provided that the purchase price upon original issue shall be at least $90,000), except that the minimum original amount shall be $1,000 (without regard to purchase price) for securities meeting the requirements of § 563.8(f)(2)(ii) of this Part, and upon partial prepayment a certificate for the amount then outstanding may be issued in substitution therefor; and

(vi) Set forth, in the certificate and the purchase agreement or indenture, precisely the following statement:

Notwithstanding anything to the contrary in this certificate (or in any related document): (a) If the FSLIC shall be appointed receiver for the issuer of this certificate (the "issuer") and in its capacity as such shall cause the issuer to merge with or into another insured institution, or in such capacity shall sell or otherwise convey part or all of the assets of the issuer to another insured institution or shall arrange for the assumption of less than all of the liabilities of the issuer by one or more other insured institutions, the FSLIC shall have no obligation, either in its capacity as receiver or in its corporate capacity, to contract for or to otherwise arrange for the assumption of the obligation represented by this certificate in whole or in part by any insured institution or institutions which results from any such merger or which has purchased or otherwise acquired from FSLIC as receiver for the issuer, any of the assets of the issuer, or which, pursuant to any arrangement with FSLIC, has assumed less than all of the liabilities of the issuer. To the extent that obligations represented by this certificate have not been assumed in full by an insured institution with or into which the issuer may have been merged, as described in this subparagraph (a), and/or by one or more insured institutions which have succeeded to all or a portion of the assets of the issuer, or which have assumed a portion but not all of the liabilities of the issuer as a result of one or more transactions entered into by FSLIC as receiver for the issuer, then the holder of this certificate shall be entitled to payments on this obligation in accordance with the procedures and priorities set forth in the Federal Home Loan Bank Board's regulations as they may be applicable to the receivership of the issuer or as they may be set forth in orders of the Federal Home Loan Bank Board relating to such receivership. (b) In the event that the obligation represented by this certificate is assumed in full by another insured institution, which shall succeed by merger or otherwise to substantially all of the assets and the business of the issuer, or which shall by arrangement with FSLIC assume all or a portion of the liabilities of the issuer, and payment or provision for payment shall have been made in respect of all matured installments of interest upon the certificates together with all matured installments of principal on such certificates which shall have become due otherwise than by acceleration, then any default caused by the appointment of a receiver for the issuer shall be deemed to have been cured, and any declaration consequent upon such default declaring the principal and interest on the certificate to be immediately due and payable shall be deemed to have been rescinded. (c) This security is not eligible to be purchased or held by any FSLIC-insured institution or corporate affiliate thereof except that this security may be purchased or held by a corporate affiliate of the issuer or by a diversified savings and loan holding company and its non-insured institution subsidiaries. The issuer of this security may not recognize on its transfer books any transfer made to a FSLIC-insured institution or any corporate affiliate thereof (except as provided in the preceding sentence) and will not be obligated to make any payments of principal or interest on this security if the owner of this security is a FSLIC-insured institution or any corporate affilitate thereof (except as provided in the preceding sentence). (d) For the purpose of parts (a) and (b) of this paragraph, the term "insured institution" means a depository institution the accounts of which are insured by the FSLIC, the Federal Deposit Insurance Corporation or any federal or state agency which performs similar functions.

* * * * *

(3) *Limitations on sale to certain institutions.*

(i) No insured institution may sell any subordinated debt securities issued pursuant to this section to a Federal Home Loan Bank or, except with prior written approval of the Corporation in a supervisory situation, to the Corporation; and

(ii) Without the prior written approval of the Corporation, no insured institution may sell, either directly or indirectly through an underwriter or otherwise, any subordinated debt securities issued pursuant to this section to an insured institution or any corporate affiliate thereof, except that an insured institution may sell such securities to its corporate affiliates or to a diversifed savings and loan holding company and its non-insured-institution subsidiaries.

* * * * *

(i) *Delegations of authority.* (1) The Principal Supervisory Agent is authorized to approve subordinated debt applications filed pursuant to this section, if they are in compliance with regulatory requirements, unless the subordinated debt application involves a significant issue of law or policy upon which the Corporation has not taken a formal position or requires an offering circular for subordinated debt securities to be sold in a public offering. (2) The Director of the Office of District Banks, with the concurrence of the Director of the Office of Examinations and Supervision and the General Counsel or their designees, are authorized to approve any subordinated debt application filed pursuant to this section if they are in compliance with regulatory requirements, unless the respective office directors are of the opinion that the subordinated debt application involves policy considerastions which warrant formal consideration by the Corporation.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85-11885 Filed 5-16-85; 8:45 am]

BILLING CODE 6720-01-M

---

12 CFR Parts 563b and 569

[No. 85-320]

Conversion Proxy Solicitations

Dated: April 30, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board is adopting alternative procedures for obtaining the approval of the members of mutual insured institutions for plans to convert from the mutual to stock form of organization. The alternative procedures authorize the use of certain existing proxies to approve such plans when the members have been provided previously with adequate disclosure regarding the plan. The alternative procedures are intended to balance the interests of members with the practical needs of converting insured institutions. In addition, the Board is clarifying other provisions of the Conversion Regulations relating to voting by mutual account holders.

EFFECTIVE DATE: June 11, 1985.

FOR FURTHER INFORMATION CONTACT: James C. Stewart, Senior Attorney, Corporate and Securities Division (202) 377-6457; J. Larry Fleck, Deputy Director, Corporate and Securities Division (202) 377-6413; or Julie L. Williams, Associate General Counsel, Director, Corporate and Securities Division (202) 377-6459, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: By Resolution No. 84-654, dated November 16, 1984, the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), proposed to amend the rules governing the conversion-to-stock form of savings and loan associations and savings banks whose deposits are insured by the Corporation and of federal savings banks whose accounts are insured by the Federal Deposit Insurance

Corporation ("insured institutions"). *Conversion Proxy Solicitations*, 49 FR 47410 (Dec. 4, 1984). The proposed amendments would have authorized mutual insured institutions to use general proxies previously granted by account holders to obtain approval by account holders of a plan of conversion to the stock form. The authority to use general proxies in this manner, however, would be limited to instances in which the account holders or other voting members have been furnished a proxy statement meeting the requirements of § 563b.5(c) of the Conversion Regulations, 12 CFR Part 563b (1984).

Under the Board's current regulations, a mutual insured institution must conduct a special proxy solicitation in order to obtain approval of the plan of conversion. 12 CFR 563b.6(c) (1984). The proxy solicitation requirements were intended to ensure that members have all the information they need to vote intelligently on the plan of conversion. *See Conversions of Insured Institutions From Mutual Into Stock Associations*, Resolution No. 73–26, 38 FR 1335 (Jan. 11, 1973). Since the conversion will extinguish the voting rights of members, 12 CFR 563b.3(c)(15) (1984), such consent is critical to the validity of the plan. The member proxy solicitation, however, adds significantly to the cost of conversion to stock form. There is not only the cost of preparing, printing, and mailing the proxy statement, but, in the event members do not respond to the initial solicitation, converting institutions must incur the additional expense of supplemental mailings, advertisements, telephone solicitations and even personal visits to members.

The proposal reflected the Board's belief that the member approval process could be streamlined through the use of general proxies and still provide the necessary informed consent of members when voting members have been furnished the disclosures mandated by the Form PS and are specifically informed that their previously executed proxies may be used if they do not respond to the solicitation. The Board proposed to amend § 563b.5(d) of the Conversion Regulations to allow the use of proxies other than those specifically solicited for the meeting to approve a conversion if all voting members as of the voting record date have been provided with a proxy statement meeting the requirements of § 563b.6(c) and with a proxy meeting the requirements of § 563b.5, and containing provision for an affirmative or negative instruction as to casting of the member's vote. Item 2 of the Form PS itself was proposed to be amended to require a bold-face legend on the cover of the proxy statement indicating that, if a proxy is not returned by the meeting date, management may use its general or other existing proxies to vote on the plan of conversion. Item 4 regarding voting rights also was proposed to be amended to require additional disclosure on the use of other proxies. In order to allow for variations in the authority conferred by individual proxies, the preamble to the proposal suggested that the independent counsel's opinion on the validity of the special conversion meeting should address the issue of authority conferred by general proxies held by the association.

In addition, the Board proposed to amend § 563b.6(c) to require the forwarding of conversion proxy-solicitation materials to known beneficiaries of trust accounts held by the institution to ensure the fullest participation in the conversion vote. Finally, the Board proposed to relocate this provision in § 563b.6 with the other provisions relating to the furnishing of proxy materials and to update the sectional references in § 563b.3(d)(14).

The Board received five public comments on the proposal. All commenters supported the use of general proxies in conversions. The continued provision of proxy materials to voting members was viewed as a prudent precaution. One comment from a mutual insured institution estimated that adoption of the rule could save the institution approximately $160,000 on the cost of its conversion. Another commenter, a firm that often acts as a proxy-solicitation agent in conversions, noted that as a practical matter fewer than five percent of accountholders and other members actually vote against a conversion: The main difficulty in securing member consent is obtaining response to the solicitation.

One commenter did suggest that for purposes of clarity, the Conversion Regulations should specifically require an opinion of independent counsel that any general proxies used confer sufficient authority to vote on conversion. The Board is amending § 563b.6(c)(2) to specifically provide that the opinion of counsel on the special meeting must address the issue of proxy authority if general proxies are used.

Several commenters criticized the proposed amendment to § 563b.6(c) that would require the mailing of proxy materials to each beneficial holder of an account held in a fiduciary capacity when, in the case of a federal association, the name of the beneficial holder is known, or, in the case of a state-chartered association, the beneficial holder possesses voting rights. Although there was no objection to furnishing proxy materials and voting rights to IRA beneficiaries, the Board was urged not to extend this treatment to beneficiaries of other types of fiduciary accounts. It was noted that a large percentage of fiduciary accounts are established for the benefit of children. In the majority of cases, it was asserted, the beneficiaries have no control over the account. Accordingly, it was contended that the extension of voting privileges to all types of beneficiaries whose names are known to a federal association will result in disproportionate administrative expenses and burden.

The Board finds the arguments raised by the commenters persuasive and has determined not to adopt that portion of the proposal that would require converting federal mutual associations to send proxy materials to each account beneficiary whose name appears on the association's records. The final rule does, however, require federal associations to furnish proxy materials to IRA beneficiaries and afford them voting rights. The Board is of the view that such beneficiaries are in a different position than beneficiaries of other fiduciary accounts because they represent an identifiable category of beneficial account holders who retain a degree of control over their accounts.

With respect to the conversion proxy-solicitation process, the Board has become aware that some confusion may have existed concerning the applicability of the Conversion Regulations to conversions that are undertaken in multiple steps where the intended result is a conversion and a necessary step to that end requires a vote of approval of the association's members, but where members will not be furnished a proxy statement subsequently to obtain their approval of the conversion. It is the Board's longstanding position that such multi-step transactions must comply with the Conversion Regulations and, specifically, that the conversion proxy-solicitation rules apply to such a solicitation.

The Board also is taking this opportunity to clarify an inadvertent technical omission in another regulation affecting the voting rights of members in a mutual insured institution. Part 569 of the Insurance Regulations generally governs solicitations of proxies from "security holders" in insured institutions. However, when a definition of "security" was added to the Insurance Regulations by Resolution No.

82-193, dated March 24, 1982, the term excluded insured accounts in order to exempt such accounts from the filing requirements for new securities. *See Amendments Relating to Savings Accounts*, 47 FR 13776, 13779-80 (Apr. 1, 1982). *See* 12 CFR 561.41 (1984). The Board did not intend this change to affect the scope of Part 569, and does not believe that it did. However, since the definition of "proxy" in § 569.1(c) states that the term includes every form of authorization by which a person is, or may be deemed to be, designated to act for a "security holder", the argument might be made that the amendment to the general definition of the term "security" resulted in excluding proxies given by mutual account holders, since accounts were removed from the definition of a "security."

While the definition of security holder in § 569.1(a) specifically encompasses the owner of an institution's indebtedness that confers voting rights and while accounts are generally considered debts of the institution, the number of inquiries regarding the current regulation indicates the need for clarification and the Board is therefore amending § 569.1(a) to specifically provide, as the Board has always intended, that the term "security holder" includes an account holder who has a right to vote in the affairs of the institution.

Finally, the Board is taking this opportunity to correct a cross-reference in § 563b.2(a)(34) of the Conversion Regulations.

The Board has determined for good cause to implement the amendments that have not been published as proposals on a permanent basis without notice and comment pursuant to 5 U.S.C. 553(b)(3)(B) and 12 CFR 508.11. It is the Board's view that good cause exists for immediate implementation since the changes are in the nature of technical clarifications and consistent with longstanding policy.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604 (1982), the Board is providing the following final regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The rules would apply to all insured institutions.

3. *Impact of the proposed rules on small institutions.* To the extent that the rules would affect small institutions, this impact has been discussed elsewhere in the proposal.

4. *Overlapping of conflicting federal rules.* There are no federal rules which duplicate, overlap, or conflict with the proposed rules.

List of Subjects in 12 CFR Parts 563b and 569

Federal Savings and Loan Insurance Corporation, Securities, Savings and loan associations.

Accordingly, the Board hereby amends Parts 563b and 569 of Subchapter D, Chapter V of Title 12 of the Code of Federal Regulations, as set forth below.

1. The authority for 12 CFR Parts 563b and 569 continues to read:

Authority: Secs. 402, 403, and 407 of the National Housing Act, 48 Stat. 1256, 1257, and 1260, as amended, 12 U.S.C. 1725, 1726, and 1730; Sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended, 12 U.S.C. 1464; Secs. 3(b), 12, 13, 14, and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895, and 901, as amended, 15 U.S.C. 78c, l, m, n, and w; and Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR Part 1071 (1943-48 Comp).

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563b—CONVERSION FROM MUTUAL TO STOCK FORM

Subpart A—Standard Conversions

§ 563b.2 [Amended]

2. Amend § 563b.2 by revising the cross-reference in paragraph (a)(34) to read "§ 563b.3(c)(4)."

* * * * *

3. Amend § 563b.5 by adding a new paragraph (d)(4) thereto, as follows:

§ 536b.5 Solicitation of proxies; proxy statement.

* * * * *

(d) *Requirements as to proxy* * * *

(4) Notwithstanding any other provisions of this paragraph (d), the proxy may be in a form previously obtained from a voting member and conferring general authority to vote on any and all matters at any meeting of the members or other authority to vote on matters to be presented at the special meeting, *Provided:* That such voting member has been furnished a proxy statement conforming with paragraph (c) of this section and the voting member does not grant a later-dated proxy to vote at the meeting called to consider the plan of conversion or attend such meeting and vote in person.

* * * * *

4. Revise paragraph (c) of § 563b.6 as follows:

§ 563b.6 Vote by members.

* * * * *

(c)(1) *Notice to members.* Notice of the meeting to consider a plan of conversion shall be given by means of the proxy statement authorized for use by the Corporation. The notice shall be given not more than 45 nor fewer than 20 days prior to the date of the meeting to each association member, unless state law requires a different notice period. Such notice shall also be sent to each beneficial holder of an account held in a fiduciary capacity: (i) In the case of a Federal association, where the account is an Individual Retirement Account and the name of the beneficial holder is disclosed on the institution's records, and (ii) in the case of a state-chartered association where the beneficial holder possesses voting rights.

(2) *Summary proxy statement.* The proxy statement required by paragraph (c)(1) of this section may be in summary form, *Provided:*

(i) A statement is made in bold-face type on the notice to members required under paragraph (c)(1) of this section that a more detailed description of the proposed transaction may be obtained by returning an attached postage-paid postcard or other written communication requesting a supplemental information statement which, together with the summary proxy statement, complies with the requirements of Form PS;

(ii) The last date on which the summary proxy statement is mailed to members will be deemed the date on which notice is given for purposes of paragraph (c)(1). Without prior approval by the Board, the special meeting of members shall not be held fewer than 20 days after the last date on which the supplemental information statement is mailed to requesting members;

(iii) The supplemental information statement required to be furnished to members pursuant to paragraph (c)(2)(i) of this section may be combined with Form OC, if the subscription offering is commenced concurrently with or during the proxy solicitation period pursuant to § 563b.3(d)(1) of this Subpart A;

(iv) The summary proxy statement shall be prepared in accordance with the following requirements:

(A) All of the requirements of Form PS shall be met, with the exception of the following:

(*1*) Item 6. *Management Remuneration.*

(*2*) Item 7. *Business of the Applicant.* Paragraphs (c) through (m), and (o).

(*3*) Item 14. *Financial Statements.*

(4) Item 15. *Consents of Experts and Reports,* Paragraph (b).

(B) The disclosure requirements of Items 8(j), 9 and 13 of Form PS may be prepared in summary form.

(C) The disclosure requirements of Item 5 may be met through disclosure of the names, ages, and present occupations of all directors and executive officers.

(D) The plan of conversion shall not be required to be attached to the summary proxy statement under Item 16.

(E) Includes the statement contained in § 563b.8(u) of this Part.

* * * * *

4. Amend § 563b.8(c) by removing the word "and" at the end of subparagraph (2)(i) thereof and inserting, before the period at the end of subparagraph (2)(ii) thereof, the following:

§ 563b.8 Procedural requirements.

* * * * *

(c) *Additional filing requirements.*

* * *

(2) * * *

"; and (iii) if the association has used proxies executed prior to the proxy solicitation required by § 563b.6(c)(1), the authority conferred by such proxies includes authority to vote on the plan of conversion."

* * * * *

Subpart E—Forms

* * * * *

§ 563b.101 Form PS—Proxy Statements.

* * * * *

5. Amend Item 2 of the Form PS by adding the following sentence at the end thereof:

Form PS

[Facing Sheet]

Federal Home Loan Bank Board, Federal Savings and Loan Insurance Corporation, 1700 G Street, NW., Washington, D.C. 20552.

Proxy Statement

* * * * *

Form PS

Information Required in Conversion Proxy Statement

* * * * *

Item 2 Notice of Meeting.

If the applicant intends to use previously obtained proxies at the meeting in accordance with § 563b.5(d)(4), the notice of the meeting shall include the following boldface legend:

THE ASSOCIATION MAY USE YOUR PREVIOUSLY-EXECUTED PROXIES TO VOTE FOR THE PLAN OF CONVERSION IN THE EVENT YOU DO NOT EXECUTE ANOTHER PROXY FOR THIS MEETING, ATTEND AND VOTE IN PERSON, OR OTHERWISE REVOKE YOUR PREVIOUSLY-EXECUTED PROXIES.

* * * * *

6. Amend Item 4 of the Form PS by adding the following sentence at the end of paragraph (a): "Discuss the voting rights of beneficiaries of accounts held in a fiduciary capacity such as IRA accounts."; and adding a new paragraph (d), as follows:

* * * * *

Item 4 Voting Rights and Vote Required for Approval.

* * * * *

(d) If the Applicant intends to use previously executed proxies to vote on the plan of conversion in accordance with § 563b.5(b)(4), discuss how such proxies were obtained, the circumstances in which such proxies may be used, and how such proxies will be voted.

* * * * *

PART 569—PROXIES

7. Amend § 569.1 by adding the following sentence at the end of paragraph (a) thereof:

§ 569.1 Definitions.

(a) *Security holder.* * * * For purposes of this part, the term "security holder" shall include any account holder having the right to vote in the affairs of a mutual insured institution.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85-11886 Filed 5-16-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-ANM-18]

Blanding, Utah, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends the published description of the Blanding, Utah, transition area. A restricted area referred to in the description of the transition area has been revoked. This action does not increase the size of the transition area, but makes only editorial changes in the description.

DATES: Effective date—0901 G.m.t., August 1, 1985.

Comments must be received on or before July 18, 1985.

ADDRESSES: Send comments on the rule to: Manager, Airspace & Procedures Branch, ANM-530, Federal Aviation Administration, Docket No. 85-ANM-18, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

The official docket may be examined in the Regional Counsel's Office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Katherine Paul, Airspace Technical Specialist, ANM-535, Federal Aviation Administration, Docket No. 85-ANM-18, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this is in the form of a final rule, which involves an editorial change to the description of the Blanding, Utah, transition area, and thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to make an editorial change to the published description of the Blanding, Utah, transition area. Airspace docket 81-ARM-17 (47 FR 4504) revoked a Restricted Area (R-6410) contained in the description of the Blanding, Utah, transition area. This action does not enlarge the size of the transition area but makes only an editorial change in the description.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

Since this amendment is only editorial or corrective in nature, and imposes no

additional regulatory or economic burder on any person, notice and public procedure hereon are unnecessary.

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

List of Subjects in 14 CFR Part 71

Transition area, Aviation safety.

Adoption of the Amendment

§ 71.181 [Amended]

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Blanding, Utah—(Amended)

On the ninth and tenth lines of the description, delete ". . . excluding that portion within R-6410 during the times that R-6410 is in use."

(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 Seattle, Washington, on May 6, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-11915 Filed 5-16-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 85-ANM-17]

Alteration of Various Transition Areas in the Northwest Mountain Region

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends the published descriptions of the Coppertown, Montana; Great Falls, Montana; and Logan, Utah, transition areas. Two airways referred to in these descriptions have been renumbered. This action does not increase the size of the transition areas, but makes only editorial changes in the descriptions.

DATES: Effective date—0901 G.m.t., August 1, 1985.

Comments must be received on or before July 18, 1985.

ADDRESSES: Send comments on the rule to: Manager, Airspace & Procedures Branch, ANM-530, Federal Aviation Administration, Docket No. 85-ANM-17, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's Office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Katherine Paul, Airspace Technical Specialist, ANM-535, Federal Aviation Administration, Docket No. 85-ANM-17, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

Request for Comments

Although this is in the form of a final rule, which involves editorial changes to the descriptions of the Coppertown, Montana; Great Falls, Montana; and Logan, Utah, transition areas, and thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to make editorial changes to the published descriptions of the Coppertown, Montana; Great Falls, Montana; and Logan, Utah, transition areas. Airspace docket 83-ANM-9 (49 FR 19292) redescribed an airway contained in the description of the Coppertown, and Great Falls, Montana, transition areas (V2N changed to V247). In addition, airspace docket 83-ANM-13 (49 FR 19293) redescribed an airway contained in the description of the Logan, Utah, transition area, (V4S to V142). This action does not enlarge the size of the transition area, but makes only editorial changes in the descriptions.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

Since this amendment is only editorial or corrective in nature, and imposes no additional regulatory or economic burden on any person, notice and public procedure hereon are unnecessary.

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

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

§ 71.181 [Amended]

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Coppertown, Montana—(Amended)

Replace "V2N" with "V247."

Great Falls, Montana—(Amended)

Replace "V2N" with "V247."

Logan, Utah—(Amended)

Replace "V4S" with "V142."

(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 Seattle, Washington, on May 6, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-11916 Filed 5-16-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 84F-0211]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to expand the use of hexamethylene bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate) as an antioxidant/stabilizer in polyoxymethylene copolymers that contact foods containing more than 8 percent alcohol. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective May 17, 1985; objections by June 17, 1985.

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

FOR FURTHER INFORMATION CONTACT: Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 30, 1984 (49 FR 30370), FDA announced that a food additive petition (FAP 4B3805) had been filed by Ciba-Geigy Corp., Hawthorne, NY 10532, proposing that § 177.2470 *Polyoxymethylene copolymer* (21 CFR 177.2470) be amended to expand the use of hexamethylene bis(3,5-di-*tert*-buty-1-4-hydroxyhydrocinnamate) as an antioxidant/stabilizer in polyoxymethylene copolymers that contact foods containing more than 8 percent alcohol.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive uses are safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before June 17, 1985 submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Polymeric food packaging.

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 Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for Part 177 is revised to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 177.2470 [Amended]

2. Section 177.2470 *Polyoxymethylene copolymer* is amended in paragraph (b)(1) by revising the entry "Hexamethylene bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate) (CAS Reg. No. 35074-77-2) (for use in contact with foods containing no more than 8 percent alcohol)" to read "Hexamethylene bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate) (CAS Reg. No. 35074-77-2)."

Effective date. This regulation is effective May 17, 1985.

Dated: May 8, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-11922 Filed 5-16-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-204; Re: Notice No. 472]

Establishment of the Northern Sonoma Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in California known as "Northern Sonoma." The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: June 17, 1985.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54824) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

E. & J. Gallo Winery on behalf of its subsidiary Frei Brothers, a winery located in Healdsburg, California, petitioned ATF for the establishment of a viticultural area in California to be known as "Northern Sonoma." In response to this petition, ATF published a notice of proposed rulemaking (Notice No. 472) in the **Federal Register** on June 27, 1983 (48 FR 29539) proposing the establishment of this viticultural area.

General Description

The Northern Sonoma viticultural area consists of approximately 329,000 acres encompassing 26,000 acres of grapevines and 72 wineries.

The Northern Sonoma viticultural area is located entirely within the North Coast viticultural area. Six approved viticultural areas are located entirely within the Northern Sonoma viticultural area as follows: Chalk Hill, Alexander Valley, Sonoma County Green Valley, Dry Creek Valley, Russian River Valley, and Knights Valley.

The Sonoma County Green Valley and Chalk Hill areas are each entirely within the Russian River Valley area. The boundaries of the Alexander Valley, Dry Creek Valley, Russian River Valley, and Knights Valley areas all fit perfectly together dividing northern Sonoma County into four large areas. The Northern Sonoma area uses all of the outer boundaries of these four areas with the exception of an area southwest of the Dry Creek Valley area and west of the Russian River Valley area. This area has nearly 300 acres of grapevines and possesses the same geographical features as the rest of the Northern Sonoma area.

Name

The name "Northern Sonoma" was used as a community name by the *Healdsburg Enterprise*, a local newspaper, beginning in 1887. A winery was established in Geyserville in 1890 named "North Sonoma Winery"; the winery was destroyed by fire three years later. In 1910, *The Pacific Wine and Spirits Review*, reported that Sonoma County would soon become the leading grape producing county in the state, attributing the growth partly to the construction of three new wineries in Northern Sonoma. In January 1920, the *Healdsburg Enterprise* and the *Santa Rosa Press Democrat* both reported on a movement to divide northern and southern Sonoma County into two counties. These reports support the concept of "Northern Sonoma" as a distinct community. A winery was established in Geyserville at the end of prohibition named "Northern Sonoma Wines, Inc." By the mid-1940's, this winery was producing approximately one million gallons annually, most of which was sold in bulk to bottlers. This winery was phased out of existence in 1953. Beginning in 1950, tourism publications of the county government and local chambers of commerce have divided the county into "Northern Sonoma" and other regions. A series of articles published in 1973 and 1974 in *Wines & Vines*, a wine industry trade magazine, describe the "northern district" of Sonoma County. This "northern district" is approximately the same as the approved viticultural area. In the spring of 1980, another effort was initiated to establish a separate county comprising the northern part of Sonoma County. This also supports the idea that "Northern Sonoma" may be identified as a separate community.

Geographical Features Which Affect Viticultural Features

The approved area is separated from the Sonoma Valley viticultural area in southern Sonoma County by the city of Santa Rosa and Cotati Valley which are urban or undergoing urbanization. These and other urban areas distinguish the proposed area from areas located south of the proposed boundary.

The area west of the approved western boundary is mountainous and relatively inaccessible. A small part of the western portion of the approved area is also mountainous and inaccessible. However, for convenience the boundary was drawn as a series of straight lines connecting features which can be found conveniently on the map.

North and east of the approved area are mountain ridges which distinguish the microclimates of Northern Sonoma from the microclimates on the opposite sides of the mountain ridges. The northern part of the area is cooler than the Guenoc Valley viticultural area to the north. The eastern part of the area receives significantly more rainfall than the Napa Valley viticultural area to the east.

Public Comments

ATF received 2 comments in response to Notice No. 472, from ISC of California, Inc. and Heublein Wines. Both commenters were in favor of establishment of the Northern Sonoma viticultural area as proposed. Both commenters were specifically in favor of establishment of large areas which include smaller approved areas. Both commenters believe that the name "Northern Sonoma" applies to the proposed area and that the name would not be confusing to consumers.

Boundary Adopted as Proposed

Based on the foregoing, the boundary of the Northern Sonoma viticultural area, as proposed in Notice No. 472, is established unchanged. However, the proposed § 9.70(c)(20) erroneously referred to "Big Oak Mountain" where the correct name of the geographical feature is "Big Oat Mountain." This error is corrected in the final rule. The boundary of the approved viticultural area is described in § 9.70.

Miscellaneous

ATF does not wish to give the impression by approving Northern Sonoma as a viticultural area that it is approving or endorsing the quality of the wine from the area. ATF is approving this area as being distinct and not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Northern Sonoma wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not

expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Compliance With E.O. 12291

In compliance with Executive Order 12291 the Bureau has determined that this final rule is not a major rule since it will not result in:

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

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

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

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

27 CFR Part 9—American Viticultural Areas is amended as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: August 29, 1935, Chapter 814, sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205), unless otherwise noted.

Par. 2. The table of sections in 27 CFR Part 9, Subpart C, is amended by adding the heading of § 9.70 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.70 Northern Sonoma.

Par. 3. Subpart C is amended by adding § 9.70 to read as follows:

§ 9.70 Northern Sonoma.

(a) *Name.* The name of the viticultural area described in this section is "Northern Sonoma."

(b) *Approved map.* The approved map for determining the boundary of the Northern Sonoma viticultural area is the U.S.G.S. Topographic Map of Sonoma County, California, scale 1:100,000, dated 1970.

(c) *Boundary.* The Northern Sonoma Viticultural area is located in Sonoma County, California. The boundary description in paragraphs (c)(1)–(c)(23) of this section includes (in parentheses) the local names of roads which are not identified by name on the map.

(1) The beginning point is the point, in the town of Monte Rio, at which a secondary highway (Bohemian Highway) crosses the Russian River.

(2) The boundary follows this secondary highway (Bohemian Highway) southeasterly across the Russian River, along Dutch Bill Creek, through the towns of Camp Meeker, Occidental, and Freestone, then northeasterly to the point at which it is joined by State Highway 12.

(3) The boundary follows State Highway 12 through the town of Sebastopol to the point, near a bench mark at elevation 96 feet, at which it intersects a northbound secondary highway (Fulton Road) leading toward the town of Fulton.

(4) The boundary follows this secondary highway (Fulton Road) north to the town of Fulton where it intersects an east-west secondary highway (River Road).

(5) The boundary follows this secondary highway (River Road)—

(i) East past U.S. Highway 101 (where the name of this secondary highway changes to Mark West Springs Road),

(ii) Easterly, then northerly to the town of Mark West Springs (where the name of this secondary highway changes to Porter Road),

(iii) Easterly to the town of Petrified Forest (where the name of this secondary highway changes to Petrified Forest Road), and

(iv) Northeasterly to the Sonoma County-Napa County line.

(6) The boundary follows the Sonoma County-Napa County line northerly to the Sonoma County-Lake County line.

(7) The boundary follows the Sonoma County-Lake County line northwesterly to the section line on the north side of Section 11, Township 10 North, Range 8 West.

(8) The boundary follows this section line west to the northwest corner of Section 9, Township 10 North, Range 8, West.

(9) The boundary follows the section line south to the southwest corner of Section 4, Township 9 North, Range 8, West.

(10) The boundary proceeds in a straight line northwest to the northeast corner of Section 36, Township 10 North, Range 9, West.

(11) The boundary follows the section line north to the northeast corner of Section 13, Township 10 North, Range 9, West.

(12) The boundary proceeds in a straight line northwesterly to the intersection of 38°45' North latitude parallel and 122°52'30" West longitude meridian.

(13) The boundary proceeds in a straight line northwesterly to the southeast corner of Section 4, Township 11 North, Range 10 West.

(14) The boundary follows the section line north to the Sonoma County-Mendocino County line.

(15) The boundary follows the Sonoma County-Mendocino County line west then south to the southwest corner of Section 34, Township 12 North, Range 11 West.

(16) The boundary proceeds in a straight line southeasterly to the southeast corner of Section 3, Township 11 North, Range 11 West.

(17) The boundary follows the section line and its extention south to 38°45' North latitude parallel.

(18) The boundary follows this latitude parallel west to the west line of Section 5, Township 10 North, Range 11 West.

(19) The boundary follows the section line south to the southeast corner of Section 18, Township 9 North, Range 11 West.

(20) The boundary proceeds in a straight line southwesterly approximately 5 miles to the peak of Big Oat Mountain, elevation 1404 feet.

(21) The boundary proceeds in a straight line southeasterly approximately 2¾ miles to the peak of Pole Mountain, elevation 2204 feet.

(22) The boundary proceeds in a straight line southerly approximately 2¾ miles to the confluence of Austin Creek and the Russian River.

(23) The boundary follows the Russian River northeasterly, then southeasterly to the begining point.

Signed: March 4, 1985.

Stephen E. Higgins,

Director.

Approved: April 24, 1985.

Edward T. Stevenson,

Deputy Assistant Secretary (Operations).

[FR Doc. 85-11879 Filed 5-16-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 841

Licensing Government-Owned Inventions in the Custody of the Department of the Air Force

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is revising Part 841, Subchapter D, Title 32 of the Code of Federal Regulations—Licensing Government-Owned Inventions in the Custody of the Department of the Air Force. This revision is necessary to assure that the Department of the Air Force is consistent with the General Services Administration rule which implements the applicable public law. The intent of the revision is to provide information necessary for submitting all requests for a license under an Air Force invention.

EFFECTIVE DATE: September 21, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Garvert, HQ USAF/JACP, Washington, DC 20324, telephone (202) 475-1386.

SUPPLEMENTARY INFORMATION: This is a complete revision made according to Pub. L. 96-517 and the General Services Administration regulation on Licensing of Federally Owned Inventions, 41 CFR Part 101-4. Pub. L. 96-517, dated December 12, 1980, established the policy and objective of the Congress to promote the utilization of inventions arising from federally supported research and development and authorized the Administrator of General Services to promulgations specifying the terms and conditions upon which any federally owned invention may be licensed. The Department of the Air Force has determined that this part is not a major rule as defined by Executive Order 12291; is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354); and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Proposed rulemaking was published on pages 14532 and 14533 in the Federal Register on April 12, 1984 and invited comments for 30 days ending May 14, 1984. One comment was received questioning the Department of the Air Force determination that the regulation is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354). After consideration, the Air Force determination was upheld. The regulation involves patents and patent applications vested in the United States of America and, therefore, falls within the "public property" exception in 5 U.S.C. 553 to Pub. L. 96-354.

List of Subjects in 32 CFR Part 841

Inventions and patents.

Accordingly, 32 CFR Part 841, is revised to read as follows:

PART 841—LICENSING GOVERNMENT-OWNED INVENTIONS IN THE CUSTODY OF THE DEPARTMENT OF THE AIR FORCE

Subpart A—General Information

Sec.

841.0 Purpose.
841.1 Air Force policy.
841.2 Execution of licenses.
841.3 Delegation of authority.
841.4 Definitions.
841.5 Royalties.

Subpart B—Restrictions and Conditions for Licensing and Types of Licenses

841.6 Restrictions and conditions.
841.7 Nonexclusive licenses.
841.8 Exclusive and partially exclusive licenses.
841.9 Additional licenses.
841.10 Foreign licenses.

Subpart C—Licensing Procedures

841.11 Publication requirements.
841.12 Request for a license.
841.13 Contents of a license application.
841.14 Published notices.
841.15 Determination to grant or deny exclusive or partially exclusive licenses.
841.16 Modification and termination.
841.17 Appeals.

Subpart D—Transfer of Custody of Government Inventions and Confidentiality of Information

841.18 Transfer procedure.
841.19 Confidentiality of plans and reports.

Authority: 10 U.S.C. 8012.

Subpart A—General Information

§ 841.0 Purpose.

This regulation prescribes the policies, administrative requirements, procedures, terms, and conditions for licensing of rights in federally owned patents and patent applications vested in the United States of America in the custody of the Department of the Air Force. It is consistent with General Services Administration Licensing of Federally Owned Inventions, 41 CFR 101-4, which implements Pub. L. 96-517. It applies to all requests for a license under an Air Force invention.

§ 841.1 Air Force policy.

Federally owned inventions in the custody of the Department of the Air Force normally will best serve the public interest when they are developed to the point of practical application and made available to the public in the shortest possible time. Nonexclusive, partially exclusive, or exclusive licenses for the practice of these inventions may be granted to applicants who agree to develop and/or market the inventions. All Air Force inventions normally will be made available for the granting of licenses to responsible applicants.

§ 841.2 Execution of licenses.

Nonexclusive, partially exclusive, or exclusive licenses will be executed on behalf of the Department of the Air Force by the Secretary or by anyone to whom this authority is delegated.

§ 841.3 Delegation of authority.

The administration of this part is delegated to The Judge Advocate General, who may redelegate the administration of this part to the Chief, Patents Division, Office of The Judge Advocate General. All communications received in any Air Force activity requesting information regarding the licensing of a Government invention will be acknowledged and sent without further action directly to HQ USAF/JACP,Wash DC 20324.

§ 841.4 Definitions.

(a) "Air Force invention" means an invention, plant, or design which is covered by a patent or patent application in the United States, or a patent, patent application, plant variety protection, or other form of protection in a foreign country, title to which has been assigned to or otherwise vested in the United States Government and in the custody of the Department of the Air Force.

(b) "Small business firm" means a small business concern as defined in section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

(c) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(d) "United States" means the United States of America, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 841.5 Royalties.

(a) Royalties may or may not be charged under nonexclusive licenses granted to US citizens and US corporations on Government inventions; however, the Department of the Air Force may require other considerations when a royalty is not charged.

(b) Normally, an exclusive or partially exclusive license on an Air Force invention will contain a royalty provision and/or other consideration flowing to the Government.

Subpart B—Restrictions and Conditions for Licensing and Types of Licenses.

§ 841.6 Restrictions and conditions.

The following restrictions and conditions apply to all licenses granted under this part:

(a) Restrictions:

(1) A license may be granted only if the applicant has supplied the Air Force with a satisfactory plan for development or marketing of the invention, or both, and with information about the applicant's capability to fulfill the plan.

(2) A license granting rights to use or sell under an Air Force invention in the United States shall normally be granted only to a licensee who agrees that any product embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

(b) Conditions. Licenses shall contain such terms and conditions as the Air Force determines are appropriate for the protection of the interests of the Federal Government and the public and are not in conflict with law or this part. The following terms and conditions apply to any license:

(1) The duration of the license shall be for a period specified in the license agreement, unless sooner terminated according to provisions therein.

(2) The license may be granted for all or less than all fields of use of the invention or in specified geographical areas, or both.

(3) The license may extend to subsidiaries of the licensee or other parties if provided for in the license but shall be nonassignable without approval of the Air Force, except to the successor of that part of the licensee's business to which the invention pertains.

(4) The license may provide the licensee the right to grant sublicenses under the license, subject to the approval of the Air Force. Each sublicense shall make reference to the license, including the rights retained by the Government, and a copy of each sublicense shall be furnished to the Air Force.

(5) The license shall require the licensee to carry out the plan for development or marketing of the invention, or both, to bring the invention to practical application within a period specified in the license, and to continue to make the benefits of the invention reasonably accessible to the public.

(6) The license shall require the licensee to report, at least annually, on the utilization or efforts at obtaining utilization that are made by the licensee, with particular reference to the plan submitted.

(7) Licenses may be royalty-free or for royalties or other consideration.

(8) When the licensee agrees that any products embodying the invention or produced through use of the invention will be manufactured substantially in the United States, the license shall recite such agreement.

(9) The license shall provide for the right of the Air Force to terminate the license, in whole or in part, if:

(i) The Air Force determines that the licensee is not executing the plan submitted with its requests for a license and the licensee cannot otherwise demonstrate to the satisfaction of the Air Force that it has taken or can be expected to take within a reasonable time effective steps to achieve practical application of the invention;

(ii) The Air Force determines that such action is necessary to meet requirements for public use specified by Federal regulations issued after the date of the license and such requirements are not reasonably satisfied by the licensee;

(iii) The licensee has willfully made a false statement of or willfully omitted a material fact in the license application or in any report required by the license agreement; or

(iv) The licensee commits a substantial breach of a covenant or agreement contained in the license.

(10) The license may be modified or terminated consistent with this part upon mutual agreement of the Air Force and the licensee.

(11) Nothing relating to the grant of a license, nor the grant itself, shall be construed to confer upon any person, any immunity from or defense under the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this subpart shall not be immunized from the operation of state or Federal law by reason of the source of the grant.

(12) The license shall contain a provision that the government makes no representation or warranty as to the validity of any licensed patent or patent application, or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent and that the Government assumes no liability whatsoever resulting from the exercise of the license.

§ 841.7 Nonexclusive licenses.

Each Air Force invention normally will be made available for the granting of nonexclusive licenses, subject to the provisions of any other license, including those in § 841.8, and subject to the following condition: the nonexclusive license may also provide that, after termination of a period specified in the license agreement, the Air Force may restrict the license to the fields of use or geographic areas, or both, in which the licensee has brought the invention to practical application and continues to make the benefits of the invention reasonably accessible to the public. However, such restriction shall be made only in order to grant an exclusive or partially exclusive license according to this part.

§ 841.8 Exclusive and partially exclusive licenses.

Each Government invention may be made available for the granting of an exclusive or partially exclusive license subject to the following restrictions and conditions:

(a) Restrictions. Exclusive or partially exclusive licenses may be granted on federally owned inventions as follows:

(1) Three months after notice of the invention's availability has been announced in the **Federal Register**; or

(2) Without such notice where the Air Force determines that expeditious granting of such a license will best serve the interest of the Federal Government and the public; and

(3) In either situation specified in paragraph (a) (1) or (2) only if:

(i) Notice of a prospective license, identifying the invention and the prospective licensee, has been published in the **Federal Register**, providing opportunity for filing written objections within a 60-day period;

(ii) After expiration of the 60-day period and consideration of any written objections received during the period, the Air Force makes the determinations required by § 841.15 favorably to the applicant; and

(iii) The Air Force has given first preference to any small business firms submitting plans that are determined by the agency to be within the capabilities of the firms and as equally likely, if executed, to bring the invention to practical application as any plans submitted by applicants that are not small business firms.

(b) Conditions. In addition to the provisions of § 841.6, the following terms and conditions apply to domestic exclusive and partially exclusive licenses:

(1) The license shall be subject to the irrevocable royalty-free right of the Government of the United States to practice and have practiced the invention on behalf of the United States and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(2) The license shall reserve to the Air Force the right to require the licensee to grant sublicenses to responsible applicants, on reasonable terms, when necessary to fulfill health or safety needs.

(3) The license shall be subject to any licenses in force at the time of the grant of the exclusive or partially exclusive license.

(4) The license may grant the licensee the right of enforcement of the licensed patent pursuant to the provisions of 35 U.S.C. 29, as determined appropriate in the public interest.

§ 841.9 Additional licenses.

Nothing in this part will preclude the Air Force from granting licenses for Air Force inventions which are the result of an authorized exchange of rights in the settlement of patent disputes. The following exemplify circumstances wherein such licenses may be granted:

(a) In consideration of the settlement of an interference;

(b) In consideration of a release of a claim of infringement; or

(c) In exchange for or as part of the consideration for a license under adversely held patents.

§ 841.10 Foreign licenses.

(a) Exclusive or partially exclusive licenses may be granted on an Air Force invention covered by a foreign patent, patent application, or other form of protection, provided that:

(1) Notice of a prospective license identifying the invention and prospective licensee has been published in the **Federal Register**, providing opportunity for filing written objections within a 60-day period and following consideration of such objections;

(2) The Air Force has considered whether the interests of the Federal Government or United States industry in foreign commerce will be enhanced; and

(3) The Air Force has not determined that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the United States in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with antitrust laws.

(b) In addition to the provisions of § 841.6, the following terms and conditions apply to foreign exclusive and partially exclusive licenses:

(1) The license shall be subject to the irrevocable, royalty-free right of the United States Government to practice and have practiced the invention on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(2) The license shall be subject to any licenses in force at the time of the grant of the exclusive license.

(3) The license may grant the licensee the right to take any suitable and necessary action to protect the licensed property on behalf of the United States Government.

Subpart C—Licensing Procedures

§ 841.11 Publication requirements.

The Department of the Air Force will cause to be published in the **Federal Register**, and at least one other publication that the Air Force deems would best serve the public interest, a list of Government inventions in the custody of the Department of the Air Force available for licensing under the conditions specified in Subpart B.

§ 841.12 Request for a license.

Requests for a license under an Air Force invention should be addressed to the Chief, Patents Division, HQ USAF/JACP, Wash DC 20324.

§ 841.13 Contents of a license application.

An application for a license will include:

(a) Identification of the invention for which the license is desired including the patent application serial number or patent number, title, and date, if known;

(b) Identification of the type of license for which the application is submitted;

(c) Name and address of the person, company, or organization applying for the license and the citizenship or place of incorporation of the applicant;

(d) Name, address, and telephone number of the representative of the applicant to whom correspondence should be sent;

(e) Nature and type of applicant's business, identifying products or services which the applicant has successfully commercialized, and approximate number of applicant's employees;

(f) Source of information concerning the availability of a license on the invention;

(g) A statement indicating whether the applicant is a small business firm as defined in § 841.4 above;

(h) A detailed description of the applicant's plan for development or marketing of the invention, or both, which should include:

(1) A statement of the time, nature, and amount of anticipated investment of capital and other resources which applicant believes will be required to bring the invention to practical application;

(2) A statement as to applicant's capability and intention to fulfill the plan, including information regarding manufacturing, marketing, financial, and technical resources;

(3) A statement of the fields of use for which applicant intends to practice the invention; and

(4) A statement of the geographic areas in which the applicant intends to manufacture any products embodying the invention and geographic areas where applicant intends to use or sell the invention, or both;

(i) Identification of licenses previously granted to applicant under federally owned inventions;

(j) A statement containing the applicant's best knowledge of the extent to which the invention is being practiced by private industry or Government, or both, or is otherwise available commercially; and

(k) Any other information which applicant believes will support a determination to grant the license to applicant.

§ 841.14 Published notices.

A notice that the prospective exclusive or partially exclusive licensee has been selected will be published by the Department of the Air Force in the **Federal Register** and a copy of the notice will be sent to the Attorney General. The notice will include:

(a) Identification of the invention;

(b) Identification of the selected licensee; and

(c) A statement that the license will be granted unless any written objection is received within 60 days.

§ 841.15 Determination to grant or deny exclusive or partially exclusive licenses.

(a) After the notice is published in the **Federal Register** that a prospective exclusive or partially exclusive licensee has been selected and the 60 days for filing written objections has expired, a decision will be made whether to grant or deny the license considering all arguments and evidence of record. A memorandum of the decision will be prepared and shall include:

(1) An identification of the invention, type of license desired, and name and address of the party applying for the license;

(2) The name and address of all third parties who objected to the granting of the license, if any;

(3) A brief statement of the reasons for the objections, if any;

(4) A discussion of the relative merits of the license application vs. the objections filed by third parties, if any;

(5) Determinations, and reasons supporting the determinations, whether:

(i) The interests of the Federal Government and the public will be served by the proposed license, in view of the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(ii) The desired practical application has not been achieved or is not likely expeditiously to be achieved under any nonexclusive license which has been granted on the invention;

(iii) Exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(iv) The proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention's utilization by the public;

(v) The grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistant with the antitrust laws; and

(vi) The interest of the United States Government or industry in foreign commerce will be enhanced, if the license request is under a foreign patent, patent application, or other form of protection.

(6) The signature of the individuals making the determinations.

(b) A record of the determinations to grant or deny an exclusive or a partially exclusive license shall be maintained by the Patents Division.

§ 841.16 Modification and termination.

Before modifying or terminating a license, other than by mutual agreement, the Air Force shall furnish the licensee and any sublicensee of record a written notice of intention to modify or terminate the license, and the licensee and any sublicensee shall be allowed 30 days after such notice to remedy any breach of the license or show cause why the license should not be modified or terminated.

§ 841.17 Appeals.

A party whose application for a license has been denied, a licensee whose license has been modified or terminated, in whole or in part, or a party who timely filed a written objection in response to the notice required in § 841.8 and § 841.10 and who can demonstrate to the satisfaction of the Air Force that such party may be damaged by the agency action, may appeal to The Judge Advocate General, any decision or determination concerning the grant, denial, interpretation, modification, or termination of a license. The appeal must be in writing and submitted within 60 days from the date the decision or determination was mailed to the party.

Subpart D—Transfer of Custody of Government Inventions and Confidentiality of Information

§ 841.18 Transfer procedure.

Under certain circumstances it may be in the best interest of the Air Force to enter into an agreement to transfer its custody of any invention to another Government agency for purposes of administration including the granting of licenses pursuant to this part. Such transfers will be made on a case-by-case basis.

§ 841.19 Confidentiality of plans and reports.

Title 35 U.S.C. 209 provides that any plan submitted pursuant to § 841.13 above and any report required by § 841.6 may be treated by the Air Force as commercial and financial information obtained from a person and priviledged and confidential and not subject to disclosure under 5 U.S.C. 552.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-11961 Filed 5-16-85; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 85-08]

Special Local Regulations; Great Chattanooga Raft Race

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Miles 470.5 to 464.0, Tennessee River. The "Great Chattanooga Raft Race", an approved marine event, will be held on June 1, 1985, at Chattanooga, Tennessee. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations will be effective from 12:00 noon on June 1, and terminate at 4:00 p.m. on June 1, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR. B.J. Willis, Chief, Boating Technical Branch, Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103, (314) 279-5971.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35, for the purpose of promoting the safety of life and property on the Tennessee River between miles 470.5 and 464.0 during the "Great Chattanooga Raft Race", June 1, 1985. This event will consist of approximately 1000 participants with homemade and inflatable unpowered rafts, which could pose hazards to navigation in the area. Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event.

A notice of proposed rule making has not been published for these regulations and they are being made effective less than 60 days from the date of publication. Following normal rule making procedures would have been impracticable. The application to hold the event was not received until April 18, 1985, and there was insufficient time in which to publish proposed rules in advance of the event, and to provide for a delayed effective date. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities.

This rule is necessary to ensure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W.L. Giessman, USCGR, Project Officer, Boating Technical Branch, and Lt. R.E. Kilroy, USCG, Project Attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–0207 to read as follows:

§ 100.35—0207 Tennessee River, miles 470.5 through 464.0.

(a) *Regulated Area.* The area between Mile 470.5 and 464.0 Tennessee River is designated the regatta area, and may be closed to commercial navigation or mooring between the hours of 12:00 noon on June 1, and 4:00 p.m., on June 1, 1985. All times listed are local time.

(b) *Special Local Regulations.* The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35–0207 will be effective on June 1, 1985, between the hours of 12:00 noon and 4:00 p.m. (local time).

(33 U.S.C. 1233; 49 U.S.C. 108; 33 CFR 100.35; 49 CFR 1.46(b))

Dated: May 1, 1985.

B.F. Hollingsworth,

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

[FR Doc. 85–11872 Filed 5–16–85; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Annual Fee—Third-Class Bulk Rates

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule change amends section 641 of the Domestic Mail Manual to require payment of third-class annual bulk mailing fees only by those persons or organizations which actually enter mailings at the bulk rates. The current regulation requires mailers of third-class bulk matter to pay annual bulk fees even when an agent has been engaged to present their material to the Postal Service. The change was proposed to achieve consistency in the application of third-class bulk fee requirements through simplification of the regulation. We also feel that the new rule, which is analogous to the approach taken to the annual First-Class presort fee, will be more closely related to the legitimate business purposes which support the fee because it will henceforth be paid only by those entities which actually present the mail and thus deal directly with the Postal Service.

EFFECTIVE DATE: May 19, 1985.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, (202) 245–4512.

SUPPLEMENTARY INFORMATION: On April 1, 1985, the Postal Service published in the **Federal Register** for comment (50 FR 12839), a proposed rule concerning the payment of annual bulk third-class mailing fees. Interested persons were invited to submit written comments concerning the proposed change by May 1, 1985.

A total of eight written comments were received from mailers and mailers' organizations. Six commenters favored the proposed change as written; one favored it, but requested clarification of several points, and one opposed it. Those commenters who favored the change as written believed that the new rule would result in consistency in the application of third-class annual bulk fee requirements and would also simplify administration of the bulk fee requirements. The commenter who requested a clarification was concerned with the applicability of bulk fees when permit imprint mail is presented by an agent, but postage is paid from the trust account of the client whose permit imprint appears on the mailing piece. Under these circumstances, the individual or organization whose permit imprint appears on the mailing piece, and from whose account postage is paid, is considered to be the mailer and must pay the bulk mailing fee.

Only one commenter, a newspaper association, opposed the proposed rule. This commenter supported its opposition with two arguments. First, the commenter asserted that the current requirement of separate permits protected an interest in allowing mail recipients to "know whence the mail came," and to enable them to satisy themselves that the mail has paid the required postage. Second, the commenter asserted that there is no great difficulty in distinguishing coupon and shared mailings.

Regulations governing third-class mail today do not provide any assurance that mail recipients will be able to identify the "true" originator of third-class mail matter. Permit imprints were devised for administrative, and not investigatory purposes, and it seems doubtful that mail recipients who are curious about the origin of their mail would research by permit number, rather than through reference to the contents of the third-class mail piece, or even the return address, if one has been provided. More importantly, whatever help a permit imprint might provide for purposes of originator research, the imprint can properly be avoided through the use of precanceled stamps.

As noted above, the commenter also stressed the value of a recipient's being able to be assured that mail has paid its "freight." The Postal Service itself has a substantial interest in proper postage payment, and has devised verification and audit methods to protect its revenue. Mail recipients, and the public at large, essentially must rely on these

methods, and on external audits, to satisfy themselves about proper postage payment, particularly in the case of permit imprint mailings. The new rule will in no way reduce available information about postage payment. Under the new rule, the Postal Service will continue to look to presenters of mailings to substantiate the proper payment of postage. To the extent that (for mailers utilizing permit imprints) permit indicia might be altered, financial records of postage payment will continue to be maintained at origin.

The commenter also asserted that coupon and shared mailings could be readily distinguished. This may be true in typical cases, but continuing changes in mail-preparation and mailing practices have produced ever-increasing numbers of variations from the typical. For example, if the preparer of a "typical" coupon mailing should agree to add another producer's promotional material to its mail piece, the line identified by the commenter would be blurred. Any postal effort to keep the line clear and to enforce distinctions would require inquiries into mailers' business dealings, inquiries which are unrelated to the Postal Service's administrative purposes.

The Postal Service has decided to implement this rule change on May 19, 1985, without the usual 30-day waiting period. The change will affect only new third-class mailers, and those current mailers which have not yet made third-class mailing this calendar year. A 30-day delay in implementation would only encourage delays in mailing. In addiiton, the relaxation in fee administration will remove, rather than create, restrictions on mail users.

For the above reasons, the Postal Service hereby adopts the following amendment to section 641 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

Chapter 6 Third-Class Mail

640—Authorizations and Permits

1. The authority citation for 39 CFR Part 111 is revised to read as set forth below, and the authority citation following § 111.3 removed.

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 408, 3001–3011, 3201–3219, 3403–3405, 3601, 3621; 42 U.S.C. 1973cc–13, 1973cc–14.

2. Revise 641 to read as follows:

641 Annual Fee—Bulk Rates

Each person or organization which enters mailings at the regular or special bulk third-class rates must pay an annual bulk mailing fee at each post office where mailings will be deposited (see 612.1). Persons or organizations paying this fee may enter mail of their clients as well as their own mail. This fee is separate from the fee that must be paid for a permit to mail under the permit imprint system (see 145.2). The annual bulk mailing fee must be paid at or before the time of the first bulk rate mailing of each calendar year.

A transmittal letter making this change in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. This change will be published in the **Federal Register** as provided in 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85–11972 Filed 5–16–85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2837-6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: The USEPA today announces approval of a revision to the Indiana State Implementation Plan (SIP) for Total Suspended Particulates (TSP). The revision pertains to Indiana Rule 325 IAC 6–2.1, Particulate Emission Limitations for Sources of Indirect Heating. This rule repeals and replaces 325 IAC 6–2. The purpose of the new rule is to clarify the emission limits that were contained in 325 IAC 6–2, and to set revised emission limits for new sources. USEPA's action is based upon a SIP revision request that was submitted by the State of Indiana on December 21, 1983. A notice of proposed rulemaking on this revision was published on October 24, 1984 (49 FR 42746).

EFFECTIVE DATE: This final rulemaking becomes effective on June 17, 1985.

ADDRESSES: Copies of this revision to the Indiana SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision, the technical support document, and other materials related to this rulemaking are available for review at the following addresses: (It is recommended that you telephone Colleen W. Comerford, at (312) 886–6034, before visiting the Region V Office.)

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

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

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford, (312) 886–6034.

SUPPLEMENTARY INFORMATION: On December 21, 1983, the Indiana Air Pollution Control Board (IAPCB) requested that USEPA approve Indiana Rule 325 IAC 6–2.1. Indiana Rule 325 IAC 6–2.1 repeals and replaces, for State purposes, 325 IAC 6–2. The final rule was adopted on June 6, 1983, promulgated on September 21, 1983, and submitted to USEPA as a SIP revision on December 21, 1983.

The proposed rule is divided into four sections, 325 IAC 6–2.1–1 through 325 IAC 6–2.1–4. Each of these sections was discussed in detail in the October 24, 1983, notice of proposed rulemaking (49 FR 42746). A short synopsis of each section is given below.

325 IAC 6–2.1–1

Section 6–2.1–1 discusses the applicability of the rule. Subsection 1(a) through 1(d) are acceptable. USEPA wishes to make the following clarifications concerning 1(e) through 1(h).

1(e)—This subsection states that, if any limitations established by 325 IAC 6–2.1 are inconsistent with the New Source Performance Standards (NSPS) contained in Indiana's Rule 325 IAC Article 12.1 then the provisions in Article 12.1 prevail. Regardless of the wording of Subsection 1(e) all new facilities to which the Federal New Source Performance Standards (NSPS) apply must continue to meet the requirements of the NSPS as of the effective date of these regulations.

1(f) and 1(g)—These subsections state that, if any limitations established by 325 IAC 6–2.1 are inconsistent with the limitations contained in a facility's construction or operating permit, or with the limitations required to meet the National Ambient Air Quality Standards (NAAQS), then the limitations contained in the permit and the limitations required to protect the NAAQS prevail (325 IAC Article 2, Permit Review

Regulations). Any emission limit revisions for existing facilities, and any relaxations of the SIP for new facilities, that are approved by the IAPCB under 325 IAC Article 2, have to be submitted to USEPA as SIP revisions.

1(h)—This subsection pertains to the addition of a new facility at a source. USEPA finds the wording of this subsection acceptable, but would have preferred language which explicity states that more stringent emission limitations may apply.

325 IAC 6-2.1-2

Section 6-2.1-2 discusses the emission limitations for all sources of indirect heating located in Lake, Porter, Marion, Boone, Hamilton, Hendricks, Johnson, Morgan, Shelby, and Hancock Counties, Indiana, which were operating, or had received construction permits, prior to the effective date of 325 IAC 6-2.1. Subsection 2(a) and 2(c) are acceptable. USEPA wished to make the following clarification concerning Subsection 2(b).

2(b)—325 IAC 6-2.1-2 contains an equation which sets one emissions limit for all emission points at a source to which this portion of the regulation is applicable. However, 325 IAC 6-2.1-2(b) allows the State to establish, through its operating permit mechanism, different specific emission limits for each emission point at a source, as long as the total emissions from these points are equal to the emissions that the regulation would allow if only the one emission limit were used. USEPA proposed to approve section 2(b) (49 FR 42746), if the State committed, in writing, prior to final rulemaking, to send all bubbled emission limits approved under 325 IAC 6-2.1 to USEPA as SIP revisions. USEPA received a letter from the IAPCB on March 27, 1985, stating its intention to do so.

325 IAC 6-2.1-3

Section 6-2.1-3 discusses the emission limits for all sources of indirect heating that were not specified in section 6-2.1-2. USEPA finds this section generally acceptable, as the State made the clarifications recommended by USEPA. However, additional clarification concerning sections 3(a) and 3(b) is given below.

3(a)—This subsection gives the equation for determining the particulate emission limits for indirect heating sources that existed, and were in operation, prior to the effective date of 325 IAC 6-2.1. USEPA and the State have agreed on the definitions of "C", "Q", "a", "h", and "h_i" as stated in the notice of proposed rulemaking (49 FR 42746).

3(b)—The comments made under 2(b) also apply to 3(b).

325 IAC 6-2.1-4

Section 6-2.1-4 discusses the emission limits of all sources of indirect heating receiving permits to construct on, or after, the effective date of Rule 325 IAC 6-2.1. USEPA finds this section acceptable. The State made the clarifications recommended by USEPA with the exception of 4(b). The comments made under 1(e) above also apply to 4(b).

Figures

The December 2, 1983, submittal did not include the two figures that are referenced in 325 IAC 6-2.1, which graphically depict the emission limitation equations of the rule. On October 25, 1984 (49 FR 42746), USEPA proposed to approve 325 IAC 6-2.1, since the omission of these figures did not substantially affect the rule. On November 28, 1984, the IAPCB submitted the missing figures for USEPA's review.

USEPA's review has revealed an error factor in the figures of 6-10%, so USEPA does not approve these figures for SIP purposes. However, since the proposed approval of the rule did not include these figures, USEPA can still proceed to finally approve 325 IAC 6-2.1. Indiana should revise the figures and, if it so chooses, resubmit them as an addendum to the TSP SIP.

Conclusion

During the 60-day public comment period, USEPA received no comments. Therefore, based on USEPA's analysis of the rules, and Indiana's clarifications and comments, USEPA finally approves 325 IAC 6-2.1, Particulates Emission Limitations for Sources of Indirect Heating. This revision to the Indiana TSP SIP merely clarifies the emission limits contained in the Indirect Heating Rule (325 IAC 6-2), which this revision is replacing, and adds emission limits for new sources.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by Reference, Particulate matter, Intergovernmental relations.

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

This notice is issued under authority of sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: May 8, 1985.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Indiana

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

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

Authority: 42 U.S.C. 7410 and 7502.

2. Section 52.770 is amended by adding new paragraph (c)(50) as follows:

§ 52.770 Identification of Plan.

* * * * *

(c) * * *

(50) On December 21, 1983, the Indiana Air Pollution Control Board submitted Indiana Rule 325 IAC 6-2.1, Particulate Emission Limitations for Sources of Indirect Heating. This rule repeals and replaces Indiana Rule 325 IAC 6-2. See §§ 52.770(c)(4) and (c)(35) and § 52.776(i).

(i) Incorporation by reference.

(A) 325 IAC 6-2.1, revised regulation establishing Particulate Emission Limitations for Sources of Indirect Heating.

(ii) Additional material.

(A) December 21, 1983, submittal of Finding of Facts and Recommendations of Hearing Officer R. W. James on 325 IAC 6-2.1.

(B) March 27, 1985, commitment letter from the State concerning the procedures the State will use in processing "bubbles" under 325 IAC 6-2.1-2(B) and 3(b). See § 52.776(i).

* * * * *

3. Section 52.776 is amended by adding new paragraph (i).

§ 52.776 Control strategy: Particulate matter.

* * * * *

(i) 325 IAC 6-2.1 is approved with the State's March 27, 1985, commitment that any "bubble" approved by the State under 325 IAC 6-2.1-2(b) and 3(b) will also be subject to the State's general "bubble" regulation, 325 IAC 2-4. The State additionally committed that until such time as 325 IAC 2-4 is approved as a part of the SIP, all such limits approved under the bubbling provisions of 325 IAC 6-2.1-2(b) and 3(b) will be submitted as site specific revisions to the SIP. Unless and until these emission point specific limits are approved as a portion of the SIP, the SIP limit for each individual emission point will remain

the general limit calculated by means of the formulae in 325 IAC 6-2.1-2(a) and 3(a), even though a revised emission point specific limit has been adopted by Indiana under 325 IAC 6-2.1-2(b) and 3(b). See 52.770(c)(50).

* * * * *

[FR Doc. 85-11990 Filed 5-16-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[BERC-247-CN]

Medicare Program; Payment to Health Maintenance Organizations and Competitive Medical Plans

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period, published January 10, 1985, that implemented a new program of reimbursement for health maintenance organizations and competitive medical plans.

FOR FURTHER INFORMATION CONTACT: Nancy Drucker, (301) 594-9773.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-786 beginning on page 1314 in the issue of Thursday, January 10, 1985, make the following corrections:

1. On page 1345, second column, the redesignation table is corrected by inserting "§ 405.2071" between "§ 405.2070" and "§ 405.2072" in the left column and inserting "§ 417.271" between "§ 417.270" and "§ 417.272" in the right column.

§ 417.407 [Corrected]

2. On page 1349, first column, in § 417.407(b), "section 1301(d) of the Public Health Service Act" is corrected to read "section 1301 of the Public Health Service Act."

3. On page 1349, second column, in § 417.407(d), "paragraph (b)(1)(iv)" is corrected to read "paragraph (c)(i)(iv)."

§ 417.410 [Corrected]

4. On page 1349, third column, in § 417.410(g), §§ 417.530 through 417.596" is corrected to read "§§ 417.530 through 417.598."

§ 417.424 [Corrected]

5. On page 1352, first column, in § 417.424(a)(2), "§§ 417.412-417.416" is corrected to read "§§ 417.412 through 417.418."

§ 417.440 [Corrected]

6. On page 1354, first column, in § 417.440(b)(4), "417.422" is corrected to read "417.442."

§ 417.442 [Corrected]

7. On page 1354, second column, in § 417.442(a), "§§ 417.592 and 417.594" is corrected to read "§§ 417.590 through 417.594."

§ 417.444 [Corrected]

8. On page 1355, first column, in § 417.444(b)(8), "paragraph (c)(6)" is corrected to read "paragraph (b)(6)."

§ 417.448 [Corrected]

9. On page 1355, third column, in § 417.448(b)(2), "§ 417.460(a)(2)(v)" is corrected to read "§ 417.460(a)(2)(iv)."

§ 417.472 [Corrected]

10. On page 1358, second column, in § 417.472(f), "section 1876(l)(5) of the Act" is corrected to read "section 1876(i)(5) of the Act."

§ 417.478 [Corrected]

11. On page 1358, third column, in § 417.478(d), "§ 110.108(j)(i)" is corrected to read "§ 110.108(j)(1)."

§ 417.523 [Corrected]

12. On page 1361, first column, in § 417.523(c), "§§ 417.410 through 417.416" is corrected to read "§§ 417.410 through 417.418."

§ 417.526 [Corrected]

13. On page 1361, first column, in § 417.526, in the second sentence, "Sections 417.580 through 417.596" is corrected to read "Sections 417.580 through 417.598."

§ 417.532 [Corrected]

14. On page 1362, first column, in § 417.532(e)(3), "Part 406" is corrected to read "Part 405."

§ 417.536 [Corrected]

15. On page 1363, first column, in § 417.536(i), "405.425" is corrected to read "§ 405.424."

§ 417.580 [Corrected]

16. On page 1368, first column, in § 417.580(a), "Sections 417.582 through 417.596" is corrected to read "Sections 417.582 through 417.598."

17. On page 1368, first column, in § 417.580(b), "Sections 417.582 through 417.596" is corrected to read "Sections 417.582 through 417.598."

§ 417.582 [Corrected]

18. On page 1368, first column, in § 417.582, "§§ 417.584 through 417.596" is corrected to read "§§ 417.584 through 417.598."

§ 417.584 [Corrected]

19. On page 1368, second column, in § 417.584(c), the last word in the paragraph, "amount", is corrected to read "account."

§ 417.596 [Corrected]

20. On page 1371, first column, in § 417.596(c)(1), "paragraph (b)(3)" is corrected to read "paragraph (c)(3)."

21. On page 1371, first column, in § 417.596(c)(3), "paragraph (b)(1)" is corrected to read "paragraph (c)(1)."

§ 417.597 [Corrected]

22. On page 1371, second column, in § 417.597(e)(2), "paragraph (c)(1)" is corrected to read "paragraph (e)(1)."

§ 417.616 [Corrected]

23. On page 1372, third column, in § 417.616(c)(2), "paragraph (a)" is corrected to read "paragraph (b)."

§ 417.632 [Corrected]

24. On page 1373, second column, in § 417.632(a), "§ 417.616(c)(2)" is corrected to read "§ 417.616(a)."

§ 417.634 [Corrected]

25. On page 1373, second column, in § 417.634, "20 CFR 404.967 through 404.981" is corrected to read "20 CFR 404.967 through 404.983."

(Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act as amended (42 U.S.C. 1302, 13951(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); section 114(c) of Pub. L. 97-248 (42 U.S.C. 1395mm note); and section 1301 of the Public Health Service Act (42 U.S.C. 300e)

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance Program, and No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 13, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-11996 Filed 5-16-85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 50458-5048]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) announces the closure of the non-Indian commercial salmon fishery in the fishery conservation zone (FCZ) between the U.S.-Canada border and Cape Falcon, Oregon, at midnight May 14, 1985, to ensure that the chinook salmon quota for the May fishing period is not exceeded in 1985. The Director, Northwest Region, NMFS (Regional Director), has determined, in consultation with the Washington Department of Fisheries (WDF) and the Oregon Department of Fish and Wildlife (ODFW), that the commercial fishery quota of 27,000 chinook salmon for the area during the May fishing period will be reached by midnight May 14. This action is intended to conserve chinook salmon stocks.

EFFECTIVE DATE: Closure of the FCZ from the U.S.-Canada border to Cape Falcon, Oregon, to commercial salmon fishing is effective at 2400 hours Pacific Daylight Time, May 14, 1985.

ADDRESS: The data upon which this notice is based are available for public inspection from 8:00 a.m. to 4:30 p.m. weekdays at the Northwest Regional Office, NMFS, Building 1, 7600 Sand Point Way, NE., Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 202–526–6150.

SUPPLEMENTARY INFORMATION: Final regulations to implement the framework amendment to the fishery management plan for the commercial and recreational ocean salmon fisheries off the coasts of Washington, Oregon, and California were published in the **Federal Register** on October 31, 1984 (49 FR 43679). Under the provisions of the framework amendment, the 1985 management measures were published on May 2, 1985 (50 FR 18672).

The regulations implementing the framework amendment specify at § 661.21(a)(1) that when a quota for the commercial or the recreational fishery, or both, for any salmon species during any period open to fishing in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register**, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

The chinook salmon quota for the May non-Indian commercial fishery in the area from the U.S.-Canada border to Cape Falcon, Oregon, is 27,000 fish, as shown in Table 1 of the 1985 management measures. Based on the most recent catch and effort information supplied by the WDF and the ODFW, the non-Indian commercial fishery catch in the area is projected to reach the 27,000 chinook salmon quota by midnight, May 14. The Secretary therefore issues this notice to close the ocean non-Indian commercial troll fishery from the U.S.-Canada border to Cape Falcon, Oregon, effective midnight, May 14, 1985. This notice does not apply to the treaty Indian troll fishery in the same area or other fisheries which may be operating in other areas.

The Regional Director consulted with the Directors of WDF and ODFW regarding this closure. The Directors of WDF and ODFW have indicated that Washington and Oregon will close the non-Indian commercial troll fishery in State waters adjacent to this area of the FCZ at the same time this action closes the FCZ, and will prohibit further landings after a grace period of 36 hours (noon, Thursday, May 16) for landings in all ports.

As provided under § 661.22(e), all data and other information relevant to this notice of closure have been compiled in aggregate form and are available for public review at the above address.

Other Matters

This action is taken under the authority of § 661.22 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

Dated: May 14, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 85–12018 Filed 5–14–85; 4:50 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 96
Friday, May 17, 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

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Determinations of Serious Deficiencies

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: To ensure consistency among States, the Department is proposing to amend the Child Care Food Program (CCFP) regulations to specify that institutions that have been denied or terminated from the program because they have been determined to be seriously deficient in their operations in one State shall not be permitted to participate in the CCFP in any State until the serious deficiency is corrected. The Department is further proposing to specify that FNS may make independent determinations of serious deficiencies and require States to act upon these determinations. The proposed rule would also set out appeal rights applicable to such situations. Finally, in the interests of clarity, this proposed rule would revise and reorganize the existing provisions regarding seriously deficient institutions. This proposed rule will enhance program integrity.

DATE: Comments must be received on or before July 16, 1985, to be assured of consideration in the final rulemaking.

ADDRESS: Comments should be sent to Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public viewing in room 509, 3101 Park Center Drive, Alexandria, Virginia 22302 during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. James O'Donnell at the above address or by phone at (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12291 and has been classified not major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in cost or prices for program participants, individual industries, Federal agencies, State or local government agencies or geographic regions, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

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

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements included in this rule have been submitted and approved by the Office of Management and Budget, under clearance 0584–0055.

Background

Section 226.6(c) of the CCFP regulations prohibits State agencies from entering into agreements with applicant institutions which can be identified through their corporate organizations, officers, employees or otherwise as an institution which formerly participated in a Federal child nutrition program and was found to have been seriously deficient in its operation of such program. This provision further directs State agencies to terminate institutions which have been found to be seriously deficient and have not taken appropriate corrective action. The intent of this provision is to ensure the integrity of the CCFP by preventing institutions with demonstrable operational or managerial deficiencies from participating in the program. The Department finds, however, that some confusion has arisen concerning a State agency's application of this provision when a denial or termination action has been taken by another State agency or the Department has made a determination of serious deficiency. In order to clarify this situation, the Department is proposing to amend § 226.6(c) of the CCFP regulations.

First, the Department proposes to stipulate that a finding of serious deficiency leading to a denial or termination action taken by one State agency shall be binding upon all States in which the institution participates or is applying to participate in the CCFP. Section 17(a)(2)(B) of the National School Lunch Act (42 U.S.C. 1766(a)(2)(B)), mandates that institutions are not eligible to participate in the CCFP if they have been seriously deficient in their operations of any child nutrition program for a period of time specified by the Secretary. The language of the statute is very broad in this respect and clearly directs administering agencies to consider an institution's complete operation of any child nutrition program and not just the portion of that operation occurring within their respective States. Consequently, one State agency's action to deny or terminate participation because of serious deficiency must be respected by any other State in which the institution operates or is applying to operate.

Secondly, there are occasions when a serious deficiency is identified by the Department rather than by a State agency. At times, the Department may possess more information regarding an institution than the State agency. This is especially true in the case of institutions which operate in more than one State. In order to comply with the mandate of the statute that seriously deficient institutions may not participate in the CCFP, it may be necessary for the Department, itself, to make a finding of serious deficiency. In these instances, the Department has the responsibility to bring this finding to the attention of the States in which the institution operates and to require the termination of the institution's participation in the CCFP and the denial of any subsequent applications from that institution. The Department must also advise other States of the finding and require that they deny any applications by that institution.

Consistent with the current regulations which require a State agency to afford a seriously deficient institution every reasonable opportunity to correct

problems before terminating the institution, the Department will afford institutions which it finds to be seriously deficient an opportunity to take corrective action before notifying the States of the institution's ineligible status. Consequently, when the Department makes an independent determination that an institution is seriously deficient and that appropriate corrective action has not been taken, State agencies are bound to abide by this finding just as if the actions had been taken by another State agency. The proposed regulation would clarify the Department's authority and States' responsibility in this area.

To ensure that information about seriously deficient institutions can be disseminated quickly, the proposed regulation would require State agencies to notify the Department within 15 days of any action to deny or terminate a seriously deficient institution. The name and other pertinent information about the institution will be included on a list of ineligible institutions, and the Department will make this list available to all State agencies which administer the CCFP. The Department will also include on this list any institutions which the Department has determined to be seriously deficient. State agencies will be prohibited from executing a new agreement with any institution on this list and will be required to terminate the participation of any ineligible institution within 15 days of receiving notification from the Department. The proposal further specifies that once an institution has been declared ineligible, it shall remain ineligible until FNS, in consultation with the appropriate State agency, has determined that the serious deficiency which resulted in ineligibility has been corrected.

Thirdly, the proposed rule provides a "good cause" exception to the prohibition against participation by institutions which can be identified with seriously deficient institutions through their corporate organizations, officers, employees or otherwise. While such identification would continue to constitute grounds for denial or termination, the proposed rule would ensure that the mere fact an institution has hired a former employee of an ineligible institution would not automatically result in that institution's becoming ineligible as well. In order for this exception to be invoked, however, the institution must demonstrate to the satisfaction of the State agency, with FNS concurrence, that the employee was not linked in any way with the deficiencies which resulted in the ineligibility of the former institution.

Finally, the proposed rule delineates the appeal process for institutions that have been included on this list of ineligible institutions. Section 17(e) of the National School Lunch Act (42 U.S.C. 1766(e)) directs State agencies to provide fair hearings to any institution aggrieved by any action of that State with respect to participation or reimbursement. The intent of this provision is to safeguard institutions from arbitrary and capricious actions by the State agency. However, States will have no discretion with respect to the continued participation of institutions determined ineligible by other States or FNS. It would not, therefore, be appropriate for actions stemming from prior findings of serious deficiency to be appealed over and over again in each individual State.

The Department emphasizes, however, that institutions will have full rights of appeal of the determinations leading to ineligibility. If an institution is determined to be seriously deficient by a State agency, the institution will be able to appeal the State's adverse action (denial or termination) which is based on that finding. Only when the State's action has been upheld on appeal will the institution be included on the list of ineligible institutions. When the Department determines independently that an institution has been seriously deficient, the institution will be notified of this decision by the Department and will be afforded an opportunity to take corrective action. If the Department finds the corrective action to be inadequate, the Department will declare the insititution to be ineligible to participate in the CCFP and the institution will be afforded an opportunity to appeal the decision to the Department's administrative review officers. If the Department's determination is upheld on appeal (or if the institution elects not to exercise its appeal rights), the institution will be included on the list of ineligible institutions, and States will be notified that they must deny applications from or terminate the participation of that institution.

In both cases, institutions will be deemed ineligible only after careful deliberations by the agency most familiar with all of the pertinent circumstances. These deliberations will include a review, if requested, by an impartial hearing official. In view of these procedural safeguards and because States will have no discretion with respect to an institution's continued participation in the CCFP once it has been declared ineligible, additional opportunities for administrative appeals would not be allowed.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, Infants and children, Surplus agricultural commodities.

PART 226—[AMENDED]

Accordingly, the Department is proposing to amend 7 CFR Part 226 as follows:

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

Authority: Secs. 803, 810, and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1766); Sec. 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); Sec. 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. In § 226.6, Introductory text of paragraph (c) is amended by removing the first 4 sentences and inserting in their place 12 sentences, to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(c) *Denial of applications and termination of institutions.* The State agency shall not enter into an agreement with any applicant institution which the State agency determines to have been seriously deficient at any time in its operation of any Federal child nutrition program unless the deficiencies have been corrected to the satisfaction of the State agency, with FNS concurrence. The State agency shall terminate the program agreement with any institution which it determines to be seriously deficient. However, the State agency shall afford an institution every reasonable opportunity to correct problems before terminating the institution for being seriously deficient.

The State agency shall notify FNS whenever it has denied an application from or terminated the participation of a seriously deficient institution. This notification shall be made within 15 days of the review official's decision upholding the State's action or, if the institution elects not to appeal the decision, within 15 days of the expiration of the appeal right. FNS will maintain a list of these institutions and will notify all other State agencies of these institutions' ineligibility to participate in the program. FNS may determine independently that an institution has been seriously deficient in its operation of any Federal child nutrition program and include such institution on the list of ineligible institutions if appropriate corrective

action is not taken. State agencies shall not enter into an agreement with any institution included on this list of ineligible institutions and shall terminate any participating institution included on the list within 15 days of the receipt of notification by FNS of the institution's ineligible status. Once included on this list, an institution shall be ineligible to participate in the program until such time as FNS, in consultation with the appropriate State agency, determines that the serious deficiency which resulted in the ineligible status has been corrected. Any institution which is identifiable with a seriously deficient institution through its corporate organization, officers, employees, or otherwise shall also be considered to be ineligible unless it is demonstrated to the satisfaction of the State agency, with FNS concurrence, that good cause exists for considering the institution distinct from the seriously deficient institution. Denial or termination actions taken on the basis of FNS notification of ineligible status shall not be subject to administrative review as provided in § 226.6(j). However, an institution which FNS determined to be seriously deficient and which has not taken acceptable corrective action nay request an administrative review of this determination by an FNS review official in accordance with the appeal procedures set forth in § 226.6(j) and will not be included on the list of ineligible institutions unless FNS' determination is upheld by the review official. * * *

* * * * *

Dated: May 14, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-12002 Filed 5-16-85; 8:45 am]

BILLING CODE 3410-30-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Codes and Standards for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its regulations to incorporate by reference the Winter 1982 Addenda, Summer 1983 Addenda, Winter 1983 Addenda, Summer 1984 Addenda and 1983 Edition of Section III, Division 1, of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), and the Winter 1982 Addenda, Summer 1983 Addenda, and 1983 Edition of Section XI, Division 1, of the ASME Code. The sections of the ASME Code being incorporated provide rules for the construction of light-water-cooled nuclear power plant components and specify requirements for inservice inspection of those components. Adoption of these amendments would permit the use of improved methods for construction and inservice inspection of nuclear power plants.

DATES: Comment period expires July 16, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Written comments or suggestions may be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. G.C. Millman, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 443-7860.

SUPPLEMENTARY INFORMATION: On February 7, 1983, the Nuclear Regulatory Commission published in the **Federal Register** (48 FR 5532) amendments to its regulation, 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," which incorporated by reference new addenda to the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code). The amendment revised § 50.55a to incorporate by reference the Winter 1981 Addenda to Division 1 rules of Section III, "Rules for the Construction of Nuclear Power Plant Components," and Division 1 rules of Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components," of the ASME Code. On November 4, 1983, the Commission published in the **Federal Register** (48 FR 50878) an amendment to § 5055a to incorporate by reference the Summer 1982 Addenda to Section III, Division 1, of the ASME Code. The ASME did not publish a Summer 1982 Addenda to Section XI. On March 15, 1984, the Commission published in the **Federal Register** (49 FR 9711) an amendment to § 5055a to, among other things, incorporate by reference those subsections of Section III which apply to the construction of Class 2 and Class 3 components.

Since publication of the last ASME Code addenda incorporated by reference in § 5055a, the Winter 1982 Addenda, Summer 1983 Addenda, Winter 1983 Addenda, Summer 1984 Addenda, and 1983 Edition, to the ASME Code have been issued. The 1983 Edition is equivalent to the 1980 Edition, as modified by the Summer 1980 Addenda, Winter 1980 Addenda, Summer 1981 Addenda, Winter 1981 Addenda, Summer 1982 Addenda, and Winter 1982 Addenda. The Commission proposes to amend § 5055a to incorporate by reference all editions through the 1983 Edition and all addenda through the Summer 1984 Addenda that modify Section III, Division 1, and all editions through the 1983 Edition and all addenda through the Summer 1983 Addenda that modify Section XI, Division 1, of the ASME Code. The Summer 1983 Addenda for Section XI does not include any technical requirements related to Division 1, but is being included in the reference to avoid confusion that might occur with a lack of continuity in the addenda references.

Editorial revisions are proposed to correct certain existing footnote and paragraph references that are inconsistent with the last amendment (49 FR 9711) to this rule and to simplify the language. These editorial revisions are contained entirely in § 50.55a(g).

For facilities whose operating licenses were issued prior to March 1, 1976, this rule provides the effective date for implementing the inservice inspection requirements and for defining the effective edition and addenda of the Code for the start of the next one-third of a 120-month inspection interval after September 1, 1976. Since this one-third of an inspection interval has already been completed for all applicable facilities, it is proposed that the part of the rule addressing it in § 50.55a(g)(4)(iii) be deleted.

Power reactors for which a notice of hearing on an application for a provisional construction permit or a construction permit had been published on or before December 31, 1970, were permitted to use the rules for construction required by power reactors that had received their construction permits prior to January 1, 1971. It is proposed that § 50.55a(1) which covers this provision be deleted because it is no longer necessary. Section 50.55a(c)(4) provides that for these and other facilities that received a construction permit prior to May 14, 1984, the applicable Code Edition and Addenda

for a component of the reactor coolant pressure boundary continue to be that Code Edition and Addenda that were required by Commission regulations for the component at the time of issuance of the construction permit.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the cost and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from Mr. G. C. Millman, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commision, Washington, D.C., 20555, Telephone (301) 433-7860.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not, if promulgated, have significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Since these companies are dominant in their service areas, this proposed rule does not fall within the purview of the Act.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 68 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91 and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Section 50.58 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73 and 50.78 are issued under 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 50.55a is amended as follows:

Paragraph (b)(1) and the introductory text of paragraph (b)(2) are revised;

Reference to footnote 2 in paragraph (g)(1) is deleted;

References to footnote 3 in paragraph (g)(2) and in paragraphs (g)(3) (ii) and (iv) are removed;

Paragraphs (g)(3) (i) and (iii) are revised;

Paragraph (g)(4)(iii) is removed and reserved; and

Paragraph (i) is removed.

§ 50.55a Codes and standards.

* * * * *

(b) * * *

(1) As used in this section, references to Section III of the ASME Boiler and Pressure Vessel Code refer to Section III, Division 1, and include editions through the 1983 Edition and Addenda through the Summer 1984 Addenda.

(2) As used in this section, references to Section XI of the ASME Boiler and Pressure Vessel Code refer to Section XI, Division 1, and include editions through the 1983 Edition and Addenda through the Summer 1983 Addenda, subject to the following limitations and modifications:

* * * * *

(g) * * *

(3) * * *

(i) Components which are classified as ASME Code Class 1 shall be designed and be provided with access to enable the performance of inservice examination of such components and shall meet the preservice examination requirements set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda [6] applied to the construction of the particular component.

* * * * *

(iii) Pumps and valves which are classified as ASME Code Class 1 shall be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda [6] applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

* * * * *

(4) * * *

(iii) [Reserved]

* * * * *

Dated at Bethesda, MD this 19th day of April 1985.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Executive Director for Operations.

[FR Doc. 85–11998 Filed 5–16–85; 8:45 am]

BILLING CODE 7590-01-M

Notices

Federal Register
Vol. 50, No. 96
Friday, May 17, 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

Soil Conservation Service

Finesville Recreational Field Land Drainage Measures; Finding of No Significant Impact

The Finesville Recreational Field Land Drainage Measure is located in Phohatcong Township, Warren County, New Jersey in the Sussex-Warren Resource Conservation Development Area.

Technical and financial assistance for the measure is being provided by the Soil Conservation Service of the U.S. Department of Agriculture under the Resource Conservation and Development Program. Authorization is provided by Section 102 of the Food and Agriculture Act of 1962 (Pub. L. 87–703) and the Soil Conservation Act of April 27, 1935 (16 U.S.C. 590 a–f).

An environmental assessment was conducted in conjuction with the planning of the measure in consultation with federal, state and local agencies as well as interested organizations and individuals. Data developed during the assessment are available for public review at the following location:

U.S. Department of Agriculture, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873.

The Measure Plan provides basic information on the proposed action and addresses the five provisions of section 102(2)(c) of the National Environmental Policy Act.

The environmental assessment for the measure indicates that the proposed action will not have a significant adverse impact on the human environment. Therefore, based on these findings, I have determined that an environmental impact statement is not required for the Finesville Recreational Field Land Drainage Measure.

Dated: May 13, 1985.

Joseph C. Branco,

State Conservationist.

[FR Doc. 85–11917 Filed 5–16–85; 8:45 am]

BILLING CODE 3410–16–M

Winters Road Critical Area Treatment (CAT) Measures; Finding of No Significant Impact

The Winters Road Critical Area Treatment (CAT) Measure is located in Phohatcong Township, Warren County, New Jersey in the Sussex-Warren Resource Conservation Development Area.

Technical and financial assistance for the measure is being provided by the Soil Conservation Service of the U.S. Department of Agriculture under the Resource Conservation and Development Program. Authorization is provided by Section 102 of the Food and Agriculture Act of 1962 (Pub. L. 87–703) and the Soil Conservation Act of April 27, 1935 (16 U.S.C. 590 a–f).

An environmental assessment was conducted in conjuction with the planning of the measure in consultation with federal, state and local agencies as well as interested organizations and individuals. Data developed during the assessment are available for public review at the following location:

U.S. Department of Agriculture, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873.

The Measure Plan provides basic information on the proposed action and addresses the five provisions of section 102(2)(c) of the National Environmental Policy Act.

The environmental assessment for the measure indicates that the proposed action will not have a significant adverse impact on the human environment. Therefore, based on these findings, I have determined that an environmental impact statement is not required for the Winters Road Critical Area Treatment Meaure.

Dated: May 13, 1985.

Joseph C. Branco,

State Conservationist.

[FR Doc. 85–11918 Filed 5–16–85; 8:45 am]

BILLING CODE 3410–16–M

Spring Valley Reservoir Critical Area Treatment RC&D Measure, Idaho; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345, Boise, Idaho 83702, telephone (208) 334–1601.

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Spring Valley Reservoir Critical Area Treatment RC&D Measure, Latah County, Idaho.

The environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Spring Valley Reservoir Critical Area Treatment RC&D Measure will provide adequate vegetative and structural treatment to the Spring Valley Reservoir area severely damaged by erosion. Planned treatments to control the severe erosion problems include water barring of foot trails, seeding of abandoned roads and trails, shoreline protection and grading and shaping of existing roads and parking areas to prevent erosion and subsequent sedimentation in the Reservoir. Other treatments include gully and escarpment grading, shaping and seeding. Terraces will be installed to protect the treatments on the gullies and escarpments from runoff.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N.

Hobson. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the previous page.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 7, 1985.

Stanley N. Hobson,

State Conservationist.

[FR Doc. 85-11964 Filed 5-16-85; 8:45 am]

BILLING CODE 3410-16-M

NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

Notice of Meeting

May 14, 1985.

The National Commission on Agricultural Trade and Export Policy will hold its next meeting at 9 a.m. on June 10, 1985, at the Atlanta Airport Marriott, College Park, Georgia.

The meeting is open to the public. Individuals or organizations interested in appearing before the Commission to discuss "U.S. Agricultural Competitiveness" should contact the Commission staff at (202) 488-1961.

Future meetings are scheduled as follows:

July 12, Washington, D.C.
August 12, Denver, Colorado
September 13, Fresno, California

Kenneth L. Bader,

Chairman.

[FR Doc. 85-11942 Filed 5-16-85; 8:45 am]

BILLING CODE 3410-05-M

COMMISSION ON CIVIL RIGHTS

Iowa 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 Iowa Advisory Committee to the Commission will convene at 9:45 a.m. and will end at 2:00 p.m. on June 7, 1985, at the Best Western Starlight Village, 923 3rd Street, Des Moines, Iowa. The purpose of the meeting is to provide an orientation for new Committee members and develop plans for future projects.

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 13, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-12012 Filed 5-16-85; 8:45 am]

BILLING CODE 6335-01-M

Kentucky Advisory Committee; 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 Kentucky Advisory Committee to the Commission originally scheduled for May 20 and 21, 1985, at the Lexington, Kentucky, has new addresses and convening times.

The meeting dates will remain the same. The meeting time will change to 7:00 p.m. to 8:00 p.m. on May 20th and 9:00 a.m. to 5:15 p.m. on May 21st. The address will change to The Brown, A Hilton Hotel, Fourth and Broadway, Room Louis XVI, Louisville, Kentucky on May 20th and City Hall, 601 West Jefferson Street, Aldermanic Chambers, Louisville, Kentucky on May 21st.

Dated at Washington, D.C., May 13, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-12013 Filed 5-16-85; 8:45 am]

BILLING CODE 6335-01-M

Louisiana 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 Louisiana Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 5:00 p.m., on June 6, 1985, at the Capitol House, 201 Lafayette Street, Room #303, Baton Rouge, Louisiana. The purpose of the meeting is to provide an orientation session for new members and develop plans for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Michael R. Fontham or J. Richard Avena, director of the Southwestern Regional Office at (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 13, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-12014 Filed 5-16-85; 8:45 am]

BILLING CODE 6335-01-M

Louisiana 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 Louisiana Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 4:00 p.m., on June 7, 1985, at the Capitol House, 201 Lafayette Street, Rouge Royale Room, Baton Rouge, Louisiana. The purpose of the meeting is to hold a Community Forum on Comparable Worth.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Michael R. Fontham or J. Richard Avena, director of the Southwestern Regional Office, at (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 13, 1985

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-12015 Filed 5-16-85; 8:45 am]

BILLING CODE 6335-01-M

New Mexico Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 4:00 p.m. on May 30, 1985, at the AMFAC Hotel, 2910 Yale Boulevard, S.E., Albuquerque, New Mexico. The purpose of the meeting is to hold an orientation and to plan for future committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Chair, Vincent Montoya or J. Richard Avena, director of the Southwestern Regional Office, at (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 13, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-12016 Filed 5-16-85; 8:45 am]

BILLING CODE 6335-01-M

West Virginia 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 West Virginia Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 4:00 p.m. on June 10, 1985, at the Fairmont City Hall, 200 Jackson Street, 3rd Floor, City County Complex, Fairmont, West Virginia. The purpose of the meeting is to provide an orientation for new Committee members and discuss with public and private officials attending the meeting some civil rights issues that may be addressed by the Committee during the next two years.

Persons desiring additional information, or planning a presentation to the Committee, should contact Edward Rutledge, director of the Mid-Atlantic Regional Office, at (202) 254-6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 13, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-12017 Filed 5-16-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of General Permit

On May 10, 1985, a general permit to incidentally take marine mammals during commercial fishing operations in 1985 was issued to: The Office of the Fisheries Attache, Embassy of Union of Soviet, Socialist Republics, Washington, D.C.

In Category 1: Towed or Dragged Gear, to take 95 pinnipeds and 45 cetaceans.

All takings are incidental to commercial fishing operations within the U.S. Fishery Conservation Zone, pursuant to 50 CFR 216.24.

This general permit is available for public review in the office of the Assistant Administrator for Fisheries, 3300 Whitehaven Street, NW., Washington, D.C.

Carmen J. Blondin,

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

[FR Doc. 85-11979 Filed 5-16-85; 8:45 am]

BILLING CODE 3510-22-M

Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on June 4, 1985, at 9:30 a.m., at the Westin Bonaventure Hotel, Santa Anita #C Conference Room, 404 South Figueroa Street, Los Angeles, California, 90071.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97-63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order
II. Approval of the Minutes
III. Old Business
  A. Report on Tourism Policy Council Resolutions
  B. Industry Marketing Summary
  C. Approval of 1984 Annual Report
  D. Report on USTTA Industry Meeting
IV. New Business
  A. USTTA Marketing Plan
  B. Expanded Tourism Trade with Israel
V. Miscellaneous
VI. Adjournment

A limited number of seats will be available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, D.C. 20230 (telephone: 202-377-0140) will respond to public requests for information about the meeting.

Donna Tuttle,

Under Secretary for Travel and Tourism, U.S. Department of Commerce.

[FR Doc. 85-11978 Filed 5-16-85; 8:45 am]

BILLING CODE 3510-11-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Forms Under Review by Office of Management and Budget

The Committee for Purchase From the Blind and Other Severely Handicapped has submitted requests to extend the authorization for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S. Chapter 35).

On September 30, 1983, OMB approved the following Committee forms:

Initial Certification—Blind; Form 401
Initial Certification—Severely Handicapped; Form 402
Annual Certification—Blind; Form 403
Annual Certification—Severely Handicapped; Form 404

It is proposed to limit the reporting of direct labor hours used in determining the ratios of blind and other severely handicapped direct labor to hours actually worked. This change would be effective on October 1, 1985 (Fiscal Year 1986).

Currently, the certifications listed above submitted to the Committee by workshops require that the hours for paid vacations, sick leave and holidays are included in the direct labor hours reported on the forms. It appears that some workshops may not be including holiday, vacation and sick leave in the direct labor hours they are reporting. This is particularly true for workshops which are providing services where accounting for the direct labor hours required to provide the service is separate from the hours for holidays, sick leave and vacation which are considered as "Burden" rather than "Direct Labor." Similarly, the hours of vacation, sick leave, and holidays are not included in the direct labor hours shown on the forms which forecast the direct labor ratio for new items being added to the Procurement List.

The Committee's Act states that direct labor "includes all work required for preparation, processing, and packaging of a commodity, or work directly related to the performance of a service . . . "

(41 U.S.C. 48b(5)). Similarly, in establishing the requirements for the qualification of a workshop, the Act uses the words "employs . . . for not less than 75 per centum of the man-hours of direct labor required for the production or provision of commodities and services (41 U.S.C. 48b(3) and 48b(4)). Thus, the plain language of the statute addresses only man-hours of work rquired for the production of commodities or for the provision of services.

The Committee Counsel in reviewing the practice of including the hours paid for vacations, sick leave and holidays as a part of "direct labor" concluded that, in the interest of consistency and accuracy, it would be advisable to limit the reporting of direct labor hours to the hours actually worked.

The Wage and Hour Division of the Department of Labor has issued regulations (Chapter V of Title 29, Code of Federal Regulations) which implement the various laws governing wages and employment. Part 516 of Chapter V establishes the "Records to be kept by Employers." All employers, including workshops, are required to maintain and preserve payroll or other records on each employee which, among other things, show the actual hours worked each workday and the total hours worked each workweek (29 CFR 516.2(a)(7)) as well as the total wages paid in each pay period. Part 785 of Chapter V defines "Hours Worked." Hours worked as defined in Part 785 do not include vacation, holiday, and sick leave. Thus, limiting the reporting of direct labor to the hours actually worked should not impose a new recordkeeping requirement.

To be able to monitor better the Committee's program, an item is being added to the annual reports to record the 'Total Value of Fringe Benefits Paid" by the workshops to their blind or other severely handicapped workers. The Committee would then be able to respond to inquiries from Congress regarding the value of fringe benefits being paid to the blind and other severely handicapped workers. That information is not now available but the portion covered by holiday, vacation and sick leave pay is not included as a part of 'Wages Paid".

The proposed changes in repoiting direct labor were coordinated with the Department of Labor, the National Industries for the Blind and the National Industries for the Severely Handicapped. The last two agencies have been designated by the Committee as central nonprofit agencies to represent respectively the blind workshops and the other severely handicapped workshops participating in the Committee's program.

To respond to a congressional concern on upward mobility in the workshops, the question on number of placements was divided into two parts. One showing the total placements of blind and other severely handicapped direct labor persons into the competitive labor work force and the other reflecting separately the number of blind and other severely handicapped persons promoted from direct labor to supervisory, administrative or managerial positions within the agency.

In addition to the changes referenced above, it is proposed to extend the authorization for the collection of information on the above forms. The information included on the forms is required to ensure that new workshops entering the Committee's program meet the requirements of Pub. L. 92-28, June 23, 1971, (44 U.S.C. 46-48c) and that participating workshops continue to meet the requirements of the Act.

Requests for information including copies of the proposed information requests and supporting documentation should be directed to: C.W. Fletcher, Committee for Purchase from the Blind and Other Severely Handicapped, 1755 Jefferson Davis Highway, Crystal Square 5, Suite 1107, Arlington, VA, 22202, (703) 557-1145).

Comments on the requests to extend the authorization for the reports should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Joseph Lackey.

C.W. Fletcher,

Executive Director.

[FR Doc. 85-11982 Filed 5-16-85; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar and Cocoa Exchange: Proposed Amendments Relating to the Sugar No. 12 ("Domestic") Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Coffee, Sugar and Cocoa Exchange ("CSCE") has submitted a proposal which would amend the terms and conditions of its sugar No. 12 ("domestic") futures contract. The principal amendments being proposed by the CSCE would rename the contract as the "sugar No. 14" contract; change the discounts and premiums applicable to raw cane sugar of different polarizations delivered on the contract; revise the testing procedures to be used to determine the color acceptability of sugar delivered on the contract, and the associated discounts and premiums applicable to sugar of different color values; establish a new quality requirement relating to the dextran content of sugar delivered on the contract, including specification of standards for dextran content and associated discounts and premiums for sugar of differing dextran content. In addition, the proposed amendments would institute a method of automatically determining the discharge allowance applicable to contract deliveries on an annual basis. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before June 17, 1985.

ADDRESS: Interest personsed should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CSCE Sugar No. 14 futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: The current terms and conditions of the sugar No. 12 ("domestic") contract specify testing procedures and associated discounts and premiums for color and polarizations. Under the CSCE proposal, the sugar No. 14 ("domestic") contract would specify new testing procedures and revised discounts and premiums for color, and revised discounts and premiums for polarization. In addition, the proposed amendments would also establish a new quality requirement for sugar delivered on the contract relating to the dextran content of delivery sugar. The CSCE proposal would establish dextran content standards and associated discounts and premiums for the No. 14 contract.

The current and proposed schedule of differentials for sugar polarization are presented below:

POLARIZATION DIFFERENTIALS [1]

Degrees	Current terms	Proposed terms
94–95	−2.75	−2.75
95–96	−1.75	−5.50
96–97	+1.5	+.50
97–98	+1.25	+2.25
98–99	+1.00	+1.20

[1] The sugar No. 12 contract's current differentials are expressed as percentages of the invoice price less any applicable import duty payable per pound for 96 degree sugar in effect on the date of delivery. Although the method of applying the percentage differentials would not change, certain terminology has been revised. The proposed differentials are expressed as percentages of the basis price. The basis price is the contract price less any applicable duty or import fee per pound for 96 degree sugar in effect on the date of entry of the sugar. The current and proposed differentials printed in the table reflect the incremental change in the total differential to be paid for each full degree of polarity above or below 96 degrees. For sugar testing in fractions of a full degree (*e.g.*, 97.5), the total differentials for polarity are changed in proportion to such fractions.

The sugar No. 12 contract currently requires that testing procedures for sugar color be conducted in accordance with International Commission for Uniform Methods of Sugar Analysis (I.C.U.M.S.A.) color units methods 2 (1958). Under the proposed amendments, sugar color tests would be conducted in accordance with I.C.U.M.S.A. color units method 4 (1978) modified. In addition, the proposals would revise the current testing procedures for sugar color to the extent that the current color test for affined raw sugar would be modified to provide for separate tests for affined raw sugar and whole raw sugar.[2] The current and proposed differentials for sugar color are presented below:

CURRENT COLOR DIFFERENTIALS FOR SUGAR [3]

Method 2 color units	Differential (percent)
Less than 104	+0.009
105–124	+0.00625
125–210	0.0
211–245	−0.015
246–280	−0.03
281–315	−0.045
Over 315	−0.06

[3] The current color differentials for the sugar No. 12 contract are expressed as percentages of the basis price. The basis price represents the contract price for the delivery sugar less any applicable duty. The differentials printed in the table reflect additions to the total differential to be paid for each full color unit above and below the par range. Differentials for fractions of each unit of color are established in proportion to such fractions.

PROPOSED COLOR DIFFERENTIALS FOR AFFINED AND WHOLE RAW SUGAR [4]

Affined		Whole	
Method 4 color units	Differential (percent)	Method 4 color units	Differential (percent)
Less than 800	+.0081	less than 3,000	+0.0009
800–1,500	0.0	3,000–6,000	0.0

[2] Under the terms of the sugar No. 12 and No. 14 contracts, whole raw sugar denotes raw centrifugal cane sugar. Affined raw sugar represents raw centrifugal cane sugar which has been washed with water. Under the sugar No. 12 contract's current terms, tests for sugar color are applied to affined raw sugar only.

PROPOSED COLOR DIFFERENTIALS FOR AFFINED AND WHOLE RAW SUGAR [4]—Continued

Affined		Whole	
Method 4 color units	Differential (percent)	Method 4 color units	Differential (percent)
1,500–1,800	−.0135	6,000–7,000	−.0015
1,800–2,100	−.027	7,000–8,000	−.0030
2,100–2,400	−.0405	8,000–9,000	−.0045
Above 2,400	−.054	Above 9,000	−.0060

[4] The proposed differentials are expressed in percentages of the basis price (see footnote 2 above for a description of the basis price). The proposed differentials for affined raw sugar reflect additions to the total differential to be paid for each increment of 10 color units above or below the par range. The proposed differentials for whole raw sugar reflect additions to the total differential to be paid for each increment of 25 color units above or below the par range. Under the proposed amendments, differentials for fractions of each increment of color units are to be established in proportion to such fractions.

The proposed amendments would establish a new quality requirement for sugar deliverable on the contract relating to the dextran content of delivery sugar expressed in Milli-Absorbance Units (M.A.U.). This proposal would establish standards for dextran content as well as differentials applicable to delivery sugar having specified dextran content levels. The proposed differential schedule for dextran content is presented below:

PROPOSED DIFFERENTIALS FOR DEXTRAN [5]

M.A.U.	Differential (percent)
250 or less	0.0
251–350	−0.007
351–450	−0.009
451–550	−0.011
Above 550	−0.013

[5] The proposed differentials are expressed as percentages of the basis price (see footnote 3 above for a description of the basis price) for each unit of M.A.U. above the lowest M.A.U. value listed for each range of M.A.U. given in the table. The proposals further provide that differentials for fractions of one M.A.U. unit shall be calculated in proportion to such fractions.

The current CSCE sugar No. 12 contract requires deliverers of sugar to pay receivers of sugar a stevedoring allowance for discharging sugar. Under existing procedures, the allowance is periodically revised and implemented with respect to existing contract months and deliveries made in selected previously expired contracts, subject to Commission approval, by the CSCE. Under the CSCE proposal, the discharge allowance would be calculated annually by the CSCE, based on a weighted average of discharge allowances posted by sugar refining firms located at the contract's delivery points. The weights would reflect each refiner's annual share of the total imported tonnage of sugar received by all refiners located at the contract's delivery ports for a period ending June 30 of each year. The calculated discharge allowance would be implemented on October 1 of each year with respect to all contract deliveries occurring after that date.

The CSCE states that the proposed amendments with regard to polarity, color and dextran reflect standards, testing procedures, discounts and premiums that are expected to be the most commonly used in the domestic sugar industry. The CSCE indicates that the proposed amendments accurately reflect cash market contract changes recently adopted by major U.S. sugar refiners that will become effective for cash market deliveries beginning July 1, 1985.

The CSCE indicates that the proposed method of setting the stevedoring allowance would eliminate the current procedure of periodically requesting Commission approval of rates, which in the past has required retroactive applicability of rates. According to the CSCE, the discharge allowance would then be smoothly and objectively determined, and known to the industry prior to becoming effective. The CSCE also indicates that the proposed system of determining the stevedoring allowance would minimize disruption and confusion for deliveries on the domestic sugar contract.

The proposed amendments to the CSCE domestic sugar contract would become effective two business days following the CSCE's receipt of notice from the Commission of approval of the proposed amendments. Under the CSCE's proposed implementation procedure, trading in the sugar No. 14 contract would begin shortly after receipt of notice of Commission approval of the proposed amendments in delivery months commencing with the July 1985 contract month. Trading in the sugar No. 12 contract would be permitted to continue in any delivery months listed for trading at the time trading commences in the sugar No. 14 contract. In regard to continued trading in the sugar No. 12 contract, the CSCE has submitted proposed Rule 12.01(c) which provides that, upon the commencement of trading in the sugar No. 14 contract, no trading in the new delivery months shall be initiated in the sugar No. 12 contract. Proposed Rule 12.01(c) specifies also that any sugar No. 12 contract for any delivery months shall be de-listed following the commencement of trading in the sugar No. 14 contract if no transaction is executed and there is no open position in such delivery month for five consecutive trading days. In addition, the Exchange is proposing to implement the proposed procedure for establishing revised discharge allowances with respect to any existing delivery months

listed for the sugar No. 12 futures contract at the time sugar No. 14 futures contract begins trading.

In accordance with section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982), the Commission has determined that the proposal submitted by the CSCE concerning its domestic sugar futures contract is of major economic significance and that the receipt of public comment on the proposed rule amendments will assist the Commission in its determination whether they should be approved. In particular, the Commission is requesting comments from interested parties with regard to the following:

1. The extent to which the proposed differentials for the polarity of raw cane sugar, the proposed standards and associated differentials with regard to the color and dextran content of raw sugar, and the proposed testing procedures for color would conform to such standards, testing procedures and differentials for cash market deliveries commencing on July 1, 1985, at U.S. East Coast and U.S. Gulf Coast delivery points for the contract;

2. The extent to which the proposed method of establishing the stevedoring or discharge allowance for contract deliveries would result in an allowance that would reflect stevedoring or discharge fees which sellers pay or grant to buyers in the course of transactions for cash market deliveries commencing on July 1, 1985, at U.S. East Coast and U.S. Gulf Coast delivery points for the contract; and

3. The effect of the proposed amendments on the supply of raw cane sugar available for delivery on the domestic raw sugar futures contract.

The CSCE proposal will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CSCE in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commisison's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581 by June 17, 1985.

Issued in Washington, D.C. on May 15, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-12090 Filed 5-16-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 9:00 a.m., Wednesday, 19 June 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services Inc., One Crystal Park, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 14, 1985.

[FR Doc. 85-12010 Filed 5-16-85; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Notice of Advisory Committee Meeting

SUMMARY: Working Group B (Mainly Low Power Devices) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 9:00 a.m. on Thursday and 8:30 a.m. on Friday, June 13 and 14, 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Michael Shapiro, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The low power device area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 14, 1985.

[FR Doc. 85-12011 Filed 5-16-85; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Local Protection Project for the City of Winfield, Cowley County, KS

AGENCY: U.S. Army Corps of Engineers, DOD, Tulsa District.

ACTION: Notice of Intent To Prepare a Draft Environmental Impact Statement.

SUMMARY: 1. Proposed Action: The proposed action is to raise the height of an existing levee and extend the levee about 1,250 feet on the north side of Winfield and about 4,000 feet on the south side. This includes the addition of ponding areas, ramps and swing gates, drainage structures, a pump station, and increased bridge openings.

2. Reasonable Alternatives: The alternatives that will be evaluated include one no action alternative and eight action alternatives. The no action alternative (without condition) would retain the flood control capabilities of the existing project. The eight action alternatives look at the same levee alignment with four different levee heights, with and without the addition of upstream flood water detention, that would provide 100-, 200-, and 400-year and Standard Project Flood (SPF) conditions. Three increased bridge openings, 50-, 100-, and 150-feet, for the Atchison, Topeka, and Santa Fe Railroad and Highway up on the south side of Winfield will be investigated. Environmental impacts would be similar with each of the action alternatives.

3. Scoping Process: a. Public Involvement. Public involvement during this study has been through informal meetings with city officials of Winfield, Kansas, representatives of the US Fish and Wildlife Service (USFWS), and personnel of the Kansas Fish and Game Commission (KF&G).

b. Significant Issues Requiring in-Depth Analysis. None.

c. Assignments. The USFWS will provide formal consultation as outlined in section 7 of the Endangered Species Act and a Fish and Wildlife Coordination Act Report. The KF&G will provide information concerning aquatic habitat in the affected streams. The US Soil Conservation Service will report on prime and unique farmlands.

d. Environmental Review and Consultation Requirements. The draft environmental impact statement will be circulated for review and all comments will be incorporated into the final environmental impact statement.

4. Informal scoping meetings have been held between the Corps and city officials of Winfield, and the Corps and personnel from the USFWS and the KF&G.

5. Estimated date when the DEIS will be available to the public: January 1, 1986.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. Buell O. Atkins, Chief, Environmental Resources Branch, US Army Corps of Engineers, Tulsa District, PO Box 61, Tulsa, OK 74121-0061, (918) 581-7857—FTS 745-7857.

Dated: May 8, 1985.

Franklin T. Tilton,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 84-11693 Filed 5-16-85; 8:45 am]

BILLING CODE 3710-39-M

DEPARTMENT OF ENERGY

National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and time: Monday, June 10, 1985—9:30 a.m.-3:00 p.m.

Place: The Four Seasons Hotel, Washington, D.C.

Contact: Kathryn Cameron, Special Assistant to the Assistant Secretary, Fossil Energy, U.S. Department of Energy, Room 4G-084, FE-1, Washington, D.C. 20585, 202/252-4608.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to the coal and coal industry issues.

Tentative agenda:

—Call to Order by John N. Dalton, Chairman Pro Tempore, National Coal Council
—Remarks by the Honorable John S. Herrington, Secretary of Energy
—Remarks by Ralph E. Bailey, Vice Chairman, National Petroleum Council
—Organizational Discussion
—Consideration of Administrative Matters
—Discussion of Any Other Business Brought Before the National Coal Council
—Public Comment—10 minute rule
—Adjournment

Public Participation: The meeting is open to the public. The Chairman Pro Tempore of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Kathryn Cameron at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal Holidays.

Issued at Washington, D.C. on May 13, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-11958 Filed 5-16-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board Supply Subpanel of the Energy R&D Strategy Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Supply subpanel of the Energy R&D Strategy Panel of the Energy Research Advisory Board (ERAB).

Date and Time: June 6, 1985—9:30 a.m.-5:00 p.m.

Place: Department of Energy, 1000 Independence Avenue SW., Room 4A-110, Washington, DC 20585.

Contact: Charles E. Cathey, Department of Energy, Office of Energy Research, 1000 Independence Avenue SW., Washington, DC 20585, 202/252-8933.

Purpose of the Parent Board: To advise the Department of Energy on the overall research and development conducted in the Department and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: To examine the future energy needs of the Nation and develop judgments on the essential ingredients of a balanced energy R&D effort. The Panel has established Supply, Demand, Research, and Infrastructure Subpanels to assist in carrying out its assignments.

Tentative Agenda:

- Review and comment on the summary of the Supply Subpanel report.
- Review and comment on the eight appendixes to the Supply Subpanel. Report (consisting of the individual reports on each area of energy supply research).
- Plan for material to be provided to the Long Range R&D Strategy Steering Committee.
- Discuss future plans for the Supply Subpanel.
- Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Subpanel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles E. Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Subpanel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Issued at Washington, DC on May 10, 1985.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff Office of Energy Research.

[FR Doc. 85-12008 Filed 4-16-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER84-379-004 et al.]

Electric Rate and Corporate Regulation Filings; Florida Power and Light Co. et al.

Take notice that the following filings have been made with the Commission:

1. Florida Power and Light Company

[Docket No. ER84-379-004]

May 9, 1985.

Take notice that on May 2, 1985, Florida Power and Light Company submitted for filing a compliance refund report pursuant to the Commission's acceptance of the settlement agreement by letter dated March 19, 1985.

The acceptance letter required that any amounts collected in excess of the settlement rate levels be refunded within thirty days from the date of the acceptance letter, with interest computed in accordance with the appropriate section of the Commission's Regulations.

On April 18, 1985, a refund in the amount of $457,011.64, was made to Seminole Electric Cooperative, Inc. (Seminole) in accordance with the settlement agreement and the amended Attachment A rate schedule (Phase II) to the Aggregate Billing Partial Requirements Service Agreement (ABPRSA). An additional refund of $1,789.60 was made to Seminole on April 24, 1985. The original refund on April 18, 1985 understated the interest payable to Seminole by $1,785.96 due to an error in the operation of FPL's rate refund program. An additional $3.64 of interest was included on the $1,785.96 amount from April 18, 1985 through the additional refund date of April 24, 1985.

Based on the terms of the settlement agreement and approved rate schedules, no refunds were due to the Company's full and partial requirements customers.

Comment date: May 24, 1985, in accordance with Standard Paragraph H at the end of this notice.

2. Florida Power Corporation

[Docket No. ER85-472-000]

May 10, 1985.

Take notice that on April 30, 1985, Florida Power Corporation (Florida Power) tendered for filing a revision to the capacity charge for short term firm interchange service to Florida Power, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Orlando Utilities Commission, Sebring Utilities Commission, Tampa Electric Company, and the Cities of Gainesville, Kissimmee, Lakeland, Lake Worth, St. Cloud, Tallahassee, and Vero Beach, Florida and interchange service contracts with each of those utilities. According to Florida Power, the revised charge is derived using the same methods reflected on the cost support schedules submitted with each of the original contracts.

Florida Power proposes to change the present Service Schedule B capacity charge for fossil production plant of $126.36 per MW per day to $143.45 per MW per day, based on 1984 data.

Florida Power requests that the revised capacity charge be made effective on May 1, 1985, and requests waiver of the sixty day notice requirement.

According to Florida Power, the filing has been served on each of the affected utilities and the Florida Public Service Commission.

Comment date: May 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power Corporation

[Docket No. ER85-470-000]

May 10, 1985.

Take notice that on April 30, 1985, Florida Power Corporation (Florida Power) tendered for filing revisions to the reservation fees for Assured Capacity and Energy Interchange Service to Sebring Utilities Commission, and the City of Kissimmee, Florida under interchange service contracts with each of the utilities. According to Florida Power, the revised fees are derived using the same methods reflected on the cost support submitted with the original contracts.

Florida Power proposes to change the present Service Schedule F reservation fees of $2.68 per MW per hour for base load plant, and $1.60 per MW per hour for intermediate load plant to $3.35 per MW per hour and $1.55 per MW per hour respectively, based on 1984 data.

Florida Power requests that the revised reservation fees be made effective on May 1, 1985, and requests waiver the sixty day notice requirement.

According to Florida Power, the filing has been served on each of the affected utilities and the Florida Public Service Commission.

Comment date: May 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corporation

[Docket No. ER85-471-000]

May 10, 1985.

Take notice that on April 30, 1985, Florida Power Corporation (Florida Power) tendered for filing revisions to the capacity charges for Short Term Firm, Backup, and Reserve Interchange Service to Seminole Electric Cooperative, Inc., under an interchange service contract. According to Florida Power, the revised charges are derived using the same methods reflected on the cost support schedules submitted with the original contract.

Florida Power proposes to change the present Service Schedule B capacity charge for fossil production plant of $1.26.36 per MW per day to $143.45 per MW per day, based on 1984 data. Florida Power also proposes to change the present Service Schedule G and H capacity charges of $131.26 per MW per day for base load plant $76.93 per MW per day for immediate load plant, and $62.65 per MW per day for peaking load plant to $160.90 per MW per day, $74.52 per MW per day, and $64.30 per MW per day, respectively based on 1984 data.

Florida Power requests that the revised daily capacity charges be made effective on May 1, 1985, and requests waiver of the sixty day notice requirement.

According to Florida Power, the filing has been served on Seminole Electric Cooperative, Inc. and the Florida Public Service Commission.

Comment date: May 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER85-475-000]

May 10, 1985.

Take notice that on May 1, 1985, New England Power Company (NEP) tendered for filing as an amendment to FERC Rate Schedule No. 101, as supplemented, a proposed agreement to supersede said Rate Schedule.

NEP submits that the existing schedule no longer provides reasonable cost recovery and therefore tenders the instant submittal in order to provide for additional revenues for the services currently being provided.

Since the present agreement has been under extensive negotiations for an extended period of time, and in fact has been extended several times past its expiration date, NEP requests the Commission's prior notice provision be waived and the tendered agreement be allowed to become effective on May 1, 1985, in accordance with NEP's intentions.

Comment date: May 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER85-466-000]

May 10, 1985.

Take notice that on May 1, 1985, New England Power Company (NEP) tendered for filing a proposed amendment to its FERC Electric Tariff, Original Volume No. 3 as presently on file and effective with this Commission.

The proposed amendment would increase the effective rate for PTF service on NEP's system to a full cost basis of $9.29 per KW yr. from the present rate of $7.66 per KW yr. for similar wheeling service.

The proposed effective date is July 1, 1985.

Comment date: May 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. San Diego Gas and Electric Company

[Docket No. ER85-474-000]

May 10, 1985.

Take notice that on May 1, 1985, San Diego Gas & Electric Company (SDG&E) tendered for filing as initial rate schedules the following agreements:

(1) Interruptible Transmission Service Agreement between San Diego Gas and Electric and City of Burbank.

(2) Interruptible Transmission Service Agreement between San Diego Gas and Electric and Imperial Irrigation District.

Under the terms of each Agreement, SDG&E will make available interruptible transmission service between any Point of Receipt and any Point of Delivery as specified in each Agreement.

Copies of this filing were served upon the Public Utilities Commission of the State of California, City of Burbank and Imperial Irrigation District.

Comment date: May 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER85-473-000]

May 10, 1985.

Take notice that on May 1, 1985, Southern California Edison Company (Edison) tendered for filing a notice of change of rates for transmission service as embodied in Edison's agreements with the following entities:

Name of customer	Rate schedules FERC No.
Arizona Electric Power Cooperative	161.
California Department of Water Resources	38, 112, and 169.
City of Burbank	135 and 166.
City of Glendale	136 and 143.
M-S-R- Public Power Company	153.
City of Pasadena	137.
San Diego Gas and Electric Company	151.
Imperial Irrigation District	138.

Edison requests an effective date of May 1, 1985, and requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Southwestern Electric Power Company

[Docket No. ER85-468-000]

May 10, 1985.

Take notice that on April 29, 1985, Southwestern Electric Power Company (SWEPCO) tendered for filing a Transmission Service Agreement (the Agreement), dated February 15, 1985, between SWEPCO and the Oklahoma Municipal Power Authority (OMPA). The Agreement provides that SWEPCO will supply OMPA with transmission services with respect to power and energy from two units jointly owned by SWEPCO and OMPA within SWEPCO's service area.

SWEPCO requests that the Agreement and rates determined thereunder be made effective as of May 1, 1985, and requests waiver of the Commission's notice requirements.

Copies of the filing have been served on OMPA, the Oklahoma Corporation Commission, the Public Utility Commission of Texas, the Arkansas Public Service Commission and the Louisiana Public Service Commission.

Comment date: May 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Public Service Company

[Docket No. ER85-477-000]

May 10, 1985.

Take notice that on May 1, 1985, Southwestern Public Service Company (Southwestern) tendered for filing proposed changes in its FERC Electric Service Tariffs to all full requirements customers as follows:

Name of customer	Rate schedule FERC No.
Bailey County Electric Cooperative	86
Central Valley Electric Cooperative	87
Deaf Smith Electric Cooperative	88
Farmers Electric Cooperative	89
Greenbelt Electric Cooperative	90
Lamb County Electric Cooperative	91
Lea County Electric Cooperative	103
Lighthouse Electric Cooperative	92
Lyntegar Electric Cooperative	93
Midwest Electric Cooperative	105
Northfork Electric Cooperative	94
Roosevelt County Electric Cooperative	95
South Plains Electric Cooperative	96
Swisher Electric Cooperative	97
Rita Blanca Electric Cooperative	98
North Plains Electric Cooperative	99
Tri County Electric Cooperative	100
Texas-New Mexico Power Company Partial Requirements Customers	75
City of Brownfield, Texas	81
City of Floydada, Texas	83
Lubbock Power and Light Company	85
City of Tulia, Texas	101
Texas-New Mexico Power Company	107

Southwestern proposes a two step increase for their full requirements and their partial requirements customers. The proposed full requirements customer changes would result in an increase of $3,131 under the Phase I rate and an additional $5,706,301 under the Phase II rate for Period II year ended June 30, 1986, resulting in a .002 percent increase and 3.52 percent increase, respectively, above the existing full requirements rate subject to refund under Docket ER84-604. The proposed partial requirements customer changes would result in an increase of $936,218 under the Phase I rate and additional $848,317 under the Phase II rate for Period II, resulting in a 3.72 percent increase and a 7.10 percent increase, respectively, above the existing partial requirements rate subject to refund under Docket ER84-604.

The proposed effective date for the Phase I rates is 60 days after filing date. The Phase II rates are requested to be made effective 61 days from the filing date. Southwestern requests that the Phase I rates be allowed, subject to refund, without suspension or that it be suspended for no longer than one day. Southwestern would not oppose a maximum five-month suspension of the Phase II rate. If the Commission orders a five month suspension of the Phase I rates beyond their proposed effective date, Southwestern requests that the Phase I rates be deemed withdrawn and the Phase II rates only be considered in this filing.

Southwestern also proposes to modify the Fuel Adjustment Clause (FAC) for each of its full requirements and partial requirements to become effective concurrent with the Phase II rates. The modification incorporates the seventy-five percent flow through of off-system and interchange margin revenues through the FAC.

Copies of the filing were served on the affected customers, the Public Utility Commission of Texas, the Public Service Commission of New Mexico, and the Oklahoma Corporation Commission.

Comment date: May 22, 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.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11935 Filed 5-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-468-000 et al.]

Natural Gas Certificate Filings; United Gas Pipe Line Co. et al.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP85-468-000]

May 9, 1985.

Take notice that on April 26, 1985, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP85-468-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap located on United's Waskom-Goodrich 20-inch line in Nacogdoches County, Texas, under the certificate issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that the sales tap would enable United to supply an estimated average of 1 Mcf per day of natural gas to Entex, Inc., for resale to the residence of Mr. Mack Cagle under United's Rate Schedule DG-N.

United states that it would have sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: June 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Bayou Industrial Gas Corporation

[Docket No. CP85-459-000]

May 10, 1985.

Take notice that on April 23, 1985, Bayou Industrial Gas Corporation (BIGCO), 1001 Fannin Street, Suite 1700, Houston, Texas 77002, filed in Docket No. CP85-459-000 an application pursuant to Section 7(c) of the Natural Gas Act and § 284.222 of the Commission's Regulations for a blanket certificate of public convenience and necessity for authorization to transport, sell and assign volumes of natural gas in interstate commerce as of BIGCO were an intrastate pipeline as defined in Subparts C, D and E of Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

BIGCO states that it presently plans to engage only in transactions that would take the form of exchanges for which there would be no charges for services rendered. BIGCO further states that if it elects to perform services in the future for which charges would be made, BIGCO would provide, at that time, the information required by § 284.222(c)(7) of the Commission's Regulations. BIGCO asserts that it received during the period November 1984 through March 1985, a total of 1,035,095 million Btu of natural gas, all of which was received within or at the state boundary, and was exempt from the Commission's jurisdiction under the Natural Gas Act by reason of Section 1(c) of the Nautral Gas Act.

BIGCO indicates it would comply with the conditions set forth in § 284.222(e) of the Commission's Regulations.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Colorado Interstate Gas Company

[Docket Nos. CP85-376-000 and CP85-376-001]

May 10, 1985.

Take notice that on March 28, 1985, as amended on April 18, 1985, Colorado Interstate Gas Company (Applicant), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-376-000 [1] an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to make various changes to its FERC Gas Tariff, Original Volume No. 1, all as more fully set forth in the application, and amendment thereto, which is on file with the Commission and open to public inspection.

Specifically, Applicant requests authority to modify Rate Schedule PS-1 and cancel Rate Schedule S-1 in Applicant's FERC Gas Tariff, Original Volume No. 1.

Applicant's Rate Schedule PS-1 is available to certain customers for the purpose of natural gas peaking service. The modification of Rate Schedule PS-1 would enable Applicant to synchronize its contract obligations with storage withdrawal and still meet or exceed the required deliveries for the coldest weather pattern of the last 30 years in Applicant's service area.

Applicant's Rate Schedule S-1 is available to certain customers for the seasonal purchase of natural gas between the period May 1, and September 30, of each year. Rate Schedule S-1 has not been used since 1982 and customer nominations for 1986 indicate that Rate Schedule S-1 would not be used in the future.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Colorado Interstate Gas Company

[Docket No. CP85-447-000]

May 10, 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. CP85-447-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity

[1] Docket No. TC85-12-000 has also been assigned to this application. Due to the nature of the amendment filed by Applicant in Docket No. CP85-376-001, Docket No. TC85-12-000 is hereby terminated.

seeking authorizing the transportation of gas for Western Natural Gas and Transportation Corp. (Western), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

According to the application, Western has required that Applicant provide transportation for up to 15,000 Mcf of gas per day on behalf of certain Denver area end-users, to be delivered to Public Service Company of Colorado (PSCo) at an existing gas sales point from Applicant. Such transportation would be provided on an interruptible basis using existing facilities. Applicant's proposed transportation rate is 58.85 cents per Mcf of gas. Applicant states that the proposed transportation rate is equivalent to the non-gas component of Applicant's Rate Schedule G-1 commodity sales rate (56.60 cents per Mcf of gas) plus 1.25 cents per Mcf of gas for the Gas Research Institute Funding Fee.

Applicant states that the proposed transportation volumes will be delivered for Western's account by Williston Basin Interstate Pipeline Company at the Elk Basis delivery point located in Section 29, Township 58 North, Range 99 West, Park County, Wyoming. Applicant also would receive gas at the Cimarron delivery point located in Section 13, Township 18 South, Range 45 West, Kiowa County, Colorado, directly from Western. Redeliveries of thermally equivalent volumes are proposed to be made to PSCo for Western's account at the East Denver redelivery point located in Section 29, Township 2 South, Range 66 West, Adams County, Colorado.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Columbia Gulf Transmission Company

[Docket No. CP85-472-000]

May 10, 1985.

Take notice that on April 29, 1985, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP85-472-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Texas Gas Transmission Corporation (Texas Gas), 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 gas for Texas Gas from a point of receipt at an existing interconnection between the facilities of Applicant and Sea Robin Pipeline Company in Vermilion Parish, Louisiana, for delivery to Texas Gas at an existing interconnection between the facilities of Applicant and Texas gas at the terminus of the Blue Water Project near Egan, Acadia Parish, Louisiana. Applicant would transport up to 1,000 Mcf of natural gas per day on an interruptible basis pursuant to a gas transportation agreement dated August 17, 1984. The proposed service, it is said, would provide Texas Gas with the most practical and economical means of transporting an additional supply of natural gas.

Applicant states that Texas Gas would pay 6.60¢ per Mcf of natural gas received for transportation at the point of receipt. Applicant states further that the transportation would continue for a period of seven years, and yearly thereafter unless terminated by either party.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. El Paso Natural Gas Company

[Docket No. CP85-458-000]

May 10, 1985.

Take notice that on April 23, 1985, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP85-458-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by conveyance without cost to the Navajo Tribal Utility Authority (NTUA) certain sales lateral pipeline, with appurtenances, located in San Juan County, Utah, all as more fully set forth in the application on file with the Commission and open to public inspection. Applicant states that the pipeline and metering facilities are currently being utilized by Applicant to sell and deliver natural gas to the NTUA for resale to the community of Montezuma Creek, Utah (Montezuma Creek), at the existing Montezuma School delivery point.

Applicant asserts that subsequent to the installation of the pipeline and metering facilities serving Montezuma Creek, it began experiencing increases in the natural gas requirements in and around the Montezuma School delivery point. It is explained that the increases in the NTUA's natural gas requirements at said delivery point have and continue to consist of high-priority load requirements and that with this continuous development of the NTUA's residential and small commercial requirements, Applicant's existing sales lateral pipeline facilities situated downstream of its Montezuma School meter station have suffered serious encroachment. In addition, Applicant states that from an operational standpoint these facilities are effectively serving as a distribution service for the NTUA and can be more properly monitored and maintained by the local distributor, the NTUA, as a distribution pipeline facility.

Applicant proposes to abandon and convey to the NTUA the sales lateral pipeline facilities extending from its Montezuma School meter station located in San Juan County, Utah, at no cost, pursuant to the terms and conditions of the letter agreement between El Paso and the NTUA dated January 21, 1985.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP85-455-000]

May 10, 1985.

Take notice that on April 22, 1985, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP85-455-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate certain taps and related facilities for the sale of approximately 8,250 Mcf of natural gas per year to four residential customers in Oklahoma and Texas and to a residential subdivision, that will contain approximately 78 residences in Bryan County, Oklahoma, under Lone Star's blanket certificate issued in Docket No. CP83-59-000, as amended, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Lone Star proposes to construct and operate the appropriate facilities for the sale of approximately 450 Mcf of gas annually to four residential customers one of which is located in Bryan County, Oklahoma (O.E. Sullivan) another customer in Stephens County, Oklahoma (Kenneth Brooks) and two customers are located in Denton County, Texas (Russell Wood and Joe Edge). Lone Star also proposes to construct and operate a sales tap for the sale of approximately 7,800 Mcf of gas annually to the Western Meadow subdivision under development in Bryan County, Oklahoma, that would contain about 78 homes.

Lone Star asserts it would charge those customers located in Oklahoma the residential rate which is approved by the Oklahoma Corporation Commission and those customers

located in Texas the residential rate which is approved by the Texas Railroad Commission.

Lone Star alleges that the proposed volumes of gas for the new residential customers is not expected to have any significant impact on its peak day or annual system sales or operations.

Comment date: June 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP85-457-000]

May 10, 1985.

Take notice that on April 22, 1985, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP85-457-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate certain taps and related facilities for the sale of approximately 400 Mcf of natural gas per year to four residential customers in Oklahoma and Texas, under Lone Star's blanket certificate issued in Docket No. CP83-59-000, as amended, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Lone Star proposes to construct and operate the appropriate facilities for the sale of approximately 400 Mcf of gas annually to four residential customers located each one in Choctaw (Betty Marcum) and Bryan (Melvin Rodgers) Counties, Oklahoma and Denton (Mr. Payne) and Grayson (Dennis McCray) Counties, Texas.

Lone Star asserts it would charge those customers located in Oklahoma the residential rate which is approved by the Oklahoma Corporation Commission and those customers located in Texas the residential rate which is approved by the Texas Railroad Commission.

Lone Star alleges that the proposed volumes of gas for the new residential customers is not expected to have any significant impact on its peak day or annual system sales or operations.

Comment date: June 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

9. Michigan Consolidated Gas Company—Interstate Storage Division

[Docket No. CP82-502-003]

May 10, 1985.

Take notice that on April 22, 1985, Michigan Consolidated Gas Company (MichCon) 500 Griswold Street, Detroit, Michigan 48226, filed in Docket No. CP82-502-003 pursuant to Section 7(c) of the Natural Gas Act a third amendment to its pending application filed on August 20, 1982, in Docket No. CP82-500-002 as amended on August 4, 1983, and on July 6, 1984, so as to reflect an increase in the natural gas transportation service to be rendered by it to ANR Storage Company (ANR) as well as changes in the charges for such service, all as more fully set forth in the amendment which is on file with the commission and open to public inspection.

MichCon indicates that, insofar as here pertinent, said application requested authority for MichCon to transport gas for ANR incidental to the storage of gas by ANR for Transcontinental Gas Pipe Line Corporation (Transco).

MichCon states that on February 11, 1985, MichCon and ANR amended the transportation agreement between then to reflect recent changes in the storage agreement between ANR and Transco in order to accommodate Transco's need for additional storage service to enable it to meet its customers' peak day and winter period requirements during the 1987-88 and subsequent heating reasons. Because of that amendment, MichCon states that it is amending its application herein as follows:

(1) The maximum daily quantity of gas which MichCon would transport for ANR, exclusive of compressor fuel, during any summer period would be 119,416 Mcf per day rather than 75,750 Mcf per day.

(2) The maximum daily quantity of gas which MichCon would transport for ANR, inclusive of compressor fuel, during any winter period would be 249,250 Mcf per day, rather than 149,625 Mcf per day.

(3) The contract quantity would be 15,888,000 Mcf rather than 10,100,000 Mcf.

(4) The maximum daily volume of gas which MichCon may, at ANR's request and at MichCon's sole option, receive for ANR's account, inclusive of compressor fuel, during the summer period from the partnership between ANR and Washington 28 Gas Storage Company (Couch Gas Storage Company's successor in interest), which partnership was established for the purpose of developing and operating gas storage fields in Macomb County, Michigan, for the provision of storage service to ANR, at the Romeo delivery point and redeliver to Great Lakes Gas Transmission Company (Great Lakes) at the Belle River Mills delivery point, would be 249,250 Mcf per day, rather than 149,625 Mcf per day.

(5) The maximum daily volume of gas which MichCon may, at ANR's request and at MichCon's sale option, receive for ANR's account, exclusive of compressor fuel, during the winter periods from Great Lakes at the Belle River Mills delivery point, and redeliver to the Partnership at the Romeo delivery point, would be 119,416 Mcf per day, rather than 75,750 Mcf per day.

(6) The revised rates which MichCon would charge ANR under the amended agreement are as follows: a revised monthly service charge of $83,584 per month, rather than $58,050 per month; and a revised charge of 3.18 cents per Mcf, rather than 3.47 cents per Mcf, for gas in excess of the contract quantity delivered to MichCon for ANR's account at Belle River Mills delivery point a redelivered to Romeo delivery point or delivered to MichCon at the Romeo Delivery Point and redelivered to Great Lakes at the Belle River Mills delivery point for the account of and redelivery to Transco. In addition, the credit to which ANR would be entitled in the event MichCon fails or is unable to accept delivery or redelivery of gas volumes up to contract maximums which it does not make-up during the winter period would be equal to 6.36 cents per Mcf, rather than 6.94 cents per Mcf, multiplied times the difference between volumes redelivered by MichCon and volumes so scheduled and mad available for delivery to MichCon. It is stated that these changes in rate are necessary to reflect changes in volumes and changes pursuant to the Commission's letter order, issued January 11, 1985, in connection with MichCon's filing in Docket No. RP84-13. MichCon states that the amendment also includes revisions to Exhibits C, D, G, N, P, and Z-1 and Z-2.

MichCon further states that in all other respects its application remains the same as filed on August 20, 1982, as amended.

Comment date: May 31, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. National Fuel Gas Supply Corporation

[Docket No. CP84-204-001]

May 10, 1985.

Take notice that on April 25, 1985, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP84-204-001 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for an eligible end-user under the

certificate issued in Docket No. CP83-4-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

National proposes to transport up to 2,500 Mcf of gas per day and 912,500 Mcf of gas per year, for the account of Airco Carbon, Division of BOC, Inc., to National Fuel Gas Distribution Corporation (Distribution) which, in turn, would deliver the gas to Airco at Airco's facilities in Niagara Falls, New York, pursuant to the terms of the gas transportation agreement dated August 10, 1983. National states that the current transportation rate is 26.72 cents per Mcf, plus 2 percent retainage for shrinkage which is in accordance with its transportation Rate Schedule T-2. In addition, the current transportation rate charged by Distribution is currently 88.0 cents per Mcf plus the surcharge to reflect the tax rates applicable within the municipality where Airco is taking service plus 2.5 percent of the gas for loss allowance in accordance with Distribution's New York Tariff (P.S.C. No. 7-Gas), it is asserted.

National states that the gas to be purchased by Airco involves gas supplies previously under contract to and released by National. Airco would use the gas transported by National in boilers, infrared heaters, water heaters, space heating furnaces, incinerators, dryers and miscellaneous process use, which are qualified end-uses pursuant to § 157.209(e)(2) of the Regulations, it is asserted. National states that no new facilities are necessary to effectuate the proposed transportation. It is stated that the proposed transportation would commence as of the effective date of the requested authorization and terminate on the expiration date set forth in § 157.209(e) of the Commission's Regulations.

Comment date: June 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

11. New Orleans Public Service Inc.

[Docket No. CP85-479-000]

May 10, 1985.

Take notice that on May 2, 1985, New Orleans Public Service Inc. (NOPSI), 317 Baronne Street, New Orleans, Louisiana 70112, filed in Docket No. CP85-479-000 an application pursuant to Section 7(c) of the Natural Gas Act and § 284.222 of the Commission's Regulations (18 CFR 284.222) for a certificate of public convenience and necessity for blanket authorization to transport, sell or assign natural gas in interstate commerce under the Natural Gas Act as if NOPSI were an intrastate pipeline as defined subject to the Commission's Regulations in Subparts C, D, and E of Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NOPSI states that its rates, services and facilities are subject to the regulatory jurisdiction of the Louisiana Public Service Commission and that it would comply with the conditions set forth in § 284.222(e) of the Commission's Regulations.

NOPSI indicates that it is contemplating entry into mutually beneficial exchange agreements with interstate pipelines for which no rate will be charged. NOPSI also states that if in the future it wishes to charge for any transaction entered into under the blanket certificate, it would comply with the provisions of § 284.222(e) of the Commission's Regulations.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

12. Northwest Central Pipeline Corporation

[Docket No. CP85-450-000]

May 10, 1985.

Take notice that on April 19, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74102, filed in Docket No. CP85-450-000 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon by reclaim certain compression and appurtenant facilities and a certificate of public convenience and necessity authorizing the construction and modification of compression and appurtenant facilities on Northwest Central's Pampa-Wichita 20-inch pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest Central proposes to abandon by reclaim compressor units and appurtenant facilities at Burnett, Pampa, Higgins and Mooreland compressor stations; modify two compressor units at Burnett Station; and install two new compressor units and appurtenant facilities at Higgins Station to meet more efficiently changing operating conditions on its pipeline system and more readily accommodate these stations for future automation. It is explained that declining production in the various fields require smaller compression facilities providing greater flexibility in station operations. The application reflects that the Pampa and Mooreland compressor stations would be by-passed and abandoned in their entirety, and that there would be at total net reduction in compression capacity of 16,800 horsepower. A summary of the proposal follows:

COMPRESSOR UNITS TO BE

Station	Location	Reclaimed (horsepower)	Installed (horsepower)	Modified (horsepower)	Remaining (horsepower)
Burnett	Carson County, Texas	2-1,000		2-1,000	2-1,000
Pampa	Gray County, Texas	6-1,000			0
Higgins	Hemphill County Texas	5-1,000	2-600		2-600
Mooreland	Woodward County, Oklahoma.	5-1,000			0
Total		18-1,000	2-600	2-1,000	

Northwest Central states that the estimated cost of the proposed facilities is $2,041,000, which would be paid from treasury cash. Further, Northwest Central states that the total reclaim cost for the proposed abandonments is $421,000, which would be paid with available funds, and the estimated salvage value of the facilities to be reclaimed is $653,000.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

13. Sea Robin Pipeline Company

[Docket Nos. CP76-428-002 and CP76-428-003]

May 10, 1985.

Take notice that on April 9, 1985, and April 17, 1985, Sea Robin Pipeline Company (Sea Robin), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP76-428-002, and Docket No. CP760-428-003, respectively, petitions to amend the order issued February 12, 1977, in Docket No. CP76-428 pursuant to section 7(c) of the Natural Gas Act so as to authorize the designation of a new receipt point and an additional transportation redelivery point to United Gas Pipe Line Company (United), all as more fully described in the petitions to amend which are on file with the Commission and open to public inspection.

Sea Robin states that it is authorized to provide transportation service for United for the transportation and redelivery of United's gas purchased from certain offshore Louisiana delivery points. Sea Robin further states that it is authorized to redeliver United's gas at the terminus of Sea Robin's system onshore near Erath, Vermilion Parish, Louisiana, into the facilities of United. Sea Robin also states that the transportation agreement between United and Sea Robin dated June 1, 1976, has been amended on March 13, 1984, and December 5, 1984, to provide for a new redelivery point at the inlet side of the measuring station of Faustina Pipeline Company located at the offshore terminus of the Sea Robin system and a new receipt point at South Marsh Island Area Block 127, offshore Louisiana.

No other changes are proposed by the transportation agreements.

Comment date: May 31, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

14. Southern Natural Gas Company

[Docket No. CP85-448-000]

May 10, 1985.

Take notice that on April 18, 1985, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP85-448-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon its present meter station in Aiken County, South Carolina, and for authorization to construct and operate a replacement station at the same site under the authorization issued in Docket No. CP82-406-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states that two of its customers, Carolina Pipe Line Company (Carolina) and South Carolina Electric and Gas Company (South Carolina), merged their operations, and since the merger, Southern has continued to deliver gas to Carolina and South Carolina at separate delivery points in Aiken County. However, Southern has determined that a single delivery point would provide more accurate measurement of the gas sold as well as simplifying operations and reducing operational and maintenance costs.

Southern estimates the cost of construction, installation and operation of the new meter station at the single delivery point to be $1.5 million. Of this amount, it is stated, $115,000 would be borne by South Carolina Pipe Line, formerly Carolina and South Carolina.

Southern also indicates that the sole purpose of constructing the replacement station is to effect a contract demand delivery of 198,000 Mcf of natural gas, which amount would not increase as a result of this proposal.

Comment date: June 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

15. Tarpon Transmission Company

[Docket No. CP85-389-000]

May 10, 1985.

Take notice that on March 25, 1985, Tarpon Transmission Company (Applicant), 4665 First International Building, Dallas, Texas 75270, filed in Docket No. CP85-389-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of a public convenience and necessity authorizing the construction of a tap facility to permit the transportation of natural gas, 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 install a tap facility on its 18-inch pipeline in Block 361, Eugene Island, offshore Louisiana. Applicant states that it transports natural gas for the account of Trunkline Gas Company (Trunkline) which Trunkline obtains from various independent producers by authorization granted August 4, 1977, in Docket No. CP77-315. Applicant states further that Trunkline has entered into an agreement with Natural Gas Pipeline Company of America (NGPL) to transport gas NGPL has acquired in the Block 361 area. It is said that Trunkline seeks to provide that service for NGPL utilizing in part Tarpon's transportation service. It is further said that there would be no increase in Trunkline's minimum daily obligation or transportation entitlement.

Applicant states that it proposes to charge the transportation rate that is currently in effect, subject to the outcome of the proceedings in Docket No. RP84-82, for the transportation of these volumes. Applicant states further that the cost of construction of the tap facility would be reimbursed by NGPL.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

16. Transwestern Pipeline Company

[Docket No. CP85-441-000]

May 10, 1985.

Take notice that on April 16, 1985, as supplemented April 23, 1985, Transwestern Pipeline Company (Applicant), 1200 Travis Street, Houston, Texas 77001, filed in Docket No. CP85-441-000 an application pursuant to section 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon the sale of natural gas to Great Plains Gas Company (Great Plains) and for a certificate of public convenience and necessity authorizing the operation of existing facilities to provide direct sale service and authorizing construction and operation of such sales taps, meter stations and pipeline facilities as are necessary to continue service to certain right-of-way grantors and other users of natural gas for agricultural and irrigation purposes in the Panhandle areas of Texas and Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon service under Rate Schedule RW-1 to its customer, Great Plains, and to continue serving the existing authorized customers of Great Plains under direct sales arrangements. It is asserted that Great Plains has failed to pay for gas delivered to it by Applicant since prior to October of 1983 and that it has accumulated a debt to Applicant of $749,152.84. It is further asserted that Great Plains is not in compliance with the resale restrictions in Applicant's RW-1 tariff and that Applicant believes that certain safety problems exist in the operation of Great Plains' system.

It is stated that upon abandonment of its sales to Great Plains, Applicant proposes to continue serving Great Plains' existing authorized customers. Applicant further proposes to construct minor pipeline facilities, as necessary, to continue natural gas service to its right-of-way and agricultural customers now being served by Great Plains. Total cost of all facilities needed to continue serving Great Plains' existing authorized customers is estimated not to exceed $150,000.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

17. United Gas Pipe Line Company

[Docket No. CP85-465-000]

May 10, 1985.

Take notice that on April 25, 1985, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas,

filed in Docket No. CP85-465-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for SCM Corporation (SCM), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to transport up to 8,500 Mcf of natural gas per day on behalf of SCM through June 30, 1985. It is stated that the gas to be transported would be purchased from The Resource Group, Inc. (Resources Group), and would be used as boiler fuel and as fuel for sulfate and chloride plant heating equipment. It is explained that United would receive the gas from the Resources Group at a point in Northeast Houma Field, Terrebonne Parish, Louisiana, and deliver it to Columbia Gulf Transmission Company which would deliver it to Columbia Gulf Transmission Company which would deliver it to Columbia Gas Transmission Corportion for delivery to Baltimore Gas and Electric Company, the distribution company serving SCM.

United states that it would charge a rate equal to United's Type I Rate which excludes the cost attributable to gas consumed in the operation of United pipeline system. It is indicated that currently the rate for such service is 7.79 cents per Mcf.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

18. Williston Basin Interstate Pipeline Company

[Docket No. CP85-214-001]

May 10, 1985.

Take notice that on April 12, 1985, Williston Basin Interstate Pipeline Company (Williston), 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP85-214-001 a petition to amend the order issued March 11, 1985, in Docket No. CP85-214-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of additional volumes of natural gas for Ecological Engineering Systems, Inc. (EES), all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Williston states that it was authorized by the March 11, 1985, order to transport natural gas and construct and operate a pipeline tap for the delivery of such natural gas to EES in McKenzie County, North Dakota. Williston further states that it proposes to transport up to 700 Mcf of natural gas per day for the account of EES pursuant to a service agreement dated November 1, 1984, which would terminate two years after the date of initial deliveries.

It is indicated that the natural gas that Williston would transport is owned and produced by EES. It is further indicated that Williston would receive the natural gas into its transmission system at the Boxcar Butte plant in McKenzie County, North Dakota, and would transport and redeliver such natural gas to EES, through a tap certificated in Docket No. CP84-469-000, for use as fuel at its Alexander field gathering compressor located in McKenzie County, North Dakota. It is stated that the compressor, which is used for gathering gas condensate and oil well gas to be processed at a gas processing plant, must be fueled with pipeline quality gas rather than sour gas available in the field.

Williston states that transportation service under its Rate ScheduleT-4 was provided for EES from November 1, 1984, through March 1, 1985, pursuant to Williston's blanket certificate authorization, under § 157.209(e)(1) of the Commission's Regulations. Williston further states that prior to that time, and subsequent to March 1, 1985, EES was and is receiving transportation service under Rate Schedule T-3 in accordance with Williston's certificate issued in Docket No. CP83-335.00. Williston states that continued certificate authority is sought for transportation of the natural gas under Service Class I, Rate Option B, of Williston's Rate Schedule T-4. Williston indicates that this rate schedule was approved, subject to refund, for Williston's parent company, Montana-Dakota Utilities Co., in Docket No. RP84-93-000.

Comment date: May 31, 1985, in accordance with the first subparagraph of Standard paragraph F at the end of this notice.

19. Texas Eastern Transmission Company

[Docket No. CP85-466-000]

May 10, 1985.

Take notice that on April 25, 1985, Texas Eastern Transmission Corporation, (Applicant), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP85-466-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the sale and transportation of natural gas and terminating the certificate of public convenience and necessity issued in Docket No. CP80-90 which authorized the sale to and transportation of natural gas on behalf of Transwestern Pipeline Company (Transwestern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that on November 9, 1979 Boarder Gas, Inc. (Border), filed an application jointly with the Commission and the Economic Regulatory Administration (ERA) in Docket No. CP80-75 and ERA Docket No. 79-31 NG, respectively, for authorization to import up to approximately 300,000 Mcf of natural gas per day from Mexico to be purchased from Petroleos Mexicanos (Pemex) for resale to six U.S. interstate pipeline purchasers, including Applicant. Pursuant to the gas sales agreement dated November 8, 1979 between the pipeline purchasers and Border, Applicant states that it is entitled to purchase up to 27½ percent of the gas imported by Border.

These applications were consolidated with Docket No. CP80-75 by notices issued November 30, 1979, and December 5, 1979. Border and the pipeline purchasers were granted certificates by Commission order issued December 21, 1979, in Docket Nos. CP80-93, *et al.* 9 FERC § 61,362. On December 29, 1979, the ERA issued its Opinion and Order No. 12 approving the importation of the subject Mexican gas by Border.

Applicant states that the Commission in its December 21, 1979, order granted to Applicant in Docket No. CP80-90 a certificate authorizing it to resell one-third of the volumes it is entitled to purchase from Border to Transwestern pursuant to a gas sales and transportation agreement dated November 13, 1979 (Agreement). Such Agreement is currently on file as Rate Schedule X-105 of Applicant's FERC Gas Tariff, Original Volume No. 2. Under the Agreement, Applicant asserts that it transports such gas quantities for Transwestern from an existing interconnection between Applicant and Pemex located at the Mexican/United States international boundary to an existing interconnection between Applicant and Valero Transmission Company (Valero) located near Angleton, Brazoria County, Texas. Valero then redelivers the gas to Transwestern at an interconnection of Valero's 36-inch pipeline and Transwestern's 20-inch pipeline in Pecos County, Texas, it is explained.

Applicant states that authorization to abandon the above described sale of gas to Transwestern is appropriate since on November 1, 1984, Pemex and Border suspended importation of Mexican natural gas which resulted in the non-availability of gas for sale to Transwestern. Subsequent to the

cessation of deliveries from Pemex and by letter agreement dated November 28, 1984, Appplicant states that it and Transwestern mutually agreed to terminate the November 13, 1979, Agreement effective as of November 1, 1984.

Applicant further states that Transwestern asserts that no adverse impact on Transwestern's customers would result from approval of this abandonment application. It is said that additional gas supplies made available to Transwestern since the passage of the Natural Gas Policy Act to 1978 are currently permitting Transwestern to meet the market demand of Transwestern's customers even after taking into account the suspension by Border and Pemex of importation of Mexican natural gas.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

20. Texas Gas Transmission Corporation

[Docket No. CP85-449-000]

May 10, 1985.

Take notice that on April 19, 1985, Texas Gas Transmission Corporation (Applicant), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP85-449-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Memphis Light, Gas and Water Division (Memphis), as agent for The Buckeye Cellulose Corporation (Buckeye), beyond June 30, 1985, under the certificate issued in Docket No. CP82-407-000 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.

Applicant states that by a gas transportation agreement dated March 11, 1985, it agreed to continue transportation of gas to Memphis for ultimate delivery to Buckeye at several of its Memphis, Tennessee, plants. It is explained that up to 4.5 billion Btu of natural gas per day would be transported on an interruptible basis, with average daily quantities estimated to be 3.3 billion Btu and as much as 1,1642.5 billion Btu on an annual basis. The agreement extends the term of the transportation service to October 31, 1985, provided that authorization is received acceptable to both parties and provided that the end-user transportation program is extended beyond June 30, 1985, it is stated.

Applicant 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. Applicant 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.

Applicant proposes to charge for its service the rate provided in its Rate Schedule TSC-1 for Rate Schedule G sales customers, which is currently 16.26 cents. Applicant is also charging the legally effective GRI funding unit, which is currently 1.25 cents per MMBtu.

Applicant indicates that the gas, transported through existing facilities, would be used for boiler fuel. Applicant states that Buckeye has purchased its gas supplies from The Cheney Group, in a first sale, and such gas was not dedicated to interstate commerce on November 8, 1978, and that The Cheney Group is acting as agent for Cities Service Oil and Gas Corporation, a producer. Applicant submits a statement by Memphis that it has capacity sufficient to perform this transportation service without deteriment or disadvantage to its other customers.

Comment date: June 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., 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 385.211 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 intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn with in 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. 85-11943 Filed 5-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. EL85-17-000]

Hydraco Power, Inc.; Petition for Declaratory Order

May 13, 1985.

Take notice that on January 3, 1985, Hydraco Power, Inc. (Petitioner) filed a petition pursuant to 18 CFR 385.207(a)(2) requesting that the Commission issue an order declaring that Petitioner's Martindale Dam Project is not subject to the Commission's jurisdiction under the Federal Power Act (Act), since it will not involve the construction of a dam on a navigable waterway, will not require any post-1935 construction, and will not affect the interest of the interstate or foreign commerce pursuant to section 23(b) of the Act. Therefore, it is not required to be licensed or exempted from licensing before the Petitioner may restore, operate, or maintain the project. The project is located on the San Marcos River in the town of Martindale,

in Caldwell County, Texas. Correspondence concerning this petition should be addressed to: Mr. Rodger M. Zimmerman, Attorney at Law, Route 1, Box 74, Driftwood, Texas 78619.

As described in the petition, the project dam was constructed in 1883, and the project was utilized as a generating facility for many years. The power station was operated by the Texas Power and Light Company and the Lower Colorado River Authority until sometime in the 1940's, when it was abandoned. The project consists of: (1) An existing concrete dam approximately 100 feet long and 12 feet in height; (2) an existing impoundment with water surface area of about 10 acres, a storage capacity of 40 acre-feet at normal water surface elevation of 501.3 feet, m.s.l.; (3) an existing penstock, 10 feet wide and 18 feet long; (4) an existing powerhouse about 25 feet by 12 feet, housing one turbine-generator unit with an installed capacity of 150 kW; (5) about 30 feet of existing transmission line at 480 volts; and (6) appurtenant facilities. The petitioner estimates that the average annual energy generation would be 875,000 kWh.

Comments, Protest, or Motions To Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commisson will consider all the protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before June 24, 1985. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11937 Filed 5-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7282-004]

Roaring Creek Ranch; Application for Transfer of Major License

May 13, 1985.

Public notice is hereby given that an application was filed on April 4, 1985, under the Federal Power Act, 16 U.S.C. 791(a)-825(r), by the Roaring Creek Ranch, Licensee and Roaring Creek Ranch and Mega Renewables, transferee, for transfer of major license for the Roaring Creek Water Power Project No. 7282. The project is located on Roaring Creek, in Shasta County, California. Correspondence should be directed to: Mr. John Downs, Roaring Creek Ranch, 1110 Shasta Street, Redding, California 96001.

The transferee is a private partnership organized under the laws of the State of California. Transferee states that it will comply with all applicable laws of the State of California as required by section 9(b) of the Federal Power Act.

Anyone desiring to be heard or to make any protest about this application should file a motion to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 385.211 or 385.214. Comments not in the nature of a protest may also be submitted by conforming to the procedures specified for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party or to participate in any hearings, a person must file a motion to intervene in accordance with the Commission's Rules. Any comments, protests, or motions to intervene must be received on or before June 21, 1985. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11938 Filed 5-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-478-000]

Tampa Electric Co.; Filing

May 13, 1985.

The filing Company submits the following:

Take notice that on May 1, 1985, Tampa Electric Company (Tampa) tendered for filing revised cost support schedules showing a change in the daily capacity charge for its scheduled interchange service provided under interchange agreements with Florida Power Corporation, Florida Power and Light Company, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Sebring Utilities Commission, Seminole Electric Cooperative, and the Cities of Gainesville, Kissimmee, Lake Worth, Lakeland, St. Cloud, Starke, Tallahassee, and Vero Beach, Florida. Tampa states that the revised daily capacity charge is based on 1984 Form No. 1 data, and is derived by the same method that is shown in the cost support schedules submitted with the interchange agreements.

Tampa requests an effective date of May 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing has been served upon each of the above-mentioned parties to interchange agreements with Tampa, as well as the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy 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 22, 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. 85-11936 Filed 5-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC85-15-000]

Texas Eastern Transmission Corp.; Tariff Filings

May 13, 1985.

Take notice that on May 6, 1985, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, tendered for filing in Docket No. TC85-15-000 pursuant to Part 154 of the Commission's Regulations under the Natural Gas Act, as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets:

Third Revised Sheet No. 93
Fourth Revised Sheet No. 94
Sixth Revised Sheet No. 95
Second Revised Sheet No. 95A
Original Sheet No. 95B
Fifth Revised Sheet No. 96

It is explained that these tariff sheets suspend the annual quanity entitlements (AQE) contained in the curtailment provisions of the FERC Gas Tariff on the

terms and conditions set forth in the Statement of Nature, Basis and Reasons filed concurrently herewith. It is indicated that under these new tariff provisions, the AQE's on Texas Eastern's system would be lifted except in the event of a long-term supply shortages. It is further indicated that in the event of a temporary *force majeure*, not expected to exceed thirty consecutive days, Texas Eastern would curtail its customers *pro rata*, with certain exceptions as to small customers. In the event of long-term gas supply shortages, Texas Eastern would reinstitute the AQE's for curtailment purposes, it is said.

It is indicated that the new tariff sheets were filed by Texas Eastern, after agreeing to do such a filing, in conjunction with the offer of settlement proposed in Docket No. CP84-429-000 *et al.* Texas Eastern requests that the tariff sheets be permitted to go into effect on June 6, 1985.

Any person desiring to be heard or to make any protest with reference to said tariff filing should on or before May 23, 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). 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11939 Filed 5-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-3-49-002]

Williston Basin Interstate Pipeline Co.; Change in Tariff

May 10, 1985.

Take notice that on May 7, 1985, Williston Basin Interstate Pipeline Company (Williston) tendered for filing Substitute Alternate First Revised Sheet Nos. 10 and 11 to its FERC Gas Tariff, Original Volume No. 1, and Substitute Alternate First Revised Sheet No. 10 and Alternate First Revised Sheet No. 11 to its FERC Gas Tariff, Original Volume No. 2, proposed to be effective May 1, 1985. These revised tariff sheets with supporting detail are filed pursuant to the Commission's order issued April 30, 1985, with respect to Williston's PGA filing of March 29, 1985, directing the revision of Account No. 802 purchase volumes in January, 1985 and the correction of two minor clerical errors.

The substitute tariff sheets effect a net rate decrease of 0.637 cents per Mcf relative to Williston's PGA filing of March 29, 1985, and net rate decrease of 122.690 cents per Mcf relative to previously effective Rate Schedules G-1, PR-1 and I-1. X-5 reflects an additional 0.021 cents per Mcf reduction and a net rate decrease of 70.516 cents per Mcf.

Copies of this compliance filing were served upon Williston's 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 17, 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. 85-11940 Filed 5-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC85-7-001]

Williston Basin Interstate Pipeline Co.; Tariff Filing

May 10, 1985.

Take notice that on May 1, 1985, Williston Basin Interstate Pipeline Company (Williston Basin), 304 East Rosser Avenue, Suite 200, Bismarck, North Dakota 58501, filed in Docket No. TC85-7-001 pursuant to Part 154 of the Commission's Regulations the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 to be effective July 1, 1985:

First Revised Sheet No. 159
Original Sheet No. 159A
First Revised Sheet No. 181
First Revised Sheet No. 184
First Revised Sheet No. 185
First Revised Sheet No. 188
First Revised Sheet No. 190

Williston Basin states that the purpose of this filing is to revise the tariff sheets filed by Montana-Dakota Utilities Co. (MDU) on February 1, 1985, in Docket No. TC85-7-000 to reflect the Commission's order dated February 13, 1985, in Docket No. CP82-487-000, *et al.* (30 FERC ¶ 61,143). This order approved a settlement authorizing Williston Basin to acquire and operate interstate pipeline facilities and services of MDU, effective January 1, 1985. Williston Basin, in compliance with this order, filed an FERC Gas Tariff to replace MDU's FERC Gas Tariff necessitating the subject tariff filing to make the original filing consistent with the numeration of pages in Williston Basin's tariff.

Any person desiring to be heard or to make any protest with reference to said tariff sheets filing should on or before May 20, 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). 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11941 Filed 5-16-85; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Record of Decision To Construct the Thermopolis-Alcova-Casper 230-/345-kV Transmission Line Project, Wyoming

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of Decision to Construct the Thermopolis-Alcova-Casper 230-/345-kV Transmission Line Project, Wyoming.

SUMMARY: The Western Area Power Administration (Western) has made the decision to construct the Thermopolis-Alcova-Casper 230-/345-kilovolt (kV) transmission line following the preferred alternative identified in the final environmental impact statement (EIS). The preferred route is environmentally acceptable but not environmentally preferred since some of the alternative routes addressed in the EIS would have lower impacts on some environmental resources. The transmission line will be

constructed with a combination of single-pole structures made of steel and steel H-frame structures. Two new substations, a 3-mile, 34.5-kV transmission line from the existing Bridger Pumping Plant, and a short 69-/115-kV tap line to the existing Lost Cabin Substation will be constructed as part of the project. Also, the existing Arminto-Casper 69-kV transmission line will be rebuilt at the same voltage on most of its existing right-of-way. Western will proceed with land acquisition, construction, and subsequent operation and maintenance of the proposed facilities. The availability of the draft and final EIS for the project was announced in the Federal Register by the Environmental Protection Agency on February 1, 1984, and October 26, 1984, respectively.

Western will implement the mitigation measures listed in the EIS. A specific mitigation plan for cultural resource impacts will be developed in consultation with the Wyoming State Historic Preservation Officer (SHPO), and this plan will be implemented before construction activities commence in the vicinity of eligible cultural resource sites. In addition, any site-specific mitigation requirements identified during construction will be addressed by Western and coordinated with appropriate Federal, State, and local agencies. General mitigation measures are discussed later in this document.

FOR FURTHER INFORMATION CONTACT: Mr. J. M. Shafer, Acting Area Manager, Loveland-Fort Collins Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 224-7201.

SUPPLEMENTARY INFORMATION: The existing Western system consists of a 115-kV line from Thermopolis to Boysen to Alcova, Wyoming, and a 69-kV line between Thermopolis and Casper, Wyoming. During periods of heavy power transfers, the 115-kV line approaches its thermal limit of 106 megawatts (MW). Transmission power losses during these peak periods can be 15 to 20 MW. The Thermopolis-Boysen-Alcova 115-kV line is also one of the weaker links in the overall transmission system between Yellowtail, Montana, and Ault, Colorado; and is one of the first lines to trip during system disturbances. As such, it is a primary contributor to instability of the regional transmission system.

Also, the existing Casper-Thermopolis 69-kV line which serves numerous customers of Western, Pacific Power & Light Company, and Tri-State Generation and Transmission Association, Inc., is over 44 years old and is subject to numerous outages because it lacks direct-strike lightning protection and because of structure failures. Replacement of the line will reduce maintenance costs and increase system reliability to the required level.

Replacing the 69-kV line at the same voltage would not provide the additional capacity required. Western proposes to replace the line with a 230-kV line which would provide the needed capacity for load growth in the area, alleviate major outage problems, reduce local transmission losses by 90 percent, improve reliability to the overall utility system in the area, provide voltage support to the underlying 115-kV and 69-kV systems, and increase transfer capability to the north and south.

Planning for the proposed project began in the spring of 1981. In September 1981, Western conducted three scoping meetings with Federal, State, and county agencies and the general public. Public scoping meetings were held in Thermopolis, Riverton, and Casper, Wyoming. The primary concerns identified during the scoping and other interagency meetings were: (1) The need for the project and how it relates to existing and planned utility facilities in the project area; (2) the environmental studies which would be conducted and the methodology for selecting a preferred corridor; (3) right of-way acquisition procedures and the extent to which individual landowners would be informed and involved in decisionmaking; (4) impacts to agricultural land use and how they would be mitigated; (5) design, construction and routing alternatives, including underground construction, double-circuiting, paralleling existing transmission lines, and construction of a line of sufficient capacity to preclude additional transmission line construction in the near future; (6) protection of cultural resources; and (7) protection of threatened and endangered species.

Following the scoping meetings, Western evaluated the resources within the study area to identify potential transmission line corridors. Areas of opportunity, least impact, avoidance, and exclusion were identified in the study area. The factors considered in this phase of the siting study included: (1) Archeological and historical sites; (2) areas of religious significance to native Americans; (3) wildlife and fisheries resources, particularly waterfowl concentration areas; (4) land use patterns, especially agricultural and residential; (5) geology and soils; (6) paleontological resources; and (7) visual resources.

After alternative corridors were identified, Western conducted a series of public planning workshops to solicit input from landowners and other interested groups and individuals. The planning workshops were held in Thermopolis, Riverton, and Casper, Wyoming, in January 1983. In addition, an informational meeting was held in January 1983 with the Joint Business Council of the Shoshone and Arapahoe Tribes at Fort Washakie, Wyoming. Subsequent to this input and an analysis of all other data collected, a preferred corridor was selected.

The draft EIS was issued in February 1984. It evaluated Western's proposed action, reasonable alternatives to the proposed action, and the environmental impacts of the proposal and alternatives. Public hearings on the draft EIS were conducted in Thermopolis, Riverton, and Casper, Wyoming, in March 1984, and written and oral comments were received. The final EIS was issued in October 1984.

Description of Alternatives

1. No Action—Western would construct no transmission facilities between Thermopolis, Alcova, and Casper, Wyoming.

2. Energy Conservation—Western encourages energy conservation which eliminates wasteful, uneconomic, or unnecessary uses of energy resulting in the reduction of energy consumption and documented adverse environmental impacts.

3. Alternative Generation Sources—Another alternative for meeting the stated need would be for Western to use other existing or planned transmission systems or new technologies.

4. Alternative Transmission Systems and Technologies—A direct current (DC) transmission system was considered as a possible alternative to an alternating current (AC) system. Underground systems were also evaluated.

5. Design Alternatives—Western considered various voltage levels, structure types, and conductors including:

A. Voltage Level—Four voltage levels were studied: 69-, 115-, 230-, and 345-kV.

B. Structure Types—Single-pole construction using either concrete, steel, or a combination of those materials, steel lattice, and wood and steel H-frame structures were alternatives considered by Western.

C. Conductors—Specular (normal) and nonspecular (dulled finish)

conductors were evaluated, as well as size of conductor.

D. Routing Alternatives—A wide variety of route locations (16) was initially considered and then rejected for environmental and technical reasons. This resulted in a reduced network of candidate routes for the proposed 230- or 230-/345-kV transmission lines between Thermopolis and Alcova, and between Alcova and Casper, and the proposed 69-kV line rebuild between Arminto and Casper.

Basis of Decision

The no-action alternative would result in low voltage, overload, and loss of load on the Thermopolis-Boysen-Alcova 115-kV transmission line, the Thermopolis-Casper 69-kV line, and the Alcova-Casper 69-kV line, increasing the frequency and severity of service interruptions, overloaded lines, and poor voltage regulation in the area's transmission system.

Energy conservation measures could not siginficantly reduce existing area loads to offset projected load growth in the area.

No projects for alternative generation exist or are planned by other utilities that could meet Western's need. Therefore, this is not a viable alternative.

In comparison to an AC transmission system, a DC system is generally not economical except for transferring large blocks of power over long distances (i.e., 300 or more miles). A DC system with the power-transfer capability of a 230-kV AC system would cost approximately two to three times as much as a 230-kV AC system with no additional significant environmental benefits.

Underground construction of a 230-kV transmission line between Thermopolis-Alcova would be technically feasible and would avoid some esthetic impacts; however, costs would be considerably higher, and the line would not be as accessible.

A resource inventory of the project's study area identified exclusion and avoidance areas, and areas of least potential impact and opportunity for transmission line routing. Alternative corridors were selected and studied along with a substation site near Alcova. The corridors were made up of links and were divided into systems. The corridor links within each system were compared and ranked by an interdisciplinary environmental study team, resulting in the identification of impact levels for each alternative corridor.

Between Thermopolis and Alcova, the preferred route addressed in the draft and final EIS is environmentally acceptable but not environmentally preferred because it would have slightly higher impacts on land use, cultural, and visual resources than the primary alternative. Both routes addressed in the Thermopolis-Alcova section are similar in that they share a common link for a portion of the project, and they both parallel existing transmission lines. The preferred route in the Thermopolis-Alcova section was designated because of lower construction costs.

In the draft EIS, Western addressed the existing transmission line corridor along the North Platte River between Alcova and Casper as the preferred route based on the assumption that the existing transmission line corridor would be used indefinitely. With this assumption the existing corridor would have been the environmentally preferred route. However, following the issuance of the draft EIS, the Bureau of Land Management (BLM) designated a utility corridor west of the North Platte River. With this designation, the existing transmission lines along the North Platte River would eventually be removed, switching the emphasis on the impact ratings. Western then reevaluated the impacts and found that the existing corridor was no longer the environmentally preferred route. The BLM corridor was then chosen as the preferred corridor between Casper and Alcova since it would occupy a designated corridor and would have comparable impacts to the other alternative routes addressed in the Casper-Alcova segment. Based on the above, Western has selected the preferred route as addressed in the final EIS as the route for the new transmission line even though it is not the true environmentally preferred alternative.

All practicable means to avoid or minimize environmental harm from Western's preferred alternative were identified in the draft and final EIS, and Western will incorporate these measures in the project. Special environmental requirements for sensitive or fragile areas will be included in the project construction specifications, including requirements for right-of-way clearing, structure site preparation, structure erection, conductor stringing, timing of construction, and the protection of archeological and historical resources. Western will implement any additional feasible site-specific mitigation measures identified and agreed upon during consultation with other Federal and State agencies. In order to lessen the visual impacts of the line, Western will use nonspecular conductors.

Western project inspectors will be fully familiarized with the project mitigation measures and will insure their implementation during construction. When crossings of Federal and State lands are involved, Western will insure that agency representatives are able to perform necessary monitoring functions. The construction mitigating measures included in the EIS will be implemented through Western's standard construction specifications and procedures.

A cultural resource mitigation plan will be developed in consultation with the SHPO and Advisory Council on Historic Preservation. No construction will be implemented in the vicinity of any eligible cultural resource sites until the section 106 compliance process has been completed for each particular eligible site. The project construction specifications will provide that, in the event previously undiscovered cultural resources are encountered during construction of the line, activities that could jeopardize those resources will be suspended until the provisions of section 106 of the National Historic Preservation Act have been carried out.

Integration With Other Requirements

Intergovernmental Cooperation—Under requirements of the Intergovernmental Cooperation Act of 1968, Western notified the Wyoming State Clearinghouse of the project by sending it copies of the draft and final EIS. Western coordinated project planning with other Federal and State agencies and received their independent evaluation of the potential impacts of the proposed transmission line and substation facility.

Western also conducted considerable coordination with the SHPO, other State agencies, U.S. Fish and Wildlife Service (FWS), and local planning boards and commissions. Reasonable suggestions and concerns of affected landowners were incorporated into project planning wherever feasible.

Endangered Species—Western has conducted a biological assessment for the project. Based on the results of the assessment, the FWS has concurred with Western's compensation measures and determination that the construction, operation, and maintenance of the transmission line will not affect endangered species. As a result, Western will use aviation ball markers or some other effective means to increase the visibility of the overhead ground wires to bald eagles and peregrine falcons where the transmission line crosses daily migration routes, reducing the potential

for in-flight collisions with the line, and will survey according to current guidelines and methodologies all prairie dog towns located within one-half mile of the transmission line to determine the presence of black-footed ferrets.

Floodplain/Wetlands—In response to the Department of Energy's *Compliance with Floodplain/Wetlands Environmental Review Requirements* (10 CFR Part 1022), Western evaluated the potential effects of the project on flood plain/wetlands. Published flood plain information was only found for the 100-year flood plains of the Bighorn River and Badwater, Casper, and Poison Spider Creeks, and these are the largest floodplains crossed by the project. Also, it was assumed that several floodprone areas exist at the numerous streams and creeks crossed by the project including the Middle Fork Casper, Buffalo, Bridger, and E–K Creeks. However, detailed information was not available for these creeks to exactly delineate the 100-year floodplain boundaries. Regardless, no transmission facilities would be located within the known 100-year floodplains or suspected floodprone areas since long spans would be used at their crossings. Potential wetland soil areas are crossed including areas associated with riparian vegetation zones as well as tracts of irrigated cropland. Western will make efforts to avoid locating transmission structures, access roads, and other facilities in wetlands. If it is not possible to totally avoid wetlands, Western will implement erosion control measures, including reseeding, to minimize effects to wetlands.

Western will obtain any necessary permits which might be required by the Clean Air Act and Clean Water Act of 1977. Copies of this record of decision will be sent to the Wyoming State Clearinghouse, appropriate Federal and State agencies, and to other agencies, organizations, and individuals commenting on the draft or final EIS.

Issued at Golden, Colorado, March 1, 1985.

William H. Clagett,

Acting Administrator.

[FR Doc. 85–12006 Filed 5–16–85; 8:45 am]

BILLING CODE 6450–01–M

Salt Lake City Area; Proposal for Developing and Marketing Power; Diamond Fork Power System and Jordanelle Powerplant

AGENCY: Western Area Administration, DOE.

ACTION: Extension of written comment period; proposal for developing and marketing power; Diamond Fork Power System and Jordanelle Powerplant.

SUMMARY: The Western Area Power Administration (Western) is in the process of developing a plan for developing and marketing power from the proposed Diamond Park Power System and Jordanelle powerplant. In the **Federal Register** notice of March 29, 1985 (50 FR 12619), Western's Salt Lake City Area Office published the proposal for development of the above resources and requested written comments to be submitted to Western by May 6, 1985. Western has now determined that an extension of this deadline is desirable.

DATE: The deadline date for written comments on the March 29, 1985, publication is now extended to July 8, 1985.

ADDRESS: On or before this extended deadline, written comments on the proposed development of the Diamond Fork and Jordanelle resources should be sent to Mr. Lloyd Greiner, Acting Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, Utah 84147, telephone (801) 524–5494. Further information concerning this request for written comments or other information pertaining to proposal should be addressed to Mr. Greiner.

Issued in Golden, Colorado, May 3, 1985.

William H. Clagett,

Administrator.

[FR Doc. 85–12007 Filed 5–16–85; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–51571; FRL–2837–3]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-five PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85–900, 85–901, 85–902, 85–903, 85–904, 85–905, 85–906, 85–907, 85–908, 85–909 and 85–910—July 31, 1985.

P 85–911, 85–912, 85–913, 85–914, 85–915, 85–916 and 85–917—August 3, 1985.

P 85–918, 85–919, 85–920, 85–921, 85–922, 85–923, and 85–924—August 4, 1985.

P 85–925, 85–926, 85–927, 85–928, 85–929, and 85–930—August 5, 1985.

P 85–931, 85–932, 85–933 and 85–934—August 6, 1985.

Written comments by:

P 85–900, 85–901, 85–902, 85–903, 85–904, 85–905, 85–906, 85–907, 85–908, 85–909 and 85–910—July 1, 1985.

P 85–911, 85–912, 85–913, 85–914, 85–915, 85–916, and 85–917—July 4, 1985.

P 85–918, 85–919, 85–920, 85–921, 85–922, 85–923, and 85–924—July 5, 1985.

P 85–925, 85–926, 85–927, 85–928, 85–929 and 85–930—July 6, 1985.

P 85–931, 85–932, 85–933, and 85–934—July 7, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–51571]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M St., SW., Washington, D.C. 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, D.C. 20460, (202–382–3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

P 85–900

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyamino-polyamide.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 2 hrs/da, up to 103 da/yr.

Environmental Release/Disposal. 6,539 kg/batch released with 54 kg/batch maximum to land. Disposal by landfill and incineration.

P 85-901

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyamino-polyamide-epichlorohydrin polymer.

Use/Production. (S) Industrial and commercial wet strength resin for paper. Prod. range: Confidential.

Toxicity Data. No data on PMN substance submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 4 hrs/da, up to 78 da/yr.

Environmental Release/Disposal. Approximately 10,000 kg/batch released with 176 kg/batch to land. Disposal by publicly owned treatment works (POTW), landfill incineration.

P 85-902

Manufacturer. Confidential.

Chemical. (G) N-substituted lauroylamide.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. No data on PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-903

Importer. Confidential.

Chemical. (G) Tetrasubsituted amine.

Use/Import. (G) Polymerizing agent. Import range: 2,000-6,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. No data submitted.

P 85-904

Importer. Confidential.

Chemical. (G) Alkoylated diol.

Use/Import. (S) Site-limited and industrial solvent. Import range: 1,000-3,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. No data submitted.

P 85-905

Manufacturer. Ethyl Corporation.

Chemical. (S) Sodium aluminum tetrahydride.

Use/Production. (S) Chemical reducing agent. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release.

P 85-906

Manufacturer. Confidential.

Chemical. (G) Polymer reacted by a poly)aliphatic) isocyanate.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-907

Importer. Confidential.

Chemical. (G) Polymer reacted by a poly (aliphatic) isocyanate.

Use/Import. (G) Open, non-dispersive use. Importer range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-908

Importer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Short oil alkyd resin.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 6 workers.

Environmental Release/Disposal. Release to land. Disposal by POTW, incineration, approved landfill and on-site water treatment.

P 85-909

Importer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Aliphatic, cycloaliphatic polyester.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 6 workers.

Environmental Release/Disposal. Release to land. Disposal by POTW, incineration, approved landfill and on-site water treatment.

P 85-910

Importer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Aliphatic, aromatic copolyester.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 6 workers.

Environmental Release/Disposal. Release to land. Disposal by POTW, incineration, approved landfill and on-site water treatment.

P 85-911

Manufacturer. Confidential.

Chemical. (S) Trifluoromethanesulfonic acid, 2-propynyl ester.

Use/Production (G) Chemical intermediate. Prod. range: 3-4 kg/yr.

Toxicity Data. Acute oral: Males — 2,263 mg/kg, females — 1,903 mg/kg; Acute dermal: Between 2.5 and 5.0 ml/kg; Irritation: Skin — Severe.

Exposure. Manufacture and use: dermal, a total of 2 workers, up to 0.4 hr/da, up to 2 da/yr.

Environmental Release/Disposal. No release. Less than 0.1 kg/batch to less than 0.4 kg/batch incinerated.

P 85-912

Manufacturer. Confidential.

Chemical. (G) Substituted alkanol adduct of a long chain diisocyanate.

Use/Production. (G) A formulation component for open, nondispersive use. Prod. range: 3,000-6,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture a total of 5 workers.

Environmental Release/Disposal. 0.01 kg to 1.0 kg released to land. Disposal by landfill.

P 85-913

Manufacturer. Confidential.

Chemical. (G) Polyol sulfate.

Use/Production. (G) Open, non-dispersive, dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 2 workers, up to 3 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. 50 to 100 kg/yr released to air with 1,000 to 1,5000 kg/yr to wash water. Disposal by POTW.

P 85-914

Manufacturer. Confidential.

Chemical. (G) Trisubstituted triazole.

Use/Production. (G) Contained use in an article. Prod. range: 400 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: dermal, inhalation and ocular, a total of 10 workers, up to 1.1 hr/da, up to 6 da/yr.

Environmental Release/Disposal. No release. Disposal by biological treatment system and less than 0.5 to less than 3.4 kg/batch incinerated.

P 85-915

Manufacturer. Hach Company.

Chemical. (S) 2,4,6-tri (2-pyridyl)-1,3,5-triazine 1:1 salt with p-toluensulfonic acid.

Use/Production. (S) Site-limited and consumer powder mixture formulation to be used as analytical reagent for determination of iron in water. Prod. range: 25 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 3 workers, up to 2–4 hrs/da, up to <5 da/yr.

Environmental Release/Disposal. Release to air and water. Disposal by POTW.

P 85–916

Manufacturer. Ciba-Geigy Corporation.

Chemical. (G) 1,2-diaminocyclohexane, epoxy resin reaction product.

Use/Production. (S) Industrial cargo and stationary storage tank linings; pipeline coating, chemical processing and pollution control equipment. Prod. range: Confidential.

Toxicity Data. Acute oral: Combined—2,189 mg/kg Male—2,505 mg/kg; Female—1,921 mg/kg; Acute dermal: Male and female>2,000 mg/kg; Irritation: Skin—Corrosive.

Exposure. Confidential.

Environmental Release/Disposal. Released to water. Disposal by biological treatment system.

P 85–917

Importer. Emser Industries.

Chemical. (G) Further clarification needed before information can be released to public file.

Use/Import. (S) Industrial copolymers for producing formulations of metal coating fine powders. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Inhalation.

Environmental Release/Disposal. No release.

P 85–918

Manufacturer. Confidential.

Chemical. (G) Methylene diisocyanatebenzene a polyether glycol and a propenoate ester.

Use/Production. (G) A formulation component for open, non-dispersive use. Prod. range: 3,000–6,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: a total of 4 workers.

Environmental Release/Disposal. 0.01 kg to less than 2.0 kg released to land. Disposal by landfill.

P 85–919

Manufacturer. The Upjohn Company.

Chemical. (G) Modified aromatic isocyanate.

Use/Production. (S) Extender/crosslinker in polymeric materials with functional groups (OH,NH_2, etc.) and functionalized coatings (NH_2 groups). Prod. range: 500–1,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation, a total of 2 workers, up to 1 hr/da, up to 15 da/yr.

Environmental Release/Disposal. Traced released to air and 0.5 kg/batch to land. Disposal by hazardous waste landfill.

P 85–920

Manufacturer. Confidential.

Chemical. (G) Ethoxylated amidoamine of rosin.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation, a total of 8 workers.

Environmental Release/Disposal. Less than 1 kg/batch released with (averaged over 15 batches) to water and less than 0.1 kg/batch to land. Disposal by hazardous waste contractors.

P 85–921

Manufacturer. The Goodyear Tire and Rubber Company.

Chemical. (S) Reaction product of thiodipropionic acid and p-aminodiphenylamine.

Use/Production. (S) Industrial polymer stabilizer and age resister additive for polymers. Prod. range: 10,500–100,000 kg/yr.

Toxicity Data. Acute oral:>13.7 g/kg; Irritation: Skin—Non-irritating; Eye—Moderate/Inconsequential; Ames Test: Non-mutagenic.

Exposure. Manufacture: dermal and inhalation, a total of 8 workers, up to 8 hrs/da, up to 80 da/yr.

Environmental Release/Disposal. Release to air. Disposal by POTW, Grant Creek Municipal Sewer, Salisbury, North Carolina and to Akron Municipal Sewer.

P 85–922

Importer. American Hoechst Corporation.

Chemical. (S) Benzenesulfonic acid, 2-amino-4-acetylamino-5-[4-[(2-[2-(sulfooxy)ethyl]sulfonyl)phenyl]azo-, sodium salt.

Use/Import. (S) Reactive dye. Import range: Confidential.

Toxicity Data. Acute oral: Female—>5,000 mg/kg; Irritation: Skin—Slight, Eye-Irritant; Ames Test: Negative; LC_{50} 96 hr Brachydanio rerio: >500 mg/1.

Exposure. Use: dermal and inhalation, a total of 40 to 50 workers, 20 customers, 600 manhours/yr.

Environmental Release/Disposal. Disposal by POTW.

P 85–923

Manufacturer. Mc Whorter, Inc.

Chemical. (G) Oil modified silicone polyester.

Use/Production. (S) Resin for industrial coatings. Prod. range: 65,454 kg/yr..

Toxicity Data. No data submitted.

Exposure. Manufacture: inhalation, a total of 2 workers, up to 1 hr/da, up to 12 da/yr.

Environmental Release/Disposal. Release to air. Disposal by landfill.

P 85–924

Manufacturer. Confidential.

Chemical. (S) Polymer of 2,2 dimethyl-3-hydroxypropyl-2, 2 dimethyl-3-hydroxypropionate, trimethylol propane, 2, 4 toluene diisocyanate, adipic acid and E-caprolactone.

Use/Production. (S) Site-limited and industrial resin used in automotive paint. Prod. range: 184,600–307,600 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal and inhalation, a total of 6 workers, up to 0.5 hr/da, up to 250 da/yr.

Environmental Release/Disposal. 0.2 to 180 kg/batch of resin released and 0.2 to 1 kg/batch of paint. Disposal by landfill.

P85–925

Manufacturer. Products Research and Chemical Corporation.

Chemical. (S) Prepolymer of 2-ethanol, 1,1'-thiobis, ethanol, 2-mercapto, reaction product with propylene oxide, 3-thiahept-5-ene-1-ol, ethanol, 2-mercapto, reaction product with oxirane [2-propenyl (oxy)methyl], 4,4'-thiodiphenol, ethanethiol, 2,2'-[1,2-ethanediyl bis (oxy)]bis.

Use/Production. (S) Industrial polymer for adhesive and sealants. Prod. range: 60,000–500,000 kg/yr.

Toxicity Data. Acute oral:>5 g/kg; Irritation: Skin—Mild, Eye-Non-irritating; Ames Test: Non-mutagenic; Maximization test: Non-sensitizing.

Exposure. Manufacture and processing: dermal, a total of 47 workers, up to 8 hrs/da, up to 60 da/yr.

Environmental Release/Disposal. 0.3 to 5 kg/batch released to land. Disposal by landfill.

P 85–926

Manufacturer. Confidential.

Chemical. (G) Ethoxylated aminoamine of rosin.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, inhalation and ocular, a total of 8 workers.

Environmental Release/Disposal. Less than 0.1 kg/batch released to land with less than 1 kg/batch to water. Disposal by state-approved hazardous waste contractor.

P 85-927

Manufacturer. Confidential.
Chemical. (G) Modified essential oil.
Use/Production. (G) Highly dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure: Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-928

Manufacturer. Confidential.
Chemical. (S) Polymer of: Pentaerythritol, benzoic acid, tall oil fatty acid, neopentyl glycol, isophthalic acid, phthalic anhydride, styrene and acrylic acid.
Use/Production. (G) Used in a closed system. Prod. range: 200-1,000 kg/yr.
Toxicity Data. No data submitted.
Exposure: Manufacture: dermal, a total of 6 workers, up to 2 hrs/da, up to 5 da/yr.
Environmental Release/Disposal. Minimal release to air. Disposal by biological treatment lagoons and state licensed landfill.

P 85-929

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Alkylated aromatic diamine.
Use/Production. (G) Polyurethane chain extender. Prod. range: Confidential.
Toxicity Data. Acute oral: >500 mg/kg; Acute dermal: >1.0 g/kg; Irritation: Skin—Mild; Ames Test: Negative.
Exposure: Confidential.
Environmental Release/Disposal. Confidential.

P 85-930

Manufacturer. IFP Enterprises, Inc.
Chemical. (S) 1,2-benzenedicarboxylic acid-4-[(3-aminophenyl) hydroxymethyl] methyl ester.
Use/Production. (S) Industrial coating for micro electronics devices. Prod. range: 500-1,000 kg/yr.
Toxicity Data. No data submitted.
Exposure: Confidential.
Environmental Release/Disposal. No data submitted.

P 85-931

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Disubstitutedalkyltriazine salt.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure: Confidential.
Environmental Release/Disposal. None expected.

P 85-932

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Disubstitutedalkyltriazine
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure: Confidential.
Environmental Release/Disposal. None expected.

P 85-933

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Disubstituted alkyltriazine.
Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: 1,000 mg/kg; Ames test: Non-mutagenic.
Exposure: Confidential.
Environmental Release/Disposal. Disposal by POTW and navigable waterway.

P 85-934

Manufacturer. Confidential.
Chemical. (G) Acrylated alkyd.
Use/Production. (G) Resin in coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure: Manufacture and processing: dermal, a total of 9 workers, up to 8 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. .5 kg/batch released to water with .5 to 10 kg/batch to land. Disposal by POTW and landfill.

Dated: May 13, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-11837 Filed 5-16-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2837-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 29, 1985 through May 3, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the rating assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-AFS-D65013-PA, Rating EC2, Allegheny Nat'l Forest Land and Resources Mgmt. Plan, PA. *Summary:* EPA's review indicates that potential water quality problems may result from implementation of the managment plan as proposed, due to potentially excessive clearcutting that could occur, and potential oil, gas, and coal extraction activities. EPA also believes that the alternatives considered may overemphasize economic considerations to the detriment of important ecological values.

ERP No. D-AFS-F65011-MN, Rating LO, Chippewa Nat'l Forest Land and Resource Mgmt. Plan, MN. *Summary:* EPA's review of the DEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. DR-AFS-K65061-AZ, Rating EC2, Tonto Nat'l Forest Land and Resourse Mgmt. Plan, AZ. *Summary:* EPA believes that this DEIS did not adequately analyze potentially significantly impacts to air and water quality, which could result from implementation of this plan.

ERP No. D-BLM-K70000-AZ, Rating EC2, Lower Gila South Resource Mgmt. Plan, AZ. *Summary:* EPA identified the need for further clarification of: the impacts on air and water quality; pesticides use; conflicts between grazing and wildlife habitat; and the environmental benefits of increased wilderness designation in the Resource Area.

ERP No. D-CDB-D89078-PA, Rating EC2, Philadelphia Convention Complex Development, CDBG, PA. *Summary:* EPA believes that the DEIS did not adequately analyze potentially adverse impacts—particularly to air quality.

ERP No. DS-COE-E34028-FL, Rating Alter. A=LO; Alter. B=EC1, Canaveral Harbor West Basin and Approach Channel Navigation Improvement, Fish and Wildlife Mitigation Plan, FL. *Summary:* On the basis of EPA's evaluation of the various alternatives, Alternative A has the greatest potential to acutually mitigate the environmental losses accruing from the proposed harbor upgrades. Alternative B has much less appeal since it would not adequately mitigate for the environmental losses occasioned by the facility upgrades.

ERP No. DS-COE-E35079-AL, Rating EC2, Upper Mobile Harbor Dredged Material Disposal, Maintenance Dredging, Long Range Disposal Plan, AL. *Summary:* EPA has some environmental concern regarding four of the alternative

dredged material disposal plans, but the environmental losses are considered manageble, mitigable, or both. However, the environmental consequences of Alternative C are of such magnitude that it it were to become the selected choice we would seriously consider rating it as environmentally unsatifactory as well as a candidate for a pre-decision referral to the Council on Environmental Quality for arbitration.

ERP No. DS-JUS-A82111-00, Eradication of Cannabis on Federal Land and Intermingled Forests and Rangelands in the Continental U.S. *Summary:* EPA believes that the DSEIS adequately presents and analyzes the additional information presented in this document.

Final EISs

ERP No. F-BLM-J02007-WY, North Fork Well Oil and Gas Exploration, Permit, Shoshone Nat's Forest, WY. *Summary:* The FEIS responded to EPA's concerns on the second DEIS.

ERP No. FS-COE-G30008-LA, New Orleans to Venice Hurricane Protection Project's, Permit, LA. *Summary:* The FEIS adequately responds to EPA's comments issued on the DEIS. EPA did not identify any new issues of concern with regard to the proposed action.

ERP No. FS-FHW-H40071-IA, I-380 Extension, US 218 to US 20, Waterloo and Cedar Falls, New Aligment Alternative, IA. *Summary:* EPA is concerned that 49 residences will experience noise impacts. The FHWA is studying some possible changes in alignment that might alleviate these noise impacts.

FS-IBR-J34002-CO, Narrows Unit Multipurpose Water Development, Pick-Sloan Missouri Basin Program, South Platte Division, CO. *Summary:* EPA has serious environmental objections to the proposal because of the predicted poor water quality conditions in the reservoir. The information on wetland losses in the EIS is not adequate. EPA has determined that the Narrows Unit, as proposed, is not consistent or otherwise in compliance with the Clear Water Act, section 404(b)(1) Guidelines since there is a jeopardy opinion issued under the Endangered Species Act for the whooping crane and the proposal fails to adequately replace lost wetlands. EPA believes another supplemental EIS is necessary. Purchase of land at the preferred site should be delayed until another Supplemental EIS is issued.

ERP No. F-NOA-L64021-00, N. Pacific Fur Seals Conservation Interim Convention, Extension, Pacific Ocean. *Summary:* EPA made no formal comments. EPA reviewed the FEIS and had no comment.

Dated: May 14, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-12026 Filed 5-16-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2837-7]

Environmental Impact Statements; Notice of Availability

Responsible Agency:

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements filed May 6, 1985 through May 10, 1985 pursuant to 40 CFR 1506.9.

EIS No. 850194, Revised, COE, NC, Scuppernong River Flood Control and Channel Drainage Improvements, Construction, Washington County, Due: July 1, 1985, Contact: Richard Jackson (919) 343-4745.

EIS No. 850195, Suppl, AFS, CA, Peppermint Mountain Resort Development, Permit, California Condor Survivability, Slate Mountain, Sequoia National Forest, Tulare County, Due: July 1, 1985, Contact: Julie Allen (209) 784-1500.

EIS No. 850196, Final, FHW, TX, Beltway 8, Section II, Circumferential Freeway Construction, TX-225 to I-45, Houston, Harris County, Due: June 17, 1985, Contact: John Inabinet (512) 482-5516.

EIS No. 850197, Draft, AFS, NC, Croatan and Uwharrie National Forests, Land and Resource Management Plan, Due: August 15, 1985, contact: George Olson (704) 253-5602.

EIS No. 850198, Draft, GSA, CA, Los Angeles Federal Center Development, Construction, Metropolitan Detention Center, VA Outpatient Clinic and Federal Building-Courthouse, Los Angeles County, Due: July 1, 1985, Contact: Veronica Holland (415) 974-7624.

EIS No. 850199, Final, FHW, CA, Harbor Freeway Corridor/I-110 Transitway Construction, San Pedro to the Convention Center in Los Angeles, Los Angeles County, Due: June 17, 1985, Contact: Glenn Clinton (916) 440-3578.

EIS No. 850200, Final, FHW, MI, Carpenter Road Widening, Extension and Grade Separation, North Saginaw Street to Genesee Pond, Genesee County, Due: June 17, 1985, Contact: Kenneth Barkema (517) 377-1838.

Amended Notice

EIS No. 850175, Final, SFW, Bristol Bay Regional Management Plan, Due: June 17, 1985, Contact: John Hardy (907) 786-3484. Published FR 5-3-85 Filing date reestablished, New contact information and Review extended.

Dated: May 14, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-12027 Filed 5-16-85; 8:45 am]

BILLING CODE 6560-50-M

[Opp 180677; PH-FRL 2831-1]

Montana and Wyoming; Receipt of Applications for Specific Exemptions to Use Strychnine; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Montana Department of Livestock and the Wyoming Department of Agriculture (hereafter referred to individually by state name or collectively as "Applicants") to use the active ingredient strychnine in eggs in Johnson County, Wyoming, and in eggs and lard baits throughout Montana to control rabid skunks. EPA is soliciting comment regarding its intent to deny these requests in the absence of any substantial new evidence which would warrant a reconsideration of the cancellation order for strychnine. It is also inviting submission of substantial new evidence from interested persons.

DATE: Comments must be received on or before June 3, 1985.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP-180677," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street S., Washington, D.C. 20460.

In person, bring comments to: Room 236, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All

written comments will be available for inspection in Room 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: Jack E. Houseger, Registration Division Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Office location and telephone number: Rm. 716C, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1192).

SUPPEMENTAL INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicants have requested the Administrator to issue specific exemptions under FIFRA section 18 to permit the use of strychnine in eggs in Johnston County, Wyoming, and in eggs and lard baits throughout Montana to control rabid skunks. These requests were accompanied by the information required to be submitted as part of an application for an emergency exemption under 40 CFR Part 166. Strychnine has been used under specific exemptions for the past 11 years to control rabid skunks in Montana. Wyoming was last issued a specific exemption for this use in 1981 for use in two counties.

The proposed control programs involve use of strychine paraffin-lard baits (Montana only) and strychnine egg baits which contain 0.012 grams and 0.035 grams of actual strychnine alkaloid, respectively. A maximum of two strychnine baits per site will be placed in such skunk habitats as follows: skunk dens, holes, garbage dumps, road culverts, junk piles and under non-occupied buildings. Baits will be covered at all times and checked no less than once a week. Warning signs will be posted at entries to all premises and other visible positions near locations where treated baits have been placed. Treated eggs will be stamped with the word "poison." Special precautions will be taken to protect endangered species, including the black-footed ferret, which may inhabit prairie dog towns in areas targeted for treatment.

The Agency considers, it inconsistent with the purposes of FIFRA to permit the indefinte continuation of this use of strychnine under the section 18 program. Instead, the registration process would be the appropriate mechanism in evaluating this use pattern. The very fact that the need for this use has continued for 11 years raises a question about the efficacy of the control program. There appears to be little scientific evidence to demonstrate that the control of a rabid animal population or pockets of a rabid animal population reduces either the incidence or the spread of rabies. It has even been suggested that such control may prolong the rabies outbreak. The proper mechanism to obtain evidence to demonstrate that control is beneficial is an experimental use permit under section 5 of FIFRA.

On several occasions, Montana has been advised of the Agency's concern regarding continuation of this use of strychnine under the section 18 program. Montana was advised in June 1984 to contact the Agency to discuss the specifics regarding consideration of this use under the FIFRA section 3 registration process. However, no discussion have been initiated to date.

In 1972, EPA cancelled the registrations of strychnine products used for predator control. The use of strychnine on skunks was one of the uses cancelled. As such, these proposed actions are subject to EPA's Subpart D regulations, 40 CFR 164.130 through 164.133. Subpart D provides that any application for a registration or an emergency exemption for a pesticide use that has been cancelled shall be considered as a petition for reconsideration of the prior cancellation order. The Administrator will review the appliation to determine whether reconsideration is warranted. The Administrator shall determine that such reconsideration is warranted when he finds that: (1) The applicant has presented substantial new evidence which may materially affect the prior cancellation order and which was not available to the Administrator at the time he made his final cancellation determination and (2) such evidence could not, through the exercise of due diligence, have been discovered by the parties to the cancellation proceeding prior to the issuance of the final order.

Ordinarily, Subpart D requires the Agency to hold a formal hearing to determine whether there is substantial new evidence to justify modification of the previous cancellation order to allow the proposed use. However, there are provisions which allow the Administrator to dispense with a hearing, where otherwise required, when he determines under 40 CFR 164.133(a) that (1) the application presents a situation involving need to use the pesticide to prevent an unacceptable risk (i) to human health, or (ii) to fish or wildlife populations when such use would not pose a human health hazard; and (2) there is no other feasible solution to such risk; and (3) the time available to avert the risk to human health or fish and wildlife is insufficient to permit convening a hearing as required by § 164.131; and (4) the public interest requires the granting of the request as soon as possible. If it is determined that the above criteria are met, the need for a hearing can be waived.

The Agency has evaluated the information submitted in connection with the requests for emergency exemptions as well as that previously submitted with a pending section 3 registration request from Montana for this use. Based on a preliminary review, it does not appear that any of the requests contains the substantial new evidence required by the subpart D regulations to warrant a reconsideration of the 1972 cancellation order.

In general, substantial new evidence is new information or data which would alter or change the Agency's assessment of the benefits and/or risks associated with the use of a pesticide affected by a cancellation order. Such information or data could, for example, demonstrate that the benefits of the use of strychnine in a rabid skunk control program are higher than originally thought or that the use of strychnine does not pose as great a risk to nontarget organisms as originally believed.

The Agency is seeking public comment regarding its intent to deny the rquests for specific exemptions for use of strychnine to control rabid skunks. It is also inviting interested persons to submit any information which they believe may constitute substantial new evidence and thus warrant a reconsideration of the cancellation order.

Written views and/or information may be submitted to the Program Management and Support Division at the address above. The comments must be received on or before June 3, 1985 and should bear the identifying notation "OPP 180677."

The Agency will review and consider all comments and information received during the comment period in determining whether to deny the emergency exemption requested by Montana and Wyoming.

Dated: May 7, 1985.

Steven Schatzow,

Director, Office of Pesticide programs

[FR Doc. 85–12024 Filed 5–16–85; 8:45 am]

BILLING CODE 6560–50–M

[OW-6-FRL-2837-5]

Proposed Determination To Prohibit, Deny, or Restrict the Specification, or the Use for Specification, of an Area as a Disposal Site; Notice and Public Hearing

SUMMARY: Section 404(c) of the Clean Water Act (33 U.S.C. 1251 *et seq*) provides that the Administrator of the U.S. Environmental Protection Agency (EPA) is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearing, that the discharge of dredged or fill materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreation areas. The procedures for implementation of 404(c) are set forth in 40 CFR Part 231. This notice of the proposed determination and public hearing is being published in accordance with 40 CFR 231.3 by the Regional Administrator of EPA's Region 6.

On December 18, 1984, EPA Region 6 notified the U.S. Army Corps of Engineers, and subsequently notified affected landowners, of our intention to prohibit an area known as the Bayou aux Carpes swamp from future use as a disposal site under section 404(c) of the Clean Water Act (CWA). The approximately 3,000 acre site lies south of New Orleans, Louisiana, on the "West Bank" of Jefferson Parish. The area is bounded on the north by the east-west Estelle Pumping Station Outfall Canal, on the east by the Plaquemines-Jefferson Parish line, on the south by Bayou Barataria and Bayou des Familles, and on the west by State Highway La. 3134 and the "Vee-Levee" pipeline canal. Maps of the project area are available at the above address. The geographic coordinates are:

Range 23E, Township 15S, Portions of Sections 13, 14, 55, 57, 59;
Range 24E, Township 14S, Portions of Sections 55, 81, 82; and
Range 24E, Township 15S, Portions of Sections 48, 49, 50, 52, 57.

Purpose of Public Notice

EPA would like to obtain comments on this proposed determination, which could result in the denial of any future applications for Section 404 (CWA) permits for the discharge of dredged or fill material in wetlands within the area in question. We are also soliciting comments on whether or not the impacts of any such proposed disposal operations would represent an unacceptable adverse effect as described in Section 404(c) of the Clean Water Act.

Public Hearing

A public hearing will be conducted on June 18, 1985, beginning at 7:00 in the evening, in the Council Chambers of the Gretna Courthouse, located at Second Avenue and Derbigney Street in Gretna, Louisiana.

Written comments may be submitted prior to the hearing. Both written and oral comments may be presented during the hearing. The hearing record will remain open for the submittal of written comments until the close of business on July 3, 1985, or possibly a later date announced at the hearing. Comments submitted prior to or after the hearing should be sent to the Environmental Protection Agency, Federal Activities Branch, 1201 Elm Street, Dallas, Texas 75270. All comments should directly address whether the proposed determination should become the final determination. These comments will be considered in reaching a decision to either withdraw the proposed determination or prepare a recommended determination to prohibit or deny the specification or the use for specification of the area as a disposal site. If a recommended determination is made, it and the administrative record will be forwarded to the Administrator of EPA in Washington, DC, for review and the final determination. The procedures to be used by the Administrator in making the final determination are specified in 40 CFR 231.6.

Copies of all comments submitted in response to this notice will be available for public inspection from 8:00 a.m. to 4:00 p.m. weekdays at the EPA address above.

The Regional Administrator of EPA's Region 6, or his designee, will be the Presiding Officer at the hearing. Any person may appear at the hearing and present oral or written statements, and may be represented by counsel or other authorized representative. The Presiding Officer will establish reasonable limits on the nature and length of the oral presentations. No cross examination of any hearing participant will be permitted, although the Presiding Officer may make appropriate inquiries of any such participant.

Background

EPA is taking this action according to the provisions of section 404(c) of the Clean Water Act. Although the U.S. Army Corps of Engineers actually issues the section 404 permits, EPA also has certain responsibilities regarding this program. EPA is responsible for developing the guidelines to be used by the Corps in reviewing the permit applications. The agency also reviews and provides comments to the Corps during their review of the applications and EPA has the authority to restrict or prohibit certain areas from use as disposal sites.

EPA's decision to initiate the 404(c) process came about at this particular time partly as a result of recent judicial action. A suit was filed in 1977 by landowners who were interested in seeing a project, which originated in the 1960's as a Corps flood control project (Harvey Canal—Bayou Barataria Levee project), completed as it was originally designed. This original design included levee-building, construction or a pumping station, and closure of some waterways.

Over the years, EPA (and other agencies) continually objected to the original project design because of the significant adverse effects (primarily drainage of the wetland) which would be inflicted on this productive wetland ecosystem. In 1975, EPA recommended a modified design, which would replace the dams with flood gates and which would require that, if a pumping station was needed for flood control, it be operated so as to maintain the integrity of the wetlands.

The latest step in the landowner's law suit occurred in the U.S. District Court for the Eastern District of Louisiana (on remand from the U.S. Court of Appeals for the 5th Circuit). Judge Lansing Mitchell issued an order which, in part, allowed EPA until December 18, 1984, to invoke 404(c) on the project as originally designed. On December 18, 1984, EPA initiated the 404(c) process with respect to that portion of the Bayou aux Carpes swamp owned by these landowners.

Subsequently, EPA initiated the 404(c) process for an additional area adjoining that property, but outside of the realm of the area being considered in the specific case before the District Court. Together, both of these tracts comprise the approximately 3,000 acre tract which is the subject of this notice and the public hearing.

EPA concern regarding the effects from projects involving the discharge of dredged or fill material in this area is not new. During a review of the Environmental Impact Statements and section 404 permit applications for two other large-scaled projects (the Marrero-Lafitte Waterline Project and the West Bank Hurricane Protection Levee

Project) which would affect this same area, EPA became involved in extensive negotiations regarding the protection of these wetland resources. EPA has thereby historically recognized this area as a sensitive, valuable wetland worthy of special protective measures and yet continually subject to project proposals which could adversely affect its wetland characteristics.

Section 404(c) criteria

Unacceptable adverse effects of municipal water supplied, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas are the four criteria which may individually or jointly be used to support an EPA decision to invoke the provisions of section 404(c) of the Clean Water Act. As a result of previous studies of the area associated with various project proposals and recent studies related to this proposed determination, EPA staff has concluded that the discharge of dredged or fill material in the subject area could induce significant and unacceptable adverse effects in all criteria areas except that of municipal water supplies.

The wooded swamp and marsh habitat, in conjunction with the waterways, is a part of an intertidal estuarine system within the biologically productive Barataria Basin. The area exhibits the hydrological, biological, and soils characteristics typical of a wetland regulated under Section 404 of the Clean Water Act. The value of the area is also evidenced by the tidal exchange, with attendant detrital export and ingress and egress of estuarine fauna. Detritus from the wetland plant species serves as a fundamental element in the food chain of the regional estuarine biota. The marsh and swamp provide valuable feeding, breeding, and/or nursery habitat for various species of fish and wildlife. In addition, the public currently has access to portions of the area for certain recreational pursuits through several watercourses which pass through the site.

In summary, the tract displays many beneficial wetland characteristics and functions such as: (1) A high degree of biological productivity; (2) habitat for all or portions of the life cycles of a variety of fish and wildlife, including waterfowl, furbearers, freshwater sport fish and commercially important shellfish and marine fish; (3) hydrological buffering, including stormwater retention and downstream freshwater contribution; (4) water quality improvement and erosion control; (5) nutrient and energy export; and (6) recreational opportunities.

Potential Adverse Impacts of Section 404 Permit Activities

The direct water quality effects resulting from the discharge of dredged or fill material could significantly and adversely affect the functions and values currently characterizing this wetland system. For example, plant productivity and the resulting food supply for fish and wildlife are dependent to a large degree upon existing water quality characteristics. Also, many important finfish and shellfish species are adversely impacted by alterations to the physical-chemical environment during critical stages in their life cycles. Effects on the ability of estuarine species to utilize in this area would be manifested in other portions of the Barataria Bay estuarine system.

Aside from the more immediate and direct effects of depositing fill material, activities requiring a Section 404 permit have been proposed for the area which would result in isolating the area hydrologically and/or draining the wetland. Although previous projects have limited the area through which water may flow, this wetland and its associated functions and values are still predominately determined by this interchange. Hydrological isolation would unacceptably diminish the current fish and wildlife potential of the immediate site. Areas further downstream would be affected also because of the site's use as a nursery area, its nutrient and detrital contributions, and its water quality contributions.

Draining the wetland would be the most severe of the indirect results of possbile section 404 permit activities. The maintenance and movement of water through this wetland are vital to the preservation of the system. In addition, draining this site would have unacceptable adverse effects on the ecological characteristics of and recreational opportunities afforded by the eastern wetland portions of the Barataria Unit of the Jean Lafittee National Historical Park, which lies within the same drainage area as the site in question.

Drainage and conversion of this area would also contribute significantly to the cumulative wetland losses currently being experienced in coastal Louisiana in general, and in the Barataria Basin in particular. According to the Louisiana State University Center for Wetland Resources, Louisiana is losing nearly 40 square miles of its coastal wetlands each year. The rates of loss in the Barataria Basin from 1955–1978 averaged 7.5 square miles per year (Louisiana Department of Natural Resourses) and are increasing faster than the national average for wetlands. This situation is significant because of the associated adverse consequences described above and because the Barataria Bay estuary provides an average 44 percent of Louisiana's total annual fish and shellfish harvest (Louisiana Department of Transportation and Development).

Proposed Determination

Based on a thorough site evaluation, coordination with other agencies and knowledgeable individuals, and a review of the literature, the Regional Administrator of Region 6 is of the opinion that issuing permits for Section 404 activities to be conducted in the wetlands in question could result in unacceptable adverse effects on shellfish beds and fishery areas, wildlife, and recreation areas. A possible exception would be for permits covering only certain habitat enhancement activities. EPA proposes to prohibit the specification of this wetland site for discharge of dredged or fill materials because such discharge could result in the direct loss of fish and wildlife habitat, the loss of detrital materials and fresh water which are exported to downstream fisheries by tidal exchange, a potential decreased production of fish food items, the loss of the natural water filtration mechanisms, the loss of stormwater buffering capacity, and the loss of recreational opportunities.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, Federal Activities Branch, 1201 Elm Street, Dallas, Texas 75270, (214) 767–2716.

Dated: May 10, 1985.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 85–11985 Filed 5–16–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Allen H. Weiner and Weiner Broadcasting Co.; Order To Show Cause

In the matter of Allan H. Weiner and Weiner Broadcasting Company Presque Isle, ME MM Docket No. 85–109; FCC 85–183.

Licensee of radio stations WOZW(AM), Monticello, ME, WOZI(FM), Presque Isle, ME, and remote pickup base station KPF–941, Yonkers, NY.

Order to show cause why the licenses for radio stations WOZW(AM), Monticello, ME,

WOZI(FM), Presque Isle, ME, and remote pickup base station KPF-941, Yonkers, NY should not be revoked.

Adopted: April 11, 1985.
Released: April 18, 1985.

By the commission.

1. The Commission has before it for consideration (a) the licenses of Weiner Broadcasting Company, for Radio Stations WOZW(AM), Monticello, ME, WOZI(FM), Presque, ME, and Remote Pickup Base Station KPF-941, Yonkers, NY (KPF-941); (b) the results of its investigation into the unlicensed operation of radio communications on frequency 1616 kHz Allan H. Weiner; and (c) the result of its investigation into the unauthorized direct broadcasting to the public on 1622 kHz from KPF-941, Yonkers, NY.

2. Weiner Broadcasting Company is the licensee of WOZW(AM), Monticello, ME, WOZI(FM), Presque Isle, ME, and Remote Pickup Base Station KPF-941, Yonkers, NY.[1] Allan H. Weiner is the President and majority (52%) stockholder of Weiner Broadcasting Company.

3. Information before the Commission as the result of its investigation raises serious questions as to whether Allan H. Weiner and/or Weiner Broadcasting Company possess the requisite qualifications to be or to remain a licensee of the Commission.

4. The evidence obtained in the course of the investigation indicates that Allan H. Weiner broadcasted on 1616 kHz from an antenna affixed to the top of the building which houses radio station WOZW(AM), Monticello, ME. The station was identified by the name "Pirate Radio North" and by the call letters "KPRC". However, Commission records reflect that Weiner is not authorized to broadcast on 1616 kHz and that the call letters KPRC have been issued to a licensee in Houston, Texas.

5. Section 301 of the Communications Act of 1934, as amended, (47 U.S.C. 301), prohibits radio operation "except under an in accordance with this Act and with a license in that behalf granted under the provisions of this Act." The use by a licensee of frequencies not assigned to him constitutes a violation of section 301 of the Act; such conduct may reflect adversely upon the qualifications of an individual to be or remain a Commission licensee, and may warrant license revocation. *See, e.g., Ramax Printing Service*, 69 FCC 2d 1785 (1978). Consequently, an appropriate issue will be specified to determine whether Allan H. Weiner operated a radio station on 1616 kHz without a Commission license and, if so, whether such operation violated section 301 of the Communications Act of 1934, as amended.

6. Our evidence also indicates that a Commission employee was unable to inspect the WOZW(AM) facility due to Mr. Weiner's lack of cooperation. 47 CFR 73.1225 (hereinafter § 73.1225 of the Commission's Rules) requires that the "licensee of a broadcast station shall make the station available for inspection by representatives of the FCC during the station's business hours or at any time it is in operation." Consequently, an appropriate issue will be specified to determine whether Allan H. Weiner refused to allow an inspection of his radio station in contravention of § 73.1225 of the Commission's Rules.

7. In addition, our evidence indicates that the WOZW(AM) main studio is located in Presque Isle, ME while the station is licensed to Monticello, ME and the transmitter is also located in Monticello, ME. In addition, good cause has not been demonstrated for the location of the studio in Presque Isle, ME. 47 CFR 73.1125 (hereinafter § 73.1125 of the Commission's Rules) specifies that absent a showing of good cause for locating elsewhere, an AM station must maintain a main studio in its principal community of license or at the station's transmitter, which may be located outside the community of license. Consequently, an appropriate issue will be specified to determine whether Allan H. Weiner and/or Weiner Broadcasting Company failed to comply with the main studio location requirement of § 73.1125 of the Commission's Rules.

8. Commission records also indicate that Mr. Weiner, on behalf of Weiner Broadcasting Company, applied for a Remote Pickup Base Station on February 15, 1984 (BPLRE-840215MD). The application was subsequently granted on August 13, 1984, and call sign KPF-941 was assigned to this facility. KPE-941 was authorized under 47 CFR 74.402(a)(1) (hereinafter § 74.402(a)(1) of the Commission's Rules) to operate on 1622 kHz.

9. The permitted used for such base stations are expressly stated in 47 CFR 74.431 (e), (g) 74.432 (c)(2), (c)(5) (hereinafter § 74.431 (e) and (g) and §§ 74.432 (c)(2) and (c)(5) of the Commission's Rules). Section 74.431(e) provides that "[a] remote pickup broadcast base station may be used for the transmission of cues, orders, and instructions to remote pickup broadcast mobile stations in its system for the purpose of dispatching them to the scene where broadcasters may originate and directing [sic] their operation on the scene. . . . A remote pickup base station may also be used to relay transmission, either directly or via an automatic relay station, to and from remote pickup broadcast mobile stations in its system. . . ."

10. Section 74.431(g) provides that "[r]emote pickup broadcast base . . . stations may be used for operational communications . . . [which] include the transmission of alerting tones of short duration and special signals used for telemetry or control." In general, operational communications are defined in § 74.401 as "[c]ommunications concerning the technical and programming operation of a broadcast station and its auxiliaries."

11. Section 74.432(c)(2) specifies that "[b]ase stations may be authorized to provide one-way or two-way voice communications between the studio and transmitter of a broadcasting station, the licensee of which is also licensee of an aural or television broadcast STL station used for program transmissin between the same two points, or to provide such voice communications between the point of origin and the termination of an aural or television intercity relay system. . . ."

12. Section 74.432(c)(5) states that "[b]ase stations may be authorized to provide standby program circuits from places where official broadcasts may be made during a war, threat of war, or state of public peril or disaster or other national, state or local emergency constituting a threat to the safety of life or property; . . ."

13. It has come to the Commission's attention that Mr. Weiner has used KPF-941 to broadcast directly to the public on 1622 kHz in Yonkers, NY. Such direct broadcasts to the public are inconsistent with the permissible uses of base stations stated in the previously-cited Commission rules. In addition, we note that 47 CFR 74.432(g) (hereinafter § 74.432(g) of the Commission's Rules) provides that an application for a remote pickup broadcast station "shall specify the broadcasting station . . . with which [it] is to be principally used." KPF-941 was licensed to be operated in association with WOZI(FM), Presque Isle, ME. The base station was,

[1] Weiner Broadcasting Company has pending an application for an international broadcast station (File No. BPIB-840904MZ). Further action on this application will be withheld pending resolution of the instant proceeding. In addition, Weiner Broadcasting Company has filed an application for a UHF television station in Presque Isle, ME (BPCT-841128KE) which will be designated for hearing with two other mutually exclusive applications. The outcome of that licensing proceeding will be conditioned on the resolution of the captioned proceeding.

however, used to broadcast directly to the public on 1622 kHz independently of its associated station. Consequently, an appropriate issue will be specified as to whether the use of base station KPF-941 to broadcast directly to the public on 1622 kHz constitutes a violation of the above-mentioned Commission rules.

14. In addition, we note that the transmitter used by Weiner Broadcasting Company for base station KPF-941 would be type accepted for commercial broadcast operation under § 73.1660 and Part 2 of the Commission's Rules. This equipment is not, however, type accepted under § 74.451(a) of the Commission's Rules for the purposes for which remote pickup base stations are intended. Consequently, an appropriate issue will be specified to determine whether Mr. Weiner and Weiner Broadcasting Company misrepresented in the application for base station KPF-941 that the transmitter would comply with the type acceptance criteria of § 74.451(a) of the Commission's Rules.

15. Accordingly, it is ordered, that, pursuant to sections 312(a) (2) and (4) of the Communications Act of 1934, as amended, Allan H. Weiner and Weiner Broadcasting Company are directed to show cause why the licenses for Radio Stations WOZW(AM), WOZI(FM) and KPF-941 should not be revoked, upon the following issues:

(1) Whether, in light of all the facts and circumstances pertaining thereto, Allan H. Weiner operated a radio station on frequency 1616 kHz in Monticello, ME at various times from January 31, 1982 through July 16, 1984, without a license issued by the Commission, in violation of section 301 (47 U.S.C. 301) of the Communications Act of 1934, as amended.

(2) Whether, in light of all the facts and circumstances pertaining thereto, Allan H. Weiner and/or Weiner Broadcasting Company refused to allow an inspection of radio station WOZW(AM) on May 3, 1984, by an authorized Commission representative, in violation of § 73.1225 of the Commission's Rules.

(3) Whether, in light of all the facts and circumstances pertaining thereto, Allan H. Weiner and/or Weiner Broadcasting Company failed to comply with the main studio location requirement of § 73.1125 of the Commission's Rules.

(4) Whether, in light of all the facts and circumstances pertaining thereto, Allan H. Weiner and Weiner Broadcasting Company used Remote Pickup Base Station KPF-941 to broadcast directly to the public on 1622 kHz in Yonkers, NY in violation of the permitted uses for remote pickup base stations as stated in §§ 74.431 (e) and (g), §§ 74.432 (c)(2) and (c)(5), and § 74.432(g) of the Commission's Rules.

(5) Whether Allan H. Weiner and Weiner Company misrepresented to the Commission that the transmitter to be used for Remote Pickup Base Station KPF-941 would comply with the type acceptance criteria of § 74.451(a) of the Commission's Rules.

(6) Whether, in light of all the evidence adduced under issues (1) through (6) above, Weiner Broadcasting Company possesses the requisite qualifications to be or to remain a licensee of the Commission.

16. Information relating to the above questions has come to the attention of the Commission since grant of the license renewals for WOZW(AM) and WOZI(FM) and the grant of a license for KPF-941. This information might, if substantiated, warrant revocation of a license or permit, and raises serious questions, best resolved in a hearing, as to whether Allan H. Weiner and Weiner Broadcasting Company have the qualifications to remain a licensee of the Commission.

17. It is further ordered, that the Chief, Mass Media Bureau, is directed to serve upon the licensee and Allan H. Weiner within thirty (30) days of the release of this Order, a Bill of Particulars with respect to Issues (1) through (4) inclusive.

18. It is further ordered, that pursuant to section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Mass Media Bureau as to issues (1) through (6) inclusive.

19. It is further ordered, that to avail itself of the opportunity to be heard, the licensee, pursuant to § 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty days of the receipt of the Order to Show Cause a written appearance stating that he will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. *See* § 1.92(a) of the Commission's Rules. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty days of the receipt of the Order to Show Cause. *See* § 1.92(b) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer or the Chief Administrative Law Judge, if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate Order will be entered. *See* §§ 1.92 (c) and (d) of the Commission's Rules.

20. It is further ordered, that if it is determined that the hearing record does not warrant an Order revoking the licenses of Weiner Broadcasting Company for Radio Stations WOZW(AM), WOZI(FM) and Remote Pickup Base Station KPF-941,[1] it shall also be determined whether Allan H. Weiner and/or Weiner Broadcasting Company has (have) willfully or repeatedly violated section 301 of the Communications Act of 1934, as amended (unlicensed operation), § 73.1225 of the Commission's Rules (failure to allow station inspection), § 73.1125 of the Commission's Rules (failure to locate main studio in community of license or at transmitter site), §§ 74.431 (e) and (g), §§ 74.432 (c)(2) and (c)(5) of the Commission's Rules (failure to comply with any of the specified uses for remote pickup base stations), § 74.432(g) (failure to operate a base station in conjunction with previously licensed broadcast station) and § 74.451(a) (type acceptance criteria) of the Commission's Rules. If so, it shall also be determined whether an Order for Forfeiture should be issued pursuant to section 503(b) of the Communications Act of 1934, as amended, in the amount of $20,000 for the repeated violations of section 301 of the Communications Act of 1934, as amended, §§ 73.1225 and 73.1125 of the Commission's Rules, and/or $20,000 for the repeated violations of §§ 74.431 (e) and (g), and §§ 74.432 (c)(2) and (c)(5), of the Commission's Rules, and the violations of §§ 74.432(g) and 74.451(a) of the Commission's Rules, or some lesser amount for violations which occurred within the statutory period preceding the issuance of the Bill of Particulars in this matter.

21. It is further ordered, that this document constitutes a Notice of Apparent Liability for forfeiture for violation of section 301 of the Communications Act of 1934, as amended, §§ 73.1225 and 73.1125 of the

[1] We note that § 74.432(a) of the Commission's Rules states that "[a] license for a broadcast remote pickup station . . . will be issued only to the licensee of an AM, FM, noncommercial educational FM, TV, or International broadcast station . . . ." Remote Pickup Base Station KPF-941 was licensed to be associated with WOZI(FM). Consequently, if the hearing record warrants an Order revoking the licenses of WOZW(AM) and WOZI(FM), KPF-941 would be unable to operate with its associated broadcast station in violation of § 74.432(a), thus necessitating an automatic revocation of the KPF-941 license.

Commission's Rules, §§ 74.431 (e) and (g), §§ 74.432 (c)(2) and (c)(5) and §§ 74.451(a) and 74.432(g) of the Commission's Rules. The Commission has determined that, in every case designated for hearing involving revocation or denial of assignment, transfer of renewal or license for alleged violations which also come within the purview of section 503(b) of the Communications Act of 1934, as amended, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Since the procedure is thus a routine or standard one, we stress that the inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of the case should be; that judgment is, of course, to be made on the facts of each case.

22. It is further ordered, that the Secretary of the Commission send a copy of this Order by *Certified Mail, Return Receipt Requested,* to:

(1) Allan H. Weiner and
(2) Weiner Broadcasting Company, P.O. Box 1117, 4 Second Street, Presque Isle, ME 04769

Federal Communications Commission
William J. Tricarico,
Secretary.

[FR Doc. 85-11973 Filed 5-16-85; 8:45 am]
BILLING CODE 6712-01-M

[FCC 85-228]

Iowa Telephone Association Petition for Declaratory Ruling; Memorandum Opinion and Order

Adopted: April 26, 1985.
Released: May 7, 1985.
By the Commission.

I. Introduction

1. On January 20, 1984, the Iowa Telephone Association (ITA), a voluntary association of telephone utilities operating in Iowa, submitted a Petition for a Declaratory Ruling on the following questions: (a) Whether this Commission's rules are inconsistent with rules recently adopted by the Iowa State Commerce Commission (Iowa Commission) that prohibit, for a special class of exchange service, (i) access to interstate toll service, and (ii) the imposition of customer line charges; and (b) whether this Commission has the jurisdiction to (i) require that local exchange services include access to interstate toll service, or (ii) apply customer line charges to local exchange services that do not access interstate toll service. These questions arise in connection with the potential offering in Iowa of Basic Local Service (BLS) by exchange telephone companies. BLS is a new class of exchange telephone service that would allow a subscriber to place or receive calls within the local exchange or extended area only, with no access, outgoing or incoming, to interstate or intrastate toll service.

2. The Iowa Commission, in a ruling issued October 7, 1983, ordered each exchange telephone company in Iowa to make BLS available to residential customers in those exchanges that are technically capable of restricting toll access on an economical basis. The Iowa Commission also held that since BLS does not provide a subscriber with access to toll services, no customer line charges—either interstate or intrastate—may be applied to such a service offering by the exchange carrier. In a subsequent Order issued November 4, 1983, the Iowa Commission deferred the effective date of its BLS rule from January 1, 1984, until such time as it decides to implement customer line charges for intrastate toll services.

II. Background

3. The events leading to the submission of the ITA petition began on February 25, 1983, with an *Order Commencing Rulemaking* issued by the Iowa Commission. In that Order, the Iowa Commission stated that it was "concerned about the effects of the FCC access charge action on universal service"; and, citing its statutory mandate to ensure "reasonable and just rates" for telephone service, it questioned whether the imposition of a toll access charge, where toll service "may be neither used nor desired," would be reasonable and just.[1] The Iowa Commission then invited comments concerning its proposal to require exchange carriers to offer a new local service that would be restricted from placing outgoing toll calls and would be exempt from customer line charges.

4. On October 7, 1983, the Iowa Commission issued an *Order Adopting Rules.* It defined a new class of service—Basic Local Service—that would permit local exchange and extended area communications, while blocking all toll calls, incoming and outgoing, interstate and intrastate. Each Iowa telephone utility was ordered to file tariffs for BLS on or before December 2, 1983. The BLS rules include the following provisions: (a) BLS shall be made available to all residential subscribers on or before January 1, 1984, "where the exchange equipment is technically capable of restricting toll access on a reasonably economical basis"; (b) "[n]o charges for access to the toll network will apply"; and (c) "charges for [BLS] . . . shall not exceed the rate applicable for local service" (*i.e.*, the basic local exchange rate, without the inclusion of any customer line charges).[2]

5. On October 21, 1983, ITA filed with the Iowa Commission a *Petition for Declaratory Ruling* addressed to the newly adopted BLS rules. ITA took the position that the provisions of the rules relating to the restriction of access to toll services and the prohibition on customer line charges are inconsistent with the FCC's access charge orders in CC Docket No. 78-72,[3] and the interstate access tariffs of the ITA members. ITA therefore asked the Iowa Commission to rule on its authority to adopt such rules. In discussing its concerns, ITA also indicated it was uncertain as to whether the BLS rules were to apply to intrastate toll services only, or to interstate toll service as well.

6. On November 4, 1983, the Iowa Commission issued a further order in which it noted that both this Commission and the Iowa Commission had delayed the implementation of their respective interstate and intrastate customer line charges. It therefore postponed the effective date of the BLS rule from January 1, 1984, until "end user charges have been implemented by this [the Iowa] Commission."[4]

7. The Iowa Commission responded to the ITA petition of November 21, 1983, on December 2, 1983, stating that since BLS is a purely intrastate service "unconnected in any way with the interstate toll network," there could be no conflict between the BLS rules and FCC rules, as properly interpreted, because the FCC "is without jurisdiction to require toll access with respect to this service or to apply end user access charges to customers requesting this service."[5]

---

[1] *Order Commencing Rulemaking,* ISCC Docket No. RMU-83-2, at 1 (issued February 25, 1983).

[2] *Order Adopting Rules,* ISCC Docket No. RMU-83-2, Adopted Rules at 1-2, (issued October 7, 1983).

[3] MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, 93 FCC 2d 241 (1983) (*Access Charge Order*), *modified on reconsideration,* 97 FCC 2d 682 (1983), *further modified on reconsideration (Second Reconsideration Order),* 97 FCC 2d 834 (1984) *off'd in part, remanded in part, NARUC* v. *FCC,* 737 F.2d 1095(D.C. Cir. 1984), *cert. denied,* 53 U.S.L.W. 3583, 3595 (U.S. February 19, 1985) (No. 84-95) (*NARUC v. FCC*).

[4] *Order Adopting Rules on an Emergency Basis,* ISCC Docket No. RMU-83-2, at 1 (issued November 4, 1983).

[5] *Declaratory Ruling,* ISCC Docket No. DRU-83-7, at 1-2, (issued December 2, 1983).

8. Subsequent to these proceedings in Iowa, this Commission modified several aspects of the access charge plan originally set forth in the *Access Charge Order*. In our *Second Reconsideration Order*, we deferred customer line charges for residential and single-line business customers to June 1, 1985. Shortly thereafter, we issued a *Further Notice of Proposed Rulemaking* [6] requesting comments on four interrelated sets of issues: (a) customer line charges for residential and single-line business subscribers; (b) the transitional mechanism for implementing such charges; (c) life-line exemptions or other assistance for low income subscribers; and (d) additional assistance for small telephone companies. At the same time, we also referred these issues to the existing Federal-State Joint Board.

9. In an order released November 23, 1984, the Joint Board recommended, *inter alia*, modification of our existing access charge plan to include the implementation of customer line charges for residential and single-line business subscribers of $1.00 per month for the June 1, 1985 to May 31, 1986 period, and $2.00 per month beginning June 1, 1986, and a reduction of the customer line charge for customers who meet a state-established means test subject to verification.[7] We adopted the Joint Board's recommendations, with minor changes and clarifications, in an order released December 28, 1984.[8] In this *Decision and Order*, we also directed the Joint Board to undertake a further study of issues relating to lifeline assistance measures and directed the Common Carrier Bureau to request additional comments concerning the affect of subscriber line charges on small business customers.[9]

III. Discussion

10. The effect of the Iowa Commission's BLS decision would be to provide residential subscribers in Iowa with an alternative local exchange service. Under the Iowa Commission rules, a BLS subscriber would be denied inbound and outbound interconnection with toll facilities, would pay no customer line charges, and would be subject to charges that could not exceed the applicable tariffed rate for conventional local exchange service. ITA now asks this Commission to rule on whether those parts of the BLS rules that require Iowa telephone companies to offer a local exchange service that is blocked from access to interstate toll services, and exempt from residential customer line charges, are inconsistent with any of our rules.

A. Restriction of Access to Interstate Services

11. With regard to the first set of issues raised by ITA, none of our present rules expressly prohibits the offering of a local exchange service like BLS, with restrictions on interstate access. Furthermore, given that the Iowa consumer has the option of choosing conventional local exchange service, which does provide access to interstate services, it is not clear that the offering of BLS as an alternative service would in and of itself violate our statutory mandate or any of our policies. There is no rulemaking petition before us asking us to prohibit such a service, and we see no need at the present time to initiate such a proceeding ourselves. Accordingly, we need not reach the further question raised by ITA of whether we have the jurisdictional authority to prohibit the offering of BLS by requiring that access to interstate toll service must always be provided as part of local exchange service.[10]

B. Application of Customer Line Charges

12. Section 69.104(a) of our rules, which was adopted in its present form in our *Reconsideration Order*, addresses the imposition of customer line charges:

> A charge . . . shall be assessed upon end users that subscribe to local exchange telephone service, Centrex, or semi-public telephone service to the extent they do not pay carrier common line charges. Such charge shall be assessed for each line between the premises of an end user and a Class 5 office that is or may be used for local exchange service.

The application of a customer line charge to local exchange lines derives from a more general principle of ratemaking followed by this Commission: any costs of service assigned to the interstate jurisdiction as a result of the separations process (which obviously must be recovered through interstate charges of some type) should be recovered through interstate charges on the services and customers that cause the costs to be incurred.[11] In our *Access Charge Order*, we applied this principle in determining that interstate customer line charges were to be the primary mechanism for the recovery of the interstate share of the non-traffic-sensitive costs of a customer's local loop. This principle was upheld by the Court in *NARUC v. FCC*:

> The scheme advance by the FCC simply requires all telephone subscribers to pay, on a per-line basis, for that portion of *their necessarily-incurred local telephone plant costs* assigned under *Smith* to the interstate jurisdiction. We cannot sensibly say that the FCC has overstepped the limits of its jurisdiction in embarking upon such an arrangement.[12]

13. In our *Second Reconsideration Order*, we applied this principle to determine the applicability of customer line charges to the special case of a line that may be restricted to internal or local use and thus be denied toll access. This issue was raised by the Bell Operating Companies in the specific context of Centrex service.[13] We found that customer line charges were still applicable because "a share of the costs of these restricted access lines is allocated to the interstate jurisdiction and must be recovered through interstate service charges. . . ." [14] Our determination that such costs would be allocated to the interstate jurisdiction was based upon the manner in which such lines are currently treated in the separations process as defined in Part 67 of our rules.[15]

---

[6] MTS/WATS Market Structure and Amendment of Part 67, Further Notice of Proposed Rulemaking, 49 FR 18,318, Current Service, 2d (P&F) 64:41 (1984) (*Further Notice*).

[7] MTS/WATS Market Structure and Amendment of Part 67, Recommended Decision and Order, 49 FR 48,325 (1984) (*Joint Board Order*).

[8] MTS/WATS Market Structure and Amendment of Part 67, Decision and Order, 50 Fed. Reg. 939 (1984) (*Decision and Order*).

[9] *Id.* at para. 7.

[10] We do note that one of the purposes of the Communications Act is "to make available, so far as possible, to all the people of the United States a rapid, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges". 47 U.S.C. 151. Furthermore, under section 201(a) of the Act, 47 U.S.C. 201(a), we may require local exchange carriers to interconnect their facilities with those of interexchange carriers if, after an opportunity for hearing, we find such action "necessary or desirable in the public interest. . . ." To the extent that BLS or similar services were to proliferate in Iowa, or elsewhere, in such a manner as to implicate the purposes of the Act, we would have to consider whether, under section 201(a) or otherwise, we could and should impose a general interstate, interconnection requirement of the provision of local exchange service (and preempt contrary state regulation, such as Iowa's BLS rule). *See Virginia State Corp. Comm'n. v. FCC*, 737 F. 2d 388 (4th Cir. 1984).

[11] *See, e.g., American Telephone & Telegraph Co.*, 61 FCC 2d 587 (1976), aff'd *sub nom. Aeronautical Radio, Inc. v. FCC*, 642 F. 2d 1221 (D.C. Cir. 1980), cert. denied, 451 U.S. 920 (1981); *American Telephone & Telegraph Co.*, 64 FCC 2d 1, 54–58 (1977).

[12] *NARUC v. FCC*, *supra* note 3, 737 F. 2d at 1115.

[13] Centrex is a service offered by an exchange carrier under state tariffs that provides a customer with switching and other capabilities functionally equivalent to those offered by an on-premises PBX. The equipment that implements Centrex services is located primarily in the end office of the exchange carrier.

[14] *Second Reconsideration Order*, *supra* note 3, 97 FCC 2d 834 at para. 37, n. 19.

[15] Amendment of Part 67 of the Commission Rules, 49 FR 7934 (March 2, 1984).

14. An analogous issue, concerning the treatment of the closed-end of intrastate WATS lines, was also addressed in the *Second Reconsideration Order*. Since Part 67 treats all WATS lines (interstate and intrastate) in the same manner as ordinary exchange service lines, a portion of the intrastate WATS access line revenue requirement is assigned to the interstate jurisdiction.[16] We therefore determined that the application of customer line charges to such lines is required.[17]

15. The threshold criterion for determining whether interstate customer line charges should be assessed upon BLS subscribers is, therefore, whether any portion of BLS subscriber line costs would be apportioned to the interstate jurisdiction under the jurisdictional separations procedures set forth in Part 67. Only if, under Part 67, all such costs were required to be allocated to the state jurisdiction, would there be a basis for asserting that no interstate customer line charge should be assessed.[18] When we turn to Part 67 for guidance, we observe that the allocative treatment of those subscriber lines that are not used for wideband services (such as, *e.g.*, BLS lines) is set forth in § 67.124(d) of the rules (Subscriber Line Outside Plant Excluding Wideband—Category 1.3). In particular, this section states that subscriber line outside plant used jointly for exchange service and toll message services (Category 1.33) shall be apportioned to the interstate jurisdiction in accordance with an interstate subscriber line factor.[19]

16. When we consider the special case of BLS, we note that while it is described as a "local-only" service, several technological realities make it highly unlikely that all interstate toll calls could effectively be blocked from BLS subscriber lines. Moreover, the attempt by a state to prevent all originating and terminating toll calls from having access to BLS lines would require that state to assert jurisdiction over interstate carriers in order to impose, *inter alia*, certain necessary reporting requirements upon interstate carriers.[20]

17. Turning first to the technological impediments, a major problem in implementing toll access blocking, even in exchanges using stored program-controlled switching systems, arises from the treatment of incoming toll calls. In the outgoing case, the end office switch can identify the calling party number and, if that number is assigned to a BLS subscriber, can readily block access to outbound toll circuits whenever a three digit area code is sent by that calling party.[21] In the incoming toll case, however, the local switch cannot readily differentiate between a toll call and an exchange call that is destined for a BLS called party. In many cases, the first three area code digits will have been stripped at an intermediate switching point. Even the three digits that identify a particular exchange may have been stripped. Under these circumstances, the identification of a toll call by the area code digits is not feasible, and more costly procedures, such as the physical reconfiguration of incoming trunks at either the interexchange carrier Point of Presence, or the end office, or both, may be necessary.

18. Second, another potential problem associated with the technical feasibility of blocking toll access arises from the treatment of both outgoing and ingoing interstate calls destined for interexchange carriers (IXCs) that either have a line-side interconnection in an end office that has not been converted to equal access, or that have a similar connection, under the Feature Group A provisions, in a converted end office. In these cases, a subscriber could access the IXC facility through two line-side connections to the end office switch. A BLS subscriber could then place an outgoing interstate toll call merely by dialing a local number and being connected to the OCC facility in a manner no different from that which would be employed if the BLS call were to an ordinary exchange subscriber. For incoming calls, problems similar to those discussed in para. 17, *supra* would exist.

19. Third, any routing of interstate calls through a so-called "leaky PBX" could also prevent the blocking of all BLS subscriber lines from interstate communications.[22] In an area in which BLS service is offered, an incoming call on a private line from an out-of-state source could be routed by a locally installed PBX directly into the line side of an end office switch and then to a BLS subscriber. Such a call would be indistinguishable (by the end office switch) from a locally originated call, and would not seem to be susceptible to blocking. Similarly, a BLS subscriber could initiate an outbound interstate call by reversing this procedure.

20. Thus, it would be impossible for BLS subscriber lines to be completely blocked from carrying interstate calls, both ingoing and outgoing, without the assertion by a state of jurisdiction over interstate carriers. Complete blockage would be higly unlikely even if such jurisdiction were permissible. Under these circumstances, BLS subscriber lines would necessarily fall into Category 1.33 of the Part 67 rules (outside plant use jointly for exchange service and toll message services) with the result that a portion of the costs of BLS lines line costs would be assigned to the interstate jurisdiction.[23]

IV. Conclusions

21. With regard to the issues concerning access to the interstate services, we have stated that we have

[16] Section 67.112(a)(3) of the Commission's Rules, *supra* note 15. The Joint Board recently has requested further comments concerning the direct assignment of WATS closed end access lines. Order Inviting Comments, CC Docket No. 80-286, FCC 84-139 (released April 11, 1984), 49 FR 18746 (May 2, 1984).

[17] *Second Reconsideration Order*, *supra* note 3, 97 FCC 2d 843 at paras. 102-106.

[18] The Court in *NARUC* v. *FCC* reached the same conclusion in rejecting an argument made by NARUC that end users should not be required to pay interstate customer line charges if they elected not to make or receive interstate calls, the Court concluded that: If we indulged NARUC's claim—that jurisdictional significance attends an individual subscriber's decision to use its line entirely for interstate calls—then. . .NARUC could hardly contest an allocation of all of such a subscriber's line costs (previously divided between the interstate and intrastate domains) to the intrastate jurisdiction alone. . . .It is hard to see what significant benefit NARUC would gain under such an arrangement. *NARUC* v. *FCC*, *supra* note 3, 737 F. 2d. at 1115.

[19] Under § 67.124(d)(4) of the rules, investments attributable to these BLS subscriber lines would be allocated to the interstate jurisdiction by the Subscriber Plant Factor (SPF), which will eventually be replaced by a flat 25 percent interstate allocation supplemented by an additional interstate allocation for high cost companies. Similarly, Part 67 would also require the allocation to interstate operations of certain additional, related costs—such as depreciation and maintenance expenses—that are keyed to the allocation of Category 1.33 Subscriber Line Outside Plant.

[20] *See* para. 18, *infra*.

[21] The assumption here is that either a subscriber is attempting to place a call with AT&T Communications at an end office that is not equipped for equal access, or that the end office has been converted to equal access and the subscriber is attempting to place a call to any interexchange carrier that subscribes to Feature Group B or D. We note, however, in para. 18, *infra*, that outgoing toll calls via interexchange carriers that have line-side interconnection at an end office switch (rather than the trunkside connections of Feature Groups B and D) cannot conveniently be blocked.

[22] The "leaky PBX" phenomenon is described in the *Second Reconsideration Order* in CC Docket No. 78-72 Phase I, *supra* note 3.

[23] Even if total blocking were possible, it is not clear whether under the current seperations rules, part of the costs of the BLS subscriber line would not be assigned to the interstate jurisdiction in any event. Section 67.124(d) (Subscriber Line Outside Plant Excluding Wideband), which is the only section that could possibly subsume the BLS line, lists these four categories only: Category 1.31 (lines used exclusively for state private line services); Category 1.32 (lines used exclusively for interstate private line services; Category 1.33 (lines use jointly for exchange and toll services, including WATS access lines); and Category 1.34 (lines used for TWX service). BLS are clearly not used for state or interstate private line services (Categories 1.31 and 1.32); or are they TWX lines (Category 1.34).

no specific rules requiring that an exchange service provide access to interstate toll services. Since the Iowa consumer now has the option of subscribing to a conventional local exchange service, we do not find it necessary to reach the further question of whether this Commission has the jurisdiction to prohibit a service like BLS with substantial restrictions on access to interstate toll service.

22. With regard to the issues concerning the application of interstate customer line charges to BLS service, we reaffirm the general regulatory principle, which has been upheld by the D.C. Circuit Court of Appeals, that interstate charges may properly be imposed on a service offering when a portion of the costs of providing that service is assigned to the interstate jurisdiction. In particular, we conclude that since both incoming and outgoing interstate toll call attempts cannot in all cases be blocked from a BLS subscriber line, subscriber line charges must be imposed upon BLS subscribers to recover the interstate portion of the costs associated with BLS subscriber line plant.

V. Ordering Clauses

23. It is ordered, that pursuant to sections 1, 2, and 4(i)–(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 154(i)–(j), and § 1.2 of the Commission's Rules, 47 CFR 1.2 (1984), the Petition for Declaratory Ruling filed by the Iowa Telephone Association is granted in part and dismissed in part as provided herein.

24. It is further ordered, pursuant to section 4(m) of the Communications Act of 1934, as amended, 47 U.S.C. 154(m), that the Secretary of the Commission shall cause a copy of this Order to be published in the Federal Register.

25. It is further ordered, pursuant to Section 4(m) of the Communications Act of 1934, as amended, 47 U.S.C. 154(m), that the Secretary of the Commission shall cause a copy of this Order to be served on each state commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–11975 Filed 5–16–85; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

May 9, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of this submission are available from the Commission by calling Doris R. Peacock, (202) 632–7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–7231.

OMB No.: 3060–0027

Title: Application for Construction Permit for Commercial Broadcast Station

Form No.: FCC 301

Action: Revision

Estimated Annual Burden: 3,328 Responses; 496,928 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–11974 Filed 5–16–85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding Disclosure by the FDIC of Statutory Enforcement Actions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Statement of policy.

SUMMARY: In order to preserve public confidence in the banking system in an increasingly deregulated and competitive environment, the Federal Deposit Insurance Corporation ("FDIC") believes that greater reliance on market discipline is preferable to the introduction of an excessive and extensive system of regulatory controls over the activities of banks. To achieve such discipline, the banking public needs relevant information concerning the banks with which it conducts or may conduct its business in order to properly evaluate the level of risk that will be encountered in dealing with specific banks. Thus, the Board of Directors has determined that public disclosure of orders resulting from statutory enforcement actions taken by the FDIC against banks and persons participating in their affairs will facilitate the development of effective market discipline, thereby encouraging funds flows to the vast majority of banks that are prudently operated rather than to the marginal banks that tend to pay the highest rates.

Therefore, the FDIC has adopted a statement of policy which provides that it will publish and make available to the public in an FDIC press release the names of all banks and persons participating in their affairs to whom the FDIC has issued orders in conjunction with formal enforcement actions. In addition, a brief description of the nature of the enforcement action taken and a summary of the order will be provided for each action disclosed. This policy will apply to insurance termination orders, cease-and-desist orders, removal orders, suspension orders, civil money penalty orders, and capital directives.

Orders will be publicly disclosed in a press release after their issuance. Public disclosure will apply to all orders issued on or after January 1, 1986, except for those orders resulting from notices issued prior to May 6, 1985, the date of adoption of this policy by the FDIC's Board of Directors. When applicable, the press release will also identify previously disclosed orders that have been termainted by the FDIC. In addition, copies of the orders issued in connection with these disclosed enforcement actions will be released to the public upon written request under the Freedom of Information Act ("FOA") with appropriate deletions of examination data.

The FDIC's existeng practice of not publicly announcing orders will remain in effect for those issued prior to January 1, 1986, and for those issued on or after that date resulting from notices issued prior to May 6, 1985, the date of the policy statement's adoption. Hence, the FDIC will not publicly announce the names of the banks and the persons participating in their affairs that are subject to such orders. In certain cases, however, the banks themselves may be obligated to disclose the existince of these orders. Nonetheless, consistent with the FDIC's current practice, copies of final orders issued in actions that are not publicly announced will still be available under the FOIA.

The FDIC's public disclosure of statutory enforcement actions will not extend at this time to notices issued by the FDIC to banks and persons participating in their affairs to initiate the administrative proceedings associated with these actions, although such notices may become subject to this policy statement in the future.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Planning and Program Development Supecialist, Division of Bank Spervision, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 289–4761.

SUPPLEMENTARY INFORMATION:

Background

As the banking industry in the United States has moved from the tightly controlled environment that prevailed from the 1930s into the 1970s to an environment that has become increasingly deregulated and competitive, the need to maintain public confidence in the banking system continues to be of paramount importance. The FDIC believes that this objective can best be achieved through greater reliance on market discipline as a supplement to effective bank supervision. In order for market discipline to have this desired effect, the FDIC has concluded that there should be a significant improvement in the disclosure of information to the public. Better disclosure should serve to protect sound, well managed institutions by distinguishing them from the small number of banks that have been willing to take excessive risks or are otherwise not well run.

On February 21, 1985, the FDIC published for public comment a proposed Statement of Policy Regarding Disclosure by the FDIC of Statutory Enforcement Actions. 50 FR 7220 (1985). The FDIC proposed to begin publishing and making available to the public the names of all banks and persons participating in their affairs to whom the FDIC issued notices and final order in conjunction with statutory enforcement actions initiated on or after Februray 21, 1985, the publication date of the propsal. The proposed disclosure policy encompassed insurance termination actions, cease-and-desist actions, removal actions, suspension acitons, civil money penalty actions, and capital directive actions taken by FDIC. It was proposed that the FDIC disclose notices as soon as they had been issued and final orders on or about their effective date. The termination of previously disclosed final order was also to be disclosed.

The policy statement proposal was developed as a means of furnishing the FDIC with an additional tool for increasing market discipline by subjecting banks and their managements to greater public scrutiny. It was not intended to be a substitute for timely and effective bank supervision by the FDIC. Rather, the public disclosure of enforcement actions woud serve as a further deterrent to bank managements that might wish to engage in activities that test the bounds of acceptable banking practice. Implementation of a disclosure policy covering both notices and final order was also seen as a method for helping to assure that banks have the caliber of management necessary for their safe and sound operation in an increasingly deregulated and competitive environment.

Present Disclosure Practices for Enforcement Actions

Insured state nonmember banks that are subject to orders resulting from statutory enforcement actions are presently required by FDIC regulations or policies to disclose this fact only in certain specific circimstances. Banks with securities registered with the FDIC in accordance with the Securities Exchange Act of 1934 are required to inform investor of the issuance of final orders in documents such as annual reports, quarterly reports, current reports, and proxy statements. (Similary, bank holding companies are required to make a public disclosure when a subsidirary bank has been subject to a final order.) Banks seeking to raise capital (dabt or equity) through a public offering, whether or not their securities are registered, are expected to disclose the existence of enforcement actions in offering circulars prepared for distribution to potential purchasers of their securities. Beginning in late 1984, all cease-and-desist orders issued by the FDIC have contained a provision requiring the bank to provide a description of the order to its shareholders in conjunction with the bank's next shareholder communication and with its notice or proxy statement preceding the next shareholder's meeting.

Other than in the circumstances described above, information concerning a statutory enforcement action against a particular insured state nonmember bank has generally not been made available directly to the bank's depositors, its other customers and creditors, and the public at large by either the bank or the FDIC. The FDIC has since 1976 published summaries of its statutory enforcement actions, but these summaries do not name the banks or individuals subject to such orders. It may be possible in some cases for a person with considerable knowledge of a particular bank to determine from a summary that the bank is subject to an order. Moreover, the FDIC will release a copy of the actual final order issued against a specific bank or individual when such a document is requested under the Freedom of Information Act ("FOIA," 5 U.S.C. 552). Under present FDIC policies, when a person requests a copy of a final order imposed on a single named bank, the bank's name is not deleted from the document that is furnished to this person. If the request covers more than one institution, however, the FDIC currently excises the banks' names and other identifying data from the copies of the orders released to the individual submitting the FOIA request. Specific examination data is deleted from all orders released under the FOIA. Notices, however, have not been released to date by the FDIC under the FOIA, nor has their existence normally been disclosed directly by the affected banks.

The FDIC views its existing disclosure procedure as an inefficient method for ensuring that market participants are equally aware of statutory enforcement actions taken against a bank or a person participating in its affairs. Moreover, the FDIC believes that the nature and content of the order issued to a bank or individual is relevant to customer decisions regarding their relationships with a bank. The effect of the disclosure policy will be to subject the activities of the banks and the individual bank directors, officers, and employees against which statutory enforcement actions are being taken to potentially greater public scrutiny. Institutions whose problems have resulted from poor management will be less able to hide that fact. Persons evaluating the financial condition of banks will be better able to determine the caliber of their managements if the specific institutions against which final orders have been issued are known to the public. Uninsured depositors and other creditors will be in a better position to assess their potential risk.

Statutory Enforcement Actions Available to the FDIC

The vast majority of the insured state nonmember banks supervised by the FDIC are sound, well managed institutions. The FDIC relies on reason and persuasion as its primary corrective tools when weaknesses are detected in these banks. In certain banks which are regarded as having sufficient overall strength and financial capacity to make failure only a remote possibillity, the FDIC may identify weaknesses that, if not properly addressed and corrected, could worsen into a more severe situation. The policy of the FDIC's Division of Bank Supervision provides that matters in need of corrective action in such institutions should be addressed in a memorandum of understanding. (The policy statement does *not* provide for the disclosure of the names of banks that have entered into memorandums of understanding with the FDIC and the FDIC does not consider memorandums of understanding available to the public under the FOIA.) A smaller number of insured state nonmember banks are found to have problems or violations of

sufficiently greater severity that the Division of Bank Supervision recommends to the FDIC's Board of Directors that formal action be taken against these institutions pursuant to sections 7(j)(15), 8, or 18(j)(3) of the Federal Deposit Insurance Act ("FDI Act"), section 801 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 ("FIRA"), or section 908(b) of the International Lending Supervision Act of 1983 ("ILSA"). In addition, the FDIC may institute a formal action under these sections of the FDI Act against any director, officer, employee, agent, or other person participating in the conduct of the affairs of an insured state nonmember bank. Through these enforcement actions, the FDIC acts to correct imnproper banking practices, increase bank capital, or suspend or remove individuals from further participation in a bank's activities.

The FDIC has been granted authority by section 8(a) of the FDI Act to initiate termination-of-insurance proceedings against any insured bank in an unsafe or unsound condition. Only the actual insurance termination order and not the corrective order issued at the inception of a section 8(a) action would be subject to disclosure by the FDIC under this policy statement. Section 8(b) of the FDI Act authorizes the FDIC to issue a final cease-and-desist order while section 8(c) empowers the FDIC to issue a temporary cease-and-desist order if an insured state nonmember bank is engaging in an unsafe or unsound practice or is violating a law, rule, or regulation or any written agreement entered into with the FDIC. If the bank or any individual does not comply with such an order, the FDIC may impose a civil money penalty in accordance with section 8(i)(2) of the FDI Act. Under sections 8(e) and 8(g) of the FDI Act, the FDIC may suspend or remove bank directors and officers and prohibit other persons from participating in the management of an insured state nonmember bank if the person has violated a law, regulation, or final cease-and-desist order, has engaged in unsafe or unsound banking preactices, has breached his or her fiduciary duty, or has been indicated for a felony involving dishonesty or breach of trust. Section7(j)(15) of the FDI Act authorizes the FDIC to assess a civil money penalty for willful violation of laws relating to the acquisition of control of an insured state nonmember bank. Section 18(j)(3) of the FDI Act provides for the FDIC to levy a civil money penalty against an insured state nonmember bank or person participating in the conduct of its affairs for violations of laws or regulations relating to loans and other dealings between banks and their affiliates or to loans and extensions of credit by a bank to its executive officers and principal shareholders. Section 801 of FIRA empowers the FDIC to assess a civil money penalty for violations of the prohibitions against preferential lending to bank insiders based upon a correspondent account relationship.

The administrative procedures applicable to these formal actions generally afford the bank or person participating in its affairs an opportunity for a heaing before an administrative law judge. Unless this right to a heaing is waived, the FDIC must serve the appropriate parties with a notice that contains a statement of facts relating to the practices or violations which warrant the enforcement action and fix a time and place for a hearing. Exceptions to this hearing procedure occur under sections 8(c) and 8(e)(4) of the FDI Act. The former section authorizes the FDIC to issue a temporary cease-and-desist order whenever it is determined that violations or threatened violations of law or unsafe or unsound practices are likely to cause insolvency or substantial dissipation of a bank's assets or earnings, serioulsy weaken its condition, or otherwise seriously prejudice the interests of its depositors. A temporary cease-and-desist order, accompanied by a notice of charges, becomes effective upon service. however, the bank or individual subject to such an order may seek injunctive relief to set it aside, limit it, or suspend it. The latter secion empowers the FDIC to suspend a director or officer of an insured state nonmember bank from office and temporarily prohibit any other person from participating in the bank's affairs whenever it is deemed necessary for the protection of the bank or the interests of its depositors. Such suspension or prohibition becomes effective upoon service and the affected indivieuals may seek a stay of the FDIC's action.

Finally, section 908(b) of ILSA authorizes the FDIC to issue a directive to an insured state nonmember bank that fails to maintain the minimum capital requirement prescribed for it under the FDIC's capital maintenance regulations (12 CFR 325, 50 FR 11128 (1985)) which implement section 908(a) of ILSA. A directive is a final order mandating that a bank restore its capital to the required minimum level within a specified time period.

The FDIC relies on its authority to institute the types of formal enforcement actions described above when circumstances warrant in order to properly discharge its supervisory responsibilities over insured state nonmember banks (and, in the case of insurance termination actions, over all FDIC-insured institutions). Nonetheless, adoption of the policy statement should directly affect only a relatively small number of banks. During 1984, the FDIC initiated 226 enforcement actions, many of which were still in process at year-end. In connection with actions initiated in that year and in previous years, the FDIC in 1984 issued 125 final cease-and-desist orders, 13 removal orders, and 13 civil money penalty orders affecting 62 individuals. The number of insured state nonmember banks at year-end 1984 totalled approximately 8,850. Hence the FDIC continues to believe that sound, well managed institutions should view the publication of the names of banks and other parties subject to orders as an appropriate response in a deregulated banking environment. This disclosue will provide the market with an indication of the institutions that the FDIC has found to be operating in a less than acceptable manner or with more than normal risk. Public notice of such situations should aid market participants in their evaluation of the condition of the institutions with which they wish to maintain or initiate banking relationships. Should a customer be averse to the risk of a continuing relationship with a bank against which a statutory enforcemen action has been taken, the selection of a new bank or banks with which to conduct business should inure to the benefit of well managed competing institutions. Thus, adoption of this policy statement should have the long range effect of strengthening the industry.

Comments Solicited and Received

The FDIC solicited comments on the merits of disclosing the existence of notices and final orders and whether the adoption of its proposed policy would foster more effective market discipline, encouraging funds flows to the vast majority of banks that are prudently operated rather than to the marginal banks that tend to pay the highest rates. In addition, comments were requested on (1) whether the policy should also extend to enforcement actions in process as of the date of the proposal, (2) whether the FDIC should release to the public upon request the text of notices and final orders issued in connection with formal actions initiated prior to the date of the proposal without deleting names and certain other identifying information, (3) whether disclosure of notices and final orders

should be made directly by banks, either on their own or in addition to the FDIC's disclosure, (4) whether disclosure of formal actions would lead to greater use of informal actions, and (5) whether the FDIC should disclose the existence of such informal enforcement actions.

While the public comment period officially closed on March 25, 1985, all comments received through April 11, 1985, were reviewed by the FDIC in order to determine whether and how to proceed with the policy statement proposal. The FDIC received a total of 768 comments of which some 665 were submitted by banks, bank holding companies, and their officers and directors. Comments were also filed by 20 bankers association and by 17 bank regulatory agencies or organizations. Others submitting comment letters to the FDIC principally included attorneys, members of Congress, businesses, and individuals. Most respondents confined their comments to the merits of the disclosure proposal and did not address the additional specific questions for which comments were requested.

The opinions expessed by the 768 commenters on the disclosure proposal were decidedly negative. Taken as a whole, only 57 or seven percent of the commenters indicated any degree of support for the proposed policy. This support was centered in the comment letters submitted by businesses, individuals, and other respondents not directly associated with banks. Only 23 of the 665 commenting banks, bank holding companies, and bank directors and officers stated their support for the FDIC's disclosure of enforcement actions while six furnished general comments on the proposal without taking a position on it.

Upon evaluating the comments and after reconsidering the policy statement as published for comment, the FDIC's Board of Directors has determined that it should proceed with a disclosure policy for statutory enforcement actions. Nevertheless, the FDIC has significantly narrowed the scope of the statement of policy that it published for comment and has made certain other changes to that proposed version in order to address issues and concerns raised by respondents. A discussion of the comments received and the resulting revisions is set forth below.

Issues Raised in Comment Letters

Disclosure of Notices

With respect to the proposed disclosure of notices, about 68 of the opponents of the FDIC's proposed policy specifically presented strongly negative views on this issue. A notice is issued at the inception of the enforcement proceedings against a bank or person participating in bank affairs and contains a statement of the facts that justify, in the opinion of the FDIC, the need for the enforcement action to be taken.

Some of the respondents questioned the FDIC's legal authority to disclose the existence of notices, referring to section 8(h)(1) of the FDI Act (12 U.S.C. 1818(h)(1)). That section provides that all hearings pursuant to section 8 of the FDI Act shall be private unless the FDIC determines, after considering the views of the bank or individual charged, that a public hearing is in the public interest. Furthermore, it was stated that the legislative history of this section of the FDI Act, which dates back to 1966, reveals that the United States Senate was strongly in favor of private proceedings which indicates that the FDIC's disclosure proposal would violate Congressional intent. One writer also cited a 1939 Securities and Exchange Commission ("SEC" or "Commission") case to support the general proposition that confidential bank information cannot be legally disclosed in a notice of charges absent specific statutory authorization [*Bank of America* v. *Douglas*, 105 F. 2d 100, 104 (D.C. Cir. 1939)].

The writers who addressed this issue also indicated that the FDIC's disclosure that a notice had been issued to a particular bank or individual would deprive the affected party of due-process rights. Several respondents stated that disclosure of the issuance of a notice before the bank or individual had had an opportunity to refute the allegations listed in the notice was effectively treating institutions and persons associated with them as guilty until proven innocent. Moreover, since hearings are generally private and not open to the public, it was asserted that the disclosure of notices by the FDIC would provide no forum for the bank to present its side to the public. As a consequence, a number of the commenters suggested that banks and persons participating in their affairs will find themselves being tried in the press before the FDIC has had to substantiate the charges contained in the notice during a meeting.

Hence, the disclosure of notices was characterized by some commenters as a method for the FDIC to coerce banks and individuals to consent to the entry of a final order, particularly in cases where certain of the FDIC's findings were believed to be without merit and should have been contested. These commenters argued that even if these banks or individuals had prevailed on the points they disputed once their hearings had concluded, they would have had to defend themselves both publicly and privately during the period between the issuance and disclosure of the notice and the entry of a less comprehensive final order. A high potential for abuse by the FDIC was foreseen by at least 26 commenters as a result of the coercive power that the disclosure of notices would have on banks and individuals that were faced with enforcement actions. Because the perceived adverse effects of the disclosure of notices would lead bank managements to agree reluctantly to stipulate and consent to orders, some writers felt that the disclosure of notices would permit the FDIC to include provisions in consent orders that are onerous and lack justification.

In those cases where banks or persons participating in their affairs regard the FDIC's charges them as unfounded and successfully exonerate themselves through the hearing process, some respondents expressed concern that disclosure of notices issued at the start of enforcement actions would irreparably harm the reputations of the affected banks or individuals. These commenters stated that the public and the media would focus almost exclusively on the initial disclosures and would ignore the outcome of the case which would go undisclosed by the FDIC if no final order were ever issued.

The FDIC has carefully considered the comments addressing the disclosure of notices. In responding to the supposed legal impediment to disclosure contained in section 8(h)(1) of the FDI Act, the attention given to the legislative history of this section should include the views of both houses of Congress. The House of Representatives was as strongly in favor of making the enforcement proceedings public as the Senate was in favor of keeping them private. Moreover, the resulting compromise language in the statute refers only to a presumption that, absent certain circumstances, hearings will normally be private. This presumption does not extend to the entire administrative proceedings in general. In the 1939 SEC case referred to in a comment letter, the court held that, in the absence of specific statutory authority, the SEC had acted improperly in publicly disclosing information derived from examination reports of Bank of America, over which it had no direct jurisdiction, in its notice of an investigative hearing targeted against the bank's parent company and to which the bank was not a party. This case does not hold that the FDIC needs a

specific statutory mandate to disclose publicly the enforcement proceedings it initiates directly against banks.

Moreover, it should be noted that the SEC follows a disclosure policy for the enforcement actions it takes that is similar to the policy which was proposed by the FDIC. Just as the FDIC relies on its examination process to identify situations where formal administrative action is considered warranted, the SEC conducts investigations that form the basis for determining whether it should proceed with enforcement action. Public disclosure occurs when the Commission grants the order for formal administrative proceedings. Many times the registrant has already agreed to settle, in which case the Commission's order and the settlement itself are publicized concurrently. When the appropriate avenue of redress to the SEC is court action, the first public disclosure after any investigation is when the Commission files a complaint requesting an injunction with the court. Often the registrant will have consented to an order and disclosure is made of both the complaint and order at the same time. The Commission's disclosure of orders to proceed with formal action and complaints requesting injunctions is made in a biweekly litigation release published by the SEC. Hence, the enforcement actions brought by the SEC are disclosed to the public before the persons subject to those actions have had an opportunity to rebut the charges against them.

Thus, the FDIC continues to believe that the disclosure of a notice in connection with a statutory enforcement action would be in the public interest. The FDIC regards its issuance of a notice as an event that is relevant to an assessment of a bank's condition and its management's abilities. The statement of facts included in a notice represents charges against a bank or individual that the FDIC has determined that it can prove from the evidence gathered during an examination or otherwise. The FDIC initiates a formal administrative action against a bank or individual only when all of the charges, taken as a whole, are sufficiently critical to warrant such serious enforcement action. The impetus for such action is the FDIC's desire for a bank to undertake the corrective actions needed to restore it to a safe and sound condition and to bring it into compliance with applicable laws and regulations. The disclosure of notices and the resulting public recognition of problems within a bank is therefore seen as a method by which the bank's depositors, shareholders, and other customers would be in a position to apply pressure on bank management for correction of the bank's weaknesses.

At the same time, the FDIC also felt that it would be more equitable to those banks consenting to the entry of final orders that would be faced with immediate disclosure of the orders for the FDIC to disclose both notices and orders. If only orders were disclosed, a bank could decide against consenting to an order for the sole purpose of using the hearing process to avoid immediate disclosure. The bank might also delay instituting necessary corrective measures to its own detriment and experience further deterioration in its condition during this period. In proposing to disclose notices, the FDIC was not intending to coerce banks and individuals to consent to the entry of a final order or to deny banks and individuals their right to a hearing.

The FDIC remains concerned that if it discloses only orders, certain banks and individuals that otherwise would consent to the entry of orders and undertake remedial actions may be motivated solely by the disclosure process to opt for a hearing, allowing problems and violations to go uncorrected during the ensuing administrative proceedings. Nevertheless, when the problems and violations within a bank are of sufficient gravity, the FDIC does have the authority to issue a temporary case-and-desist order against a bank or individual and a suspension or prohibition order against an individual. In those situations where the issuance of orders of this nature is appropriate, their existence will be disclosed by the FDIC. Therefore, in an attempt to balance the concerns of banks as expressed in the comment letters and the concerns and regulatory responsibilities of the FDIC, the FDIC has concluded that its disclosure policy should not extend at this time to notices issued by the FDIC in connection with statutory enforcement actions. However, the FDIC may reconsider its exclusion of notices from its disclosure policy in the future.

Public Confidence and Related Issues

While the minority of bankers who supported the proposed policy statement concurred with the FDIC's conclusion that the disclosure of enforcement actions would be beneficial to the banking public, the issue of public confidence was one of the central themes of some 332 of the commenters who opposed this proposal. These respondents feared that public knowledge of an enforcement action against an individual bank would taint not only that institution, but would lead to a loss of confidence in all banks in that community or market area because the public would perceive that the conditions which prompted an enforcement action against one bank would be common to all banks in the same locale. Many of these commenters argued further that this loss of confidence would spread to the entire banking system. In particular, because of the generally high regard in which the FDIC is held by the public, it was felt that bank customers would ascribe a presumption of guilt rather than innocence to any bank (or individual) that is subject to a publicly disclosed notice, prompting a damaging loss in confidence in the institution that may in the end prove to have been unwarranted.

An additional 268 commenters referred to two of the possible consequences of a loss in confidence. They stated that disclosure will cause deposit runs not only at the banks identified by the FDIC as being subject to enforcement actions, but also at nearby sound banks because of the public's impression that all banking institutions in the area generally are weak. As deposit runs become more commonplace, the end result of the disclosure of enforcement actions by the FDIC would be an increased incidence of failures. The comments from numerous bankers and other writers referred to the recent events involving the privately-insured, state-chartered savings and loan associations in Ohio as evidence of the adverse effect that publicity of one depository institution's problems can have on a large number of institutions that had been regarded as being in acceptable condition. The disclosure of enforcement actions would cause similar panicky reactions by depositors in FDIC-insured banks according to these commenters. The letters from some 72 persons took a slightly different approach toward the effect that a loss of confidence would have in institutions against which publicly disclosed enforcement actions have been taken. Without referring specifically to runs on deposits or bank failures, these writers indicated that the disclosure of enforcement actions would destroy whatever chance bank managements would have had to successfully correct their problems. Bankers' attention would supposedly be diverted from the implementation of corrective programs because of the need to restore customer confidence in their institutions.

Closely related to the confidence issue were comments from about 228 respondents that the public will

misunderstand the significance of enforcement actions to the operations and condition of a bank. In this regard, it was widely held that the distinction between a notice and a final order would not be clear to depositors and other bank customers and that the differences between the various types of enforcement actions would be overlooked by the public. Furthermore, there was concern that by having access only to the names of the banks and the persons participating in their affairs that are subject to statutory enforcement actions, bank customers will not be able to determine from this disclosure the nature and severity of the problems and weaknesses within banks in order to relate these underlying conditions to the risk of insolvency. Two commenters also cited the similarity of many banks' names and predicted that the public would confuse banks identified as being subject to enforcement actions with those that are not. In addition, 73 comment letters suggested that the press and other media would likely be as unsophisticated as the public in understanding enforcement actions, leading to distorted coverage and sensationalist stories.

The FDIC recognizes that public confidence in the banking system as a whole must be preserved and that incomplete and misleading disclosures may cause irreparable harm to individual institutions. The commenters were quite correct in stating that a loss of public confidence caused by adverse information about a bank could possibly lead to a run on the institution. Nevertheless, the FDIC does not believe that this possibility justifies the blanket withholding from the public of information concerning the existence of enforcement actions. Rather, it argues for more and better disclosure of accurate information, not less disclosure. When the public's perception that a bank is experiencing difficulties is not met with an adequate response, the informational void is filled by rumors and half-truths. Therefore, the systematic, dependable disclosure of information will promote public confidence in banks and reduce the likelihood of deposit runs.

Consequently, the FDIC has been encouraging banks to make regular disclosures to the public so that bank customers can gain a greater understanding of the depository institutions with which they have established relationships. When such disclosures reveal a management that is capable of identifying potential problems within its bank and implementing appropriate corrective action, public confidence is further enhanced. By establishing a dialogue with the public through a framework of disclosure, a bank's customers will be better able to comprehend the significance of a statutory enforcement action and will be less inclined to initiate a destabilizing run on deposits. Similarly, in these circumstances, the local media will be in a better position to put the existence of an enforcement action into proper perspective.

In response to the concerns expressed by commenters that confidence in the banking system would not be promoted if the FDIC were to publicly name the banks and the persons participating in their affairs that are subject to statutory enforcement actions and that such disclosures would be misunderstood by the public, the FDIC will expand the amount of information it had originally proposed to disclose to the public about each order. In addition to identifying the type of enforcement action being taken and the bank or individual involved, the FDIC will provide a brief description of the nature of the enforcement action and a summary of the order. Hence, if bank management has not instituted its own program of periodic public disclosures which would have addressed the problems identified within the bank and the actions being taken to correct them, the FDIC's expanded disclosure of the order should furnish the public with sufficient basic information about the enforcement action in a manner that does not lead to misunderstanding by bank depositors, shareholders, and other customers.

Deterrent Effect of the Policy

The statement of policy as it is now being adopted by the FDIC contains another significant change from the version that was issued for public comment. An objective of the policy is to deter banks and persons participating in their affairs from engaging in unsafe and unsound banking practices and from violating applicable laws, rules, and regulations. At the same time, the FDIC proposed that enforcement actions initiated on or after the **Federal Register** publication date of the proposal would be subject to disclosure. If examined shortly after the proposal were adopted in final form, few banks that were already engaging in questionable practices would have had sufficient opportunity to react to the proposal's adoption and initiate appropriate measures to correct their deficiencies on their own. Therefore, a statutory enforcement action would be a likely result of an examination of such a bank. A small number of commenters observed that by applying the policy as it was proposed, the disclosures that the FDIC would make over the first several months after the policy's adoption would have a punitive rather than a deterrent effect on the affected institutions.

In order to mitigate this aspect of the proposal, four of the banking industry respondents who expressed support for disclosure of enforcement actions as well as one commenter not in agreement with the policy statement favored some form of deferral in its implementation. These commenters recommended delays of as long as two years before any disclosure of enforcement actions would be made. This delayed implementation would provide those bankers whose institutions are currently experiencing significant problems and who shortly come under formal enforcement actions with time to work toward the elimination of their deficiencies without being subjected to the alleged adverse effects that immediate disclosure would bring about.

The FDIC concurs with those commenters recommending a deferral of the date when the disclosure of enforcement actions would begin. Therefore, the policy statement has been revised to provide for the FDIC to disclose publicly all orders issued on or after January 1, 1986, except for those resulting from notices issued prior to May 6, 1985, the date of the policy statement's adoption by the FDIC's Board of Directors. The FDIC believes that this change to the policy statement as originally proposed will serve to enhance the deterrent effect of the policy.

Applicability of Policy to All Financial Institutions

An area of concern to 142 commenters, including some who were generally supportive of the proposal, is in their view the discriminatory effect of the proposal. Among the institutions insured by the FDIC, the disclosure policy would apply only to insured state nonmember banks and not to national banks, state member banks, and FDIC-insured federal savings banks (except for insurance termination orders under section 8(a) of the FDI Act which may be issued to any FDIC-insured bank). Other financial institutions that compete with banks, such as savings and loan associations, would be excluded entirely from the coverage of the FDIC's policy. Many of those commenting on this issue mentioned that the Office of the Comptroller of the Currency ("OCC") and the Board of Governors of the Federal Reserve System had not seen fit to propose a similar policy for the banks

they supervise. Several indicated that their sole basis for opposing the proposal was that it would extend only to state nonmember banks and that they would favor the disclosure of enforcement actions if all financial institutions would be subject to such disclosure.

Because the FDIC's disclosures would generally be limited to state nonmember banks that are subject to enforcement actions, a number of respondents suggested that effective market discipline, the development of which the FDIC is seeking to facilitate, cannot be achieved. These commenters stated that the coverage of the FDIC's proposed policy would not ensure that funds would flow "to the vast majority of banks that are prudently operated rather than to the marginal banks that tend to pay the highest rates." In their view, funds would migrate to depository institutions that had not been identified publicly as having had FDIC enforcement action taken against them. Nevertheless, these institutions, whether they are national banks, state member banks, or savings and loan associations, may be more poorly operated than a state nonmember bank and be subject to an enforcement action by their regulator that has not been disclosed to the public. As a consequence, state nonmember banks would purportedly be placed at a competitive disadvantage compared to these other depository institutions since the absence of disclosures about them causes the public to regard them as safer institutions with which to do business.

The competitive advantage issue surfaced in a different form in some 29 comment letters which expressed concern that funds would tend to flow from smaller banks to larger banks if the FDIC began to disclose the enforcement actions it had taken. Several of these commenters felt that the FDIC is apt to bring a formal enforcement action against a smaller bank while relying on an informal action such as a memorandum of understanding to achieve correction of the same problems at a larger bank. Information about the formal action would be released to the public while the informal actions would remain confidential. A number of the writers also suggested that disclosure would be more likely to cause funds to flow out of smaller banks than out of larger banks. In their view, the bank regulatory agencies have erected a safety net around larger banks and will not allow them to fail. Accordingly, depositors expect to be fully protected at larger banks while they are less assured of such protection at smaller banks.

While the FDIC would prefer that enforcement actions taken against all depository institutions be public knowledge, the respondents have correctly noted that the adoption of this disclosure policy will directly affect only state nonmember banks (with the exception referred to above for insurance termination orders). The FDIC understands the concerns of those commenters who feel that competing institutions may gain some advantage over state nonmember banks. However, the number of state nonmember banks against which the FDIC initiates statutory enforcement action represents a small percentage of these institutions (about 2.5 percent in 1984). The FDIC therefore finds no basis for concluding that a disclosure policy covering only state nonmember banks will place such banks as a class at a competitive disadvantage with other classes of depository institutions when the events giving rise to disclosure affect so few state nonmember banks. Furthermore, by increasing the awareness of the banking public that enforcement proceedings are initiated against depository institutions that are found to have severe problems, customers of all depository institutions may begin to inquire of their institutions about the existence of enforcement actions against them.

The fears that funds would tend to flow from smaller to larger banks also appear to be unfounded. While the number of formal actions initiated by the FDIC against smaller institutions clearly outnumbers the actions taken against larger banks, this reflects the fact that 88 percent of insured state nonmember banks have less than $100 million in total assets, a commonly used benchmark for defining "small banks". Moreover, the FDIC does not base its decisions on whether to initiate statutory enforcement actions against banks on bank size. Rather, the FDIC takes formal action against banks based on the conditions and violations in each institution. On the movement of funds from smaller to larger banks, disclosures of enforcement actions should lessen any tendency depositors may now have for characterizing all smaller banks as less safe than larger banks. Since smaller banks have generally provided only limited disclosures relating to their condition, disclosures of enforcement actions by the FDIC will help to place those smaller banks that are sound and well managed in a better position to compete for deposits than at present.

In addition, the FDIC is not alone in its efforts to improve market discipline generally and to provide for the disclosure of enforcement actions. As stated in its comment letter on the proposal, the OCC is "proceeding with a proposed regulation requiring disclosure of financial and narrative data, including information on administrative actions." According to published reports, the OCC's proposed disclosure rules would require all national banks to disclose enforcement actions taken against them on a quarterly basis. Moreover, as noted previously, banks and bank holding companies subject to the requirements of the federal securities laws have disclosure obligations with respect to administrative enforcement actions. While the FDIC is not aware of any actions contemplated by the other federal regulators of financial institutions with respect to increased disclosure, the FDIC will continue to strongly advocate the disclosure of enforcement actions taken against institutions competing with state nonmember banks whenever an opportunity arises for the FDIC to do so.

Adequacy of Existing Powers

In 45 of the comment letters, respondents who opposed the proposal felt that the FDIC's existing enforcement powers were sufficient to the task of causing banks to correct their problems without the FDIC having to resort to the disclosure of the formal actions it takes against banks and individuals. Several of these commenters suggested that ineffective supervison by the FDIC and the agency's own lack of success in pursuing formal administrative actions lay behind the FDIC's decision to advance the disclosure proposal. In their view, if the FDIC would concentrate on using the enforcement tools already available to it, there would be no need to discipline banks through disclosure.

These arguments to ignore the deterrent effect that discolsure would have on bank behavior. Bank managements would normally seek to avoid disclosure by routinely working to identify emerging problems in their institutions and taking appropriate remedial action on a timely basis. Hence, the FDIC should seldom find compelled to draw on its inventory of enforcement tools to bring about corrective action. Therefore, disclosure would not serve as a substitute for effective bank supervision, but as an important supplement to the supervisory process.

Relationship Between Examiners and Bankers

According to about 25 commenters, adoption of the proposed policy would result in an increase in friction between bank managements and bank examiners, making the conduct of examinations more difficult. It was suggested that bankers would be less willing to share information with examiners for fear that management's candid remarks concerning bank problems would quickly find their way into the public domain. Such reluctance would reduce FDIC's ability to accurately assess the condition of a bank under examination and lessen the effectiveness of the agency's supervision of individual institutions.

The FDIC would have serious reservations about implementing any policy that would undermine its supervisory efforts in general and its examination program in particular. While certain bank managements may become less communicative with examiners as a result of the FDIC's decision to disclose enforcement actions, there has always been a small percentage of banks that has viewed the examination process as an adversary relationship. Hence, the FDIC does not believe that the number of banks adopting such a posture will increase significantly as a result of the adoption of a disclosure policy. Moreover, at the sound, well managed banks that form the vast majority of all banks, officers and directors will normally have identified the problems their banks are experiencing and will have instituted corrective action on their own. These bank managers can reasonably expect that the disclosure policy will have no direct effect on them and therefore there is no incentive for them to regard the bank examiners as adversaries. On the other hand, at a problem or near-problem bank, the intensive analysis of the bank and its activities that is called for in such circumstances dictates that examiners adopt a more detached role.

Finally, the FDIC continues to view the examination report as confidental and has not prosposed to disclose its content. While the statutory enforcement actions that the FDIC will now begin to disclose will include summaries of the orders, specific examination data will not normally be divulged.

Legal Objections

In about ten of the comment letters, the FDIC's statutory authority to adopt a policy of disclosing the names of banks and individuals subject to formal enforcement actions was questioned. Most commonly referred to in these letters was section 8(h)(1) of the FDI Act which has been discussed above under "Disclosure of Notices." Some commenters also cited a number of other federal statutes to underscore the private and confidential nature of bank supervision. For example, the FOIA specifically exempts data contained in or related to bank examinations from disclosure (5 U.S.C. 552(b)(8). A federal criminal statute (18 U.S.C. 1906) prohibits the unauthorized disclosure of bank information. Certain states have, according to eight commenters, enacted laws that prohibit the disclosure of information about banks under various circumstances. Included among these statutes are provisions that make it an offense to release information that could lead to a general withdrawal of deposits from a bank or that would otherwise injure its business or good will.

The FDIC has reviewed the legal objections raised in the comment letters and has concluded that none of them directly pertains to the FDIC's policy for disclosing statutory enforcement actions. The exemption provided for bank information in the FOIA does not prohibit such disclosures but merely authorizes certain discretionary refusals to disclose. The prohibition contained in 18 U.S.C. 1906 relates to the release of certain information by bank examiners, but would not otherwise affect public disclosures by the FDIC. With respect to the state statutes barring disclosure of bank information, it is extremely doubtful that any state legislature could constitutionally restrict the authority of a federal agency to disclose such information. The most that state law might do in this area would be to prevent state authorties from providing information to the FDIC that the FDIC might, in turn, make public.

Other Comments on the Merits of the Disclosure Proposal

The comment letters raised a host of other issues and concerns on the merits of the disclosure proposal but at a lesser frequency than for those discussed above. Among these additional comments on disclosure were the following: Attracting competent directors and officers will become more difficult; selling a problem bank will become more difficult; banks will become overly conservative and not serve the legitimate credit needs of their communities; bank examiners will become too cautious; enforcement actions relating to matters other than safety and soundness should not be disclosed; the higher rates that a bank subject to an enforcement action will have to offer to attract funds will force other local banks to raise their rates to retain deposits; and the FDIC should work toward using risk-related deposit insurance premiums rather than disclosure as a means of disciplining banks. After considering the additional comments it received, the FDIC was not persuaded that it would be appropriate to make any changes to its disclosure proposal other than those previously described.

Enforcement Actions in Process

Since the policy statement as proposed represented a change in the FDIC's disclosure practices with respect to enforcement actions, the disclosure proposal issued for public comment applied only to those enforcement actions initiated on or after the date the proposal appeared in the **Federal Register** (February 21, 1985). Enforcement actions that were already in process as of that date that subsquently resulted in the issuance of notices and final orders were not covered by the proposed disclosure policy. While banks and other persons involved in statutory enforcement actions are normally informed that final orders specifically identifying their names may be released in response to a request under the FOIA, these parties would likely have been advised of the limited amount of routine disclosure that had been applicable to enforcement actions in the past. Hence, the FDIC requested public comment on whether and to what extent disclosure should apply to enforcement actions that were under way on the date the proposal was issued for comment.

Since more than 90 percent of all commenters were opposed to the overall disclosure proposal, it is understandable that only ten of the respondents specifically addressed the request for comment on whether public disclosure should extend to enforcement actions already in process. Of those addressing this particular issue, three responded affirmatively while the remainig seven commented negatively. Each of the three favoring disclosure of actions in process had supported the proposed policy statement as well.

Because the FDIC's objective in adopting a policy of publicly disclosing enforcement actions is to deter unsafe and unsound practices by banks, the EDIC has determined that the disclosure of actions in process on the date the policy was proposed is inconsistent with this stated objective. Accordingly, the disclosure policy adopted by the FDIC does not apply to actions initiated prior to the February 21, 1985 publication date of the proposal.

Release Under FOIA of Notices and Final Orders Issued Prior to Proposal Date

By adopting a policy statement on disclosure of enforcement actions, those final orders issued to banks and individuals that have been disclosed can be released to the public under the FOIA without the omission of the names of these banks and individuals since their names will already be publicly known. Examination data would be deleted from these documents to the extent deemed appropriate by the Director of the Division of Bank Supervision. However, current FDIC practice would continue to apply to enforcement actions that predate the effective date of the disclosure policy. Hence, final orders resulting from enforcement actions have names and identifying data deleted before they are released in response to FOIA requests (unless an FOIA request covers only a single name bank).

As the policy statement was originally proposed, a different FOIA treatment would have applied to notices and final orders based on whether they had been publicly disclosed. The FDIC therefore solicited comment on whether notices and final orders resulting from formal actions instituted prior to the date the proposal was issued for comment should be released to the public upon written request without deletions of names and certain other identifying information.

As with the previous specific question, the overall negative response to the FDIC's disclosure proposal largely explains the small number of comment letters that spoke to the routine release under the FOIA of pre-existing notices and final orders without the deletion of the names of the banks and individuals involved in the enforcement actions. Seven respondents referred to this issue with three expressing a preference for releasing notices and final orders without omitting names and four opposing the idea. After due consideration, the FDIC has concluded that it would be preferable to maintain the current procedures it follows under the FOIA for final orders that will not have been publicly disclosed by the FDIC in accordance with the policy statement and for all notices. To authorize the retroactive release under the FOIA of outstanding notices and final orders without the deletion of names would not at this stage have a deterrent effect on the banks and individuals involved in those enforcement actions.

Bank Disclosure of Enforcement Actions

The policy statement as proposed provided for the publication of enforcement actions by the FDIC since, as described above, state nonmember banks themselves are not generally required to make extensive disclosure of such actions. Nonetheless, an alternative approach to achieving timely public awareness of notices and final orders issued by the FDIC would be for the FDIC to adopt a policy that places the responsibility for disclosure of statutory enforcement actions on the banks involved. In the public comment document, the FDIC requested input on whether banks that are subject to enforcement actions (or whose directors, officers, employees, or agents are subject to such actions) should be required to publicly disclose this fact, either in place of the FDIC's publication of these actions or in addition to it.

Six comments letters addressed this particular question and the one writer who opposed requiring banks to disclose enforcement actions that had been instituted against them also opposed the FDIC's proposed disclosure of such actions. Five respondents, including the OCC, indicated that enforcement actions should be disclosed by banks rather than the FDIC. The FDIC concurs with these five commenters and last year did issue for public comment a proposed policy statement on the disclosure of bank information which was designed to encourage depositors and other customers of FDIC-insured banks to request certain minimum information about the condition of such depository institutions. One provision of the proposed policy dealt with bank disclosure of enforcement actions. 49 FR 26809 (1984). However, that policy statement did not mandate disclosure by banks and the proposal itself remains under study. Nevertheless, as discussed above, the FDIC would encourage banks to implement their own systematic, dependable disclosure of information into which would be incorporated the disclosure of statutory enforcement actions taken against them.

Informal Enforcement Actions

Informal enforcement actions taken against banks by the FDIC, typically in the form of memorandums of understanding, were not included within the scope of the proposed disclosure policy statement. They are, however, an important means by which the FDIC seeks to ensure that bank managements recogize the problems within their institutions and take appropriate corrective action to eliminate these weaknesses. Since informal actions are directed toward banks of supervisory concern whose overall strength and financial capacity make the possibility of failure remote, whereas statutory enforcement actions are intitiated against banks with problems of greater severity, memorandums of understanding are not intended to be a substitute for formal actions such as cease-and-desist orders. Nevertheless, because the policy statement as it was proposed did not provide for the FDIC to divulge the names of banks that have entered into memorandums of understanding, concerns were raised within the FDIC that banks with severe weakness that would normally be the subjects of formal FDIC enforcement actions might strive to negotiate their way into informal memorandums of understanding to avoid disclosure if the policy statement were to be adopted. Comments were therefore sought on the questions of whether the adoption of the proposal would likely lead to an increased use of memorandums of understanding in preference to formal enforcement actions and, should this occur, what the effects, either beneficial or detrimental, of such a shift might be. A follow-up issue on which the FDIC solicited comment was whether the disclosure policy statement as it was proposed should be extended to include informal enforcement actions such as memorandums of understanding.

Only limited input was received on the questions relating to the effect that the adoption of a disclosure policy covering formal enforcement actions would have on the usage of informal actions. One commenter did not foresee any change in the frequency with which the FDIC would enter into memorandums of understanding if the disclosure proposal were to be adopted. A bank respondent that strongly favored the FDIC's adoption of the proposed statement of policy also urged that the FDIC not permit banks whose conditions would warrant the initiation of cease-and-desist actions to go the memorandum of understanding route to avoid disclosure. The five other comment letters addressing this issue either expected to see or hoped to see an increased reliance on memorandums of understanding by the FDIC if formal actions were publicly disclosed.

The most illuminating comments on this subject were received from a large multinational bank that suggested that, in theory, the number of memorandums of understanding that would be issued should not change significantly but that, in practice, the incentive for banks to negotiate for these informal agreements would be extremely strong. As a consequence, there might be a reduction in the publicly available information on banks that are engaging in or have engaged in unsafe and unsound

practices. This bank also expressed concern about what it saw as the FDIC's lack of clear guidelines for determining when to use a formal versus an informal enforcement action. This might cause the FDIC to pursue one type of action rather than the other for arbitrary or punitive reasons.

The specific question regarding FDIC disclosure of memorandums of understanding drew greater interest. A total of 17 commenters voiced an opinion on this matter and only the OCC favored the disclosure of informal enforcement actions (provided, however, they were disclosed by the bank and not by the regulator). The OCC indicated that by excluding memorandums of understanding from disclosure, a bank and its regulator would be wasting valuable time negotiating the type of enforcement action to use rather than correcting the problems that have been identified in the bank. While the exclusion of informal actions from disclosure clearly creates such a risk, a comparable risk would tend to arise if informal actions were to be disclosed. Banks bordering on being of supervisory concern would work long and hard to convince examiners that their condition was improving to such an extent that a disclosable informal enforcement action was not necessary. The 16 respondents not favoring disclosure of memorandums of understanding did so for the same reasons they had given for opposing the disclosure of statutory enforcement actions.

The FDIC has determined that at this time it would not be appropriate to publicly disclose informal enforcement actions such as memorandums of understanding. The circumstances in which such informal actions are utilized by the FDIC involve banks exhibiting weaknesses of moderate severity whose managements have demonstrated a willingness to take necessary corrective actions. In these cases, the solvency of the institution is not an issue provided management's interest in effecting corrections will be translated into positive results. Furthermore, memorandums of understanding lack legal enforceability and do not provide banks with the due process rights inherent in formal enforcement actions. In addition, the FDIC does not view memorandums of understanding as "material" under the securities laws and, therefore, does not require registered banks and banks preparing offering circulars that have entered into memorandums of understanding to disclose the existence of such informal agreements. (Instead, these banks are expected to disclose ther underlying problems and the salient features of their corrective plans.) For these reasons, the FDIC has not revised the policy statement to incorporate the public disclosure of memorandums of understanding.

Statutory Authority

Authority To Promulgate Disclosure Policy

The FDIC is authorized under the FDI Act to promulgate rules and regulations to carry out its specific powers. 12 U.S.C. 1819. The Supreme Court has expressly held that an administrative regulation promulgated pursuant to such an enabling statute is valid if "it is reasonably related to the purposes of the underlying statute." *Thorpe* v. *Housing Authority*, 393 U.S. 268, 280–81 (1969). One of the undisputed purposes of the FDI Act is effective enforcement of the federal banking laws, including the prevention of unsafe or unsound banking practices. In this policy statement, the FDIC has determined that public disclosure of enforcement orders will further that statutory purpose. In *FCC* v. *Schreiber*, 381 U.S. 279 (1965), the Supreme Court held that an enabling statute in many respects similar to the FDI Act authorized the public disclosure of information otherwise confidential.

Longstanding Administrative Practice of Release of Enforcement Orders Under the Freedom of Information Act and Disclosure Required Under the Securities Laws

This policy statement merely confirms the FDIC's longstanding administrative practice of disclosing to the public enforcement orders against specific banks or individuals when such documents have been requested under the FOIA. This practice has been followed since 1976.

The FDIC has been, and is, of the view that the FOIA requires it to make public all final enforcement orders, subject to certain exemptions in the FOIA. The FOIA requires an agency, in accordance with published rules, to make public all "final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases." 5 U.S.C. 552(a)(2)(A). The FDIC has promulgated published rules, 12 CFR Part 309, using almost the identical language of the FOIA, to make available "all final orders made in the adjudication of cases." The FDIC has been releasing specific orders upon request under the FOIA. Therefore, the policy statement is supported by the FDIC's longstanding administrative interpretation of the FOIA and of its own published regulations.

The policy statement is also supported by the disclosure requirements of the securities laws. As already noted, under the securities laws, registered banks are required to disclose the issuance of final cease-and-desist orders, and all banks are required to disclose the existence of statutory enforcement actions, if "material," in their securities offerings.

Authority of the FDIC To Waive Freedom of Information Act Exemptions

The FOIA was enacted to promote the public's right of access to agency information and to further the principle that acts of government should not be secret except in exceptional circumstances. Thus, the Senate Report on the 1974 FOIA Amendments states that:

> Congress did not intend the exemptions in the FOIA to be used either to prohibit disclosure of information or to justify automatic withholding of information. Rather they are only *permissive*. They merely mark the outer limits of information that *may* be withheld where the agency makes a specific affirmative determination that the public interest and the specific circumstances presented dictate—as well as the intent of the exemptions allows—that the information *should* be withheld.

S. Rep. No. 93–854, 93d. Cong., 2d Sess. 6 (1974) (emphasis in original.)

Therefore, the Supreme Court has held that the FOIA's exemptions from disclosure are permissive and can be waived by an agency whenever disclosure serves the public interest. *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 294 (1979).

Exemption 8 of the FOIA (5 U.S.C. 552(b)(8)) has often been relied upon by the bank regulatory agencies as a means of keeping confidential bank examination and related materials. However, as stated above, this exemption, as well as the others, can be waived by the agencies. See *Gregory* v. *FDIC*, 631 F. 2d 896, 899 (D.C. Cir. 1980). Thus, FDIC regulations provide for disclosure of exempt information in the public interest. See 12 CFR 309.6(c). See also 28 CFR 16.1. In 1972, FDIC similarly exercised its discretion and began releasing bank reports of condition and income to the public although such reports are specifically exempted from public disclosure under exemption 8 of the FOIA. In taking this action, the FDIC's Board of Directors determined that public availability of these reports:

> Will assist in maintaining public confidence in the Nation's banks. Such availability will also serve the salutary purpose of permitting equal access to basic

financial information by all shareholders of insured State nonmember banks and all depositors in such banks, whereas presently access to such information may be limited to a select group of insiders. Public access to the information contained in the reports will also provide greater competition in geographic areas of better-than-average profitability or greater-than-average demand for banking services, greater incentives for banks with a consistently poor performance to correct their problems, an improved ability for insured nonmember banks to raise capital, the development of more uniform rules of bank accounting and reporting, the availability of more reliable and complete data for bank research efforts and legislative policy determinations, and greater consistency with the spirit of the Administrative Procedure Act.

37 FR 28807 (1972). See 12 CFR 309.4(e).

Disclosure Not Barred by Section 8(h) of the FDI Act or 18 U.S.C. 1905

Section 8(h) of the FDI Act provides that administrative enforcement hearings shall be private, unless the FDIC, "in its discretion," determines that they be public. The policy statement does *not* cover enforcement hearings, which shall remain private unless the FDIC orders otherwise. Therefore, section 8(h) is completely inapposite here and, in any event, as noted above, there are strong policy reasons why Congress intended that "all final orders" be made public, whereas enforcement hearings be private. Likewise, The Trade Secrets Act, 18 U.S.C. 1905, is not a bar to disclosure of final enforcement orders. Section 1905 prohibits disclosure of certain confidential information, such as trade secrets, except as authorized by law. However, the FDIC will not be disclosing trade secrets or other protected information, but its own orders. Generally, FDIC enforcement orders do not contain section 1905 material and, to the extent that they do, the policy statement permits the withholding of such material.

Accordingly, there is abundant statutory authority and case law supporting the FDIC policy statement on disclosure.

Method of Disclosure

The FDIC presently intends to issue a press release once each week as the method for disclosing orders once the policy statement becomes effective January 1, 1986. The policy statement, however, does not prescribe a specific frequency for publishing the names of the banks and individuals subject to the FDIC's orders and the FDIC may adopt or later change to a frequency for its press releases that is other than weekly.

The text of the statement of policy follows:

Statement of Policy Regarding Disclosure by the FDIC of Statutory Enforcement Actions

In order for the FDIC to carry out its responsibility to promote a safe and sound banking system that enjoys public confidence, the Board of Directors has been given broad enforcement powers under section 8 of the Federal Deposit Insurance Act ("FDI Act"). The Board has the power to terminate the insurance of any FDIC-insured bank (section 8(a) of the FDI Act, 12 U.S.C. 1818(a)). The Board has also been given the power to order an insured state nonmember bank to cease and desist from engaging in unsafe or unsound practices or violations of law or regulations (sections 8(b) and 8(c) of the FDI Act, 12 U.S.C. 1818 (b) and (c)) and to suspend or remove a bank officer or director or prohibit participation by others in an insured state nonmember bank's affairs (sections 8(e) and (g) of the FDI Act, 12 U.S.C. 1818(e) and (g)). In addition, sections 7(j)(15), 8(i)(2), and 18(j)(3) of the FDI Act (12 U.S.C. 1817(j)(15), 1818(i)(2), and 1828(j)(3)) and section 801 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 ("FIRA," 12 U.S.C. 1972(2)) give the FDIC authority to assess a civil money penalty against an insured state nonmember bank or an individual for violations of certain statutes. Finally, section 908(b) of the International Lending Supervision Act of 1983 ("ILSA," 12 U.S.C. 3907(b)) authorizes the FDIC to issue a directive to an insured state nonmember bank that fails to maintain its required minimum capital.

The administrative proceedings associated with these various enforcement actions generally provide the bank or the person participating in its affairs with an opportunity to consent to the entry of a final order or to contest the action in a hearing presided over by an administrative law judge. When an action is contested, the FDIC must issue a notice to the bank or the other persons subject to the action describing the practices or violations for which corrective action is sought and setting a time a place for a hearing during which the FDIC must prove the charges it has made. Exceptions to this hearing procedure occur in temporary cease-and-desist actions under section 8(c) of the FDI Act (12 U.S.C. 1818(c)) and in suspension or prohibition actions under section 8(e) (4) of the FDI Act (12 U.S.C. 1818(e)(4)) where judicial review of the actions may be requested after their issuance.

Except for banks whose securities are registered with the FDIC in accordance with the Securities Exchange Act of 1934 and banks using offering circulars in connection with the public issuance of their own securities, insured state nonmember banks have not generally been required to publicly disclose the existance of orders issued by the FDIC. However, the FDIC does include a provision in all of its cease-and-desist orders requiring timely disclosure of such orders to bank shareholders. Moreover, in response to requests under the Freedom of Information Act ("FOIA") inquiring about the existence of any orders against a single named bank or individual (but not against more than one named bank or individual), the FDIC releases copies of final orders under sections 7(j) (15), 8, and 18(j)(3) of the FDI Act, section 801 of FIRA, and section 908(b) of ILSA, provided certain information (but not the name of the bank or individual) has been deleted from the documents pursuant to the provisions of the FOIA.

The FOIA permits federal agencies in their discretion to withhold certain types of sensitive information from routine public disclosure. The generally confidential treatment heretofore accorded banks and bank directors, officers, employees, and agents involved in statutory enforcement actions emanates from FDIC policy. In the current environment of deregulation of the banking industry, the Board of Directors has reassessed the value of retaining this disclosure policy for agency orders issued in conjunction with the FDIC'S statutory enforcement actions.

Deregulation is intended to decrease the Government's involvement in the banking business both with respect to the industry as a whole and individual institutions. Nevertheless, widespread trust in the banking system must be maintained. As the regulatory restrictions which had previously constrained bank actions are removed, the market takes on greater importance as a mechanism for promoting sound bank management and reducing the potential for inappropriate or abusive behavior by encouraging funds flows to the vast majority of banks that are prudently operated. Thus, the availability of relevant information is essential to an evaluation of bank condition and the effectiveness of the resulting market discipline.

The market's judgment of bank performance incorporates an assessment of the ability and willingness of an institution's management to operate its bank in a safe and sound manner and in conformity with applicable laws, rules,

and regulations. One may conclude from an enforcement action taken by the FDIC that a bank has exhibited a serious weakening in the quality of its assets, other unsound conditions, or violations of law that warrant prompt corrective action by its management, its shareholders, or others. Thus, the marketplace's perception of management's ability, or lack thereof, to effect the remedial measures prescribed in an order and to restore the bank to a safe and sound condition and eliminate violations should help to provide an element of discipline over the institution.

Therefore, the Board of Directors has determined that the names of all banks and persons participating in their affairs to whom the FDIC has issued orders in conjunction with statutory enforcement actions should be published and made available to the public in an FDIC press release. In addition, a brief description of the nature of the enforcement action taken and a summary of the order will be provide for each action disclosed. Orders are to be publicly disclosed in the press release after their issuance. Public disclosure will apply to all orders issued on or after January 1, 1986, except for those orders resulting from notices issued prior to May 6, 1985, the date of adoption of this policy by the FDIC's Board of Directors. When applicable, previously disclosed orders that have been terminated by the FDIC will also be identified. The press release will also indicate that any person desiring copies of the orders listed therein may obtain them under the FOIA upon written request to the FDIC by naming the banks or individuals of interest. Examination data are to be deleted from these copies to the extent deemed appropriate by the Director of the Division of Bank Supervision.

Adoption of this policy will not only promote market discipline, but will also enhance the FDIC's supervisory efforts. Facing the prospect of disclosure, bank managements may be less likely to engage in activities which are unsafe or unsound. Moreover, those insured state nonmember banks that have entered into memorandums of understanding, an informal administrative action used by the FDIC as a means of effecting corrective action in banks considered to be of supervisory concern, but which have not deteriorated to the point where they warrant formal statutory enforcement action, may tend to become more highly motivated than at present to implement the recommended corrective measures. In those cases where statutory enforcement action becomes necessary, awarenss or orders should provide the market, in concert with the FDIC, with the opportunity to exert pressure on banks to eliminate the unsafe and unsound practices and conditions within their control and to attract and retain competent personnel to properly manage bank affairs.

By order of the Board of Directors this 6th day of May 1985.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-11987 Filed 5-16-85; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Alaska Tour and Marketing Services, Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Alaska Tour and Marketing Services, Inc., d/b/a Exploration Cruise Lines, c/o Exploration Holidays and Cruises, 1500 Metropolitan Park Building, Olive Way at Boren Avenue, Seattle, Washington 98101

Dated: May 13, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-11933 Filed 5-16-85; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Carnival Cruise Lines, Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Carnival Cruise Lines, Inc. and Jubilee Shipping Company Limited, c/o Carnival Cruise Lines, 5225 N.W. 87th Avenue, Miami, Florida 33166

Dated: May 13, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-11934 Filed 5-16-85; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty); North Star Cruises, Limited

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

North Star Cruises Limited, K/S A/S North Star Cruises, A/S North Star Cruises, Fearnley and Eger A/S, and Alaska Tour and Marketing Services, Inc., d/b/a Exploration Holidays and Cruises and Exploration Cruise Lines, c/o Exploration Holidays and Cruises, 1500 Metropolitan Park Building, Olive Way at Boren Avenue, Seattle, Washington 98101

Dated: May 13, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-11920 Filed 5-16-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Comerica Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

Correction

This notice corrects a previous Federal Register document (FR Doc. No. 85-10977), published at page 19245 of the issue for Tuesday, May 7, 1985. In the first paragraph of the document, the names of the banks should be corrected to read: Michigan Bank-Midwest, Jackson, Michigan; Michigan Bank-MidSouth, Litchfield, Michigan; Michigan Bank-Huron, East Tawas, Michigan; and Michigan Bank-Livingston, Brighton, Michigan.

Board of Governors of the Federal Reserve System, May 13, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-11946 Filed 5-16-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Federal Property Resources Service

[Wildlife Order 158; 4-D-PA-712]

Union City Dam Project, French Creek, Waterford and Amity Townships, Erie County, PA; Conveyance of Property

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By deed from the General Services Administration dated March 18, 1985, the property, consisting of 303.79 acres of unimproved land, known as the Union City Dam Project, Waterford and Amity Townships, Erie County, Pennsylvania (4-D-PA-712), has been transferred to the Pennsylvania Game Commission.

2. The above described property was conveyed for wildlife conservation in accordance with the provisions of section 1 of said Pub. L. 80-537 (16 U.S.C. 667b), as amended by Pub. L. 92-432.

Dated: May 8, 1985.

J. Wayne Kulig,

Acting Commissioner, Federal Property Resources Service.

[FR Doc. 85-11988 Filed 5-16-85; 8:45 am]

BILLING CODE 6820-96-M

Intent To Prepare a Supplemental EIS

The General Services Administration (GSA) will prepare a Supplemental Draft and Final Environmental Impact Statement on the proposed disposal of four parcels of land in Rhode Island. The four parcels are:

Hoskins Park Housing Area—86.68 acres of land with 102 buildings containing 333 housing units in North Kingstown,

Old Wickford—5.1 acres of level, vacant land in North Kingstown,

Naval Gardens Housing Area—14.3 acres of land with 16 buildings containing 119 housing units in Middletown, and

Gould Island (Portion)—22.02 acres of land and 8 buildings thereon.

The Supplemental EIS will contain site-specific information on each of these parcels and consider the impacts of reasonable reuse alternatives.

Two scoping meetings will be held for the identification of issues. One will be held on May 23, 1985, at 7:30 p.m., at the Davisville Middle School, North Kingstown, R.I., and the other on May 30, 1985, at 7:30 p.m., at the Middletown, R.I. Town Hall. Interested participants may register by mail or in person at the address below for an opportunity to make a presentation at either meeting. Presentations will be heard in the order of registration. Registrations will also be accepted in person at the meeting place prior to the start of the meeting.

Interested parties unable to attend either meeting may submit written suggestions on the scope of the EIS at the address below for a period of 30 days following publication of this notice.

Questions, comments, and requests for further information may be addressed to: Pasquale Vaccaro, Realty Officer, General Services Administration, 806 J.W. McCormick Post Office & Courthouse, Boston, Massachusetts 02109, Telephone: (617) 223-2651.

Dated: May 8, 1985.

J. Wayne Kulig,

Acting Commissioner, Federal Property Resources Service.

[FR Doc. 85-11989 Filed 5-16-85; 8:45 am]

BILLING CODE 6820-96-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 10, 1985.

Public Health Service

National Institutes of Health

Subject: Sister Chromatid Exchanges in the Lymphocytes of Smokers, Passive Smokers and Non-Smokers—New
Respondents: Individuals

Health Resources and Services Administration

Subject: Record of State and Local Action Under Section 1122 of the Social Security Act—Extension (0915-0055)
Respondents: Businesses

Office of the Assistant Secretary for Health

Subject: PHS Contractors Profile System—Extension (0937-0120)
Respondents: Small businesses
OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

Subject: Medicaid Quality Control (MQC) Statistical Tables—Reinstatement (0938-0310)
Respondents: State/local governments
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: National Reference Center User Survey—SSA 5039—New
Respondents: Individuals, states
Subject: Taxation of Benefits Questionnaire—SSA 5031—Revision (0960-0401)
Respondents: Individuals
Subject: State Agency Schedule for Equipment Purchases for SSA Disability Programs—SSA 871—Existing Collection
Respondents: State governments
OMB Desk Officer: Judy A. McIntosh.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 205-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer).

Dated: May 10, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-11869 Filed 5-16-85; 8:45 am]

BILLING CODE 4150-04-M

Advisory Committees; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1985:

Name: Health Services Developmental Grants Review Subcommittee.

Date and time: June 11-12, 1985, 8:30 a.m.

Place: Hyatt Regency O'Hare, Pan Am A Room, 9300 West Bryn Mawr Avenue, Rosemont, Illinois 60018.

Open June 11, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session of the meeting of June 11 from 8:30 AM to 9:30 AM will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee wil be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This informtion is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. Hoke S. Glover, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

* * * * *

Name: Health Care Technology Study Section.

Date and time: June 11–12, 1985, 8:00 a.m.

Place: Hyatt Regency O'Hare, Ozark A Room, 9300 West Bryn Mawr Avenue, Rosemont, Illinois 60018.

Open June 11, 8:00 a.m. to 9:00 a.m.

Closed for remainder of meeting.

Purpose: The Committee is charged with the initial review of health research grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session from 8:00 AM to 9:00 AM on June 11 will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. The closed portion of the meeting will be devoted to review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

* * * * *

Name: Health Services Research Review Subcommittee.

Date and time: June 12–13, 1985, 8:00 a.m.

Place: Hyatt Regency O'Hare, Ozark A Room, 9300 West Bryn Mawr Avenue, Rosemont, Illinois 60018.

Open June 12, 8:00 a.m. to 9:00 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Service Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session of the meeting on June 12 from 8:00 AM to 9:00 AM will be devoted to a business meeting covering administration and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This informtion is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Anthony Pollitt, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Agenda items are subject to change as priorities dictate.

Dated: May 9, 1985.

John E. Marshall,

Director National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 85–11969 Filed 5–16–85; 8:45 am]

BILLING CODE 4160–17–M

Food and Drug Administration

Immunology Devices Panel; Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee 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.

Meeting: The following advisory committee meeting is announced:

Immunology Devices Panel

Date, time, and place. June 17 and 18, 9 a.m., Rm. 703–727A, 200 Independence Ave. SW., Washington, D.C.

Type of meeting and executive secretary. Open public hearing, June 17, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 5 p.m.; open committee discussion, June 18, 9 a.m. to 10 a.m.; closed presentation of data, 10 a.m. to 12 m.; closed committee deliberations, 1 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Srikrishna Vadlamudi, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the executive secretary before June 7, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for tumor marker in vitro diagnostic assays; there will also be a general discussion of in vitro allergy testing on June 18.

Closed presentation of data/closed committee deliberations. The committee will review and discuss trade secret or confidential commercial information

regarding premarket approval applications for tumor marker in vitro diagnostic assays. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above 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. The dates and times reserved for the separate 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 Regiser 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 this **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 pulic 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), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

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. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 10, 1985.

Joseph P. Hile,

Acting Commissioner of Food and Drugs.

[FR Doc. 85–11929 Filed 5–16–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85F–0188]

Calgon Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Calgon Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acrylic acid/2-acrylamido-2-methyl propane sulfonic acid for use as a boiler water additive.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5A3857) has been filed by Calgon Corp., Calgon Center, Box 1346, Pittsburgh, PA 15230, proposing that Part 173 (21 CFR Part 173) be amended to provide for the safe use of acrylic acid/

2-acrylamido-2-methyl propane sulfonic acid for use as a boiler water additive.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: May 8, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-11926 Filed 5-16-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0183]

General Electric Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that General Electric Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of hydrogen peroxide for sterilizing food-contact surfaces prepared from polycarbonate resins.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3858) has been filed by General Electric Co., Highway 69 South, Mt. Vernon, IN 47620, proposing that § 178.1005 of the food additive regulations (21 CFR 178.1005) be amended to provide for the safe use of hydrogen peroxide for sterilizing food-contact surfaces prepared from polycarbonate resins.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: May 8, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-11924 Filed 5-16-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0317]

McCormick & Co., Inc.; Amended Notice of Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending a notice that announced that McCormick & Co., Inc., had filed a petition proposing that the food additive regulations be amended to provide for the safe use of a source of gamma radiation to control insect and microbial contamination in certain dried spices and dried vegetable seasonings at doses not to exceed 3 megarads (3 Mrad). This notice is amended to increase the list of permitted spices and seasonings as well as to increase the maximum permitted dose from 1 to 3 Mrad.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 9, 1984 (49 FR 39615), FDA announced that a petition (FAP 4M3816) had been filed by McCormick & Co., Inc., 11350 McCormick Rd., Hunt Valley, MD 21031-1066, proposing that Part 179 (21 CFR Part 179) be amended to provide for the safe use of a cobalt-60 or cesium-137 source of gamma radiation to control insect and microbial infestation in certain dried spices and dried vegetable seasonings by increasing the maximum permitted dose from 1 to 3 Mrad.

On November 14, 1983, a citizen petition (83P-0386/CP), filed by McCormick & Co., Inc., requested amendment of the regulations to provide for the safe use of gamma radiation for the treatment of substances listed in § 182.10 *Spices and other natural seasonings and flavorings* (21 CFR 182.10), dehydrated onion products, dehydrated garlic products, and other natural substances used as minor ingredients solely for their flavoring properties; and blends representing any combination of said substances at an absorbed dose not to exceed 30 kiloGray (3.0 Mrad). The petitioner further stated that the qualifying phrase "minor ingredients used solely for their flavoring properties" includes the smaller particle sizes of dehydrated or dried products. This excludes the larger particle sizes used for purposes other than flavoring, e.g., as vegetables.

The petitioner has withdrawn its citizen petition and resubmitted it as an amendment to food additive petition (FAP 4M3816).

Dated: May 8, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-11925 Filed 5-16-85; 8:45 am]

BILLING CODE 4160-01-M

[FDA-225-85-6000]

Memorandum of Understanding With the National Cancer Institute

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding with the National Cancer Institute (NCI). The agreement, between NCI's Radiation Epidemiology Branch and FDA's Center for Devices and Radiological Health, is to facilitate a study of subsequent cancer incidence in women treated by irradiation with x-rays for infertility.

DATE: This agreement became effective April 10, 1985.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)) which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing the following memorandum of understanding:

Memorandum of Understanding Between the National Cancer Institute and the Food and Drug Administration

I. Purpose

This agreement between the Radiation Epidemiology Branch of the National Cancer Institute (NCI) and the Center for Devices and Radiological Health (CDRH) of the Food and Drug Administration (FDA) is to facilitate a study of subsequent cancer incidence in women treated by irradiation with x-rays for infertility.

II. Background

During the period 1925 through 1960, Dr. Ira Kaplan, a radiologist in New York City, used x-ray therapy to the ovaries and pituitary in 800 to 1,000 women who were referred to him with diagnoses of refractory infertility secondary to menstrual irregularities. These records were made available to FDA in 1968 through Dr. Kaplan's estate. However, they were judged to be inadequate for the evaluation of the deleterious effects of radiation upon future offspring, and further study of this population was terminated in early 1973. The focus of the present proposal, however, is not to study the radiation effects on the offspring but to determine cancer risks to the irradiated women. By combining Dr. Kaplan's series with several other series of women also irradiated for infertility, such as in Israel, FDA will have an adequate sample size to evaluate the risk of subsequent malignancy.

Particular attention will be given to cancers of the brain, thyroid, ovary, uterine corpus, and breast. Because the radiation doses received for treatment of infertility were lower than those given for other conditions, such as cervical cancer, benign gynecological diseases, and tinea capitis, this study provides a unique opportunity to estimate cancer risk following relatively low-dose radiation in a group of women of reproductive age, and particularly for sites such as the brain, where little information is currently available.

III. Substance of Agreement

FDA will:

(1) Give NCI access to the medical records from Dr. Kaplan's series of women irradiated for infertility;

(2) Appoint a qualified person to collaborate with the Radiation Epidemiology Branch of NCI. This person will provide scientific guidance, monitor study progress, and review all manuscripts to come from this study;

(3) Assist NCI, when appropriate, in reviewing proposals for work to be conducted on this project;

(4) Assist NCI in data analysis and manuscript preparation.

Priority of authorship on any manuscript to come from this study will be decided at a later date and by mutual agreement and will reflect relative input into the study.

NCI will:

(1) Provide the necessary funds, if any, for this study;

(2) Be responsible for all contractual matters, if any;

(3) Assume the lead role in study direction with full collaboration of CDRH;

(4) Conduct data analysis with full collaboration from CDRH;

(5) Assume the lead role in combining the study results from the Kaplan series with those from other series.

IV. Name and Address of Participating Parties

A. National Cancer Institute, NIH, Rm. 3A-22, Landow Bldg., 7910 Woodmont Ave., Bethesda, MD 20205.

B. Food and Drug Administration, Division of Life Sciences, OST, CDRH, 5600 Fishers Land (HFZ-116), Rockville, MD 20857.

V. Liaison Officers

A. For NCI: Staff Fellow, Radiation Epidemiology Branch, (currently Joan V. Liebermann), and Senior Epidemiologist, Radiation Epidemiology Branch, (currently Daniel A. Hoffman), National Cancer Institute, NIH, Rm. 3A-22, Landow Bldg., 7910 Woodmont Ave., Bethesda, MD 20205, 301-496-8600.

B. For FDA: Chief, Branch, Division of Life Sciences, OST, CDRH, Food and Drug Administration, (currently Richard P. Chiacchierini), 5600 Fishers Lane (HFZ-116), Rockville, MD 20857, 301-443-7201.

VI. Period of Agreement

This agreement, when accepted by both parties, will remain in effect indefinitely. It may be revised by mutual consent or terminated by either party upon a 30-day advance written notice to the other.

Approved and Accepted for The National Cancer Institute

By: Vincent Devita
Title: Director, National Cancer Institute
Dated: March 27, 1985.

Approved and Accepted for the Food and Drug Administration

By: Joseph P. Hile
Title: Associate Commissioner for Regulatory Affairs (HFC-1)
Dated: April 10, 1985

Dated: May 9, 1985.

John R. Wessel,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-11921 Filed 5-16-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0176]

Petrolite Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Petrolite Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use in or on food of synthetic petroleum wax prepared by copolymerization of ethylene with higher alpha olefins.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3849) has been filed by Petrolite Corp., 369 Marshall Ave., St. Louis, MO 63119, proposing that the food additive regulations be amended to provide for the safe use in or on food of synthetic petroleum wax prepared by copolymerization of ethylene with higher alpha olefins.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: May 8, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-11927 Filed 5-16-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0076]

Toyobo Co., Ltd.; Amended Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by Toyobo Co., Ltd., to amend the food additive regulations to permit the use of the copolymer of adipic acid, 1,3-benzenedimethanamine, and *alpha*-(3-aminopropyl)-*omega*-(3-aminopropoxy) polyoxyethylene in articles used in processing, handling, and packaging of food. The previous filing notice is amended to include the use of the reaction product of adipic acid and 1,3-benzenedimethanamine (Nylon MXD-6 resin).

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF 334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 20, 1984 (49 FR 16839), FDA published a notice that a petition (FAP 3B3752) had been filed by Toyobo Co., Ltd., Osaka, Japan, proposing that the food additive regulations be amended to provide for the safe use of the copolymer of adipic acid, 1,3-benzenedimethanamine, and *alpha*-(3 aminopropyl)-*omega*-(3-aminopropoxy) polyoxyethylene (Nylon MXD-6) in articles used in processing, handling, and packaging food.

The previous filing notice had inadvertently listed the copolymer as Nylon MXD-6 resin rather than the impact modified Nylon MXD-6 resin.

The previous notice which covered only the impact modified Nylon MXD-6 resins is also amended to provide for the safe use of the reaction product of adipic acid and 1,3-benzenedimethanamine (Nylon-MXD-6 resin) containing none of the monomer *alpha*-(3-aminopropyl)-*omega*-(3-aminopropoxy) polyoxyethylene in articles used in processing, handling, and packaging of food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: May 8, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-11923 Filed 5-16-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Office of the Secretary Clearance Officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7340.

Title: Information Collections Related to Specific Procurement Transactions.

Abstract: Respondents supply information and data on their qualifications and performance history, organizational conflicts of interest and salient characteristics of products for brand name or equal provisions of solicitations. This information allows the Department to evaluate offerors on the basis of demonstrated capabilities judged necessary for successful completion of individual contract projects, to ensure that selected contractors are free of conflicts of interest and to effectively evaluate products comparable to commercially specified items.

Bureau Form Number: Nome.

Frequency: On occasion.

Description of Respondents: Government Contractors.

Annual Responses: 32,304.

Annual Burden Hours: 64,608.

Bureau Clearance Officer: John Strylowski 202-343-6191.

R.W. Piasecki,

Director, Office of Acquisition and Property Management.

[FR Doc. 85-11960 Filed 5-16-85; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

Colorado; Filing of Plats of Survey

May 8, 1985.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., May 8, 1985.

The plat, representing the dependent resurvey of a portion of the west boundary and subdivisional lines; the survey of the subdivision of sections 18 and 19, and the metes-and-bounds survey in sections 18 and 19, T. 37 N., R. 11 E., New Mexico Principal Meridian, Colorado, Group No. 716, was accepted May 1, 1985.

This survey was executed to meet certain administrative needs of the Bureau of Reclamation.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Kenneth D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 85-11965 Filed 5-16-85; 8:45 am]

BILLING CODE 4310-84-M

Prineville District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 of a meeting of the Prineville District Grazing Advisory Board to be held June 20, 1985.

The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office located at 185 East 4th Street, P.O. Box 550, Prineville, OR 97754.

The agenda will include the following items:

1. Range Management sections of the Two Rivers Resource Management Plan.
2. Grazing fee study update.
3. Riparian management.
4. District monitoring program.
5. Wilderness Status update.

The meeting is open to the public. Anyone wishing to attend and/or make written or oral statements to the Board is requested to contact the District Manager at the above address prior to June 14.

Summary minutes of the meeting will be available for review an reproduction within 30 days following the meeting.

Dated: May 9, 1985.

Gerald E. Magnuson,

District Manager.

[FR Doc. 85-11966 Filed 5-16-85; 8:45 am]

BILLING CODE 4310-33-M

Realty Action; Noncompetitive Lease of Public Lands in Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Noncompetitive Lease of Public Lands (CA 14023).

SUMMARY: The following described land has been examined and found suitable for leasing under provisions of section 302 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2762, 43 U.S.C. 1732), at no less than the appraised fair market value:

San Bernardino Meridian, California

T. 11 N., R. 24 W.,

Sec. 11, portion of the SE1/4SW1/4NE1/4.

Containing approximately 0.56 acres.

SUPPLEMENTARY INFORMATION: The land is located near Maricopa, California. The proposed lease parcel is occupied by portions of a house, garage, and yard owned by Mr. J.D. Wilson. The parcel has been occupied by these improvements for approximately 30 years without authorization. The lease will be offered to Mr. Wilson to legalize his occupancy of the land and resolve an unauthorized use. The lease is consistent with the Bureau's and Kern County's planning, and would best serve the public interest.

DATE: For a period of 45 days from the date of publication of this notice, interested parties may submit comments.

ADDRESS: Comments and suggestions should be sent to: Glenn A. Carpenter, Caliente Resource Area, 520 Butte Street, Bakersfield, CA 93305. Objections will be reviewed by the BLM State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become a final determination for the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Glenn A. Carpenter, Caliente Resource Area Manager, at the above address; telephone (805) 861–4236.

Dated: May 8, 1985.

Glenn A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 85–11962 Filed 5–16–85; 8:45 am]

BILLING CODE 4310–33–M

Realty Action; Sale of Public Land in Nevada County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Removal of R&PP Classification and Sale of Public Land in Nevada County, CA.

SUMMARY: The following described lands have had R&PP classifications (BLM O C4–352), (CA 5179c) removed and are now open to operation of the general land laws including the mining laws.

T. 16 N., R. 9 E., MDM

Sec. 18, Lot 16, 18, 19

T. 13 N., R. 10 E., MDM

Sec. 5, Lot 9

The following described land has been examined and through the development of land use planning decisions based on public input, resource considerations, regulations and Bureau policies, it has been determined that the proposed sale of these parcels is consistent with the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, (90 Stat. 2750; 43 U.S.C. 1713). Sale parcels will be offered for sale July 26, 1985, at no less than the appraised fair market value, using direct sale, modified competitive or competitive procedures.

Serial No. and legal description	Acres	Fair market value	Bidding procedure
CA 16989—T. 13 N., R. 10 E., MDM: Sec. 5, Lot 9	±5.5	$32,000	Direct sale.
CA 17171—T. 15 N., R. 8 E., MDM: Sec. 2, Lot 13	±2.4	13,000	Competitive.
CA 17172—T. 15 N., R. 8 E., MDM: Sec. 2, Lot 39	±6.6	31,000	Competitive.
CA 17173—T. 15 N., R. 8 E., MDM: Sec. 2, Lot 40	±.32	250	Modified, competitive.
CA 17174—T. 15 N., R. 8 E., MDM: Sec. 2, Lot 41	±31	250	Modified, competitive.
CA 17175—T. 16 N., R. 8 E., MDM: Sec. 2, Lot 5	±1.3	750	Modified, competitive.
CA 17176—T. 16 N., R. 8 E., MDM		200	Modified, competitive.
Sec. 11, Lot 17	±.03		
Sec. 11, (AP 4–15–79)	±.14		
Sec. 14, Lot 15	±.11		
Total	±.28		
CA 17177—T. 16 N., R. 8 E., MDM: Sec. 13, Lot 17	±1.02	750	Modified, competitive.
CA 17178—T. 16 N., R. 9 E., MDM: Sec. 7, Lot 12	±.91	5,000	Modified, competitive.
CA 17179—T. 16 N., R. 9 E., MDM: Sec. 17, Lot 20	±.5	500	Modified, competitive.
CA 17180—T. 16 N., R. 9 E., MDM: Sec. 17, Lot 21	±1.0	1,000	Modified, competitive.
CA 13807—T. 16 N., R. 8 E., MDM: Sec. 26, Lot 24	±1.84	1,000	Modified, competitive.
CA 17353—T. 16 N., R. 9 E., MDM: Sec. 17, Lot 24	±.83	750	Modified, competitive.
CA 17354—T. 16 N., R. 9 E., MDM: Sec. 17, Lot 25	±1.75	1,250	Modified, competitive.
CA 17355—T. 16 N., R. 9 E., MDM: Sec. 17, Lot 26	±.55	750	Modified, competitive.
CA 17356—T. 16 N., R. 9 E., MDM		120,000	Modified, competitive.
Sec. 18, Lot 16	4.18		
Sec. 18, Lot 18	.11		
Sec. 18, Lot 19	12.38		
Total	±16.67		
CA 17359—T. 15 N., R. 8 E., MDM		1,500	Modified, competitive.
Sec. 6, Lot 20	.75		
Sec. 6, (AP 53–18–6)	1.03		
Total	±1.78		
CA 17360—T. 16 N., R. 8 E., MDM: Sec. 2, Lot 9	±1.77	100	Modified, competitive.
CA 17361—T. 16 N., R. 8 E., MDM: Sec. 11, Lot 20	±.40	100	Modified, competitive.
CA 17362—T. 16 N., R. 8 E., MDM		200	Modified, competitive.
Sec. 11, Lot 23	.08		
Sec. 11, Lot 24	.04		
Total	±.12		
CA 17363—T. 16 N., R. 8 E., MDM: Sec. 11, Lot 25	±1.22	100	Modified, competitive.
CA 17365—T. 16 N., R. 8 E., MDM: Sec. 12, Lot 20	±.34	200	Competitive.
CA 17366—T. 16 N., R. 8 E., MDM: Sec. 12, Lot 21	±.42	100	Modified, competitive.
CA 17367—T. 16 N., R. 8 E., MDM		200	Modified, competitive.
Sec. 12, Lot 23	.15		
Sec. 12, (AP–5–10–41)	.05		
Total	±.20		
CA 11982—T. 6 N., R. 13 E., MDM: Sec. 30, Lot C	1.91	4,500	Direct sale.
CA 17382—T. 15 N., R. 10 E., MDM: Sec. 33, Lot 19	±5.00	8,000	Modified, competitive.
CA 17383—T. 16 N., R. 8 E., MDM: Sec. 12, Lot 22	±16.42	22,000	Competitive.

The BLM solicits and will accept bids on these lands; and may accept or reject any and all bids, or withdraw any land from sale at any time, if in the opinion of the Authorized Officer, consummation of the sale would not be in the best interest of the United States.

Sale terms and conditions are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States (43 U.S.C. 945).

2. All bidders must be United States citizens; corporations must be authorized to own real property in the State of California; political subdivisions of the State and State instrumentalities must be authorized to hold property. Proof of meeting these requirements shall accompany bids.

3. CA 16989 will be sold by direct sale to Foresthill Calvary Chapel. The Chapel's R&PP lease (CA 5179c) has expired and they have elected to purchase under Section 203 of FLPMA (PL 94–579). The patent will be subject to a road right-of-way (CA 3847) (43 U.S.C. 1761–1771).

4. CA 17173 through CA 17180, CA 13807, CA 17353 through CA 17355, CA 17359 through CA 17363, CA 17366 and CA 17367 will be sold by a Modified Competitive Bid procedure. These parcels have been determined to have no utility as separate lots due to their size, shape, character, surrounding ownership pattern and lack of access. Consequently, the above parcels will only be offered to the adjoining landowers as designated bidders.

5. CA 11982 will be offered by direct sale to M.C. Huston. The direct sale will resolve a complicated color-of-title case.

6. CA 17356 will be offered by Modified Competitive Bid procedures. The Nevada County Board of Education will be a designated bidder and as such will be given to the right to meet the highest bid in consideration of the needs of the local county government. A condition of the sale will include the protection and preservation of certain elements of a historic Chinese Cemetery which once occupied the parcel. R&PP classification (BLM 0C4–352) has been removed with the publication of this Notice of Realty Action.

7. CA 17176, CA 17359, CA 17367 contain parcels which are described with El Dorado County Assessor's parcel map numbers. These are currently being lotted and will be patented with legal descriptions containing lot numbers.

8. CA 17382 will be offered by Modified Competitive Bid procedures. Colfax Elementary School District will be a designated bidder and as such will be given the right to meet the highest bid in consideration of the needs and plans of local government. A condition of the sale will be the protection and preservation of an existing cemetery on a portion of the property. The patent will be subject to a right-of-way (CA 15776) for a water storage tank and pipeline for the Iowa Hill Water Cooperative (43 U.S.C. 1761–1771).

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register** as provided in 43 CFR 2711.1–2(d) (amended) the above lands will be segregated from appropriation under the mining laws but excepting the mineral leasing laws for a period not to exceed 270 days, or until the lands are sold, whichever occurs first. The segregation effect may otherwise be terminated by the Authorized Officer by publication of a termination notice in the **Federal Register** prior to the expiration of the 270-day period. The above described lands, will be separately offered for sale by sealed bids. The bids will be opened at 10:00 a.m. on July 26, 1985, at the Folsom Resource Area Office, Bureau of Land Management, 63 Natoma Street, Folsom, California 95630. Sealed bids shall be considered only if received at the above address prior to 10:00 a.m. on July 26, 1985. Each sealed bid shall be accompanied by certified check, postal money order, bank draft or cashier's check made payable to the Department of the Interior-BLM for 10 percent of the bid.

The sealed bid envelopes must be marked on the front lower left corner "Folsom Resource Area, July 1985, Land Sale, Case File Serial #————." After opening all sealed bids, if two or more envelopes containing valid high bids of the same amount are received, the determination of which is to be considerd the highest bid shall be by supplemental oral bids. The oral bidding, if needed, will be conducted by the Authorized Officer immediately following the opening of the sealed bids. The person declared to have entered the highest qualifying oral bid shall submit payment of 10 percent as specified above, immediately following the close of the sale.

The successful bidder, whether such is a sealed or oral bid, shall submit the remainder of the full purchase price within 180 days of the sale date. Failure to submit the balance of the full bid within the above specified time limit result in concellation of the sale and the deposit shall be forfeited. The next high bid will then be honored.

It has been determined that the lands are without known mineral values and a successful bid will constitute a simultaneous request for conveyance of the reserved mineral estate. As such, the successful high bidder will be required to deposit a $50.00 nonreturnable filing fee for conveyance of the mineral estate.

If any of the lands described do not receive qualifying bids on July 26, 1985, they will be available over the counter at the fair market value until December 31, 1985. Detailed information concerning the sale, including the land report and environmental assessment report are available for review at the Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630. For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Bakersfield District, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301; (805) 861–4191. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination.

DATES: Sealed bids must be received by 10:00 a.m. July 26, 1985.

ADDRESS: Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

Dated: May 10, 1985.

D.K. Swickard,

Area Manager.

[FR Doc. 85–11959 Filed 5–16–85; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Statement of Responsibilities and Role of the Fishery Resources Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability of a *Statement of Responsibilities and Role* for its Fishery Resources Program. This document identifies and describes four responsibilities that will henceforth be

the Program's focus. Also outlined is the general approach the Service has adopted in discharging these responsibilities. A summary of the *Statement* is presented as Supplementary Information.

The Service is interested in providing all interested individuals and organizations the opportunity to examine or obtain the full *Statement*. Copies of the document can be examined at Service regional offices and field installations. Copis will also be sent to other Federal agencies, to State fish and game agencies, to affected Indian tribes, and to private organizations with known interest in fishery resources. In addition, a limited number of copies will be available for free distribution while the supply lasts.

ADDRESS: Requests for copies of the *Statement* should be sent to: Publications Unit, Room 527, Matomic Building, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph H. Kutkuhn, Associate Director—Fishery Resources, Washington, DC [(202)343–6394] or Robert A. Peoples, Jr., Office of Program Development—Fisheries, Washington, DC [(202)343–6307].

SUPPLEMENTARY INFORMATION: The *Statement* defines the responsibilities and role of the U.S. Fish and Wildlife Service (FWS) as a major and integral contributor to the stewardship of the Nation's fishery resources. It serves both as a new basis for the Service's Fishery Resources Program and as guidance for implementation of the Service's near- and long-term contributions to fishery resource protection and management.

Need for Redefinition of Program Responsibilities

Federal statutory responsibilities for stewardship of the Nation's diverse and valuable fishery resources date from 1871 when Congress established the position of Commissioner of Fish and Fisheries in response to concern about the decline in domestic foodfish supplies. Subsequently, the kinds of fishery resource activities involving the Federal Government have expanded and changed greatly. The factors causing this growth and evolution are numerous, varied, and complex. Three, however, have been central in shaping Federal fishery resource responsibilities:

- Continually growing, broad-based *awareness* of the importance of fishery resources, especially as a focus of recreation and source of low-cost food.
- Increasing *recognition* of the finiteness of fishery resources and of the consequences of their unregulated use as well as the degradation, if not destruction, of their habitat.
- Evolving *need* for more comprehensive and better-coordinated management of fishery resources.

The acceptance by States and tribes of responsibilities for managing fishery resources has also affected the kind and degree of Federal fishery-related activity. Because of their substantial and still-growing technical capabilities, State fishery agencies and Indian tribes are undertaking many tasks formerly performed by the Federal Government.

A major factor inducing a reassessment of Federal Fishery resource responsibility, role, and activity is the imperative to improve administrative efficiency. In addition, increasing emphasis has been placed on "users" paying for the benefits that are derived from or necessitate fisheries work performed by Federal agencies. In many cases, the beneficiaries are groups other than fishermen. With respect to mitigation of resource damage, for instance, the real beneficiaries are those who realize the services provided by the water projects that created the need for mitigation in the first place, namely, electric power consumers, irrigators, shippers, etc.

Almost from the beginning of Federal involvement with fishery resources, there has been a fundamental dichotomy in programs built around commercial and sport (or recreational) use of the Nation's fishery resources, both marine and inland.

This *Statement* addresses *interjurisdictional* anadromous, Great Lakes, and other inland, and estuarine fishery resources, whose conservation the FWS views as a major responsibility it shares at the Federal level.

Identification of Program Responsibilities

In light of these circumstances, it has been necessary and desirable to critically examine and clarify FWS responsibilities for, and role in, the management of national fishery resources. This future direction and the responsibilities of the Service's Fishery Resources Program have been methodically and rigorously redefined in terms of the resources themselves, not in terms of resource management functions; i.e., they were viewed on the basis of *what* has to be done ("ends") rather than on *how* related program objectives will be attained ("means" to an end) A wide range of options was examined, assuring good representation of past and current activity aimed at fish and fisheries in the United States. This statement presents the results of that exercise.

To identify what needs it could most appropriately meet, the Service asked four questions about each of the activities it reviewed:

- Are there statutory mandates requiring Service involvement?
- Are economically important interjurisdictional or transboundary (i.e., international, interstate, tribal/State, migratory) fishery resources involved that are depleted, threatened with impairment, or otherwise in need of Federal attention?
- Are interjurisdictional fishery resources involved whose use is the focus of major management or allocation issues? Or, are the factors adversely affecting target fishery resources interjurisdictional in nature?
- Is there share of the responsibility for redressing problems associated with such resources being discharged by the States, companion Federal agencies, Indian tribes, or others?

After reviewing each candidate activity, four were concluded to represent bonafide national responsibilities meriting the highest-priority attention of the Service's Fishery Resources Program. The redefined Program responsibilities are:

- To facilitate restoration of depleted, nationally significant fishery resources.
- To seek and provide for mitigation of fishery resource impairment due to Federal water-related development.
- To assist with management of fishery resources on Federal (primarily Service) and Indian lands.
- To maintain a Federal leadership role in scientifically based management of national fishery resources.

Articulating what the Service believes to be the valid and appropriate responsibilities of its Fishery Resources Program removes considerable doubt as to where the Program stands with regard to certain fishery resources and restores to it a much-needed sense of purpose and stability. A clear, well-defined statement of responsibilities also facilitates Service work that addresses concerns it shares with companion Federal agencies, the States, Indian tribes, interstate commissions, the private sector, academia, and public-interest groups of many kinds. The *Statement* should also facilitate definitive long-range planning for fishery resources.

The overriding goal of the Service's focus on these four responsibilities is to increase both the degree and quality of fishing opportunity, by restoring or replacing fishery resources. Moreover, placing attention on a limited number of

important fishery problems with national dimension will allow the Service to use its manpower and funding more efficiently and thereby shorten the time required to attain major Program objectives. What has not changed, and will not change, is Service commitment to the Nation's fishery resources and to closer cooperation with States, tribes, and others in advancing the best interests not only of the fishery resources themselves, but of those who use them as well.

Implementation

The question of how to best discharge these four responsibilities is also a major objective of this review. Listing them shoud *not* be taken to mean that they are exclusively the Service's. Nor is simply identifying them, though a crucial step, sufficient by itself. Equally essential, if not of paramount importance, is their timely implementation.

Implementation entails deep involvement of the Service and its Fishery Resources Program. Several recent initiatives, exemplified by such diverse activities as the Lower Snake River Compensation Plan, the Connecticut River Basin Atlantic Salmon Compact, and the Emergency Striped Bass Study, provide useful insight into how best the Service can meet these implementation requirements. Experience in these and other comparable activities indicates that the Service role in fulfilling the redefined Fishery Resources Program responsibilities will, in effect, consist of two distinct, but closely related parts:

1. Serving as a *catalyst* in ensuring that problems are identified, corrective steps are organized, and agreed-to action is coordinated.

2. Taking its own corrective action where statutorily mandated, where doing so is consistent with plans developed jointly by all responsible parties, and where its budget and manpower permit.

In a number of respects, the general implementation strategy outlined here does not represent significant departure from current Program activity and practices. However, one fundamental change is that the Service would defer operation of certain facilities, mainly new ones serving mitigation purposes, to the States or others. This would include those funded by or through the Service.

Application of this general strategy will vary according to the circumstances surrounding fulfillment of each responsibility, as well as to geographic and other differences. Hence, a detailed "Implementation Planning Process," one that approaches the strategy in terms of discrete, manageable (i.e., relatively small) program elements, will be required as the basis for meeting these Program responsibilities. Such an implementation planning process is being employed.

Dated: May 3, 1985.

Robert A. Jantzen,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 85-11994 Filed 5-16-85; 8:45 am.]

BILLING CODE 4310-55-M

National Park Service

Draft Environmental Impact Statement; Draft General Management Plan and Alternatives; Lake Meade National Recreation Area, Mohave County, AZ, and Clark County, NV; Availability of Draft Environmental Impact Statement

SUMMARY: This notice announces the availability of a draft environmental impact statement (EIS) for the general management plan for Lake Mead National Recreation Area. This notice also announces public meetings for the purpose of receiving public comments on the draft EIS.

DATES: Comments on the draft EIS should be received no later than July 24, 1985. The date(s) of the public meetings regarding the draft EIS are June 12, 13, 17, 18, 19, 20 and 24, 1985.

ADDRESSES: Comments on the draft EIS should be sumbitted to: Jerry D. Wagers, Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005, (702) 293-4041.

The public meetings will be held at:

St. George, Utah, City Council Chambers, 175 East 200 North, June 12, 1985—7:00 p.m.

Overton, Nevada, Moapa Valley Community Center, June 13, 1985—7:00 p.m.

Boulder City, Nevada, Alan Bible Visitor Center, June 17, 1985—7:00 p.m.

Las Vegas, Nevada, EPA Auditorium, 944 E. Harmon Avenue, June 18, 1985—7:00p.m.

Phoenix, Arizona, Maricopa County Board of Supervisors, 111 South 3rd Avenue, June 19, 1985—7:00 p.m.

Bullhead City, Arizona, Chamber of Commerce, June 20, 1985—7:00 p.m.

Los Angeles, California, Pasadena City College, 1570 E. Colorado Boulevard, Pasadena, California, June 24, 1985—7:00 p.m.

Public reading copies of the draft EIS will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240 (Telephone: 202-343-6843)

Western Regional Office, National Park Service, 450 Golden Gate Avenue, P.O. Box 36063, San Francisco, California 94102

Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005

A limited number of copies of the statement are available on request from:

Jerry D. Wagers, Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005

SUPPLEMENTARY INFORMATION: The document presents a proposed general management plan for Lake Mead National Recreation Area (NRA), three alternatives to the plan, and an analysis of the environmental consequences of implementing the plan or its alternatives. The proposed plan would accommodate increasing visitor use through a combination of providing new developed areas, improved access points, acceptable levels of expansion in existing developed areas, and maximum resource protection. Visitor safety hazards from flash floods would be reduced by providing structural flood protection in five developed areas and nonstructural protection in other developed areas. Management zoning would restrict land uses on 75 percent of NRA lands, less restrictive zoning would cover 25 percent of the area. Carrying capacity limits have been set for the number of slips in each marina with a parkwide total of 8,370, or an increase of 90 percent over 1978 levels. The information/education program would encourage visitor safety and resource protection, provide information and orientation, and educate visitors about the area's resources. The proposed action would not change the cabin site policy and would allow expansion of short-term trailer sites. No lands are proposed for wilderness designation. Under the no action alternative present management strategies would continue with no major changes in existing conditions. Under alternative A increasing use would be accommodated by expanding existing developed areas and resource protection would be emphasized. Under alternative B resource utilization would be emphasized and increasing use would be accommodated by maintaining existing developed areas, improving existing shoreline access points, and providing new developed areas. The environmental analysis also serves as a compliance instrument for Executive

Order 11988, "Floodplain Management" and 11990 "Protection of Wetlands".

The document is divided into two volumes. Volume I describes the draft general management plan and alternatives. Volume II describes the affected environment and environmental consequences of implementing the alternatives and proposed action. A discussion of consultation and coordination, the appendixes, bibliography, and the list of document preparers are also included.

Dated: May 8, 1985.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 85-11992 Filed 5-16-85; 8:45 am]

BILLING CODE 4310-70-M

Availability Draft Land Protection Plan; Lyndon B. Johnson National Historical Park, Blanco and Gillespie Counties, TX

Pursuant to the National Environmental Policy Act of 1969, Title 40 of the Code of Federal Regulations, Chapter 1 of Title 36 of the Code of Federal Regulations, and the final interpretive rule for Preparation of Land Protection Plans printed in the **Federal Register** on May 11, 1983 (48 FR 21121), the National Park Service has prepared a Draft Land Protection Plan for Lyndon B. Johnson National Historical Park, Blanco and Gillespie Counties, Texas.

The Draft Land Protection Plan addresses the protection of 1,335.68 acres within the authorized boundary that have not been acquired. It considers alternate means of protection, provides for public use and safety and identifies what land or interest in land need to be in Federal ownership in order to achieve management purposes consistent with the intent of Congress in authorizing the park.

Copies of the Draft Land Protection Plan are available from Lyndon B. Johnson National Historical Park, Post Office Box 329, Johnson City, Texas 78636; and the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Anyone wishing to submit comments on the Draft Land Protection Plan should provide them to the Superintendent, Lyndon B. Johnson National Historical Park, at the address provided above, within 30 days from the publication date of this notice.

Dated: May 3, 1985.

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 85-11991 Filed 5-16-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Decision-Notice OP3MCF-250]

Motor Carrier; C.W. Transportation Services

Decided: May 10, 1985.

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register** and I.C.C. Failure seasonably to opose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2 (d).

Amendments to the request for authority will not be accepted after the date of the publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

James H. Bayne,

Secretary.

MC-F-16276, filed April 23, 1985. C.W. Transportation Services (C.W.) (615 W. 41st St., Chicago, IL 60609)—Purchase (Portion)—Keeshin Charter Service, Inc. (Keeshin) (615 W. 41st St., Chicago, IL 60609). Representative: Arnold L. Burke, Esq., Schulman, Silverman & Kreiter, Ltd., 19 S. LaSalle St.—Fourth Floor, Chicago, IL 60603. C.W., a non-carrier, seeks authority to acquire a portion of the operating rights of Keeshin in its lead certificate No. MC-118044, which authorizes the transportation of passengers and their baggage, in charter operations (restricted to traffic originating in the territory indicated), from points in Cook and Will Counties, IL, and points in Lake County, IN, to points in Arkansas, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Jersey, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia, and return.

C.W. is a joint venture partnership of Keeshin Air Transport, Inc. (Keeshin Air), a non-carrier controlled by transferor Keeshin, and C.W. Limosine Services, Inc. C.W. Limo), a passenger carrier holding authority in No. MC-165970. Keeshin and Keeshin Air are

commonly controlled by Paul A. Keeshin. C.W. Limo is controlled by Charles A Wilson, Jr.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

[FR Doc. 85-11995 Filed 5-16-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19 (Sub-100)]

Rail Carriers; the Baltimore and Ohio Railroad Co; Abandonment—In Harrison County, WV; Findings

The Commission has found that the public convenience and necessity permit the Baltimore and Ohio Railroad Company to abandon its 5.09-mile rail line between milepost 19.30 at Haywood and milepost 24.39 at Spelter, in Harrison County, WV.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower-left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 85-11944 Filed 5-16-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-3; Sub. 55]

Missouri, Pacific Railroad Co.—Abandonment—In Montgomery County, AR; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 7.0-mile line of railroad between milepost 479.4 near Birds Mill and milepost 486.1 near Norman.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective June 17, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by May 27, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 6, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative : Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: May 14, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-12055 Filed 5-16-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application; Marion Laboratories, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 22, 1985, Marion Laboratories, Inc., Analytical Systems Inc. Division, 23162 La Cadena Drive, Laguna Hills, California 92653 made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (PCC) (8603)	II
Benzoylecgonine (9187)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than June 17, 1985.

Dated: May 14, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-11983 Filed 5-16-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Women's Bureau
Local Displaced Homemaker Program Questionnaire
One-time questionnaire
Non-profit institutions
300 responses; 150 hours; 1 form.

Survey questionnaire to assess the impact and effectiveness of National Displaced Homemaker Network in providing technical assistance to local programs. Information will be used to plan future programs connected through the Network, most of which are non-profit institutions.

Extension

Office of Pension and Welfare Benefit Programs
Summary Annual Report
1210-0040
Annually
Individuals or households; businesses or other for profit; non-profit institutions; small businesses or organizations
179,190,138 responses; 1.6 minutes.

Employee benefit plans covered by ERISA, with some exceptions, are required by law to provide participants and beneficiaries with a Summary Annual Report (SAR) which provides information on the financial operations of their plan.

Employment Standards Administration
Report of Changes That May Affect Your Black Lung Payment 1215-0084; CM-929
Annually
Individuals or households
97,000 responses; 12,610 hours; 1 form.

To help determine continued eligibility of primary beneficiaries and dependents receiving separate checks (split payees) from the Trust Fund. To verify and update on an annual basis income, marital status, and dependency status.

Collection of Information in Current Rules

Employment Standards Administration
General Regulations Under The Walsh-Healey Public Contracts Act 41 CFR Part 50-201.101(a)(2) (i) and (ii), 41 CFR Part 50-201.501, 41 CFR Part 50-201.604 (a) and (b)
On occasion
Businesses or other for-profit; Small businesses or organizations 2,030 responses; 169 hours.

Contractors subject to the Public Contracts Act must keep employment records which would permit DOL to determine compliance with the Act. Regular dealers must notify manufacturers that furnish goods directly to the U.S. that the minimum wage and overtime provisions of such contract work is subject to the Act.

Signed at Washington, D.C. this 14th day of May, 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85-12025 Filed 5-16-85; 8:45 am]

BILLING CODE 4510-23-M

OMB Circular A-76 Management Study; Department of Labor National Office Library

AGENCY: Office of the Assistant Secretary for Administration and Management (OASAM), Labor.

ACTION: Notice of OMB Circular A-76 Management Study.

SUMMARY: The Directorate of Administrative Services and Safety and Health Programs (DASSHP), OASAM, has scheduled an OMB Circular A-76 management study of the Department of Labor National Office Library to begin May 14, 1985.

FOR FURTHER INFORMATION CONTACT:

William J. McLaughlin, 202-523-6963

or

Edward L. Jackson, 202-523-6295.

Dated at Washington, D.C. this 10th day of May, 1985.

Donald E. Lemmon,

Director, Office of Information Management and Productivity.

[FR Doc. 85-12020 Filed 5-16-85; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

[TA-W-15,667]

Pako Corp., Golden Valley, MN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 3, 1985, applicable to all workers at Pako Corporation, Golden Valley Minnesota. The Notice of Certification was published in the **Federal Register** on April 16, 1985 (50 FR 15003).

On the basis of additional information, furnished by a corporate official on pending layoffs, the Office of Trade Adjustment Assistance reviewed the February 28, 1985, termination date, in the subject certification. The additional information shows that the final closure of the plant is taking longer than originally anticipated. It was the Department's intent to include all workers as eligible to apply for adjustment assistance who were laid off from Pako Corporation. Golden Valley, Minnesota.

The amended certification for TA-W-15,667 is hereby issued as follows:

All workers of Pako Corporation, Golden Valley, Minnesota who became totally or partially separated from employment on or after December 21, 1983 and before July 31, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this May 8, 1985.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 85-12091 Filed 5-16-85; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

[License No. 34-13774-01, EA-85-40]

John C. Haynes Co.; Order Prohibiting Access to Controlled Areas

I

On April 5, 1985, the Director, Office of Inspection and Enforcement, issued an Order requiring among other things that John C. Haynes Company ("Licensee") permit entry of NRC authorized individuals into its facility at 6532 Parr Road, Rural Route 6, Newark, Ohio, for the purpose of removal of radioactive material and contamination which pose an imminent hazard to the public health and safety. In accordance with the Order, the license is to be revoked following the completion of decontamination and removal of radioactive material. The licensee did not contest the Order. The Order was issued because of the history of the licensee's unauthorized possession and use of radioactive material, the extensive contamination at the facility, the licensee's financial condition, and the potential for dispersion of radioactive material as a result of vandalism, fire, or other phenomena.

At the time the Order was issued, Mr. Haynes, the licensee's sole agent, had been arrested by the Federal Bureau of Investigation for unauthorized possession and use of radioactive material and making false statements to the Commission. He was prohibited by order of a U.S. Magistrate from going to the facility at 6532 Parr Road, Rural Route 6. The Director concluded in the previous Order that Mr. Haynes' disregard for the Commission's requirements and the public health and safety as evidenced by his unauthorized use and possession of material and the contamination of the facility demonstrates that he neither appreciates the hazards posed by the radioactive material nor can be trusted to safely maintain the facility. The Director also found that the radioactive contamination of the facility and the physical condition of the facility and its contents pose an imminent hazard that requires immediate action to abate the hazard. Consequently, the Director concluded that immediate action pursuant to 10 CFR 2.202(f) was required to decontaminate and to remove all radioactive material from the facility.

II

The Court's prohibition of Mr. Haynes from going to the facility was lifted as a result of the May 7, 1985 dismissal by the U.S. Magistrate without prejudice of the charges against Mr. Haynes. Although decontamination activities are under way the facility remains extensively contaminated and the imminent safety hazard remains. The presence of unauthorized individuals including Mr. Haynes in areas controlled for purposes of protection of individuals from exposure to radiation and radioactive materials could (1) interfere with the decontamination efforts by disturbing monitoring equipment, delaying activities, and causing resources to be diverted to monitor and protect such individuals, (2) cause a hazard to such individuals as a result of their contamination, and (3) cause a hazard to the general public if such individuals remove contamination or radioactive material from the facility.

Therefore, I have determined that neither Mr. Haynes nor any other unauthorized individual should be permitted access to any area controlled by the NRC or its agents for the purpose of protection of individuals from exposure to radiation and radioactive materials in and around the facility at 6532 Parr Road, Rural Route 6, until the decontamination activities under the previous order are completed unless specific authorization has been approved by the Regional Administrator, Region III, or his designee. I have also determined that, pursuant to 10 CFR 2.202(f), the public health, safety, and interest requires that this Order be immediately effective.

III

Accordingly, pursuant to sections 81 and 161b, of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and Part 30, it is hereby ordered that:

Effective immediately, neither Mr. Haynes nor any other individual may be permitted access to any area controlled by the NRC or its agents for the purpose of protection of individuals from exposure to radiation and radioactive materials in and around the facility at 6532 Parr Road, Rural Route 6, Newark, Ohio until the decontamination activities under the April 5, 1985 Order have been completed unless specific authorization has been received from the Regional Administrator, Region III, or his designee, following the date of this Order.

IV

The licensee may show cause why this Order should not have been issued and should be vacated by filing a written answer under oath or affirmation within 20 days of the date of this Order which sets forth the matters of fact and law on which the licensee relies. The licensee may answer as provided in 10 CFR 2.202(b) by consenting to this Order. Upon the failure of the licensee to answer within the specified time, this Order shall be final without further proceedings.

The licensee or any other person who has an interest affected by this Order may request a hearing within 20 days after issuance of this Order. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies shall also be sent to the Executive Legal Director at the same address. If a person other than the licensee requests a hearing, that person shall describe specifically, in accordance with 10 CFR 2.714(a)(2), the nature of the person's interest and the manner in which that interest is affected by this Order. AN ANSWER TO THIS ORDER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF SECTION III OF THIS ORDER.

If a hearing is requested, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated At Bethesda, Maryland this 10th day of May, 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-11999 Filed 5-16-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Regulatory Policies and Practices; Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on June 5, 1985, Room 1167, 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:

Wednesday, June 5, 1985—3:00 p.m. until 5:00 p.m.

The Subcommittee will review the Interim Use Manual Chapter on Plant-Specific Backfitting.

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. Anthony Cappucci (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 name individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 13, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–12000 Filed 5–16–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Emergency Core Cooling Systems; Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold a meeting on May 31, 1985, Room 1167, 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:

Friday, May 31, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will review selected portions of the NRC Thermal Hydraulic Research Program for the ACRS Report to the Commission on the FY 1987 research Budget.

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. Paul Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., eastern daylight time. 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 14, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–12001 Filed 5–16–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–498–OL and 50–499–OL; ASLBP No. 79–421–07 OL]

Houston Lighting and Power Co., et al.; South Texas Project, Units 1 and 2; Notice of Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for *Houston Lighting and Power Company, et al.* (South Texas Project, Units 1 and 2), Docket Nos. 50–498–OL and 50–499–OL, is hereby reconstituted by appointing Administrative Judge Frederick J. Shon in place of Administrative Judge Ernest E. Hill, who because of a schedule conflict, is unable to serve.

As reconstituted, the Board is comprised of the following Administrative Judges: Charles Bechhoefer, Chairman, Mr. Frederick J. Shon, Dr. James C. Lamb, III.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Frederick J. Shon, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland, this 10th day of May, 1985.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 85–12021 Filed 5–16–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Nuclear Energy Co., et al.; (Millstone Nuclear Power Station, Unit No. 1); Exemption

I

The Connecticut Light and Power Company, Western Massachusetts Electric Company and Northeast Nuclear Energy Company (the licensees) are holders of Provisional Operating License No. DPR–21 which authorizes operation of the Millstone Nuclear Power Station, Unit No. 1. The license provides, among other things, that it is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

The facility consists of one boiling water reactor located in Waterford, Connecticut.

II

Appendix J to 10 CFR Part 50 was published on February 14, 1973. Since by this date there were already many operating nuclear plants and a number more in advance stages of design or construction, the NRC decided to have these plants reevaluated against the requirements of this new regulation. Therefore, beginning in August 1975, requests for review of the extent of compliance with the requirements of Appendix J were made of each licensee. Following the initial responses to these requests, NRC staff positions were developed which would assure that the objectives of the testing requirements of the above cited regulation were satisfied. These staff positions have since been applied in our review of the submittals filed by Northeast Nuclear Energy Company (NNECO) for Millstone

Unit 1. The results of this evaluation are provided below.

III

On August 7, 1975, the NRC requested NNECO to review it containment testing program for Millstone Station Unit 1 and the related technical specifications, for compliance with the requirements of Appendix J to 10 CFR Part 50.

The NRC staff's consultant, Franklin Research Center (FRC), has reviewed NNECO's submittals dated November 14, 1975; July 29, 1977; May 31, 1978; September 20, 1978; May 9, September 9, October 15, and November 6, 1980; and February 26, 1981. The submittals involved several requests for exemption from certain requirements of Appendix J to 10 CFR Part 50. The NRC staff reviewed the Technical Evaluation Report (TER) prepared by FRC, which documents FRC's review of the exemption requests and concurred at that point in time with its bases and findings.

However, based on additional information provided by the licensee in a submittal dated September 16, 1983, telephone conversations with licensee representatives on October 13th and 14th, 1983, and April 12, 1984 meeting in Bethesda with licensee representatives and the last licensee submittal dated December 7, 1984, the staff has modified its conclusions relative to the TER. The staff now finds that:

1. Type C testing of isolation valves in emergency core cooling systems in lieu of Type A testing is in accordance with the requirements of Appendix J and is, therefore, acceptable.

2. NNECO's procedure for isolating leaks during the Type A test, later testing via local testing procedures, and adding the leakage to the Type A results fulfills the requirements of Appendix J and is, therefore, acceptable.

3. The matter of Type A testing being performed in less than 24 hours was reviewed and approved by Amendment No. 94 to Provisional Operating License No. DPR-21 for Millstone Nuclear Power Station, Unit 1 dated December 19, 1983.

4. Type A testing of penetrations with expansion bellows is acceptable as an exemption from the requirements of Appendix J because of the testing experience gained with this type of penetration.

5. An exemption from the requirement to test airlocks, following an outage when the air locks are open, at design pressure is acceptable. This is because the licensee will do a low pressure test at 10 psig prior to reopening for containment entry to inspect for leakage when the plant is at operating pressure and temperature and follow with a design pressure test within the 24 hour period following startup while containment inerting is in progress.

6. In extrapolating the results of reduced pressure airlock tests to full pressure, an empirical relationship based on seven back to back 10 and 43 psig tests to be conducted over a 3-year period will be used. Until the results are available a technical specification limit of 0.024 La will be in effect. On this basis the staff concludes that the Appendix J requirements are satisfied.

7. Testing MSIVs at 25 psig is an acceptable exemption from the requirements of Appendix J because it provides a conservative determination of valve status.

8. NNECO's proposed action with regard to reversing certain valves in order to conservatively perform reverse direction testing meets the requirements of Appendix J and is acceptable.

9. The substitution of valves LP-43A and B for LP-44A and B is acceptable because either set of valves may equally be relied upon to prevent escape of containment air.

10. NNECO's proposed hydraulic testing of penetrations x-204 and x-210 will establish that the valves will remain water sealed for 30 days following an accident and, therefore, satisfies the requirements of Appendix J.

11. The licensee commitment in NNECO letter dated December 7, 1984 for Type C testing of the Transient Incore Probe (TIP) ball valves is in accord with 10 CFR Part 50 Appendix J requirements and therefore acceptable.

12. Various technical specifications were found to be in compliance with Appendix J, subject to certain clarifications and/or exemption requests as evaluated in the TER attached to the staff's safety evaluation.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

Therefore, the Commission grants the following exemptions with respect to the requirements of Appendix J to 10 CFR Part 50:

1. Type A testing of penetrations with expansion bellows is acceptable as an exemption from the requirements of Appendix J because of the testing experience gained with this type of penetration.

2. Testing MSIVs at 25 psig is an acceptable exemption because it provides a conservative determination of valve status.

3. Containment airlock testing at 10 psig instead of design pressure during startup after an outage, but prior to containment inerting, is an acceptable exemption because the airlock will later be tested at design pressure within the first 24 hours following startup while the containment is being inerted.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (April 30, 1985, 50 FR 18333).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 10th day of May 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-12022 Filed 5-16-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23690; 70-7022]

American Electric Power Co., Inc., and AEP Generating Co.; Proposal To Finance Pollution Control Facilities, and Guaranty of Pollution Control Bonds

May 13, 1985.

AEP Generating Company ("AEGCO"), and its parent American Electric Power Company, Inc. ("AEP"), a registered holding company, 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment to an application-declaration previously filed pursuant to sections 9(a), 10, 12(b), and (d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44 thereunder.

By prior Commission Order, AEGCO acquired one-half undivided interest in the Rockport Generating Station ("Plant") along with Indiana & Michigan Electric Company ("I&ME"), also a subsidiary of AEP. Each company is responsible for 50% of the costs associated with disposing of and acquiring certain air and water pollution control devices ("Project") (HCAR No. 23399, August 17, 1984). By subsequent Order, AEGCO was authorized to enter into an Agreement of Sale (now "1984 Agreement") with the City of Rockport, Indiana ("City") providing for the construction and installation of the Project by the City, and the issuance by the City of pollution control revenue bonds ("Series A Bonds") to finance AEGCO's share of the project (HCAR

No. 23420, October 4, 1984). The Series A Bonds were issued in an initial principal amount of up to $150 million.

It is now proposed by Post-Effective Amendment No. 4 that the City will issue and sell one or more additional series of bonds in a principal amount of up to $175 million ("Series 1985 Bonds") to refund on or before October 10, 1985 outstanding short-term Series A Bonds issued in the principal amount of $150 million, and to cover a portion of the cost of construction of the Project now estimated to be $200 million. The proceeds of the sale of the Series 1985 Bonds will be deposited by the City with Lincoln National Bank and Trust Company of Fort Wayne, as Trustee, under the Indenture between the City and such Trustee, to be amended by one or more Supplemental Indentures, pursuant to which the Series 1985 Bonds are to be issued and secured.

Proceeds received by AEGCO in reimbursement of its cost of construciton of the AEGCO Project are to be applied to the payment of maturing long-term debt and outstanding bank loans of AEGCO and for construction and other corporate purposes. At March 31, 1985, $480,000,000 of such bank loans were outstanding.

It is contemplated that the Series 1985 Bonds will be sold by the City pursuant to arrangements with an underwriter or a group of underwriters. In accordance with the laws of the State of Indiana, the interest rate to be borne by the Series 1985 Bonds will be fixed by or on behalf of the common council of the City. While AEGCO will not be a party to the underwriting arrangements for the Series 1985 Bonds, the Agreement provides that the terms of Series 1985 Bonds and their sale by the City shall be satisfactory to AEGCO. AEGCO understands that interest on the Series 1985 Bonds will be exempt from federal income taxation under the provisions of section 103 of the Internal Revenue Code of 1954, as amended. It is not possible to predict precisely the interest rate which may be obtained in connection with the issuance of the Series 1985 Bonds. However, AEGCO has been advised that, depending on maturity and other factors, the annual interest rates on obligations, interest on which is so tax exempt, historically have been, and can be expected at the time of issuance to be, 1½% to 2½% or more lower than the rates of obligations of like tenor and comparable quality, interest on which is fully subject to federal income tax.

The Series 1985 Bonds will be dated on or about the first day of the month in which they are issued, will bear interest semi-annually and will mature at a date or dates not more than 30 years from the date of their issuance. It is expected that the Series 1985 Bonds will not be redeemable at the option of the City prior to a date of up to ten years subsequent to the first day of the month in which they are issued, except under certain circumstances and terms specified in the Supplemental Indenture or Indentures of Trust.

Four provisions in the terms of the Series 1985 Bonds to be issued by the City are being contemplated in order to reduce the effective interest cost to the City on the obligations. Three of the alternatives contemplated a form of credit enhancement to assure the repayment of principal and interest to bondholders. This arrangement would be effected (a) by a guaranty by AEP, (b) by a letter of credit to be issued by a commercial bank or (c) through a consortium of insurance companies. The fee for arrangements (b) and (c) would be paid by AEGCO. Under the fourth alternative, the City would issue the Series 1985 Bonds with an interest rate which would be adjusted periodically in accordance with changes in some other lending rate such as that on United States government securities or the prime lending rate, or with an interest rate which would be fixed for an initial period with the option on the part of the bondholder to convert to such an adjusted rate on one or more subsequent occasions.

In the event the Series 1985 Bonds are issued with an adjustable or "floating" rate, AEGCO may, subsequent to their issue, enter contractual arrangements, generally referred to as "interest rate swaps", with one or more commercial banks or counter-parties pursuant to which AEGCO would agree to make payments of interest at a fixed rate based on a principal amount of the bonds, in return for such banks' or counter-parties' agreement to make payments to AEGCO based upon the same principal amount at a floating interest rate which may approximate the rate payable by AEGCO with respect to the bonds. The fixed rate to be paid by AEGCO would be a rate based on a fixed term obligation maturing not later than the maturity date of the bonds, but in no case greater than 10% per annum.

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 10, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants 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 application-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. 85-12005 Filed 5-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23688; 70-7106]

Columbia Gas Transmission Corp. and the Columbia Gas System, Inc.; Proposed Intrasystem and Bank Financing by Subsidiary Company

May 13, 1985.

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and its subsidiary company, Columbia Gas Transmission Corporation ("Transmission"), 1700 MacCorkle Avenue SE., Charleston, West Viriginia 25314, have filed an application-declaration with this Commission pursuant to sections 6(a) 7, 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

Transmission is a wholly owned subsidiary of Columbia engaged in the business of producing, purchasing, transporting, storing, and selling natural gas at wholesale in interstate commerce. As an interstate transporter of natural gas, Transmission is subject to regulation by the Federal Energy Regulatory Commission ("FERC"). Transmission has been burdened with marketing problems due to contract obligations to purchase quantities of gas at prices which exceed that which the market can accept. These problems have resulted in major contingent liabilities in two areas. The recent proposed resolution of the liability in one area, the purchased gas adjustment ("PGA") proceedings pending before FERC ("FERC Settlement"), is expected to reduce Transmission's revenues by up to $1 billion for a two-year period commencing April 1, 1985. Transmission expects FERC approval of the settlement. Settlement of the other major

area of liability, Transmission's exposure on contracts with producers, will produce an immediate impact upon Transmission of substantial magnitude but mitigate the cost of the FERC Settlement. It is stated that these settlements are necessary to assure Transmission's viability as a going concern and that unless Transmission can reach a satisfactory producer settlement, it will be subject to contractual obligations for gas purchases which would yield continual substantial losses far in excess of the ability of that company to sustain.

Settlements have been reached with the pipeline suppliers ("Pipeline Settlements") under which Transmission has agreed to pay the suppliers' fixed costs for purchases below minimum bill levels and to advance to the suppliers Transmission's allocable share of take or pay payments made by the pipeline suppliers in connection with Transmission's reduced purchases, with such advances to be repaid to Transmission as the pipeline suppliers work their way out of their take or pay situation.

Transmission's financial condition is of immediate and vital concern to Columbia. As of December 31, 1984, Columbia had over $1.3 billion invested in Transmission. The Board of Directors of Columbia has determined that if the contract obligations with producers can be reformed in exchange for cash payments, Columbia will provide the estimated additional funding necessary. However, not only until such time as those contracts can be reformed but also until Transmission is no longer faced with continuing losses, Columbia has determined that the protection of its investors requires that additional capital only be provided to Transmission on a secured basis.

To finance Transmission's needs in the critical period to come while protecting Columbia's investors and Transmission's customers to the maximum extent possible, Columbia requests Commission authorization for the following proposals:

1. To finance Transmission's inventory of gas stored for sale in winter months, Transmission proposes to issue and sell to Columbia, and Columbia proposes to acquire, an Inventory Financing Note, secured by Transmission's gas in storage. Under the Note, Columbia may advance during each of the years 1985 and 1986 up to $450 million to Transmission during the storage injection period. Repayment, with interest at Columbia's cost of funds, will be no later than April 30 of the year following the advance. Customer prepayments for winter service gas will also be secured by gas in storage.

2. To provide part of the financing for Transmission's operations during the next few years, Transmission proposes to sell interests in the proceeds of production from certain proved reserves ("Production Payments") to a commercial bank group in an amount of up to $400 million. The terms and conditions are to be filed by amendment.

3. To provide the remaining amount of financing for Transmission's operations in the next few years, Transmission proposes to issue and sell to Columbia two series of First Mortgage Bonds aggregating up to $350 million secured by a first lien on all of Transmission's assets, with certain exceptions. Series A Revolving Credit Bonds would permit Columbia to fund Transmission's short-term financing needs (other than for inventory purchases), and Series B Bonds would permit funding of Transmission's longer-term financing needs. The terms and conditions of this financing are to be filed by amendment.

4. Transmission is also investigating the possibility of direct bank financing of up to $70 million for its allocable share of take or pay payments made and to be made by Transmission's pipeline suppliers to their producers. These payments are required to be made by Transmission under its Pipeline Settlements. To date, $24 million of such payments (net of amounts previously recovered in rates) have been made to transmission's pipeline suppliers, and it is estimated that an additional $40 million will be paid in 1985. Transmission's maximum additional exposure for such take or pay payments under the terms of the Pipeline Settlements is estimated at $320 million. Under the terms of the Pipeline Settlements, the companies receiving the take or pay payments are obligated to repay Transmission as gas is recouped from producers or when it is determined that such amounts are not recoupable. Direct bank financing of these take or pay amounts by Transmission would rely for partial credit support on the other pipelines' obligations to repay these amounts. Further information of this proposed transaction is to be filed by amendment.

5. Emerging from the winter heating season, Transmission generates substantial amounts of cash in excess of current requirements.

As well, there are considerable fluctuations in Transmission's aggregate daily cash flow on a day-to-day basis during each month due to normal receipt and disbursement patterns. transmission proposes from time to time during 1985 and 1986, temporarily to prepay outstanding Installment Promissory Notes issued prior to 1985 with excess cash in amounts not to exceed the aggregate amounts of such notes. The Installment Promissory Notes prepaid by Transmission will be those bearing the highest interest rate outstanding at the time of each prepayment. Interest on such indebtedness will cease upon prepayment and recommence upon reinstatement. As such funds are thereafter required for construction and other corporate purposes, it is proposed that advances be made on open account to transmission by Columbia in such aggregate amounts not to exceed the amount of long-term indebtedness previously prepaid, less any current maturities applicable to Installment Promissory Notes which have matured subsequent to the date of prepayment. Either at such time as the advances equal the aggregate amount of the indebtedness prepaid, or, in any event, not later than December 31, 1986, the indebtedness that was prepaid will be reinstated and accepted by Columbia in repayment of the outstanding open account advances. These procedures are designed to permit the effective utilization of Transmission's temporary excess funds at all times.

The application-declaration and any amendments thereto 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 6, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 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 amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-12003 Filed 5-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23689; 70-6458]

Indiana & Michigan Electric Co.; Proposal To Finance Pollution Control Facilities

May 13, 1985.

Indiana & Michigan Electric Company ("I&ME"), One Summit Square, Fort Wayne, Indiana 46801, a subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has proposed a transaction with this Commission subject to sections 6, 7, 9(a), 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44 thereunder.

By order dated June 11, 1980 (HCAR No. 21618), the Commission authorized I&ME to dispose of and acquire certain pollution control systems ("Project") at its Rockport Generating Station ("Plant"), under construction near the City of Rockport in Spencer County, Indiana ("City") to comply with prescribed environmental control standards of the State of Indiana. I&ME's disposition and acquisition was undertaken pursuant to a June 1, 1980 Agreement of Sale (now "1984 Agreement") with the City, and in connection with the issuance by the City of pollution control revenue bonds in the amount of $40 million to finance the Project (HCAR No. 21642, June 25, 1980). This represented a portion of I&ME's then estimated cost of $150 million, for its 50% share obligation for the Project shared with AEP Generating Company also a subsidiary of AEP (HCAR No. 23399, August 17, 1984).

It is now proposed by Post-Effective Amendment No. 9 that the City will issue and sell one or more additional series of bonds in a principal amount of up to $160 million ("Series 1985 Bonds") to cover a portion of the cost of construction of the Project now estimated to be $200 million, and to refund outstanding short-term 1984 Series A Bonds in the principal amount of $110 million. The proceeds of the sale of the Series 1985 Bonds will be deposited by the City with the Trustee, under the 1984 Indenture between the City and such Trustee, to be amended by one or more Supplemental Indentures, pursuant to which the Series 1985 Bonds are to be issued and secured.

The Series 1985 Bonds will be dated on or about the first day of the month in which they are issued, will bear interest semi-annually and will mature at a date or dates not more than 30 years from the date of their issuance. It is expected that the Series 1985 Bonds will not be redeemable at the option of the City prior to a date of up to ten years subsequent to the first day of the month in which the Series 1985 Bonds are issued, except under certain circumstances. The Series 1985 Bonds will be subject to mandatory redemption under the circumstances and terms specified in the Supplemental Indenture or Indentures of Trust.

Proceeds received by I&ME in reimbursement of its cost of construction of the Project are to be applied to the payment of maturing long-term debt and outstanding bank loans of I&ME and for construction and other corporate purposes. At March 31, 1985, no such bank loans were outstanding.

It is contemplated that the Series 1985 Bonds will be sold by the City pursuant to arrangements with an underwriter or a group of underwriters. In accordance with the laws of the State of Indiana, the interest rate to be borne by the Series 1985 Bonds will be fixed by or on behalf of the common council of the City. While I&ME will not be a party to the underwriting arrangement for the Series 1985 Bonds, the 1984 Agreement provides that the terms of Series 1985 Bonds and their sale by the City shall be satisfactory to I&ME. I&ME understands that interest on the Series 1985 Bonds will be exempt from federal income taxation under the provisions of Section 103 of the Internal Revenue Code of 1954, as amended. It is not possible to predict precisely the interest rate which may be obtained in connection with the issuance of the Series 1985 Bonds. However, I&ME has been advised that, depending on maturity and other factors, the annual interest rates on obligations, interest on which is tax exempt, historically have been and can be expected at the time of issuance of the Series 1985 Bonds to be 1½ percent to 2½ percent lower than the rate of obligations of like tenor and comparable quality, interest on which is fully subject to federal income tax.

Three provisions in the terms of the Series 1985 Bonds to be issued by the City are being contemplated in order to reduce the effective interest cost to the City on the obligations. Two of the alternatives contemplate a form of credit enhancement to assure the repayment of principal and interest to bondholders. This arrangement would be effected either by a letter of credit to be issued by a commerical bank or through a consortium of insurance companies. The fee for such arrangement would be paid by I&ME. Under the third alternative, the City would issue the Series 1985 Bonds with an interest rate which would be adjusted periodically in accordance with changes in some other lending rate such as that on United States government securities or the prime lending rate, or with an interest rate which would be fixed for an initial period with the option on the part of the bondholder to convert to such an adjusted rate on one or more subsequent occasions.

In the event the Series 1985 Bonds are issued with an adjustable or "floating" rate, I&ME may, subsequent to their issue, enter contractual arrangements, generally referred to as "interest rate swaps", with one or more commercial banks or counter-parties which I&ME would agree to make payments of interest at a fixed rate based on a principal amount of the Series 1985 Bonds, in return for such banks' or counter parties' agreement to make payments to I&ME based upon the same principal amount at a floating interest rate which may approximate the rate payable by I&ME with respect to the Series 1985 Bonds. The fixed rate to be paid by I&ME would be a rate based on a fixed term obligation maturing not later than the maturity date of the Series 1985 Bonds, but in no case greater than 10% per annum.

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 10, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-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 application declaration, as now filed or as it may be amended, be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

FR Doc. 85-12004 Filed 5-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23682; 70-7108]

Atlee M. Kohl; Proposed Acquisition of Securities of Public Utility Company

May 7, 1985.

Atlee M. Kohl ("Kohl"), 3007 Skyway Circle North, Irving, Texas 75039, has filed an application with this

Commission pursuant to sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

Applicant, an individual, presently holds with power to vote, directly or through family trusts, 8.6% of the voting securities of Chesapeake Utilities Corporation ("Chesapeake"), a Delaware corporation and a "gas utility company" as defined in section 2(a)(4) of the Act and 9.9% of the voting securities of Florida Public Utilities Company ("FPU"), a Florida Corporation which is an "electric utility company" as defined in section 2(a)(3) and a "gas utility company" as defined in section 2(a)(4) of the Act. Applicant also holds with power to vote, directly or through family trusts, 4.8% of the voting securities of Southwestern Electric Service Company ("Southwestern"), a Texas corporation, and an "electric utility company" as defined in section 2(a)(3) of the Act. Kohl has applied for authorization under sections 9(a)(2) and 10 to acquire, directly or indirectly, additional common shares of Southwestern such that he will thereby become an "affiliate" of Southwestern under section 2(a)(11)(A) of the Act.

Chesapeake distributes natural gas in the Southern Delaware and the Salisbury, Maryland areas. Eastern Shore Natural Gas Company ("Eastern"), a wholly-owned subsidiary of Chesapeake, is an interstate pipeline which buys gas from Transcontinental Gas Pipe Line Corporation at two points in Pennsylvania, serving this gas to utility and industrial customers in Southern Delaware and the Eastern Shore of Maryland, as well as being the primary source of supply for Chesapeake. Dover Exploration Company ("Dover"), a wholly-owned subsidiary of Eastern, is engaged in gas and oil exploration ventures primarily in the Southwestern United States; it also brokers small amounts of natural gas. Eastern has two other subsidiaries, Skipjack, Inc. which owns one of Chesapeake's business offices and Sharpgas, Inc. (formerly Baygas, Inc.) which distributes propane to approximately 4,300 residential and small commercial customers generally in Delaware and Maryland. Eastern and its subsidiaries are all Delaware corporations. At December 31, 1984, Chesapeake had utility plant of $26,964,837 and for the twelve months ending December 31, 1984 it had a consolidated net income of $3,001,920.

FPU renders electric, natural gas, water and propane bottled gas service to consumers in Florida. FPU is comprised of five divisions: (1) West Palm Beach located in Southeast Florida serves natural gas to 26,290 customers and propane bottled gas to 6,092 customers; (2) Marianna is located in the Florida Panhandle and provides electricity to 9,597 customers; (3) Fernandina Beach is located in the extreme Northeast portion of Florida and serves 7,759 electric customers and 3,646 water customers; (4) Sanford is located in the Mid-Central part of the State and serves 4,965 natural gas customers and 924 propane bottled gas customers; and (5) DeLand, also located in Mid-Central Florida, provides service to 2,473 natural gas customers and 1,327 bottle propane customers. Utility plant at December 31, 1984 was $47,913,806 and its net income for the twelve months ending December 31, 1984, was $1,493,698.

Southwestern is engaged primarily in the purchase, transmission, distribution and sale of electric energy. All electricity is purchased from another utility under firm contract totalling 315,000 KW and extending to 1996. The areas served are two non-connected groups of communities in East and Central Texas of approximately 3,500 square miles with an estimated population of 120,000. At December 31, 1984 its utility plant was $58,107,000 and for the twelve months ending December 31, 1984 its net income was $2,581,000.

Applicant states that the proposed acquisition of additional Southwestern shares to result in an aggregate 5% holding (approximately 843 shares) would be effectuated through: (i) An open market purchase or purchases at prevailing market prices; (ii) a private purchase or purchases at negotiated prices; or (iii) any combination of the foregoing transactions. Subsequent acquisitions would be made similarly to the extent such acquisitions were deemed appropriate by Kohl, however, he will not directly or indirectly acquire Southwestern common stock in such amounts that he will directly or indirectly own more than 10% of the outstanding common stock of Southwestern without seeking further Commission approval.

The application 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 May 31, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicant 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 application, or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11955 Filed 5-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23687; 70-6906]

Middle South Utilities, Inc., Middle South Energy, Inc., Extension of Time Period in Which To Issue and Sell Common Stock

May 13, 1985.

Middle South Utilities, Inc. ("MSU"), a registered holding company, and its wholly owned subsidiary Middle South Energy, Inc., 225 Basonne Street, New Orleans, Louisiana, 70112, have filed a post-effective amendment to their application-declaration subject to sections 6(a), 7, 9(a), 10, and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 43 thereunder.

On January 23, 1985 (HCAR No. 23579) this Commission authorized MSE to issue and sell to MSU, and MSU was authorized to purchase, from time to time through July 31, 1985, up to 160,000 additional shares of MSE's authorized but unissued common stock, no par value ("Additional Shares"). As of March 31, 1985, MSE had not sold any shares of the Additional Shares to MSU.

Based upon MSE's revised estimate of cash requirements for the remainder of 1985 and through July 31, 1986, it may be necessary for MSE to issue and sell the Additional Shares to MSU during the remainder of 1985 and through July 31, 1986. MSE requests authority for an extension of the period, through July 31, 1986 during which MSE may issue and sell from time to time and MSU may purchase, not in excess of 160,00 shares of the Additional Shares at a price of $1,000 per share for an aggregate cash purcahse price of $160,000. MSE will apply the proceeds of the sale of the Additional Shares to costs incurred in connection with the Grand Gulf Project.

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 6,

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 int his matter. After said date, the amended 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 Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11957 Filed 5-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22034; File ST-NASD-85-4]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to Schedule C of the NASD By-Laws

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 March 4, 1985, the National Association of Securities Dealers, Inc. ("NASD") 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 proposed rule change would amend the definition of "representative" in Schedule C of the By-Laws to include persons who are employed by certain non-broker/dealer organizations and who perform activities on behalf of members similar to those performed by registered representatives. The effect of the amendment will be to make explicit the requirement that members register such persons as representatives and thereby bring them under regulation comparable to the regulation to which registered representatives of members presently are subject.

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 changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under existing Schedule C, persons whose responsibilities include soliciting and accepting orders, recommending securities to customers, or providing investment advice resulting in securities transactions must be registered before being permitted by a member to engage in such activities. These persons are in fact, persons associated with members. The definition of "representative" in Schedule C covers persons who are engaged in the investment banking and securities business "for the member" including the functions of "solicitation of conduct of business in securities." The definition, however, has been traditionally applied only to employees and other natural persons who are directly compensated by the member for such activities.

The proposed rule change would explicity extend the coverage of Schedule C to apply to certain persons who, if they were employees of a member, would clearly fall within the definition of representative because of the activities they perform. The securities activities of banks, savings and loan associations and certain other organizations have expanded over the past few years. In addition, the relationship between NASD members and these institutions has assumed a different direction. There have traditionally been personnel within these institutions engaged in securities activities such as trust officers, traders, portfolio managers, investment and financial consultants, and investment officers. In the past, however, these institutions simply referred securities business to members which charged the institutions a commission or fee. The commissions or fees earned by members from this referred business were not shared by the members with the institutions.

The NASD understands that a number of banks, savings and loan associations, and other business organizations have recently entered into contractual or other arrangements with members to refer the institution's customers to members for execution of securities transactions and in return for such business the members have agreed to compensate the institutions. This appears to be an increasing trend in the securities industry. In many cases the ability of institutions to provide brokerage services to their customers through these arrangements with members is actively promoted through advertising and publications. Although some personnel at the institutions appear to perform only clerical and ministerial functions, there do not appear to be any requirements to limit the ability of personnel to make recommendations or engage in other functions specified in the definition of "representative" in Schedule C to the By-Laws. If such persons do make recommendations to customers, however, there is a question as to whether the registration requirements of Schedule C apply since they often receive no direct compensation from members even though the employer institution does.

The Association believes the public interest is not served by exempting from the registration requirements employees of organizations who are dealing with public customers in the same way in which registered representatives of members deal with the public. At the present time, these persons are not required to take qualification examinations and function outside the supervisory responsibilities which members are required to exercise over their other representatives. The Association is concerned that the lack of any formal qualification standards, supervision and individual accountability for misconduct may create conditions which unnecessarily may expose public customers to the risk of harm. The Association believes that in fact, these persons are associated persons of members and that unless registration is a requirement, it cannot fully carry out its statutory responsibility to prevent fraudulent acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest.

The proposal is intended to apply to persons who perform securities activities on behalf of members. It is thus limited to employees or other agents of organizations who have

entered into arrangements with members by which the activities of those persons actively further the securities business of the members. Further, the only non-broker/dealer persons who would come under the new definition of "representative" in proposed subsection (b)(ii) would be persons who receive compensation from members or whose employers receive compensation from members. The Association believes that its statutory duty to regulate its members is not fully implemented by allowing a situation where persons soliciting or receiving business for members are not required to take and pass qualification examinations and be subject to disciplinary action for violations of applicable requirements. The Association believes that if a person is soliciting or receiving business for a member and the member compensates the employer, the impact on the public interest is no less great than if the person is compensated directly by the member. The need for protection against unqualified persons which is achieved by examinations and accountability through disciplinary proceedings and member supervisory responsibility is no less important. Accordingly, the effect of the proposal is to require members to register such persons so that investors will receive equal protection under the Association's rules and the federal securities laws.

Under section 15A(b)(6) of the Securities Exchange Act of 1934 (the "Act"), the rules of a national securities association shall be designed "to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade . . . and, in general, to protect investors and the public interest." The Association believes the use by members of non-broker/dealer personnel to solicit customers and further the securities business of members presents the danger that such statutory goals will not be fully acheived without appropriate regulation by the Association. The effect of registration of these persons as envisioned by the proposed rule change will ensure that they are identified to the Association, as is presently the case with respect to other registered representatives, that they have met the same standards of training and competence established by the Association for other registered representatives, that they are subject to similar supervision as that provided for persons associated with members and that they will be subject to the jurisdiction of the Association and accountable for misconduct. As such, the proposed rule change is consistent with, and in furtherance of, the stated purposes of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change does not impose any burden on competition not necessary in furtherance of the purposes of the Act. The proposed rule change will affect equally all members desiring to receive business through arrangements with non-broker/dealers. While the requirement to register, qualify and supervise persons may tend to impede the maintenance and creation of these arrangements, these requirements are identical to those imposed on persons associated with members. Moreover, as discussed above, these requirements are necessary for the Association to fulfill its statutory responsibilities.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

In NASD Notice to Members 83-72, December 20, 1983, the Association solicited comments regarding the proposed amendment. Forty-six comment letters were received. Copies of the Notice to Members and the comment letters have been submitted to the Commission as Exhibit 2 to this filing.

Sixteen of the commentators generally approved of the proposal while others raised specific objections. Some commentators discussed the Association's statutory authority to adopt this rule change, the impact of the proposed rule change on a member's supervisory responsibilities and the effect of the proposed rule change on competition. Other commentators proposed technical amendments and others urged the Association to defer action until the Commission had acted on proposed Exchange Act Rule 3b-9. The Association's Board of Governors considered all of these comments in connection with its final action on the Rule and the Association has provided a response to all comments in the filing with the Commission.

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. Specifically, the Commission requests comments on the statutory authority of the NASD to adopt this proposal, the similarity of issues raised by this proposal, and the Commission's proposed Rule 3b-9 [1] under the Act and the extent to which comments that the Commission has received on the Rule are relevant to this proposal.

With respect to the NASD's authority to adopt the proposal, the Commission specifically requests comment on the applicability of several statutory provisions. First, section 15A(b)(2) of the Act requires the NASD to adopt rules to ensure that its members and persons associated with a member comply with the federal securities laws and the NASD's rules. In this regard, section 3(a)(21) of the Act defines the term "person associated with a member," ("associated person") to mean "any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member."

The NASD, in its filing, indicates that the statutory definition of an associated person encompasses persons who solicit or receive business for a member and receive compensation for such services or whose employers receive compensation from members. The NASD states that by using the word "control" in section 3(a)(21) of the Act, Congress did not limit the definition to include only the degree of control necessary to establish the common law relationships of principal—agent or employer—employee. Rather, the NASD believes the protection of investors and other purposes of the Act require a broader reading of that term if the Act's purposes are to be achieved. The NASD reasons, therefore, that the concept of control should be construed as meaning the ability to influence, to a significant extent, the relevant activities of another person.

The NASD continues that a member has such influence in any arrangement

[1] Published for comment in Securities Exchange Act Release No. 20357 (November 8, 1983), 48 FR 51830 (November 15, 1983).

where persons solicit and receive business for the member and are paid compensation by the member for such services or their employers receive compensation. For example, under many arrangements, especially between a bank and a member, the NASD states that the member will provide for other organization with compliance manuals and will train the organization's employees to carry out the arrangement. In addition, such arrangements often provide that the member shall have the authority to reject any account being referred, to establish the terms, conditions and operations of any margin account, to instruct the organization in obtaining margin or maintenance calls, to establish the type of new account information the organization must obtain before referring a customer, and to establish the terms of discretionary accounts if the member agrees to accept such accounts. The NASD believes that this amount of influence, in addition to other examples of the member's control, is sufficient to satisfy the control requirement of section 3(a)(21) of the Act. The NASD concludes, therefore, that it has the authority to regulate persons who solicit or receive business for a member for compensation.

Second, as previously discussed in section II(a), the NASD cites section 15A(b)(6) of the Act as support for its statutory authority to adopt this proposal. That section of the Act charges the NASD to adopt rules that will prevent fraudulent practices and protect the investing public.

Finally, the Commission requests comment on the interrelationship between this proposal and the currently pending proposed Commisson Rule 3b–9. The proposed Rule 3b–9 would render the bank exclusion from broker-dealer registration in sections 3(a)(4) and 3(a)(5) unavailable to a bank that: (1) Publicly solicits brokerage business unless it meets certain specified exceptions; (ii) receives transaction—related compensation for providing brokerage services for trust, managing agency, or other accounts to which the bank provides investment advice; or (iii) deals in or underwrites securities. The Commission is continuing its review of proposed Rule 3b–9.

Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, 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 which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section. Copies of the filing and of any subsequent amendments also will be available at the principal office of the NASD. All submission should refer to the file number in the caption above and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30(a)(12).

John Wheeler,

Secretary.

[FR Doc. 85–11956 Filed 5–16–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

[Order 85–5–59; Docket 42597]

Application of Skystar International, Inc., for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order granting Skystar International, a certificate to engage in interstate and overseas charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than June 3, 1985.

ADDRESSES: Responses should be filed in Docket 42597 and addressed to the Office of Documentary Service, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590 and should be served the parties listed in attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Thomas F. Mahoney, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426–7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85–5–59 is available from our Documentary Service Division at the above address. Persons outside the metropolitan area may send a postcard request for Order 85–5–59 to that address.

Dated: May 13, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–11971 Filed 5–16–85; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Amdt. to Dept. Circ. Public Debt Series—No. 29–84]

Treasury Bonds of 2004

May 7, 1985.

Department of the Treasury Circular, Public Debt Series—No. 29–84, dated October 5, 1984, as amended and supplemented, descriptive of 115/8% Treasury Bonds of 2004, hereafter referred to as Bonds, is hereby amended effective May 17, 1985.

The following section and subsections in the original circular dated October 5, 1984, are hereby redesignated:

From 2.5 to 2.6.
From 6. to 7.
From 6.1 to 7.1.
From 6.2. to 7.2.

In addition, the following Sections and Subsections are now included. The other terms and conditions remain unchanged.

2. Description of Securities

2.5. A book-entry Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1 through 2.4 of this section are descriptive of Bonds in their fully constituted from; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a book-entry Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Bond are: Each future semiannual interest payment (hereafter referred to as an Interest Component) and the principal payment (hereafter referred to as the Principal Component).

Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a book-entry Bond to be separated into the components described in Subsection 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering is $1,600,000.

6.3. Only Bonds in book-entry form may be separated into their components. Such separation may be effected at any time from the effective date of the amendment to this circular until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the book-entry Bonds. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.4. The Principal Component will be payable on November 15, 2004.

6.5 Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.6. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

6.7. Once a book-entry Bond has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.8. Interest Components and Principal Components may be held only in book-entry form.

6.9. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Bond will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.10. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.11. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachment A is incorporated as part of this circular.

The foregoing amendment was effected under authority of Chapter 31 of Title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

Attachment A

CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of November 15, 2004, CUSIP No. 912810 DM 7

The Principal Component is designated 11⅞% Treasury Principal (TPRN) 2004 due November 15, 2004, CUSIP No. 912803 AB 9.

INTEREST COMPONENTS

Designation	CUSIP No. 912833	Designation	CUSIP No. 912833
Treasury Interest (TINT) 2004 Due		Treasury Interest (TINT) 2004 Due	
Nov. 15, 1985	HC 7	Nov. 15, 1995	HY 9
May 15, 1986	HD 5	May 15, 1995	HZ 6
Nov. 15, 1986	HE 3	Nov. 15, 1996	JA 9
May 15, 1987	HF 0	May 15, 1997	JB 7
Nov. 15, 1987	HG 8	Nov. 15, 1997	JC 5
May 15, 1988	HH 6	May 15, 1998	JD 3
Nov. 15, 1988	HJ 2	Nov. 15, 1998	JE 1
May 15, 1989	HK 9	May 15, 1999	JF 8
Nov. 15, 1989	HL 7	Nov. 15, 1999	JG 6
May 15, 1990	HM 5	May 15, 2000	JH 4
Nov. 15, 1990	HN 3	Nov. 15, 2000	JJ 0
May 15, 1991	HP 8	May 15, 2001	JK 7
Nov. 15, 1991	HQ 6	Nov. 15, 2001	JL 5
May 15, 1992	HR 4	May 15, 2002	JM 3
Nov. 15, 1992	HS 2	Nov. 15, 2002	JN 1
May 15, 1993	HT 0	May 15, 2003	JP 6
Nov. 15, 1993	HU 7	Nov. 15, 2003	JQ 4
May 15, 1994	HV 5	May 15, 1904	JR 2
Nov. 15, 1994	HW 3	Nov. 15, 1904	JS 0
May 15, 1995	HX 1		

[FR Doc. 85-11932 Filed 5-16-85; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Dept. Circ.; Public Debt Series—No. 12-85]

Treasury Notes; Series S-1988

May 8, 1985.

The Secretary announced on May 7, 1985, that the interest rate on the notes designated Series S-1988, described in Department Circular—Public Debt Series—No. 12-85 dated May 1, 1985, will be 10 percent. Interest on the notes will be payable at the rate of 10 percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-11931 Filed 5-16-85; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Dept. Circ.; Public Debt Series—No. 13-85]

Treasury Notes; Series B-1995

May 9, 1985.

The Secretary announced on May 8, 1985, that the interest rate on the notes designated Series B-1995, described in Department Circular—Public Debt Series—No. 13-85 dated May 1, 1985, will be 11¼ percent. Interest on the notes will be payable at the rate of 11¼ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-11930 Filed 5-16-85; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

[T.D. 85-88]

Customhouse Broker's License—Cancellation of Customhouse Broker's License No. 5081

Notice is hereby given that the Commissioner of Customs, on May 13, 1985, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part III of the Customs Regulations, as amended (19 CFR Part III), cancelled with prejudice the individual customhouse broker's license No. 5081 issued to Michael Alan Baker, Los Angeles, California, on November 14, 1974, for the Customs District of Los Angeles, California. The decision is effective as of May 13, 1985.

William von Raab,

Commissioner of Customs.

[FR Doc. 85-11986 Filed 5-16-85; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on the Readjustment Problems of Vietnam Veterans will be held in the Omar Bradley Conference Room, Veterans Administration Central Office, 810 Vermont Avenue NW, Washington, DC on June 13 and 14, 1985. Both meetings will begin at 9 a.m. and adjourn at 4 p.m. However, the morning session on June 13 will be held in Room 1012 from 9 a.m. to 11:30 a.m.

Both meetings will be open to the public to the seating capacity of the conference room. Anyone having questions concerning meetings may contact Mr. Edward Lord, Associate Director for Administration and Development, Readjustment Counseling Service, Veterans Administration Central Office, 202/389-5410/5419.

Dated: May 13, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-11980 Filed 5-16-85; 8:45 am]

BILLING CODE 8320-01-M

Medical Research Service Merit Review Board; Availability of Annual Reports

Notice is hereby given that the Annual Reports of the Veterans Administration Medical Research Service Merit Review Boards for Calendar Year 1984 have been issued.

The reports summarize activities of the Boards on matters related to the review, discussion, and evaluation of individual investigator initiated medical research projects. They are available for public inspection at two locations:

Library of Congress, Serial and Government Publications Reading Room LM 133, Madison Building, Washington, DC 20540

and

Veterans Administration, Medical Research Service Program Review Division (151D), Room 755, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: May 13, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-11981 Filed 5-16-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 96
Friday, May 17, 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

	Item
Farm Credit Administration	1
Securities and Exchange Commission	2
Tennessee Valley Authority	3

1

FARM CREDIT ADMINISTRATION

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Federal Farm Credit Board scheduled to be held on the first Monday of June 1985, as specified in 12 CFR 604.325(a).

DATES AND TIMES: The regular meeting of the Federal Farm Credit Board is scheduled to be held in McLean, Virginia, on June 3, 1985, 8:30 a.m. to 4:30 p.m.; June 4, 1985, 8:30 a.m. to 4:30 p.m.; and June 5, 1985, 8:30 a.m. to 12:00 Noon.

ADDRESS: Farm Credit Administration, Federal Board Room, 1501 Farm Credit Drive, McLean, VA 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Federal Farm Credit Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Monday, June 3, 1985

1. Executive Session [1]
2. Approval of Minutes
3. Review of Agenda
4. Reports of Board Members
5. Governor's Report
   (a) Report on FFCB Appointments
   (b) Senior Deputy Governor Selection
   (c) Status of Litigation Cases Involving FCA [2]
6. Progress Report on Federal Board's Leadership Agenda
7. Regulation Changes

Final

Part 611—Liquidation of Banks and Associations

Proposed

Part 620—Disclosure to Shareholders Requirements
Part 621—Accounting and Reporting Requirements
Section 250—Official Records of the Farm Credit Administration
Section 1150—Incorporation of Service Organizations
Section 5150—Real and Personal Property

Tuesday, June 4

8. Office of Examination and Supervision Report
   (a) Status Report on Serious Problem Banks [3]
   (b) FCA Supervisory Reports [3]
   (c) System Liquidity and the Systemwide Reserve Fund [3]
   (d) Salary Proposal for Funding Corporation CEO [4]
   (e) Status Report on BC International Financing
   (f) Alternatives for Pricing Bank CEO Positions
9. Office of Administration Report
   (a) Report on FCA Assessment Formula Review and Recommendation
   (b) Legislative Report
   (c) Economic Report
   (d) FCA Budget
      (1) Report on Automation
      (2) Budget Performance Report

Wednesday, June 5

10. FCS Building Association
11. Other Items

Dated: May 15, 1985.

Larry H. Bacon,

Acting Governor, Farm Credit Administration.

[FR Doc. 85-12117 Filed 5-15-85; 3:27 pm]

BILLING CODE 6705-01-M

[1] Closed Session—exempt pursuant to 5 U.S.C. 522b(c)(2).

[2] Closed Session—exempt pursuant to 5 U.S.C. 552b(c)(10).

[3] Closed Session—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

[4] Closed Session—exempt pursuant to 5 U.S.C. 552b(c)(6).

2

SECURITIES AND EXCHANGE COMMISSION.

Federal Register citation of previous announcement: May 16, 1985, 50 FR 20520.

STATUS: Closed/open meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, May 15, 1985.

CHANGE IN THE MEETING: Additional meeting/items.

The following item will be considered at a closed meeting scheduled for Monday, May 20, 1985, at 9:00 a.m.

Regulatory matter regarding financial institution.

The following item will be considered at an open meeting scheduled for Monday, May 20, 1985, at 1:00 p.m.

The Commission will hear statements from individuals regarding current tender offer practices and may discuss its 1984 tender offer legislative proposal. For further information, please contact David B.H. Martin, Jr. at (202) 272-2014.

The following item will be considered at an open meeting scheduled for Tuesday, May 21, 1985, at 9:00 a.m.

Consideration of whether to approve or disapprove proposals by the Chicago Board Options Exchange, Incorporated ("CBOE") which would increase the representation of floor members on the CBOE Board of Directors and allow CBOE members to elect the Executive Committee Chairman. For further information, please contact Holly Halsey Smith at (202) 272-2371.

(For additional open meeting scheduled for 9:30 a.m. this date, see 50 FR 20520.)

Commissioner Marinaccio, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission Priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

Barry Mehlman at (202) 272-2648.

John Wheeler,

Secretary.

May 15, 1985.

[FR Doc. 85-12161 Filed 5-15-85; 11:28 am]

BILLING CODE 8010-01-M

3

TENNESSEE VALLEY AUTHORITY (Meeting No. 1350)

TIME AND DATE: 10:15 a.m. EDT, Tuesday, May 21, 1985.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on May 8, 1985.

Discussion Items

1. Tennessee River Gorge Project

Action Items

A—Budget and Financing

A1. Adoption of supplemental resolution authorizing 1985 Series C power bonds.

A2. Resolution authorizing the Chairman and other executive officers to take further action relating to issuance and sale of 1985 Series C power bonds.

A3. Amendment to fiscal year 1985 capital budget financed from Power revenues and capital budget financed from Appropriations.

B—Purchase Awards

B1. Invitation 34-963512—Coal reclaim facility including installation for Cumberland Fossil Plant.

B2. Requisition 96—Spot coal for Johnsonville Steam Plant.[1]

C—Power Items

C1. Renewal power contract with Benton, Kentucky.

C2. Agreement with Big Rivers Electric Corporation covering arrangements for wheeling of long-term firm power and energy.

D—Personal Items

D1. Supplement to personal services contract with Wyle Laboratories, Huntsville, Alabama, providing to TVA engineering and testing support as needed for the environmental qualification assessment of safety-related equipment at Browns Ferry and Sequoyah Nuclear Plants; requested by Power and Engineering.

E—Real Property Transactions

E1. Land exchange and sale affecting Fontana Reservoir land transferred by TVA to U.S. Department of Agriculture for the use and benefit of the Forest Service as part of the Nantahala National Forest—Tract No. XTFR-3.

E2. Sale of permanent easement to Russell A. Hughes affecting approximately 0.14 acre of Chatuge Reservoir land in Clay County, North Carolina, for a road right of way—Tract No. XCHR-74H.

E3. Grant of permanent easement to Watts Bar Utility District for construction, operation, and maintenance of a public water supply system affecting 8.1 acres of Watts Bar Reservoir land in Rhea County, Tennessee—Tract No. XTWBR-131WS.

F—Unclassified

F1. Agreement between TVA and Knoxville Utilities Board to allow TVA to assist KUB by providing mapping services.

[1] Item approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: May 14, 1985.

W.F. Willis,

General Manager.

[FR Doc. 85-12056 Filed 5-15-85; 2:37 pm]

BILLING CODE 8120-01-M

federal register

Friday
May 17, 1985

Part II

Environmental Protection Agency

40 CFR Part 790
Toxic Substances Test Rule Development and Exemption Procedures; Final Rule

40 CFR Part 799
Identification of Specific Chemical Substance and Mixture Testing Requirements; Final Rule

40 CFR Parts 798 and 799
2-Ethylhexanoic Acid; Proposed Test Rule

40 CFR Part 799
Bisphenol A; Proposed Test Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 790

[OPTS-42052A; TSH-FRL 2809-7]

Toxic Substances; Test Rule Development and Exemption Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is amending the procedural rule, published in the Federal Register of October 10, 1984 (49 FR 39774), describing a two-phase rulemaking process it would use to develop certain test rules under section 4(a) of the Toxic Substances Control Act (TSCA) and to grant exemptions from those test rules under section 4(c) of TSCA. EPA is amending that rule by describing an alternative single-phase rulemaking process it will use in most cases to develop test rules under section 4(a) of TSCA and to grant exemptions from those test rules. This rule describes the procedures which persons subject to those test rules must follow.

DATES: Effective on June 17, 1985. Submit written comments on or before July 16, 1985.

ADDRESS: Submit written comments identified by the document control number (OPTS-42052A) in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, D.C. 20460; Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the United States: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: This rule amends a procedural rule, published in the Federal Register of October 10, 1984 (49 FR 39774), by prescribing an alternative process EPA will use to develop test rules under section 4 of TSCA and to grant exemptions from those test rules.

I. Statutory Background

Section 4(a) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C 2601 *et seq.*) authorizes EPA to promulgate rules requiring testing of chemical substances and mixtures to develop data relevant to determining the risks that those chemicals may present to health or the environment.

Section 4(b) of TSCA requires that each section 4(a) test rule identify the chemical substance or mixture for which testing is being required, provide standards for the development of test data, and specify deadlines for the submission of test data. The standards are to prescribe: (1) The health and environmental effects, and information relating to toxicity, persistence, and other characteristics which affect health and the environment for which test data are to be developed, and (2) to the extent necessary to assure development of adequate and reliable data, the manner in which the data are to be developed, the test protocol or methodology to be employed, and such other requirements as are necessary to provide such assurance (TSCA section 3(12)(B)).

The responsibility for required testing is borne jointly by all manufacturers (including importers) and/or processors of the subject chemical, depending on which activities give rise to the testing requirement (TSCA section 4(b)(3)(B)). Manufacturers or processors required by rule to sponsor testing may do so either individually or jointly through formation of a testing consortium (TSCA section 4(b)(3)(A)). The test sponsors must conduct the testing according to the standards provided in the test rule.

Alternatively, manufacturers and/or processors required by rule to test may choose to apply for a testing exemption under TSCA section 4(c) based on the belief that the required testing will be performed by another person subject to the rule. To approve an exemption application, EPA must find that: (1) The substance or mixture which the applicant manufacturers or processes is equivalent to the substance or mixture for which test data have been submitted or are being developed, and (2) data submitted by the applicant under a section 4 test rule would be duplicative of data already submitted or being developed pursuant to the rule (TSCA section 4(c)(2)).

II. Testing Standards and Test Rule Development

A. Prior Proposals and Rules

Under EPA's original approach to providing testing guidance, the Agency proposed to publish and codify in the Code of Federal Regulations (CFR), a number of model test methodologies. A number of proposed "test standards" for health effects were published in the Federal Register of May 9, 1979 (44 FR 27334) and on July 26, 1979 (44 FR 44054); similar proposed standards for chemical fate and ecological effects were published in the Federal Register of November 21, 1980 (45 FR 77332). The Agency planned to adopt such "test standards" or "generic methodology requirements" for all of the major types of tests which might be required under section 4 test rules. The Agency planned to incorporate by reference whichever of these test methodologies was appropriate for use in each chemical-specific test rule.

In response to comments that the codified testing standards approach would provide insufficient flexibility in test design, EPA proposed in the Federal Register of March 26, 1982 (47 FR 13012) a different approach for providing testing standards. In that notice, the Agency proposed to abandon the idea of codifying its approved generic test methodologies and to publish them as guidelines instead. It planned to make test rule development a two-phase process. In the first phase, EPA would establish by rule the effects and characteristics for which a given chemical must be tested and refer subject manufacturers and/or processors to suitable guidelines for how the testing should be performed. The subject firms would be required by a specified date to submit study plans detailing the methodologies and protocols they intended to use to perform the required tests and including proposed schedules for initiation and completion of the testing and submission of test data. In the second phase, after consideration of public comment on the proposed study plans, the Agency would promulgate another rule adopting the study plans (reflecting any modifications deemed necessary by EPA to assure the development of reliable and adequate data) as test standards for the development of test data and deadlines for the submission of test data.

In the Federal Register of October 10, 1984 (49 FR 39774), EPA issued a procedural rule adopting this two-phase process for the development of certain test rules.

B. Change in Process for Adopting Test Standards

In December 1983, the Natural Resources Defense Council (NRDC) and the Industrial Union Department of the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) filed an action under TSCA section 20 which challenged, among other things, the use of the two-phase process. *NRDC and AFL-CIO* v. *EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984). In an August 23, 1984 Opinion and Order, the Court found that

utilization of the two-phase rulemaking process was permissible. However, the Court also held that the Agency was subject to a standard of promulgating test rules within a reasonable time frame. *NRDC and AFL-CIO* v. *EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984).

Subsequent to the issuance of that Opinion, the Agency submitted papers to the Court which indicated that in order to expedite the test rule development process, EPA would utilize a single-phase rulemaking process for most test rules. The Agency also indicated that EPA would publicly announce this policy in the first test rule proposal to be published in the spring of 1985. [Declaration of Don R. Clay, at 12 (September 24, 1984)]. In accordance with that commitment, the Agency is setting forth in this rule guidelines and procedures for utilization of single-phase rulemaking in the test rules program. The Agency is issuing these procedures as an interim final rule. The Agency will apply these procedures in the development of individual test rules. The Agency believes it is unnecessary to issue these specific procedures as a proposal because the Agency has received comment on the issues relating to these test rule development procedures in response to previous proposals (see Unit II.A above). Nevertheless, the Agency is providing an opportunity for public comment on this interim final rule in the event persons wish to provide comments on these specific procedures. If these comments result in a need for changes to the rule, EPA will modify the rule as appropriate.

Section 4(b)(1) of TSCA specifies that test rules shall include standards for the development of test data ("test standards") and deadlines for submission of test data. Under the two-phase process, both test standards and data submission deadlines are established during the second phase of rulemaking. However, in the single-phase approach, EPA will propose the pertinent OTS test guidelines(s) or other suitable test guideline(s) as the required test standard in the initial notice of proposed rulemaking, and EPA will also propose time frames for the submission of the test data. Industry and other commenters may suggest an alternative methodology or modification to the OTS test guideline, i.e., the proposed test standard, during the public comment period, and such comment should state why the alternative methodology or modification is more suitable for the chemical substance in question than the EPA-proposed test standard. Comment will also be sought on the proposed data submission deadlines. All such submissions, including alternative test methodologies, will be placed in the rulemaking record and will be available for review by the public. The final rule will promulgate as the test standard either the OTS test guideline or other suitable guidelines, a modified version of these guidelines, the alternative methodology submitted by commenters, or a modified version of the alternative methodology. The proposed test standards and data submission deadlines will be open for discussion at any public meeting held pursuant to TSCA section 4(b)(5).

The single-phase approach offers a number of advantages over the two-phase approach. First, the Agency believes that the single-phase approach will shorten the rulemaking period and expedite initiation of the required testing. Secondly, because the OTS test guidelines or other appropriate methodologies will be proposed as the test standards, the one-phase process eliminates the requirement under the two-phase approach for industry to submit test protocols for approval. Yet, by allowing commenters to submit alternative test methodologies during the comment period, it preserves the flexibility of the two-phase process, but at a reduced administrative cost.

Because of these advantages, the Agency intends to utilize single-phase rulemaking for most rules promulgated under TSCA section 4(a). However, EPA will continue to utilize the two-phase process for rulemakings where the two-phase process may be a more expeditious route to a final test rule, e.g., in cases where no well-accepted test methodology is available for inclusion in a proposed test rule.

III. Exemptions

EPA issued a procedural rule, published in the **Federal Register** of October 10, 1984 (49 FR 39774), describing the process it would use to grant exemptions from test rules under section 4(c) of TSCA. EPA has not changed its approach to granting exemptions. According to the October 10, 1984 rule, each exemption applicant must submit an application establishing that the chemical for which the exemption is being sought is equivalent to the one being tested and that duplicative data would result from its testing. The Agency stated its belief that one properly designed and executed study will normally provide a sufficient basis for making a regulatory decision on a given characteristic or effect of a chemical and decided to consider all tests meeting its standards to be duplicative of each other as long as the substances being tested were equivalent. Therefore, if an exemption applicant establishes that its chemical is equivalent to a substance which is to be tested according to the standards described in the test rule, the Agency will accept the contention that testing of that applicant's chemical would yield duplicative data.

Where possible, EPA plans to select a single representative test substance and to consider all forms of the chemical "equivalent" to each other for exemption purposes. The selection is to involve, among other factors, consideration of the nature of the test, the various grades of the chemical on the market, the toxicity of the various components found in those different grades of the chemical, and the effects that various additives and impurities might have on the outcome of the testing. However, if it is necessary to require testing of two or more test substances, the Agency will require that each exemption applicant provide data to establish which test substance its chemical is to be considered equivalent to. EPA will provide guidance in each test rule concerning what data must be submitted to substantiate equivalence. For a more in-depth discussion of the Agency's interpretation of TSCA section 4(c), selection of test substance, and equivalency, the reader is directed to the **Federal Register** of October 10, 1984 (49 FR 39774).

Under the procedures issued October 10, 1984, if EPA found the applicant's chemical to be equivalent to one for which study plans had been submitted and approved, the Agency would grant a conditional exemption. Exemption applicants would be notified in a Phase II test rule or by certified mail that they have received conditional exemptions. All exemptions granted prior to completion of testing would be conditional upon the sponsor's proper completion of the required tests.

Because study plans are not required to be submitted for approval under single-phase rulemaking, EPA has incorporated the following procedure to accommodate the single-phase process. EPA will grant conditional exemptions under single-phase rulemaking following EPA's receipt of a letter of intent to conduct the required test rather than after receipt and approval of a study plan. Exemption applicants will be notified in a **Federal Register** notice or by certified mail that they have received conditional exemption. No changes have been made to the procedures for granting exemptions under two-phase rulemaking.

Unless otherwise indicated in the single-phase test rule, only manufacturers (including importers) will be expected to submit exemption applications or letters of intent to conduct testing. Normally, processors will share the testing costs with the manufacturer through the pricing mechanism. However, if the exposure or risk upon which the test rule is based is associated with processing as well as manufacturing or with other downstream activities (distribution in commerce, use, and disposal), and if manufacturers fail to submit letters of intent to conduct testing, the Agency will publish a notice in the **Federal Register** and call upon processors to submit letters of intent to conduct testing or exemption applications.

IV. Discussion of Final Rule Amendment

A. Single-Phase Test Rule Development

1. *Promulgation of a single-phase test rule.* Under single-phase rulemaking, the proposed test rule will discuss who should conduct testing (manufacturers or processors or both), the health and environmental effects or other characteristics for which testing will be required, appropriate Good Laboratory Practice requirements, OTS test guidelines or other test guidelines as proposed test standards, schedules for submission of test data, and the representative substance or substances to be tested. If more than one substance is to be tested, the proposed test rule will also give proposed instructions for showing equivalence.

The Agency will accept comment on its proposal for 60 days. An opportunity will also be provided for oral comment at a public meeting with EPA, if requested. Comments will be solicited on EPA's findings under section 4(a) of TSCA, on the particular health or environmental effects or other characteristics for which testing is proposed, on the test substance or substances proposed to be tested, on the proposed standards for the development of test data, and on the schedules for the submission of test data. Commenters may suggest alternative test methodologies or modifications to the OTS test guidelines, i.e., the proposed test standards. Such comments should state why the alternative methodology or modification is more suitable for the specific chemical substance than the EPA proposed test standards.

After considering public comments, including any oral comments, EPA will publish a final rule specifying the health and environmental effects and other characteristics for which data are required to be developed, standards for the development of test data, deadlines for the submission of data, the persons responsible for testing, the required test substance(s), and instructions for showing equivalence. The final rule will promulgate as the test standard either the OTS test guideline or other suitable guidelines, a modified version of these guidelines the alternative methodology submitted by commenters, or a modified version of the alternative methodology.

2. *Persons subject to single-phase test rule.* Each test rule will specify whether manufacturers, processors, or both are found under TSCA section 4(b)(3)(B) to be responsible for testing and submitting data on the subject chemical substance or mixture.

a. *Manufacturers only.* If testing is being required solely to allow evaluation of risks associated with manufacturing, only manufacturers of the chemical substance or mixture will be subject to the rule. Once the test rule is in effect, 44 days after publication in the **Federal Register**, each current manufacturer will have 30 days to submit, for each required test, either a letter of intent to conduct testing or an application for exemption. Each manufacturer who submits a letter of intent to conduct a specific test will be obligated to conduct testing and submit data.

b. *Processors only.* If the test rule's findings are based solely on exposure associated with processing, only processors will be subject to the rule. Each processor of the chemical substance or mixture will be required within 30 days of the effective date of the test rule to submit a letter of intent to conduct testing or an exemption application. Each processor who submit a letter of intent to conduct testing will be obligated to conduct testing and submit data.

c. *Both manufacturers and processors.* If testing is being required to allow evaluation of risks associated with manufacturing and processing, or with distribution in commerce, use, or disposal of the chemical, both manufacturers and processors will be subject to the rule. Although both manufacturers and processors are legally subject to the test rule in these circumstances, EPA expects that only manufacturers ordinarily will be required to submit letters of intent to conduct testing or exemption applications and to conduct testing and submit data. If manufacturers submit letters of intent to conduct testing and perform all the required tests, processors will not be required to submit letters of intent to conduct testing, to perform the testing, or to submit exemption applications. EPA will automatically grant such processors exemptions without requiring the submission of exemption applications.

It is expected that, in most cases, testing will be performed by the manufacturers and that part of the cost of testing will be passed on to processors through the pricing mechanism, thereby enabling them to share in the costs of testing. However, processors will be called upon to sponsor tests if manufacturers fail to do so, or may be required to provide reimbursement directly to those sponsoring this testing (See Data Reimbursement rule, 40 CFR 791.45).

Once the test rule is in effect, 44 days after publication in the **Federal Register**, each current manufacturer will have 30 days to submit, for each required test, either a letter of intent to perform the test or an application for exemption. Each manufacturer who submits a letter of intent to perform a specific test will be obligated to perform that testing.

If no manufacturer submits a letter of intent to perform a particular test within the 30-day period, EPA will publish a notice in the **Federal Register** to notify all processors of the subject chemical. The notice will state that EPA has not received letters of intent to perform certain tests and that current processors will have 30 days to submit, for each test remaining, either a letter of intent to perform the test or an exemption application for that test. Each processor who submits a letter of intent to perform a specific test will be obligated to perform the testing.

If no manufacturer or processor submits a letter of intent to perform a particular test, EPA will notify all manufacturers and processors, either by letter or by notice in the **Federal Register**, that all exemption applications concerning that test will be denied and that beginning 30 days later all manufacturers and processors will be in violation of the rule unless a manufacturer or processor submits a letter of intent within that period to perform the tests.

d. *New manufacturers and processors.* Any person not manufacturing or processing the chemical at the time the rule goes into effect, or within the first 30 days after the rule goes into effect, who later begins manufacturing or processing before the end of the reimbursement period and who is subject to the rule, will be required to submit a letter of intent to conduct testing or an exemption application for each required test by the day the person begins manufacture or processing. If both manufacturers and processors are

subject to a rule, processors are not required to submit letters of intent or exemption applications unless EPA has published a notice in the **Federal Register** telling processors to submit letters of intent or exemption applications for certain tests, in which case any person not processing the chemical at the time the rule goes into effect or within 30 days after the publication of the notice, who later begins processing before the end of the reimbursement period, will be required to submit a letter of intent to test or an exemption application for each test specified in the **Federal Register** notice by the day the person begins processing.

3. *Submission of letter of intent to conduct testing or exemption application.* Those subject to a single-phase test rule must either submit a letter of intent to perform testing, or request an exemption based on the belief that the test will be performed by another, for each of the tests required by the test rule. Persons subject to a test rule who do not submit a letter of intent to conduct testing or an exemption application will be in violation of the rule.

Letters of intent to conduct testing must specify which study or studies the respondent will sponsor and, if more than one representative form of the chemical is to be tested, which test substance will be used in each of those studies. For applicants participating in a testing consortium, the letter of intent to test must include the names and signatures of all consortium members and the identity of the primary spokesperson for the consortium. EPA will consider such notices as commitments to perform testing unless EPA agrees to the substitution of an exemption application in instances where more than one company indicates an intent to sponsor equivalent tests.

Exemption applications must list the test requirements for which an exemption is being sought and discuss the applicant's basis for believing that the tests will be performed by another party. If more than one representative substance is to be tested, the applicant must also state which test substance it believes its chemical to be equivalent to and support this assertion with the types of data called for in the test rule.

Under section 14(c) of TSCA, any person submitting data under the Act may assert a claim of confidentiality with regard to information afforded such protection under section 14(a) of TSCA. Section 14(b) severely limits confidentiality claims for health and safety data on chemicals subject to section 4 test rules. For a discussion of the Agency's policy and procedures concerning confidentiality aspects of its test rule and exemption process, the reader is directed to the **Federal Register** of October 10, 1984 (49 FR 39774).

4. *Submission of study plans.* Under single-phase rulemaking, EPA is requiring the submission of study plans no later than 30 days before the initiation of testing for each required test. EPA will not be approving study plans under single-phase rulemaking. The submission of study plan information is being required, however, to facilitate lab inspections and data audits to assure the Agency that testing which is being undertaken is reliable and adequate.

Study plans must contain:

(a) The identity of the test rule.

(b) The specific test requirements covered by the study plan.

(c) The names and addresses of the test sponsors, testing facilities, responsible administrative officials, project managers, and appropriate individual to contact for communications with EPA.

(d) Brief summaries of the training and experience of each testing facility professional involved in the study.

(e) Data on the chemical substance being tested.

(f) Study protocol.

(g) Schedule for initiation and completion of each test and for submission of interim progress and final reports to EPA.

B. Exemption Process for Single-Phase Test Rules

1. *Submission of exemption application.* Any person subject to a single-phase test rule may request an exemption from conducting any of the tests required under the test rule based on the belief that the test will be performed by another. Exemption applications must list the test requirements for which an exemption is being sought and discuss the applicant's basis for believing that the tests will be performed by another party. If more than one representative substance is to be tested, the applicant must also state which test substance it believes its chemical to be equivalent to and support this assertion with the types of data called for in the test rule.

2. *Evaluation of exemption applications.* EPA will examine exemption applications after their receipt to determine whether properly completed exemption applications have been received from all those not sponsoring testing or participating in a consortium sponsoring testing, and to evaluate equivalency claims. When a single representative substance is to be tested, all forms of the chemical will be considered equivalent to it, and the Agency will contact the applicant only if information is missing or unclear.

If two or more chemical substances are to be tested, equivalency claims will be assessed according to the criteria in the test rule. If the Agency finds an equivalency claim to be in error, or if information needed to make an equivalency determination is missing, the applicant wil be notified. If the equivalency claim is being questioned because supporting data are inadequate, the applicant will be given 15 days to provide explanatory information. If EPA finds the applicant's chemical equivalent to a different test substance than was claimed in its application, EPA will notify the applicant in writing and explain why.

3. *Approval of exemption applications.* Provided that the first condition for granting exemptions (equivalence to the test substance) has been satisfied, the second condition, i.e., duplicativeness of data, will be considered to have been met and conditional exemptions will be granted following EPA's receipt of a letter of intent to conduct that test. Exemption applicants will be notified by certified mail in a **Federal Register** notice that they have received conditional exemptions. The exemptions will be conditional because they will be given based on the assumption that the test sponsors will complete the required testing according to the specifications and schedules in the test rule. TSCA section 4(c)(4)(B) provides that if an exemption is granted prospectively, i.e., on the basis that one or more persons are developing test data, rather than on the basis of prior test data submissions, the Agency must terminate the exemption, after an opportunity for hearing, if the test sponsor has not complied with the test rule.

4. *Appeal of exemption denials.* Persons whose exemption applications are denied will be notified by certified mail or by **Federal Register** notice and may appeal that denial. Appeals must be filed with EPA within 30 days of the receipt of the letter or publication of the **Federal Register** notice denying the exemption. Appeals should include a detailed explanation of why the applicant disagrees with EPA's decision. The applicant may request a hearing. EPA will notify applicants of its decision within 60 days after EPA receives the appeal or 60 days after the hearing if the request for a hearing is granted.

5. *Termination of conditional exemptions.* Exemptions granted prospectively are conditional. The Agency will terminate the exemption if

the test sponsor does not comply with the test rule. If EPA determines that one or more of the test requirements contained in a test rule has not been fully complied with because (a) data required by the rule were not submitted by the date specified in the rule, or (b) data were not generated according to the test standards or in accordance with EPA's Good Laboratory Practice requirements, EPA will notify holders of exemptions based on that testing by certified letter or **Federal Register** notice as to its basis for believing that the testing supporting the exemptions has not satisfied the test rule's requirements and of its intent to terminate those conditional exemptions.

Such exemption holders may file written comments concerning EPA's intent to terminate such exemptions and may request an opportunity for a hearing to refute EPA's tentative decision or may submit a letter of intent to conduct the required test. Comments, hearing requests and letters of intent to test must be in writing and must be received by EPA within 30 days of receipt of the letter or publication of the **Federal Register** notice announcing the Agency's intent to terminate the exemptions. The comments and hearing requests should include a brief statement of the basis for the exemption holder's belief that the conditional exemption should not be terminated. If an exemption holder requests a hearing, a single hearing will be held by EPA to address the concerns of all conditional exemption holders objecting to the termination unless confidentiality claims preclude a joint hearing. Exemption holders will receive written notification of EPA's final decision whether the exemption will be terminated.

If the Agency finds it necessary to terminate conditional exemptions, it will notify the exemption holders to that effect, will explain the reason for the Agency's decision and will give instructions as to what actions the former exemption holders must take to avoid being found in violation of the test rule.

V. Rulemaking Record

EPA has established a public record for this rulemaking, docket number [OPTS–42052A], which contains the following information:

(1) **Federal Register** notices pertaining directly to this rule consisting of:

(a) Rule concerning two-phase test rule development and exemption procedures.

(b) Notice of proposed rule pertaining to exemptions.

(c) Proposed rule related notice describing changes in EPA's test standards policy and test rule development process.

(2) **Federal Register** notices related to this rule consisting of:

(a) Proposed health effects testing standards.

(b) Proposed chemical fate and ecological effects testing standards.

(c) Final rule concerning EPA's good laboratory practice standards.

(d) Final rule concerning data reimbursement.

(3) Comments pertaining to this rule.

This record, which includes basic information considered by the Agency in developing this rule and appropriate **Federal Register** notices, is available for inspection in the OPTS Reading Room, Rm. E–107, 401 M St., SW., Washington, D.C., from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

VI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule on test rule development and exemption application procedures is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The regulation is a procedural rule and will have virtually no effect on the economy. The rule describes the process EPA will use to develop test rules under section 4(a) of TSCA and to grant exemptions from those test rules under section 4(c) of TSCA. It will not cause price or cost increases to the regulated community. The regulation will not significantly affect competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, will be included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, Sept. 19, 1980), EPA is certifying that this rule will not have a significant impact on a substantial number of small entities.

The alternative procedures for the development of test standards described in this rule are expected to present an even smaller burden to the test sponsor than those referred to in the two-phase test rule development process described in the **Federal Register** of October 10, 1984 (49 FR 39774). Because EPA will propose pertinent OTS test guidelines or other guidelines as test standard requirements, industry will not have to develop proposed study plans for submission and approval. This will reduce the burden on industry.

In addition, by facilitating an exemption process in which a single manufacturer or processor can sponsor tests on behalf of all those subject to a TSCA section 4 test rule, this rule reduces the administrative and financial burden which those testing rules might otherwise impose on regulated industries.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2070–0033.

List of Subjects in 40 CFR Part 790

Testing, Exemptions, Environmental protection, Hazardous materials, Chemicals.

Dated: May 7, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 790 is amended as follows:

1. The authority citation for Part 790 is revised to read as follows:

Authority: 15 U.S.C. 2603.

2. In Subpart A, by revising § 790.5, to read as follows:

§ 790.5 Submission of information.

(a) All submissions to EPA under this part must bear the Code of Federal Regulations (CFR) section number of the subject chemical test rule, e.g., § 799.4400 *1,1,1-Trichloroethane.*

(b) Submissions containing confidential business information must be addressed to: Document Control Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

(c) Submissions not containing confidential business information must be addressed to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

(d) In addition, a copy of the cover memo for all submissions must be addressed to: Director, Office of Compliance Monitoring (EN-342), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

3. By revising Subpart B to read as follows:

Subpart B—Test Rule Development

Sec.
790.20 Promulgation of test rules.
790.22 Persons subject to a test rule.
790.25 Submission of letter of intent to conduct testing or exemption application.
790.28 Procedure if no one submits a letter of intent to conduct testing.
790.30 Submission of study plans.
790.32 Phase II test rule.
790.35 Modification of test standards or schedules during conduct of test.
790.39 Failure to comply with a test rule.

Subpart B—Test Rule Development

§ 790.20 Promulgation of test rules.

(a) If EPA determines that it is necessary to test a chemical substance or mixture under section 4 of the Act, it will promulgate a test rule in Part 799 of this chapter.

(b) EPA will promulgate specific test rules in Part 799 of this chapter either by a single-phase rulemaking procedure or by a two-phase rulemaking procedure.

(1) Under single-phase test rule in Part 799 of this chapter through a notice and comment rulemaking which specifies the following:

(i) Identification of the chemical for which testing is required under the rule.

(ii) The health or environmental effect or effects or other characteristics for which testing is being required.

(iii) Which test substance(s) must be tested.

(iv) Standards for the development of test data.

(v) The EPA Good Laboratory Practice requirements for the required testing.

(vi) Schedule for submission of interim reports and/or final reports to EPA.

(vii) Who must submit either letters of intent to conduct testing or exemption applications.

(viii) What types of data EPA will examine in determining equivalence if more than one test substance is to be tested.

(2) Under two-phase test rule development, EPA will promulgate a Phase I test rule in Part 799 of this chapter through a notice and comment rulemaking which specifies the following:

(i) Identification of the chemical for which testing is required under the rule.

(ii) The health or environmental effect or effects or other characteristics for which testing is being required.

(iii) Which test substance(s) must be tested.

(iv) A reference to appropriate guidelines for the development of test data.

(v) The EPA Good Laboratory Practice requirements for the required testing.

(vi) Who must submit either letters of intent to conduct testing and study plans, or exemption applications.

(vii) What types of data EPA will examine in determining equivalence if more than one test substance is to be tested.

(3) Under two-phase test rule development, test standards and schedules will be developed in a second phase of rulemaking as described in §§ 790.30 and 790.32.

§ 790.22 Persons subject to a test rule.

(a) Each test rule described in § 790.20 will specify whether manufacturers, processors, or both are subject to the requirement for testing of the subject chemical under section 4(b)(3)(B) of the Act and will indicate who will be required to submit letters of intent to conduct testing.

(1) If testing is being required to allow evaluation of risks:

(i) Primarily associated with manufacture of the chemical, or

(ii) Associated with both manufacturer and processing of the chemical, or

(iii) Associated with distribution in commerce, use, and/or disposal activities concerning the chemical, each manufacturer of the chemical will be subject and must comply with the requirements of the test rule.

(2) While legally subject to the test rule in circumstances described in paragraph (a)(1) (ii) and (iii) of this section, processors of the chemical must comply with the requirements of the test rule only if processors are directed to do so in a subsequent notice as set forth in § 790.28(b).

(3) If testing is being required to allow evaluation of risks associated solely with processing of the chemical, processors will be subject and must comply with the requirements of the test rule.

(b) [Reserved]

§ 790.25 Submission of letter of intent to conduct testing or exemption application.

(a) No later than 30 days after the effective date of a test rule described in § 790.20, each person subject to that rule and required to comply with the requirements of that rule as provided in § 790.22(a) must, for each test required, either notify EPA by letter of his or her intent to conduct testing or submit to EPA an application for an exemption from testing requirements for the test.

(b) EPA will consider letters of intent to test as commitments to sponsor the tests for which they are submitted unless EPA agrees to the substitution of an exemption application in instances where more than one person indicates an intent to sponsor equivalent tests.

(c) Each letter of intent to conduct testing must include:

(1) Identification of test rule.

(2) Name, address, and telephone number of the firm(s) which will be sponsoring the tests.

(3) Name, address, and telephone number of the appropriate individual to contact for further information.

(4) For sponsors participating in a testing consortium—a list of all members of the consortium, the signature of an authorized representative of each member, and a designation of who is to serve as principal sponsor.

(5) A list of the testing requirements for which the sponsor(s) intends to conduct tests.

(6) If EPA is requiring testing of more than one representative substance—which test substance the sponsor(s) intends to use in each of the tests.

(d)(1) Any person not manufacturing or processing the subject chemical as of the effective date of the test rule describing in § 790.20 or by 30 days after the effective date of the rule who, before the end of the reimbursement period, manufacturers or processes the test chemical and who is subject to and required to comply with the requirements of the test rule must submit the letter of intent to test or an exemption application required by paragraph (a) of this section by the date manufacture or processing begins, or

(2) When both manufacturers and processors are subject to the rule, any person not processing the subject chemical as of the effective date of the test rule described in § 790.20 or by 30 days after publication of the Federal Register notice described in § 790.28(b)(2) who, before the end of the reimbursement period, processes the test chemical and who is required to comply with the requirements of the rule must submit the letter of intent to test or an exemption application required by § 790.28(b)(3) of the date processing begins.

(e) Manufacturers subject to a test rule described in § 790.20 who do not submit to EPA either a letter of their intent to conduct tests or a request for an exemption from testing for each test for which testing is required in the test rule will be considered in violation of

that rule beginning on the 31st day after the effective date of the test rule described in § 790.20 or on the date manufacture begins as described in paragraph (d) of this section.

(f) Processors subject to a test rule described in § 790.20 and required to comply with the requirements of test rule pursuant to § 790.22(a)(2) or a **Federal Register** notice as described in § 790.28(b)(2) who do not submit to EPA either a letter of their intent to conduct tests or a request for an exemption for each test for which testing is required in the test rule will be considered in violation of that rule beginning on the 31st day after the effective date of the test rule described in § 790.20 or 31 days after publication of the **Federal Register** notice described in § 790.28(b)(2) or on the date processing begins as described in paragraph (d) of this section, as appropriate.

§ 790.28 Procedure if no one submits a letter of intent to conduct testing.

(a) *If only manufacturers are subject to the rule.* (1) This paragraph applies if testing is being required solely to allow evaluation of risks associated with manufacturing and the test rule described in § 790.20 states that manufacturers only are responsible for testing.

(2) If no manufacturer subject to the test rule has notified EPA of its intent to conduct one or more of the required tests within 30 days after the effective date of the test rule described in § 790.20, EPA will notify all the manufacturers by certified mail or publish a notice in the **Federal Register** of this fact specifying the tests for which no letter of intent has been submitted and will give the manufacturers an opportunity to take corrective action.

(3) If no manufacturer submits a letter of intent to conduct one or more of the required tests within 30 days after receipt of the certified letter or publication of the **Federal Register** notice described in paragraph (a)(2) of this section, all manufacturers subject to the rule will be in violation of the test rule from the 31st day after receipt of the certified letter or publication of the **Federal Register** notice described in this paragraph.

(b) *If manufacturers and processors are subject to the rule.* (1) This paragraph applies if testing is being required to allow evaluation of risks associated with manufacturing and processing or with distribution in commerce, use, or disposal of the chemical and the test rule described in § 790.20 states that manufacturers and processors are responsible for testing.

(2) If no manufacturer subject to the rule has notified EPA of its intent to conduct testing for one or more of the required tests within 30 days after the effective date of the test rule described in § 790.20, EPA will publish a notice in the **Federal Register** of this fact specifying the tests for which no letter of intent has been submitted.

(3) No later than 30 days after the date of publication of the **Federal Register** notice described in paragraph (b)(2) of this section, each person processing the subject chemical as of the effective date of the test rule described in § 790.20 or by 30 days after the date of publication of the **Federal Register** notice described in paragraph (b)(2) of this section must, for each test specified in the **Federal Register** notice, either notify EPA by letter of his or her intent to conduct testing or submit to EPA an application for an exemption from the testing requirements for the test.

(4) If no manufacturer or processor of the test chemical has submitted a letter of intent to conduct one or more of the required tests within 30 days after the date of publication of the **Federal Register** notice described in paragraph (b)(2) of this section, EPA will notify all manufacturers and processors by certified letter or publish a **Federal Register** notice of this fact specifying the tests for which no letter of intent has been submitted. This letter or **Federal Register** notice will give the manufacturers and processors an opportunity to take corrective action.

(5) If no manufacturer or processor submits a letter of intent to conduct one or more of the required tests within 30 days after receipt of the certified letter or publication of the **Federal Register** notice described in paragraph (b)(4) of this section, all manufacturers and processors subject to the rule will be in violation of the test rule from the 31st day after receipt of the certified letter or publication of the **Federal Register** notice described in paragraph (b)(4) of this section.

(c) *Only processors are subject to the rule.* (1) This paragraph applies if testing is being required solely to allow evaluation of risks associated with processing and the test rule described in § 790.20 states that only processors are responsible for testing.

(2) If no processor subject to the rule has notified EPA of its intent to conduct one or more of the required tests within 30 days after the effective date of the test rule described in § 790.20, EPA will notify all the processors by certified mail or publish a notice in the **Federal Register** of this fact, specifying the tests for which no letter of intent has been submitted and give the processors an opportunity to take corrective action.

(3) If no processor submits a letter of intent to conduct one or more of the required tests within 30 days after receipt of the certified letter or publication of the **Federal Register** notice described in paragraph (c)(2) of this section, all processors subject to the rule will be in violation of the test rule from the 31st day after receipt of the certified letter or publication of the **Federal Register** notice described in this paragraph.

§ 790.30 Submission of study plans.

(a) *Who must submit study plans.* (1) Persons who notify EPA of their intent to conduct tests in compliance with the requirements of a single-phase rule as described in § 790.20(b)(1) must submit study plans for those tests no later than 30 days before the initiation of each of those tests.

(2) Persons who notify EPA of their intent to conduct tests in compliance with the requirements of a Phase I test rule as described in § 790.20(b)(2) must submit proposed study plans for those tests on or before 90 days after the effective date of the Phase I rule; or, for processors complying with the notice described in § 790.28(b)(2), 90 days after the publication date of that notice; or 60 days after the date manufacture or processing begins as described in §790.25(d), as appropriate.

(3) Study plans must be prepared according to the requirements of this Subpart B and Part 792 of this chapter. Only one set of study plans should be prepared and submitted by persons who are jointly sponsoring testing.

(4) Any person subject to a test rule may submit a study plan for any test required by the rule at any time, regardless of whether the person previously submitted an application for exemption from testing for that test.

(5) Unless EPA has granted an extension of time for submission of proposed study plans, manufacturers who notify EPA that they intend to conduct testing in compliance with the requirements of a Phase I test rule as described in § 790.20(b)(2) and who do not submit proposed study plans for those tests on or before 90 days after the effective date of the Phase I test rule or 60 days after the date manufacture begins as described in § 790.25(d) will be considered in violation of the test rule as if no letter of intent to test had been submitted.

(6) Unless EPA has granted an extension of time for submission of proposed study plans, processors who notify EPA that they intend to conduct

testing in compliance with the requirements of a Phase I test rule as described in § 790.20(b)(2) and who do not submit proposed study plans for those tests on or before 90 days after the effective date of the Phase I test rule or 90 days after the publication date of the notice described in § 790.28(b)(2), or 60 days after the date processing begins as described in § 790.25(d), as appropriate, will be considered in violation of the test rule as if no letter of intent to test had been submitted.

(b) *Extensions of time for submission of study plans.* (1) The Agency may grant requests for additional time for the development of study plans on a case-by-case basis. Requests for additional time for study plan development must be made in writing to EPA. Each extension request must demonstrate why that extension should be granted.

(2) Under two-phase rulemaking, extension requests must be submitted to EPA within 60 days after the effective date of the Phase I test rule as described in § 790.20(b)(2); or for processors complying with the notice described in § 790.28(b)(2), 60 days after the publication date of that notice; or 30 days after the date manufacture or processing begins as described in § 790.25(d), as appropriate.

(3) EPA will notify the submitter by certified mail of EPA's decision to grant or deny an extension request.

(4) Persons who have been granted an extension of time for submission of study plans as described in paragraph (b)(1) of this section and who do not submit proposed study plans in compliance with the requirements of a Phase I test rule in accordance with the new deadline granted by EPA will be considered in violation of the test rule as if no letter of intent to test had been submitted as described in § 790.25(e) and (f).

(c) *Content of study plans.* (1) All study plans are required to contain the following information:

(i) Identity of the test rule.

(ii) The specific test requirements of that rule to be covered by the study plan.

(iii)(A) The names and addresses of the test sponsors.

(B) The names, addresses, and telephone numbers of the responsible administrative officials and project manager(s) in the principal sponsor's organization.

(C) The name, address, and telephone number of the appropriate individual to contact for oral and written communications with EPA.

(D) (*1*) The names and addresses of the testing facilities and the names, addresses, and telephone numbers of the testing facilities' administrative officials and project manager(s) responsible for the testing.

(*2*) Brief summaries of the training and experience of each professional involved in the study, including study director, veterinarian(s), toxicologist(s), pathologist(s), chemist(s), microbiologist(s), and laboratory assistants.

(iv) Identity and data on the chemical substance(s) being tested, including physical constants, spectral data, chemical analysis, and stability under test and storage conditions, as appropriate.

(v) Study protocol, including rationale for species/strain selection; dose selection (and supporting data); route(s) or method(s) of exposure; description of diet to be used and its source, including nutrients and contaminants and their concentrations; for *in vitro* test systems, a description of culture medium and its source; and a summary of expected spontaneous chronic diseases (including tumors), genealogy, and life span.

(vi) Schedule for initiation and completion of each short-term test and of each major phase of long-term tests; schedule for submission of interim progress and final reports to EPA.

(2) Information required in paragraph (c)(1)(iii)(D) of this section is not required in proposed study plans submitted in compliance with the requirements of a Phase I test rule if the information is not available at the time of study plan submission; however, the information must be submitted before the initiation of testing.

(d) *Incomplete study plans.* (1) Upon receipt of a study plan, EPA will review the study plan to determine whether it complies with paragraph (c) of this section. If EPA determines that the study plan does not comply with paragraph (c) of this section, EPA will notify the submitter that the submission is incomplete and will identify the deficiencies and the steps necessary to complete the submission.

(2) The submitter will have 15 days after the day it receives this notice to submit appropriate information to make the study plan complete.

(3) If the submitter fails to provide appropriate information to complete a proposed study plan submitted in compliance with the requirements of a Phase I test rule on or before 15 days after receipt of the notice, the submitter will be considered in violation of the test rule as if no letter of intent to conduct the test had been submitted as described in § 790.25(e) and (f).

§ 790.32 Phase II test rule.

(a) If EPA determines that the proposed study plan described in § 790.30(a)(2) complies with § 790.30(c), EPA will publish a proposed Phase II test rule in the **Federal Register** requesting comments on the ability of the proposed study plan to ensure that data from the test will be reliable and adequate.

(b) EPA will provide a 45-day comment period and will provide an opportunity for an oral presentation upon the request of any person. EPA may extend the comment period if it appears from the nature of the issues raised by EPA's review or from public comments that further comment is warranted.

(c) After receiving and considering public comment, EPA will adopt the study plan, including the time deadlines and reporting schedules, as proposed or as modified in response to EPA review and public comments, in a final Phase II test rule as test standards and schedules for the required testing.

§ 790.35 Modification of test standards or schedules during conduct of test.

(a) *Application.* Any test sponsor who wishes to modify the test standards or schedules for any test required under a test rule must submit an application in accordance with this paragraph. Application for modification must be made in writing to the Director, Office of Compliance Monitoring (EN-342), Office of Pesticides and Toxic Substances, EPA, 401 M St., SW., Washington, D.C. 20460, or by phone, with written confirmation to follow within 10 working days. Applications must include appropriate explanation of why the modification is necessary.

(b) *Adoption.* (1) To the extent feasible, EPA will seek public comment on all substantive changes in test standards and schedules. EPA will issue a notice in the **Federal Register** requesting comments on requested modifications. However, EPA will act on the requested modification without seeking public comment if either:

(i) EPA believes that an immediate modification to a test standard is necessary to preserve the accuracy or validity of an ongoing study, or

(ii) EPA determines that a modification clearly does not pose any substantive issues.

(2) EPA will notify the sponsor of EPA's approval or disapproval. When EPA approves a modification, it will publish a notice in the **Federal Register** indicating that the test standard or schedule has been modified.

§ 790.39 Failure to comply with a test rule.

(a) Persons who notified EPA of their intent to conduct a test required in a test rule in Part 799 of this chapter and who fail to conduct the test in accordance with the test standards and schedules adopted in the test rule, or as modified in accordance with § 790.35, will be in violation of the rule.

(b) Any person who fails or refuses to comply with any aspect of this Part or a test rule under Part 799 of this chapter is in violation of section 15 of the Act. EPA will treat violations of the Good Laboratory Practice standards as indicated in § 792.17 of this chapter.

4. By revising Subpart E, to read as follows:

Subpart E—Exemptions

Sec.

790.80 Submission of exemption applications.
790.82 Content of exemption application.
790.85 Submission of equivalence data.
790.87 Approval of exemption applications.
790.88 Denial of exemption application.
790.90 Appeal of denial of exemption application.
790.93 Termination of conditional exemption.
790.97 Hearing procedures.
790.99 Statement of financial responsibility.

Subpart E—Exemptions

§ 790.80 Submission of exemption applications.

(a) *Who should file applications.* (1) Any manufacturer or processor subject to a test rule in Part 799 of this chapter may submit an application to EPA for an exemption from performing any or all of the tests required under the test rule.

(2) Processors will not be required to apply for an exemption or conduct testing unless EPA so specifies in a test rule or in a special Federal Register notice as described in § 790.28(b)(2) under the following circumstances:

(i) If testing is being required to allow evaluation of risks associated with manufacturing and processing or with distribution in commerce, use, or disposal of the chemical and manufacturers do not submit notice(s) of intent to conduct the required testing; or

(ii) If testing is being required solely to allow evaluation of risks associated with processing of the chemical.

(b) *When applications must be filed.* (1) Exemption applications must be filed within 30 days after the effective date of the test rule described in § 790.20 or, if being submitted in compliance with the Federal Register notice described in § 790.28(b)(2), within 30 days after the publication of that notice.

(2) Exemption applications must be filed by the date manufacture or processing begins by any person not manufacturing or processing the subject chemical as of the effective date of the test rule described in § 790.20 or by 30 days after the effective date of the test rule described in § 790.20, who, before the end of the reimbursement period, manufactures or processes the test substance and who is subject to the requirement to submit either a letter of intent to test or an exemption application.

(3) When both manufacturers and processors are subject to the rule, exemption applications must be filed by the date processing begins by any person not processing as of the effective date of the test rule described in § 790.20 or by 30 days after publication of the Federal Register notice described in § 790.28(b)(2) who, before the end of the reimbursement period, processes the test substance and who is subject to the requirement to submit either a letter of intent to test or an exemption application.

(c) *Scope of application.* A person may apply for an exemption from all, or one or more, specific testing requirements in a test rule in Part 799 of this chapter.

(Approved by the Office of Management and Budget under control number 2070–0033).

§ 790.82 Content of exemption application.

The exemption application must contain:

(a) The identity of the test rule.

(b) The specific testing requirement(s) from which an exemption is sought and the basis for the exemption request.

(c) Name, address, and telephone number of applicant.

(d) Name, address, and telephone number of appropriate individual to contact for further information.

(e)(1) If required in the test rule to establish equivalence:

(i) The chemical identity of the test substance on which the application is based.

(ii) Equivalence data specified in § 790.85.

(2) If a test rule requires testing of a single representative substance, EPA will consider all forms of the chemical subject to that rule to be equivalent and will not require the submission of equivalence data as described in § 790.85.

§ 790.85 Submission of equivalence data.

If EPA requires in a test rule promulgated under section 4 of the Act the testing of two or more test substances which are forms of the same chemical, each exemption applicant must submit the following data:

(a) The chemical identity of each technical-grade chemical substance or mixture manufactured and/or processed by the applicant for which the exemption is sought. The exact type of identifying data required will be specified in the test rule, but may include all characteristics and properties of the applicant's substance or mixture, such as boiling point, melting point, chemical analysis (including identification and amount of impurities), additives, spectral data, and other physical or chemical information that may be relevant in determining whether the applicant's substance or mixture is equivalent to the specific test substance.

(b) The basis for the applicant's belief that the substance or mixture is equivalent to the test substance or mixture.

(c) Any other data which exemption applicants are directed to submit in the test rule which may bear on a determination of equivalence. This may include a description of the process by which each technical-grade chemical substance or mixture for which an exemption is sought is manufactured or processed prior to use or distribution in commerce by the applicant.

§ 790.87 Approval of exemption applications.

(a) EPA will conditionally approve exemption applications if:

(1)(i) For single-phase test rules, EPA has received a letter of intent to conduct the testing from which exemption is sought;

(ii) For two-phase test rules, EPA has received a complete proposed study plan for the testing from which exemption is sought and has adopted the study plan, as proposed or modified, as test standards and schedules in a final Phase II test rule; and

(2) The chemical substance or mixture with respect to which the application was submitted is equivalent to a test substance or mixture for which the required data have been or are being submitted in accordance with a test rule; and

(3) Submission of the required test data concerning that chemical substance or mixture would be duplicative of data which have been or are being submitted to EPA in accordance with a test rule.

(b)(1) If a single representative substance is to be tested under a test rule, EPA will consider all forms of the chemical subject to that rule to be equivalent and will contact the exemption applicant only if information is missing or unclear.

(2) If two or more representative substances are to be tested under a test rule, EPA will evaluate equivalence claims made in each exemption application according to the criteria discussed in the test rule.

(i) If EPA finds an equivalence claim to be in error or inadequately supported, the applicant will be notified by certified mail. The applicant will be given 15 days to provide clarifying information.

(ii) Exemption applicants will be notified that equivalence has been accepted or rejected.

(c) The final Phase II test rule which adopts the study plans in two-phase rulemaking, a separate **Federal Register** notice in single-phase rulemaking, or a letter by certified mail will give exemption applicants final notice that they have received a conditional exemption. All conditional exemptions thus granted are contingent upon the test sponsors' successful completion of testing according to the specifications in the test rule.

§ 790.88 Denial of exemption application.

(a) EPA may deny any exemption application if:

(1) EPA determines that the applicant has failed to demonstrate that the applicant's chemical is equivalent to the test substance; or

(2) The exemption applicant fails to submit any of the information specified in § 790.82; or

(3) The exemption applicant fails to submit any of the information specified in § 790.85 if required in the test rule; or

(4)(i) For single-phase test rules, EPA has not received a letter of intent to conduct the test for which exemption is sought; or

(ii) For two-phase test rules, EPA has not received an adequate study plan for the test for which exemption is sought; or

(5) The study sponsor(s) fails to initiate the required testing by the deadlines adopted in the test rule; or

(6) The study sponsor(s) fails to submit data as required in the test standard and deadlines for submission of test data as adopted in the test rule or as modified in accordance with § 790.35.

(b) EPA will notify the exemption applicant by certified mail or **Federal Register** notice of EPA's determination that the exemption application is denied.

§ 790.90 Appeal of denial of exemption application.

(a) Within 30 days after receipt of notification that EPA has denied an application for exemption, the applicant may file an appeal with EPA.

(b) The appeal shall indicate the basis for the applicant's request for reconsideration.

(c)(1) The applicant may also include a request for a hearing. Hearings will be held according to the procedures described in § 790.97.

(2) Hearing requests must be in writing and must be received by EPA within 30 days of receipt of the letter or publication of the **Federal Register** notice described in § 790.88(b). Hearing requests must provide reasons why a hearing is necessary.

(d) If EPA determines that there are material issues of fact, then the request for a hearing will be granted. If EPA denies a hearing request, EPA will base its decision on the written submission.

(e) EPA will notify the applicant of its decision within 60 days after EPA receives the appeal described in paragraph (a) of this section or within 60 days after completion of a hearing described in paragraph (c) of this section.

(f) The filing of an appeal from the denial of an exemption shall not act to stay the applicant's legal obligations under a test rule promulgated under section 4 of the Act.

§ 790.93 Termination of conditional exemption.

(a) EPA shall terminate a conditional exemption if it determines that:

(1) The test which provided the basis for approval of the exemption application has not been started by the deadlines for initiation of testing adopted in the test rule or modified in accordance with § 790.35; or

(2) Data required by the test rule have not been generated in accordance with the test standards or submitted in accordance with the deadlines for submission of test data that were adopted in the test rule or modified in accordance with § 790.35; or

(3) The testing has not been conducted or the data have not been generated in accordance with the Good Laboratory Practice requirements in Part 792 of this chapter.

(b) If EPA determines that one or more of the criteria listed in paragraph (a) of this section has been met, EPA will notify each holder of an affected conditional exemption by certified mail or **Federal Register** notice of EPA's intent to terminate that conditional exemption.

(c) Within 30 days after receipt of a letter of notification or publication of a notice in the **Federal Register** that EPA intends to terminate a conditional exemption, the exemption holder may submit information to rebut EPA's preliminary decision or notify EPA by letter of its intent to conduct the required test pursuant to the test standard established in the final test rule. Such a letter of intent shall contain all of the information required by § 790.25(c).

(d)(1) The exemption holder may also include a request for a hearing. Hearings will be held in accordance with the procedures set forth in § 790.97.

(2) Hearing requests must be in writing and must be received by EPA within 30 days after receipt of the letter or publication in the **Federal Register** notice described in paragraph (b) of this section.

(e) EPA will notify the exemption holder by certified letter or by **Federal Register** notice of EPA's final decision concerning termination of conditional exemptions and will give instructions as to what actions the former exemption holder must take to avoid being found in violation of the test rule.

§ 790.97 Hearing procedures.

(a) Hearing requests must be in writing to EPA and must include the applicant's basis for appealing EPA's decision.

(b) If more than one applicant has requested a hearing on similar grounds, all of those appeals will be considered at the same hearing unless confidentiality claims preclude a joint hearing.

(c) EPA will notify each applicant of EPA's decision within 60 days after the hearing.

§ 790.99 Statement of financial responsibility.

Each applicant for an exemption shall submit the following sworn statement with his or her application:

I understand that if this application is granted before the reimbursement period described in section 4(c)(3)(B) of TSCA expires, I must pay fair and equitable reimbursement to the person or persons who incurred or shared in the costs of complying with the requirement to submit data and upon whose data the granting of my application was based.

[FR Doc. 85-11587 Filed 5-16-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42034B; TSH-FRL 2815-4]

Identification of Specific Chemical Substance and Mixture Testing Requirements; Ethyltoluenes, Trimethylbenzenes, and the C9 Aromatic Hydrocarbon Fraction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is issuing a final test rule requiring the manufacturers and processors of the C9 aromatic hydrocarbon fraction obtained from the reforming of crude petroleum, other than those who manufacture and process this fraction solely as an impurity, to test the C9 aromatic hydrocarbon fraction for neurotoxicity, mutagenicity, developmental toxicity, reproductive effects, and oncogenicity (unless certain mutagenicity test results are negative). This rule requires that testing of the C9 aromatic hydrocarbon fraction be performed according to protocols submitted to and approved by the Agency.

DATES: These regulations shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on June 3, 1985. These regulations shall become effective on July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, D.C. 20460; Toll Free: (800-424-9065), In Washington, D.C.: (544-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is promulgating a final rule under section 4(a) of TSCA to require testing of the C9 aromatic hydrocarbon fraction, which contains isomers of ethyltoluene and trimethylbenzene as primary components, for the following health effects: Neurotoxicity, mutagenicity, developmental toxicity, reproductive effects, and oncogenicity (unless specified mutagenicity test results are negative). In its Tenth Report (47 FR 22585, May 25, 1982), the Interagency Testing Committee (ITC) designated mixed ethyltoluenes (ET) and 1,2,4-trimethylbenzene (1,2,4-TMB) for priority consideration for environmental and health effects testing. In its Eleventh Report (47 FR 54624, December 3, 1982), the ITC recommended that the other trimethylbenzenes be considered for testing. EPA issued a proposed test rule published in the **Federal Register** of May 23, 1983 (48 FR 23088) under 40 CFR 799.1625 *C9 aromatic hydrocarbon.* Because of the rearrangement of the specific chemical substances in Part 799, this final rule for the C9 aromatic hydrocarbon is recodified to § 799.2175.

I. Introduction

This notice is part of the overall implementation of section 4 of the Toxic Substances Control Act (TSCA, Pub. L. 94-469, 90 Stat. 2003 *et seq.;* 15 U.S.C. 2601 *et seq.*) which contains authority for EPA to require development of data relevant to assessing the risks to health and the environment posed by exposure to particular chemical substances or mixtures.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance or mixture to develop health or environmental data if the Administrator finds that:

> (A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,
> (ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or
> (B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,
> (ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

For a more complete understanding of the statutory section 4 findings, the reader is directed to the Agency's published proposed test rules on chloromethane and chlorinated benzenes (45 FR 48524; July 18, 1980) and dichloromethane, nitrobenzene, and 1,1,1-trichloroethane (46 FR 30300; June 5, 1981) for in-depth discussions of the general issues applicable to this action.

II. Background

A. Profile

1. *Ethyltoluenes.* Ethyltoluene (ET) occurs in three isomeric forms: 2-ET (ortho), 3-ET (meta) and 4-ET (para). Unless otherwise noted, the term "ethyltoluene" in this document refers to mixed ethyltoluenes, a substance containing all three isomers. ET (CAS No. 25550-14-5) is a colorless liquid readily soluble in most organic solvents, but relatively insoluble in water. ET is sufficiently volatile to enter the atmosphere, and is chemically stable under normal environmental conditions at room temperature. The individual isomers of ET are found in crude oil, gasoline, petroleum products, and have been detected in air and water, and in foods and natural products. ET, along with other nine-carbon aromatic hydrocarbons (C9), is produced during the catalytic reforming of petroleum, which is one of several processes involved in petroleum refining. A portion of this C9 stream is used as a solvent or a component in solvents. The remainder is used in gasoline blending. The solvents produced from the C9 aromatic hydrocarbons are used in paint and varnish formulations, paint thinners, printing inks, pesticide formulations and, to a lesser extent, hydrocarbon lubricating oils for refrigerants. Solvents known to contain significant amounts of ET are Suresol 100®, Aromatic 100® and Espersol 10®.

Nearly pure *ortho*-ET is synthetically produced by Dow Chemical Company and used in the production of *ortho*-vinyltoluene which is used in fiber reinforced polyesters, vinyltoluene alkyds and copolymer resins. Conversion of *ortho*-ET to these products is nearly complete. Mobil Oil Company synthesizes *para*-ET to produce *para*-vinyltoluene.

Total ET production (pure isomers plus that contained in the C9 aromatic hydrocarbon fraction) is estimated to be between 30 to 50 billion pounds annually.

Despite the ITC's designation of ET and the existence of a CAS number, EPA has been unable to identify any product containing only mixed ET isomers. With the exception of the *ortho*-ET manufactured by Dow and the *para*-ET manufactured by Mobil, ET is found exclusively as one of the major components of the C9 fraction.

2. *Trimethylbenzenes.* Trimethylbenzene (TMB) also occurs in three isomeric forms: 1,2,3-TMB, [CAS No. 526-73-8]; 1,3,5-TMB, [CAS No. 108-67-8]; and 1,2,4-TMB, [CAS No. 95-63-6]. The 1,2,4-isomer is the most abundant and commercially is the most important isomer. 1,2,4-TMB is a clear, colorless liquid, readily soluble in organic solvents, but with low solubility in water. It is a stable compound under normal conditions, it undergoes typical electrophilic substitutions such as nitration, halogenation, sulfonation and alkylation, and is oxidized in the presence of catalysts.

Similar to ET, 1,2,4-MB and the other trimethylbenzenes are produced during catalytic reforming and comprise a major portion of the aromatic C9 fraction. The uses of the C9 fraction were discussed in the profile of ET.

1,2,4-TMB is separated from the aromatic C9 reformate by the Koch Refining Company. Koch's 1,2,4-TMB production was in the range of 10 to 50 million lbs in 1977. Current U.S. production volume of isolated 1,2,4-TMB appears to be in excess of 50 million lbs, with imports in 1981 of approximately 11.9 million lbs. Phillips Petroleum Company has reported production only of research quantities of 1,2,4-TMB since 1971.

Most of the isolated 1,2,4-TMB appears to be consumed as a raw material in the manufacture of trimellitic anhydride (approximately 50 million lbs/yr) which is subsequently used in the production of plasticizers, alkyd resins, unsaturated polyesters, and other industrial chemicals.

The 1,2,3-isomer (hemimellitene) is used principally to make a musk, similar to xylene musk. It is also oxidized to anhydro-hemimellitic acid. No information is currently available to EPA on the quantities consumed through these uses, although those quantities are expected to be a small percentage of the total TMB production which is estimated to be approximately 30 billion pounds per year. EPA required reporting under section 8(a) of TSCA to obtain information on the production, exposure and release of 1,2,3- and 1,3,5-TMB (49 FR 25856). No reports have been received by the Agency to date, indicating that there is not substantial production of 1,2,3-TMB. Under the section 8(a) small manufacturer's exemption standards, contained in the Preliminary Assessment Information Rule (47 FR 26992, June 22, 1982), small manufacturers (and importers) were exempt from reporting only if the firm's total annual sales was less than $30 million and less than 100,000 pounds of the chemical were produced or imported per year at a given site.

Some of the 1,3,5-isomer (mesitylene) is separated from the C9 fraction and is used as an intermediate, primarily for production of 1,3,5-trimethyl-2,4,6-tris(3,5-di-tert-butyl-4-hydroxybenzyl) benzene, which is produced by Ethyl Corporation and sold as Ethanox 330®. It is an important antioxidant (noncoloring stabilizer) for plastics such as polypropylene, high-density polyethylene, polyamides, adhesives, specialty rubbers such as Spandex® fibers, and waxes.

B. ITC Recommendations

The ITC designated ET (mixed isomers) and 1,2,4-TMB for priority testing consideration in its Tenth Report, published in the **Federal Register** of May 25, 1982 (47 FR 22585) and recommended in its Eleventh Report published in the **Federal Register** of December 3, 1982 (47 FR 54624) that the other trimethylbenzenes (1,2,3- and 1,3,5-isomers) be considered for testing. These actions were based on the chemicals' exposure potential and the lack of sufficient information on health and environmental effects. The trimethylbenzenes were recommended for testing for neurotoxicity, reproductive effects, teratogenicity and subchronic effects. ET mixed isomers were recommended for testing for mutagenicity, metabolism and subchronic effects. Both ET and TMB were recommended for testing for environmental effects and chemical fate.

C. Proposed Rule

EPA issued a proposed rule published in the **Federal Register** of May 23, 1983 (48 FR 23086) under 40 CFR 799.1625 *C9 aromatic hydrocarbon*, which would require that testing of the C9 aromatic hydrocarbon fraction containing *ortho*-, *meta*-, and *para*-isomers of ethyltoluene and the 1,2,3-, 1,3,5- and 1,2,4-isomers of trimethylbenzene be performed. Because of the rearrangement of the specific chemical substances in Part 799, the final rule for the C9 hydrocarbon fraction is recodified to § 799.2175. Health effects testing proposed for the C9 fraction included neurotoxicity, mutagenicity, teratogenicity (developmental toxicity), reproductive effects, and oncogenicity (unless the results of certain mutagenicity studies are negative). The EPA based its proposed testing requirements on the authority of section 4(a)(1)(B) of TSCA. It found that:

1. There was no production of the mixed ETs aside from production of the C9 aromatic hydrocarbon fraction.

2. There were no data to indicate that exposure to 1,2,4-TMB or other isolated isomers of TMB was substantial and there was no basis for finding that exposure to isolated isomers of TMB may present an unreasonable risk to human health from the effects mentioned by the ITC.

3. There was no evidence of substantial release of isolated TMB isomers to the environment; furthermore, available data were adequate to reasonably predict that these isolated TMB isomers would neither persist nor accumulate in the environment in sufficient quantity that would likely result in an unreasonable risk to the environment.

4. There were substantial amounts of the C9 aromatic hydrocarbon fraction (containing ET and TMB isomers) produced in the U.S. each year (approximately 80 billion pounds).

5. A substantial number of workers and consumers were exposed to the C9 aromatic fraction through exposure to solvents and gasoline.

6. There were insufficient data on neurotoxicity, reproductive effects, teratogenicity, mutagenicity and oncogenicity upon which to reasonably determine or predict the effects of exposure to the C9 fraction, and that testing was necessary to develop such data.

7. EPA did not propose an oncogenic bioassay based on the section 4(a)(1)(B) finding because EPA considered the required mutagenicity tests as an appropriate first tier for oncogenicity. However, EPA found that unless certain of the required mutagenicity tests produced negative results, there would be insufficient basis to rule out the potential of oncogenic effects for the C9 fraction. In such circumstances, EPA found that unless a 2-year bioassay had been conducted, there would be insufficient data upon which to predict oncogenicity, and testing would be necessary to develop oncogenicity data.

8. There were sufficient data on the subchronic effects and metabolism of the C9 fraction; therefore, EPA did not propose testing of these types.

9. Although the C9 fraction was found to be released to the environment in substantial quantities, available data were adequate to predict that this material neither persisted nor accumulated in the environment in

sufficient quantity that would likely result in an unreasonable risk to the environment. For this reason, EPA did not propose that environmental effects testing be conducted at that time.

The scientific support used by EPA in making the proposed section 4 findings and for the proposed test rule was set forth in the support documents for ET and TMB, which are available from the Office of Toxic Substances' TSCA Assistance Office and in the public record for that proposed rule.

III. Public Comment

The comments received by the Agency in response to the proposed rule for ET/TMB/C9 aromatic hydrocarbons were from the American Petroleum Institute (API), the Chemical Manufacturer's Association (CMA), the American Industrial Health Council (AIHC), the Natural Resources Defense Council (NRDC), Eastman Kodak Company, and the Neurobehavioral Toxicity Test Standards Committee of the Division of Psychopharmacology of the American Psychological Association. The major issues identified during the comment period are discussed below.

A. Comments on Substantial Exposure Finding

API commented that the Agency has not demonstrated that there is "substantial exposure" to the C9 aromatic fraction through exposure to motor gasoline. API contended that the Agency's approach to the substantial exposure finding does not satisfy the requirements of section 4(a)(1)(B) of TSCA, violates the Administrative Procedures Act, and yields a conclusion "that a reasoned evaulation of the relevant data will not support." API contended that EPA had not satisfied the statutory requirements of section 4(a)(1)(B) of TSCA in support of a substantial exposure finding for the C9 fraction through exposure to gasoline because it had failed to consider all relevant data available such as: (1) The volatility of the C9 fraction, (2) monitoring studies conducted on C9, and (3) the relevant toxicological data and information available on these compounds.

1. API stated that the term "substantial exposure," where exposure to the C9 aromatic fraction is concerned, is not satisfied by showing simply that a substantial number of workers and consumers are exposed. API cited past EPA regulatory activity on dichloromethane, 1,1,1-trichloroethane and nitrobenzene as instances in which the Agency stated that it was neither feasible nor desirable to make strict numerical definitions of substantial exposure or release, intending rather to make judgments of these factors on a case-by-case basis. It was the opinion of API that the Agency had failed, in the case of C9, to make this individual judgment based on available data which, if considered in the context of section 4 as interpreted by API, would not support the substantial exposure finding.

In the case of C9 in gasoline, the Agency considered both the number of persons potentially exposed as well as the levels and durations of exposure and relevant toxicological data.

The number of persons directly exposed (inhalation, dermal, etc.) to gasoline on a frequently recurring basis, primarily service station attendants (approx. 300,000) and consumers pumping their own gasoline, is certainly large.

Data submitted by industry on exposures to driver-salesmen and service station attendants (Ref. 3) show non-detectable to very low levels of exposures to ET and TMB (92 percent of the readings for ET and TMB are below 0.1 parts per million (ppm)). No data were submitted concerning the levels of ET and TMB exposure to the millions of consumers who pump their own gasoline and are by far the greatest number of individuals exposued to gasoline vapors; however, it is unlikely that the levels of exposure to consumers substantially exceed those for service station attendants. The frequency and extent of dermal exposure of consumers, as well as trained personnel, to gasoline also may constitute an important route of exposure which the industry data do not address.

2. API contended that a reasoned evaluation of existing exposure data demonstrates that exposure to the C9 aromatics through gasoline is not substantial. A reasoned evaluation, API continued, "would consider their relevant physical and chemical properties, like the volatility of the C9s, the monitoring studies conducted on ET, 1,2,4-TMB and others C9s, and relevant toxicological data and information." The API cited volatility data on the C9 fraction, air monitoring data on gasoline vapor concentrations in employee breathing zones at four representative bulk terminals (Ref. 1), service station air sampling at seven representative service stations (Ref. 2), air monitoring data of employees exposed to gasoline in both service station and non-service station settings (Ref. 4), and exposure to gasoline components during typical vehicle refueling operations at gasoline stations (Ref. 4). The last two studies above were new submissions to the Agency. Exposure values in those two studies ranged from non-detectable (ND) to 0.16 ppm for ET and ND to 0.11 ppm for 1,2,4-TMB (detection limit of 0.01 ppm). API stated that these data support the conclusion that exposure to the C9 aromatics through exposure to motor gasoline "occurs at extremely low, indeed barely detectable, levels."

In discussing exposure levels in relation to health effects information, API stated that "an evaluation of the existing toxicity data and information on the alkyl benzenes and the C9 aromatics suggest that excessive concern over the long-term, low level exposure to the C9 aromatics in the complex hydrocarbon mixture is certainly not warranted, as these data indicate the low inherent toxicity of the C9 compounds."

Two subchronic toxicity studies (Refs. 5 and 6) on commercial C9 aromatic solvents (45 to 47 percent TMB; 31 percent ET) previously submitted to EPA were cited by API. API contended that "the absence of clinically significant toxicity at the levels tested in these studies indicates that the C9 aromatics have an extremely low probability of producing chronic effects, particularly at the levels encountered during exposure to gasoline vapor." API further cited the National Academy of Sciences (NAS) review of the toxicity of the alkyl benzenes (Ref. 8), which concluded that chronic toxic effects are unlikely, due to rapid metabolism and excretion. The NAS report further found that although the toxicity of most alkyl benzenes is not well studied, the information available to date on alkyl benzenes in general characterizes these chemicals as "relatively impotent toxic agents" and "not a serious carcinogenic hazard." API concluded that these findings are "strongly supported" by the results of the Shell/Exxon studies (Refs. 5 and 6).

API also noted that "the scores that 1,2,4-TMB and ET received in the TSCA Interagency Testing Committee (ITC) 1980 scoring exercise largely concur with this API position." API stated that in the areas of mutagenicity, carcinogenicity and teratogenicity, ET and 1,2,4-TMB received scores indicating that the ITC had no experimental data in these health effect areas and had little or no reason for suspicion.

The Agency disagrees with API's contention that the Agency has not conducted a reasoned evaluation of existing data and information on exposure to the C9 aromatics through exposures to gasoline. EPA has considered all available data on C9, and believes that information is available

which indicates that a large number of persons are exposed to gasoline, that low levels of C9 are found in vapors of gasoline, and that there is a lack of toxicological data to reasonably determine or predict the significance of those exposures. EPA believes that although the subchronic studies on C9 provide sufficient data to reasonably determine or predict certain chronic effects of C9, these studies do not address adequately the areas of neurotoxicity, reproductive effects, developmental effects, mutagenicity, or oncogenicity to permit the Agency to reasonably determine or predict the effects of C9 exposure in these areas. As the NAS study pointed out, the toxicity of most alkyl benzenes is not well studied.

3. API stated that the Agency's alleged failure to consider all relevant factors would render a final rule defective under the Administrative Procedure Act. API stated that the Agency had "violated the Administrative Procedure Act (APA) by failing to identify the basis for its conclusions that the evidence warranted a section 4 test rule in this case." API described EPA's finding as "a brief two sentences with no supportive or explanatory reasoning." API further stated that the support documents issued for ET and TMB did not articulate a rationale, discuss the factual material EPA found pertinent, discuss all of the relevant evidence, or draw a connection between the facts and EPA's conclusion.

The Agency recognizes the need to explain adequately its basis for regulatory action and believes it has done so in the proposed test rule and this final test rule for the C9 aromatic hydrocarbon fraction. The rulemaking record for this action includes all relevant information considered by the Agency and its analysis of this information.

The support documents issued for ET and TMB discussed the data available to the Agency and the adequacy or inadequacy of these data within the context of section 4. The support documents for ET and TMB provide a more than adequate basis of the Agency's assessment of testing needs based upon review and evaluation of available data pertinent to the chemical substance designated for testing. The ET/TMB support documents discuss the Agency's rationale for its findings and for each proposed test. In the final rule, the Agency is setting forth additional explanation of its findings and the basis for this action.

4. Overall, EPA still believes that there may be substantial human exposure to gasoline and its component hydrocarbons. However, as discussed in Unit III. D. below, the Agency has concluded that data obtained from the toxicological testing of the C9 fraction would have very little relevance to an assessment of the risks of exposure to gasoline. Therefore, EPA is not considering exposure to the C9 fraction through exposure to gasoline as part of its basis for finding substantial human exposure to the C9 fraction. The Agency believes that exposures associated with the manufacture and processing of the C9 fraction and the use of solvents containing significant concentrations of the C9 fraction provide more than sufficient basis for a finding of substantial human exposure under TSCA section 4(a)(1)(B)(i).

B. Comments on the Test Substance

In the proposed rule, the Agency put forth several issues for comment specifically related to the selection of the C9 fraction as the test substance:

1. Is the C9 fraction the appropriate test substance? Can a single C9 substance or mixture be selected which would be representative, for toxicological purposes, of the C9 fraction to which persons are exposed through exposure to solvents and gasoline? If so, what should the specifications be for such a substance or mixture? If not, what substances should be selected for testing and why? Should a commercial C9 fraction be used for testing instead of a synthetic mixture?

API responded that a C9 aromatic solvent could be tested for purposes of assessing unreasonable risk to solvents only and that a blend of the five commercial C9 aromatic solvents would be the most appropriate test article. API strongly emphasized that "the test material recommended by API would not be appropriate for characterizing the hazard from exposure to gasoline." API contended that ET and TMB were only minor components of gasoline and that exposure to ET and TMB vapors from gasoline was likely to be at very low concentrations. The recommended C9 aromatic solvents blend would, according to API, contain the isomers of ET and TMB in proportion relevant to the real world usage of C9 aromatic solvents in the United States.

The Agency agrees that a blend of the five commercial C9 aromatic solvents could serve as an appropriate test article, although the EPA does not believe that such a blend is essential so long as the test substance meets the criteria specified in § 799.2175(b) of the final rule. These criteria require that the test substance have a minimum ET content of 22 percent and a minimum TMB content of 15 percent with minimum total ET/TMB content of 75 percent. Data submitted by API in its comments on the proposed test rule showed a range of 22 to 45 percent ET, 15 to 71 percent TMB and 75 to 90 percent total ET/TMB composition to be representative of the ET/TMB ranges encountered in surveying the major U.S. C9 solvent products currently in use. As discussed in Unit III.D., EPA is no longer concerned with the representativeness of the test substance with respect to exposures resulting from the presence of the C9 fraction in gasoline.

2. The Agency further asked whether testing of the individual ET and TMB isomers should be required for any of the tests? If so, which isomers and which tests.

API commented that the choice of a C9 aromatic solvent to test for certain effects resulting from exposure to such solvents is relevant to making unreasonable risk determination. API stated that it did not believe that the most efficient and accurate method of determining the overall toxicity of a mixture is to test the individual components. API stated that "from a regulatory standpoint, it is often reasonable to assess risk of injury to health or environment for the material to which populations are likely to be exposed (e.g., the C9 solvent)." API noted that testing of representative mixtures has precedence in environmental regulations, citing the 1978 FIFRA guidelines, 40 CFR Part 158, as an example (Ref. 17). Public comments on the FIFRA guidelines recommended that each ingredient of a pesticide product be tested in chronic and subchronic assays, an alternative the Agency considered economically prohibitive, and stated that such testing would not significantly improve the quality of EPA's decision-making.

In the case of the C9 fraction, composed primarily of high percentages of ET and TMB isomers, the Agency agrees that testing the C9 fraction alone would most likely elucidate any potential problems that may result from exposures to the C9 fraction or solvents containing significant concentrations of the C9 fraction. Testing of the individual isomers does not appear necessary at this time in order to evaluate the risk posed by exposure to the C9 fraction and solvents containing it.

C. Comments on Persons Subject to Testing

Comments were received from Eastman Kodak Company concerning the Agency's definition of "manufacture" as that term is used under section 4(a)(1)(B) of TSCA.

Specifically, the comments related that definition to byproducts, impurities and non-isolated intermediates subject to test rules promulgated under section 4. The comments stated that the Agency should clarify in each test rule the potential application of the definition of "manufacturer" to certain persons who might otherwise be required to test, or to reimburse others required to test, because of the unintentional creation of the chemical specified in the rule during manufacture or processing of another chemical substance.

EPA is exempting from these testing requirements those manufacturers and processors which produce and process the C9 aromatic hydrocarbon fraction only as an impurity. The Agency is exempting those manufacturers and processors because the EPA findings under section 4(a)(1)(B) are based on exposures to the C9 fraction which are a result of intentional manufacture, processing, and use. In addition, it will be difficult for both EPA and manufacturers and processors to identify with complete assurance all chemical substances which contain the C9 fraction solely as an impurity. Finally, the Agency would find it difficult to apply both the exemption and reimbursement processes to those who manufacture and/or process the C9 fraction solely as an impurity. The Agency's reimbursement regulations issued pursuant to section 4(c) state that those who manufacture or process chemical substances as impurities will not be subject to test requirements unless the rule specifically states otherwise (40 CFR 791.48b). EPA finds no basis to impose such a requirement in this rule.

Persons who manufacture or process the C9 fraction as a byproduct or as a non-isolated intermediate are subject to the testing requirements set forth in this rule; these activities constitute intentional manufacture and processing of the C9 fraction. The total C9 domestic production, including that produced as a byproduct or a non-isolated intermediate, will be used in determining reimbursement shares under the Data Reimbursement Final Rule, (48 FR 41786).

D. Comments on Relevance of Test Data

API contended that testing of C9 aromatics will not produce data which will enable the Agency to make "unreasonable risk" determinations for persons exposed to gasoline; therefore, EPA does not have a basis for requiring those who manufacture or process gasoline to test the C9 aromatic fraction. The API contends that the data generated by the proposed testing required under section 4 of TSCA must be sufficient to support a comprehensive risk determination that could provide a basis for EPA to take action under TSCA section 6. Because exposure to C9 aromatics is not representative of exposure to gasoline, and because test results on the C9 aromatics will be of minimal value in assessing the risks to persons exposed to low levels of C9 aromatics in gasoline, the Agency should separate its testing of C9 aromatic based on solvent exposures from the questions of risks associated with exposure to gasoline.

API contends that C9 aromatics constitute a minor portion of gasoline vapors, and that data on the biological activity of a small part of a mixture are not useful in predicting the overall effects, let alone the risks, of the mixture. The interaction of chemicals in mixtures can, API states, modify their individual absorption, distribution, metabolism and excretion. Thus, in API's view, the toxicity of an isolated minor component may differ significantly from its toxicity as part of a mixture. In addition, the applicability of the test results on C9 aromatics to assessing gasoline risk will be further complicated by the dilution factor. API stated that, unless a component possesses extreme toxicity, it is rare that it will contribute significantly to the overall risk of the mixture, except additively or synergistically. API contends that the data available on C9 aromatics clearly show no extreme toxicity, and because the testing of this isolated material will not allow one to measure additive or synergistic effects, little is to be gained in the overall risk or hazard evaluation for gasoline exosure by gathering data on isolated C9 aromatics.

EPA does not agree that data required under section 4 must support a comprehensive risk determination, but the Agency does believe that such data must be relevant to that determination. In general, EPA disagrees with API's position that testing of a component or set of components of a mixture or complex substance will not produce data that are relevant to assessing the risk to persons exposed to the tested material as part of the mixture or complex substance. In this instance, however, after reviewing the information available to the Agency, EPA has concluded that test data on the C9 aromatics would only be minimally relevant to assessing the health risks to persons exposed to gasoline. C9 aromatics are among approximately 300 chemical species in gasoline and the levels of C9 encountered in a typical motor gasoline are relatively low (approximately 3 percent). In some cases the testing of a component present at such a level in a complex product may be relevant to assessing the risk of exposure to the complex product (e.g., if the component were found to be a potent neurotoxicant). However, in this instance existing data show unleaded gasoline to be carcinogenic in laboratory animal inhalation studies (Ref. 19). Exposure controls for gasoline are expected to be based on these data or on additional testing of gasoline aimed at characterizing its overall toxicity as a complex product. Data on the C9 aromatic fraction alone will be of minimal relevance to that overall determination. Therefore, EPA is separating its decision to require testing of C9 based on exposure to this material through its manufacture, processing, and use as a solvent from the Agency's broader consideration of testing of gasoline or regulation of gasoline exposures.

API commented further that EPA should reevaluate the economic effect of the proposed test rule for the C9 fraction because test results obtained on C9 aromatics would not be relevant to a determination of the risk of exposure from the C9 aromatics through exposure to gasoline. EPA has performed a revised economic analysis for this final rule based on the test costs and an analysis of the market characteristics of the C9 aromatic solvents. This analysis is discussed in detail in Unit V, Economic Analysis of Final Test Rule.

E. Comments on Protocol Submission and the Phased Test Rule Process

The Natural Resources Defense Council (NRDC) submitted comments concerning the need for requiring validated protocols and recommended modification of the Agency's two-phase test rule process. NRDC stated that the Agency should require test sponsors to use validated reference protocols or give adequate justification for any deviations from these protocols. NRDC cited the Agency's two-phase test rule process (as described at 47 FR 13012; March 26, 1982) as an apparent "reversal" of EPA's previous policy which had required that specific EPA, FIFRA or OECD testing protocols be followed by persons required to test under section 4(a) of TSCA. The proposed policy of demanding only that test sponsors select protocols listed in Agency guidelines, or develop protocols on their own, was cited as an approach "apparently developed in response to industry criticism that the requirements are too rigid and would inhibit innovation in

testing methodologies." The commenter further characterized this decision as compromising the recognized need for reliable and adequate data.

The Agency disagrees with NRDC's view that the two-phase test rule process based on EPA's review and approval of chemical-specific study plans would compromise the ability of the test rule to generate reliable and adequate data. In general, EPA believes that issuance of generic test methodology guidelines, rather than generic test requirements provides more flexibility for test facilities, test sponsors, and EPA itself in arriving at cost-effective, scientifically sound test methodologies, and facilitates the incorporation of scientific judgement where necessary on a chemical-specific basis. This approach also encourages scientific innovation and the development of more sophisticated and scientifically advanced testing methodologies. With either single-phase or two-phase rules a public comment period and an opportunity for a public meeting will allow interested parties to review and comment on the chemical-specific test standards. After this comment period, EPA will issue a final rule adopting chemical specific test standards as required under section 4(b)(1)(B) of TSCA. A more detailed discussion of the Agency's views on these and other related issues may be found in the Agency's Test Rule Development and Exemption Procedures final rule (49 FR 39774; October 10, 1984).

NRDC also stated that the Agency should modify the timing of the two-phase test rule development process so that subsequent test rules, complete with specific protocols for testing, are published within one year of EPA's receipt of the ITC's recommendations. NRDC contended that application of the two-phase rulemaking process in the case of the C9 rule has resulted in the Agency's failure to meet the statutory deadlines for initiating rulemaking.

EPA does not agree that the Agency has not met its statutory responsibility for mixed ET's and 1,2,4-TMB. The Agency's statutory obligation under TSCA section 4(e)(1)(B) was fulfilled with the issuance of the proposed test rule for the C9 fraction; in so doing EPA initiated rulemaking under section 4(a) to require testing appropriate to the actual exposures to mixed ETs and 1,2,4-TMB.

EPA shares NRDC's desire that test rules should be completed as rapidly as possible and the Agency is continuing to explore ways to better achieve that objective. EPA believes that in most instances in the future it will be able to minimize the time required to complete test rulemaking by proceeding in a single phase to propose test standards along with the required tests. Nevertheless, having initiated the rulemaking for the C9 fraction using the two-phase process, EPA believes that the most expeditious way to complete that rulemaking is to continue with the two-phase rulemaking.

F. Comments on Proposed Health Effects Testing

1. *Use of C9 fraction to extrapolate risk for ET/TMB.* In the proposed rule for C9's, the Agency asked whether a negative result or a high no-observed-effect level (NOEL) on the C9 fraction could be used to make reasonable predictions that the individual ET and TMB isomers would not present an unreasonable risk of that effect.

API responded that a negative result (or a high NOEL) for the C9 solvent could be interpreted to mean that it was likely that the individual ET and TMB isomers had no observable effect at the concentration (dose) of the individual isomers administered. API stated that, unlike gasoline, C9 aromatic solvents are composed of substances, i.e., the individual ET and TMB isomers, which boil over a narrow range and are similar in chemical and biological properties. API maintained that the toxicity of such mixtures is generally the sum of that of its individual components, especially for low dose exposure. Therefore, API stated, a determination of the toxicity from exposure to C9 solvents allows inference that its individual components would manifest similar toxicity.

The Agency agrees with API that assessing the toxicity of the C9 mixture as a complete entity should provide a reasonable upper bound for the toxicity of the individual ET TMB in the C9 mixture. (API reported the total percentage ET/TMB content of representative U.S. C9 solvent at 75–90 percent; with a median of 80 percent).

2. *Route of exposure for test article.* The Agency also asked what the routes of exposure for the test substance should be.

API believed that the question related directly to the development of test protocols, and therefore should more appropriately reside in Phase II of section 4 rulemaking, as the Agency described in its notice concerning the test rule development process (47 FR 13012, March 26, 1982), wherein the Agency stated that not until Phase II would sponsors be required to develop test protocols. However, if the Agency proceeds to define the route of exposure in Phase I, the general API comment was that, where applicable, if a route other than that expected in humans is used, it should be justified.

The Agency agrees in principle that where possible the route of exposure for testing should reflect that expected to be encountered in the actual exposure situation to be addressed. The Agency believes, however, that when the two-phase test rule process is used it is appropriate to specify the route of exposure in Phase I. EPA considers such specification to be part of defining the effects for which testing is being required, particularly when more than one route of exposure is possible and the Agency is interested in the effects resulting from a particular type of exposure. There generally will be a significant interelationship between the exposures giving rise to the test rule (which are addressed in the Phase I rulemaking) and the appropriate route of exposure for testing. However, should there be questions of the technical feasibility of conducting a test with the preferred route of exposure which come to light only during the development of study plans, these issues will be addressed in the Phase II rulemaking. In the case C9, the Agency believes dermal and inhalation exposures can be expected to occur. The Agency has specified the inhalation route of exposure for testing of C9 because it believes the inhalation route is the predominant route encountered, and the Agency is particularly interested in the effects resulting from inhalation exposure to the C9 fraction.

3. *Neurotoxicity.* Comments were received from the Neurobehavioral Toxicity Test Standards Committee of the American Psychological Association, concurring with the Agency's recommendation for neurotoxicity testing of the C9 fraction as set forth in the proposed rule. The commenter specifically cited the appropriateness of such testing in the case of the C9 fraction, because these types of violatile lipophilic materials can penetrate into and affect the central nervous system. Because the effects of long-term exposure on the structure and function of the nervous system are unknown and are of concern, the comments characterized the proposed testing as desirable for predicting the potential of exposure to C9 to cause adverse effects on behavior and the nervous system.

The Agency agrees with the comment that examination of neurobehavioral toxicity be included in its evaluation of the C9 fraction because such evaluations have been demonstrated to be relevant in assessing the adverse behavioral effects of inhaled gases and

vapors. The Committee commented that the subchronic data collected would not be useful, however, in establishing short-term exposure threshold limit values (STEL–TLV) to protect against acute performance impairment. While the proposed subchronic testing is not specifically designed to determine a STEL–TLV, EPA believes that the conduct of the subchronic study, combined with existing data, will provide sufficient data to reasonably predict the acute neurotoxic effects of the C9 fraction.

API contended that the Shell 90-day inhalation study and the 1-year chronic study submitted in 1982 were adequate to address the neurotoxic effects of the C9 fraction in rodents, and that an additional 90-day study on C9 as proposed by the Agency was not a necessary or cost-effective implementation of section 4 of TSCA.

The Agency proposed that a 90-day subchronic neurotoxicity test, with functional and neuropathologic components, be performed on the C9 fraction for reasons set forth in the ET support document. Although the Shell study was specifically oriented towards the detection of neurotoxic effects, techniques the Agency believes are necessary to specially prepare neural tissue for histopathologic examination were not used in this study. Furthermore, the primary effects seen in both oral and inhalation toxicity were functional changes, which have not yet been adequately studied. Therefore, the Agency is requiring an additional 90-day study to further investigate neurotoxic effects.

4. *Mutagenicity.* API, CMA, and AIHC submitted comments on the proposed mutagenicity testing requirements for the C9 fraction.

a. *Guidelines for human risk assessment from mutagenicity data.* CMA and AIHC stated that EPA should articulate the human health risks to which the mutagenicity test data are intended to relate, and the methodologies by which the data will be used to assess those risks.

EPA is proposing to use its test scheme in two ways: (1) As a screen to determine the need for long-term testing to characterize the oncogenic potential of the C9 fraction; and (2) to determine whether exposure to the C9 fraction may pose a threat to future generations by inducing either heritable gene mutations or chromosome aberrations.

Risk estimates have been made for humans from mutagenicity test results. For gene mutations, for example, data derived from the mouse specific locus test with the antineoplastic drug procarbazine have been used to estimate the risk of human mutations (Ref. 7).

In this example, the spontaneous mutation rate in humans was calculated by estimating the frequency of genetic disease which might result from new mutations. Second, data from radiation experiments in mice were used to extrapolate from increased mutations to obvious skeletal disorders. Third, an estimate was made to extrapolate from this restricted class of disorders to genetic disease in general. The major assumptions here were an assumed equivalency between mice and humans and an assumed equivalency between radiation-induced mutations and those induced by chemicals. The major health impacts estimated in this way will be from autosomal dominant and X-linked recessive syndromes, with negligible impact from other recessive disorders.

Risk estimates for chromosomal aberrations have also been made (Refs. 13 and 14). The heritable chromosome aberration of concern was reciprocal translocation. The majority of conceptuses with such translocations die *in utero*. Using a somewhat limited human data base and experimental work in the marmoset, it was estimated that 2 to 10 congenitally malformed children arise per million conceptuses for each rad of paternal X-ray exposure. If one knows: (1) The spontaneous frequency of translocations in humans and (2) the increase which results from chemical exposure in laboratory mammals, and if one assumes equivalency for rodents and humans and X-rays and chemicals (or knows how to correct for non-equivalency), the Agency believes that one can calculate the increased disease burden resulting from a defined exposure.

The Agency recognizes that all estimates made using such data are gross estimates at best, that many of the assumptions may not be proven valid, and that there is a great dependence on incomplete data bases. Nevertheless, it is the Agency's view that heritable mutation is a serious threat to the health and well-being of the population and that mutagenicity is a valid regulatable health endpoint. The tests that will be required by this test rule should provide a basis for EPA to determine if exposure to the C9 fraction presents a risk of heritable mutation that would warrant control.

CMA also stated that it was premature to require mutagenicity testing until the Agency had adopted scientifically sound guidelines on mutagenicity risk estimation, that the goals of Phase II of the Gene-Tox Program had still not been finalized nor had the conclusions of this program been announced. Phase II's announced goals include an assessment of the strengths and weaknesses of various test systems for human risk assessment, and development of techniques for using experimental data to evaluate mutagenic risks to the human population.

The Agency has updated its guidelines for mutagenicity risk estimation first published in the **Federal Register** of November 13, 1980 (45 FR 74984). These guidelines treat mutagenicity as a separate endpoint from oncogenicity, and provide guidance on how EPA intends to use the results of mutagenicity testing to estimate human risk (49 FR 46314; November 23, 1984). Public comment has been solicited on the updated guidelines, but in the interim they are being used for Agency assessments.

The report of the Goal 8 Subcommittee of the Gene-Tox Program entitled "Evaluation of Existing Mutagenicity Bioassays for Purposes of Genetic Risk Assessment" is presently undergoing prepublication review prior to publication in "Mutation Research Reviews in Genetic Toxicology". In essence, the report states that there is a high degree of correlation between positive responses in lower tier, nongerm cell assays, and those observed in mammalian germ cell assays; it further concludes that these nongerm cell assays may be used to identify potential mammalian mutagens.

These potential mammalian mutagens can be further tested using germ cell assays which confirm their mutagenic potential and allow one to make human risk estimates from the resulting data. This approach is compatible with the testing proposed by the Agency in the C9 test rule in which positive responses in lower tier assays lead to additional testing of presumptive germ cell mutagens in assays for heritable gene mutations (specific locus assay) and chromosomal aberrations (heritable translocation).

The Gene-Tox Program has adequately validated as meaningful and repeatable the tests included in the final C9 rule (Ref. 12). Furthermore, the test sequence has been designed so that one test compliments the others. In its TSCA section 4 program, the Agency uses a standardized sequence and a model set of tests as a starting point in defining the mutagenicity testing scheme for each chemical, but varies the tests used in the sequence when a chemical's properties or data on the test chemical or related chemicals indicate such a need. Commenters have not suggested any modification of the test scheme in their

comments on the proposed rule other than elimination of certain tests as discussed in Units III.F.4.c. through h., below. The Agency believes that its current model test sequence approach is technically defensible and offers sufficient flexibility to address chemical specific issues.

Likewise, the Agency's approach to the identification of mammalian mutagens is compatible with that of the National Academy of Sciences (Ref. 9). Here too, a series of positive responses in lower tier assays leads to designation of a chemical as a potential mammalian mutagen. Mammalian mutagens are confirmed by positive results in assays which measure heritable mutations.

In summary, the Agency feels that there is a consensus in the scientific community on both the need for, and manner of, identifying mammalian mutagens and that its proposed scheme for identifying these agents is in keeping with those recommended by experts in the field of mammalian mutagenesis. Further, while it is recognized that there is, as yet, no generally accepted single methodology for estimating human risk from mutagenic agents, it is the Agency's view that such methodologies do exist and are usable. Therefore, the Agency concludes that it is appropriate at this time to require mutagenicity testing of the C9 aromatic fraction to obtain data with which to perform risk estimates with a view to regulation should the C9 fraction prove to be a mammalian germ cell mutagen.

b. *Automatic triggers in mutagenicity testing scheme.* In the proposed rule, EPA utilized a mutagenicity testing scheme which included three tiers. The Agency proposed that if positive results were obtained in the lower tiers, manufacturers and processors would be automatically required to conduct the next higher level of test(s). Both CMA and AIHC stated that EPA should eliminate automatic triggers in its mutagenicity testing scheme, and adopt instead a scheme which permits assessment of the weight-of-evidence and consideration of alternative testing approaches.

EPA believes the use of automatic triggers is appropriate in certain portions of its mutagenicity testing scheme for the C9 fraction, but has modified its approach in other portions to take into consideration the concerns raised by the commenters. The Agency's rationale for employing a mutagenicity testing scheme utilizing automatic triggers is discussed in part in Unit III.F.4.a., above. In addition, EPA uses the automatic trigger sequence in section 4 rulemaking as a more expedient means of obtaining necessary test data than that afforded by using a stepwise tiering approach, which would rely on evaluation and quantification of a variety of individual test results as a basis for determining if higher-level testing is necessary. Under the Agency's preferred section 4 rulemaking process, test sequences and results which trigger higher level testing are defined before testing sequences are initiated. No additional regulatory actions by EPA are required between testing tiers. Under a stepwise tiered testing arrangement, a new rulemaking describing the next test sequence and interpretation of results would have to be performed for each level in the tiered sequence. This would result in a very time consuming and laborious process of individual rulemaking for individual testing requirements on a step-by-step basis. The Agency does not believe such an approach would be a timely or cost effective use of Agency resources.

Although the Agency believes the use of automatic triggers is suitable for many of the mutagenicity tests in the C9 test rule, the Agency does acknowledge that the incorporation of scientific judgment may be necessary in circumstances where reference data are not as extensive or where a test is more controversial in nature. For instance, because of the limitations, particularly the sensitivity, of the highest tier mutagenicity tests, EPA believes that a step allowing the Agency's judgment as to the need for those tests would be appropriate. As described below, such a decision step has been incorporated in the final rule for the C9 fraction. In contrast, EPA believes that because of the much more extensive reference data available for conducting and interpreting the results of the first and second tier mutagenicity tests it will not be necessary for the Agency to conduct on independent evaluation of the results prior to requiring that higher tier testing be performed.

To incorporate appropriate scientific judgment prior to the use of end-point mutagenicity tests, EPA has decided to utilize automatic triggers between the first and second tier tests, and a "presumptive automatic trigger and opt-out" approach between second tier tests and the final or "end-point" tests in this final test rule for C9 aromatic hydrocarbons. Under this approach, EPA is promulgating a tiered testing scheme for mutagenicity for the C9 fraction with automatic triggers to additional mutagenicity testing. Before the last tier, EPA will hold a public program review if the results of the previous tier test are positive. Public participation in this program review will be either in the form of written public comments or a public meeting. Request for public comments or notification of a public meeting will be published in the **Federal Register.** If, after review of public comment, no change in the test sequence is deemed necessary EPA will provide formal notification to the test sponsor that the next tier test should be conducted. If the Agency believes additional testing is no longer warranted as a result of the earlier test results, public comment, scientific judgment, and other appropriate factors, EPA will issue a proposed amendment to "opt-out" by repealing the existing requirement and, after consideration of public comment on the proposed amendment, issue a final decision whether it will rescind the rule requirement. This approach offers the advantage of allowing the incorporation of scientific judgment based on the weight of the evidence after the initial testing tiers have been completed, while not significantly delaying higher tier testing where it is deemed necessary.

EPA has decided not to use the public program review approach between the lower tier mutagenicity tests for the C9 aromatic hydrocarbon test rule. EPA believes the use of automatic triggers between these tiers is suitable. It should be noted that this does not exclude the public from requesting modifications in the test program. Provisions are available under section 21 of TSCA for the public to petition EPA at any time to amend a rule under section 4.

c. *Sex-linked recessive lethal (SLRL) assay in Drosophila.* API and CMA both submitted comments questioning the applicability of the *Drosophila* SLRL assay to predict heritable genetic effects.

CMA cited several limitations of the *Drosophila* SLRL assay which it considered to be sufficient cause for eliminating this assay from the mutagenicity testing scheme. These limitations include its performance in the International Collaborative Study (Ref. 10); problems with dosimetry; problems with data evaluation because of the occurrence of clusters; differences in metabolism between insects and man; and incomplete data evaluation by the Gene-Tox Work Group on *Drosophila.*

EPA responds to these comments in the reverse order to which they are listed above: (1) The Gene-Tox Work Group report on the SLRL assay is complete and has appeared in the open literature (Ref. 11). The Work Group concluded that one major advantage of the assay is its objectivity in testing for transmissible mutations in a eukaryotic test system. In addition, using a list of carcinogens developed for Phase I of the

Gene-Tox Program, the Work Group found a 90 percent correlation between in vivo carcinogenicity and the SLRL assay. Using a revised carcinogen list developed during the second phase of the Gene-Tox Program, the Phase II Assessment Panel found an 88 percent correlation between results in the SLRL assay and in vivo carcinogenicity.

(2) CMA is correct in stating that there are metabolic differences between insects and humans. However, the Agency considers these differences to be no greater than those between bacteria and humans such as in the Ames assays, and further believes that the in vivo metabolism afforded by *Drosophila* with intact enzyme systems and repair mechanisms is superior to the artifically manipulated in vitro metabolic activation systems used with bacterial and in vitro cell culture systems.

(3) Statistical methodology which allows for the appearance of clusters exists and should be used in evaluating data from the SLRL assay. Such methods are discussed in the Gene-Tox Work Group report (Ref. 11).

(4) Dosimetry is a generic problem in toxicology and is not unique to studies with *Drosophila*. Good toxicologic practices help to minimize this problem which is not a valid reason for eliminating the SLRL assay from the proposed testing scheme. Also, it should be remembered that results from this assay will not be used for quantitative risk assessment, but rather as a qualitative indication of potential mammalian mutogenicity which will be confirmed by subsequent testing.

(5) A review of the data from the International Collaborative Study (Ref. 10) fails to confirm the 27 percent accuracy figure cited by CMA. Six of 17 carcinogens and 8 of 9 noncarcinogens were correctly identified in this study. Overall, 14 of 26 chemicals were correctly identified, which gives an accuracy rate of 53.8 or 54 percent, not 27 percent as stated by CMA.

In summary, EPA believes that the SLRL assay is sufficiently validated to be used as a qualitative indicator of potential mutagenicity and oncogenicity as outlined in its proposed test scheme. This opinion is shared by the NAS Report (Ref. 9), which recommends the use of this assay in a scheme to identify environmental mutagens. In addition, both Phase I and Phase II of the Gene-Tox Program found the SLRL assay to be ready for use in testing programs. The Phase I Work Group found advantages in the use of this assay for both screening and hazard evaluation (Ref. 11). The Phase II report on the developmental status of bioassays in genetic toxicology found that the SLRL assay was one of the ten assays which could be considered as "routine", using as criteria the number of facilities conducting the test, the number of chemicals and chemical classes represented in the Gene-Tox data base, the uniformity of protocol development and the number of assays conducted per year in all facilities (Ref. 12).

d. *Mouse specific locus assay.* CMA and API both opposed the inclusion of the mouse specific locus assay on the grounds that the test is inappropriate for mutagenic risk evaluation due to lack of chemical data to validate the results, and on the grounds that it is not intended for human risk estimation. They further commented that the test is costly, insensitive, and available only in a limited number of testing facilities.

EPA disagrees with the contention that the mouse specific locus test is not intended for human risk estimation. The assay has been used to test for the genetic effects of both chemicals and radiation. This assay is the primary source of the data used by the National Research Council Advisory Committee on Biological Effects of Ionizing Radiation (BIER) and the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR) (Refs. 13 and 14) to estimate the genetic risk of radiation. EPA is aware that the NAS (Ref. 9) has recommended that assays such as the dominant skeletal and cataract mutation assays be used for human risk estimation because they measure dominant mutations (as opposed to the recessive mutations detected in the mouse specific locus assay) and permit sampling of a larger portion of the genome than does the specific locus assay. EPA further recognizes that the mouse specific locus assay is subject to many of limitations cited by CMA. Nevertheless, it is the Agency's view that the specific locus assay, in spite of its limitations, is suitable for human risk estimation, primarily because its data base of test chemicals exceeds those of the dominant skeletal and cataract mutation assays and because it has been used for risk estimation with both chemicals and radiation. Further, the Agency believes that the limitations cited by CMA for the mouse specific locus assay apply to both the dominant skeletal and cataract mutation assays as they would to most, if not all, assays currently in use for heritable mutations in mammals. These assays are all subject to limitations in number of chemicals that can be tested and the number of facilities which can perform the assay because of the cost, time, and numbers of animals required. They are not intended as screening assays, but rather as confirmatory tests for heritable mutations. They should be considered equivalent in time, cost and facilities needed to those required to perform a two-year assay for oncogenicity.

e. *Cytogenetic assays.* API and CMA both questioned the Agency's rationale in requiring an in vitro cytogenetic assay in the tiered testing sequence, since an in vivo assay is required upon a negative finding in the in vitro test. API cited the in vivo results as a more definitive endpoint in the evaluation of mutagenic effect.

EPA has included both an in vitro and an in vivo cytogenetics assay in its bottom tier of testing to maximize detection of potentially clastogenic agents. An in vitro cytogenetics assays precedes the in vivo cytogenetics assay because it is a easier to perform than the in vivo cytogenetics assay and is conservative of time, resources, money and animals. Further, the Agency is of the opinion that in vitro cytogenetics assays are sufficiently predictive of both carcinogenicity and potential germ-cell mutagenicity that further testing can be triggered as a result of positive results in this assay. However, the Agency also believes that the in vitro test is subject to sufficient limitations, particularly in the use of in vitro metabolic activation systems, that a negative response, particularly one which occurs in the face of technical difficulties with metabolic activation systems or in the face of erratic or narrowly defined toxicity curves, should be confirmed by an in vivo assay. As additional information on these two test systems becomes available, the Agency will continue to consider the need to include in future test rules both in vitro and in vivo cytogenetics assays and may eliminate one or substitute other assays for the ones now required to determine clastogenicity.

f. *Dominant lethal assay.* API stated that the potential for inducing heritable chromosomal damage could be addressed initially in the reproductive studies, rather than through the use of the dominant lethal assay or the heritable translocation assay. EPA does not agree with this assessment. The use of the dominant lethal assay and the heritable translocation assay provides a more definite evaluation of the potential for heritable chromosomal damage than does the reproductive study, which is oriented towards the detection of more generally defined adverse effects.

CMA did not agree with the inclusion of the dominant lethal test as a higher tier assay because, they claimed, it is: (1) Insensitive because of the high

frequency of spontaneous embryonic death, (2) difficult to interpret because death may be caused by nongenetic events; (3) there are strain differences among mice; and (4) the assay measures chromosomal events indirectly.

EPA is aware of the criticisms directed at the dominant lethal assay by CMA. EPA disagrees with the contention that there is a "high" degree of spontaneous embryonic death, although some fetal wastage does occur in the untreated control population. It is for this reason that one should include untreated control animals in each experiment and should compare experimental data both to concurrent and historical control data for the laboratory performing the assay.

Embryonic death may occur as a result of nongenetic events. However, EPA is of the opinion that it is safe to assume death is a result of chemical treatment when it is statistically increased above control levels in the treated population. Further, because chromosomal aberrations are known to result in fetal wastage (Ref. 15), EPA also believes that for a chemical which has been shown to induce chromosomal aberrations either in vitro or in vivo, it is safe to assume that increased fetal death is a result of chemically induced chromosomal aberrations in the treated population. CMA's argument about strain differences in this assay is spurious. Species and strain differences are known to occur in all assays for toxicological effects and are neither unique to the dominant lethal assay nor germane to the rejection of this assay in a testing program.

In summary, EPA considers the dominant lethal assay to be an appropriate second tier assay for chromosomal aberrations because it provides evidence that the chemical in question reaches germ cell tissues where it induces chromosomal aberrations which are transmitted to the next generation. In this context, the NAS also recommends the use of the dominant lethal assay to confirm suspected mammalian mutagenicity (Ref. 9). Once this activity has been confirmed, NAS further recommends the use of the heritable translocation assay for human risk estimation. Recognizing that other assays which provide such evidence are in development, EPA will be reviewing its position on the dominant lethal assay in the future and may require other tests in place of, or in addition to, this assay in other test rules.

g. *Heritable translocation assay.* CMA objected to the use of the heritable translocation assay, primarily on the grounds that it is a research tool unsuitable to use in a testing program. CMA's primary support for this contention is a quote from the Gene-Tox Work Group Report (Ref. 16), which states: "It should be clearly understood that the heritable translocation test is still under development and that it is not ready for wide scale use in testing."

CMA cited an inadequate data base as one of the limitations of this assay, along with high cost, and an insufficient number of available facilities to perform the assay. These are the same limitations CMA applied to the mouse specific locus assay and EPA's response to them is the same as that articulated above for the mouse specific locus assay. In addition, the heritable translocation assay is available in more facilities than the specific locus assay and is not subject to limitations with source and stock of mice. Although the present data base consists of alkylating agents or agents which are converted to alkylators in vivo, EPA agrees with Gene-Tox report which states that the ". . . test appears appropriate when any compound (regardless of class) gives evidence of dominant-lethal and/or cytogenetic effects in germ cells".

EPA feels that CMA has misconstrued the essential meaning of the characterization of this test by the Work Group. The Gene-Tox report referred to use of the assay in a screening program. EPA agrees that this assay should not now, and because of time and cost consideration, most likely will never be, considered to be a part of a screening program for the identification of potential mutagens. Rather, EPA is suggesting that this assay be used to confirm germ cell mutagenesis. The Gene-Tox Report states ". . . its [the heritable translocation assay's] use is in the final phase of the testing program, when mutagenicity to mammalian germ cells is evaluated and data for use in genetic risk assessment are obtained" (Ref. 16). The NAS also recommended that the heritable translocation test be used for human risk estimation once a suspect mammalian mutagen, identified on the basis of results in an in vitro cytogenetics assay, has been confirmed in a dominant lethal assay (Ref. 9).

Finally, CMA has raised a question about the use of negative results for risk estimation in the face of positive results in other test systems. This problem is not unique to the heritable translocation assay but it also a consideration for results from the mouse specific locus test. For the purposes of risk estimation, agents producing negative results in these tests will have to be presumed nonmutagens and risk estimation for mutagenicity will not be performed.

h. *DNA damage assay.* API contended that the Sister Chromatid Exchange (SCE) assay alone should be adequate to identify potential DNA damage in cells.

The Agency agrees that the SCE assay alone is sufficient to identify potential DNA damage from the C9 fraction and has dropped the requirement for a DNA damage assay from the final rule for C9.

5. *Oncogenicity.* EPA requested comment on whether oncogenicity testing of the C9 fraction should be required only if selected mutagenicity tests produce non-negative results, or whether oncogenicity testing should be required immediately on the basis of the TSCA section 4(a)(1)(B) findings.

API commented that there is a very low probability of the C9 fraction to induce an epigenetic oncogenic effect. API stated that "in the absence of any genotoxic mechanisms, there would be no need to consider the C9's as having a high priority need for oncogenicity testing." API supported current Agency efforts in using an appropriate battery of short-term mutagenic tests to prioritize testing for oncogenic effects, but believed neither a positive mutagenic effect nor a substantial exposure finding alone should automatically trigger oncogenicity testing.

CMA objected to the use of rigidly defined battery of tests where a single positive response would trigger a two-year bioassay and proposed instead a scheme where the results of both short-term genotoxicity testing and other relevant information would be considered "in toto" prior to proceeding with a 2-year bioassay. AIHC stated that appropriate screening batteries for potential oncogenicity should be flexible, allowing the exercise of good scientific judgement and the consideration of expanding data bases in selecting assays and interpreting test results.

EPA agrees with API that there is a very low probability of the C9 fraction to induce an epigenetic effect because long-term subchronic toxicity testing (16 months) produced no indication of sustained histopathological changes related to C9 aromatic hydrocarbon exposure. Therefore, EPA is not requiring oncogenicity testing immediately under section 4(a)(1)(B) for the C9 aromatic hydrocarbon fraction. EPA's proposed and final test schemes for oncogenicity testing of the fraction are designed to screen for oncogenic potential of chemical substances which act through genotoxic mechanisms. While the chronic bioassay is, at present, the most appropriate means of confirming and quantifying a chemical's potential to cause oncogenic effects, the Agency believes that several short-term

genotoxicity tests can provide a reasonable screening of the oncogenic potential of the C9 fraction. If all of these tests yield negative results, the likelihood of the C9 fraction being oncogenic is small and the chronic bioassay will not be required. Conversely, if any one of these trigger tests is clearly positive, potential oncogenicity of the C9 fraction is suggested and the chronic bioassay is essential to confirm or deny that potential and provide a basis for judging what oncogenic risk exposure to the C9 fraction may present. The Agency's rationale for selecting specific trigger tests for such screening is discussed further below. Because the selected short-term tests measure different genotoxic events, each of which has been shown to correlate with oncogenicity in a variety of chemicals, even if only one of these tests was positive and all of the others were negatives, EPA believes that the potential for the C9 fraction to be oncogenic would not be sufficiently disproven to warrant foregoing the chronic bioassay, given the substantial exposure to the substance. However, EPA agrees with the commenters that a weight-of-the evidence judgment by the Agency may be necessary should the results from the specified short-term tests be a mixture of negative and equivocal outcomes.

Therefore, EPA is finalizing the rule with triggering of the chronic bioassay if any of the selected short-term tests fails to produce a negative result. If results of one or more tests are clearly positive, EPA will notify the test sponsors to initate the chronic study. However, if mixed negative and equivocal results are obtained, the Agency will review the overall weight of scientific evidence provided by all of the tests. If, in EPA's judgment, that evidence indicates that oncogenicity of the C9 fraction is quite unlikely, the Agency will solicit public comment on whether it should rescind the requirement for the chronic test.

The Agency proposed that a non-negative response in any of several short-term genotoxicity tests be used to trigger oncogenicity testing for the C9 because it believes that a non-negative response in any of these assays provides sufficient basis to establish a concern for potential oncogenicity. These assays were selected because: (1) Except the the *Drosophila* sex-linked recessive lethal assay, all are mammalian in origin; (2) all are known to detect carcinogens with a reasonable degree of accuracy; (3) all measure a defined genetic endpoint; and (4) all are readily available for general testing purposes.

In the final section 4 test rule for the C9, the Agency has adopted a first tier battery which consists of tests for both gene mutations and chromosomal aberrations. Results of these lower tier assays may trigger additional testing, both for oncogenicity and heritable germ cell mutations. If the C9 fraction is nagative in the required in vitro assays for gene mutation (the Ames assay and one or two in vitro assays for specific locus gene mutation in cells in culture) and in both in vitro and in vivo assays for chromosomal aberrations, no further testing for oncogenic potential will be required.

Of the four tests in the lower tier, oncogenicity testing is triggered by non-negative results in three of them: the in vitro assay for gene mutation in cells in culture; the in vitro assay for chromosomal aberrations; and the in vivo assay for chromosomal aberrations. These assays were chosen as triggers because they are mammalian assays which measure known genetic endpoints. Each of these assays also shows an empirical correlation with in vivo oncogenicity.

The overall correlation between results in the three most widely used tests for gene mutation in cells in culture to oncogenicity, as determined by Phase II of the EPA Gene-Tox Program, is 85.9 percent (Ref. 16). Seventy-three of 85 known chemical carcinogens tested in either the Chinese hamster V79 system, the mouse lymphoma L5178Y system, or the Chinese hamster ovary (CHO) system, were correctly identified. On an individual basis, 18 of 22 (81.8 percent) carcinogens tested in the L5178Y system, 12 of 12 (100 percent) tested in the CHO system and 58 of 69 (84 percent tested in the V79 system were correctly identified. EPA feels that there is sufficient evidence to indicate that these assays may be used to trigger an in vivo assay for oncogenicity. EPA is not, at this time, recommending any one cell system. However, as the data base of tested chemicals increases, certain assays may prove to be more appropriate for specific classes of chemicals. EPA will consider such information in its review of study plans submitted during Phase II of this rulemaking.

Likewise, the EPA is not recommending a particular cell system for use in the in vitro cytogenetics assay. For all cell systems conbined, 17 of 22 carcinogens or 77.3 percent were correctly identified. EPA recognizes that this is a limited data base but nonetheless feels that there is sufficient evidence of an empirical correlation of results in these systems to oncogenicity to allow the use of this assay as a trigger for long-term oncogenicity studies and is, in fact, more concerned about the possibility of false negative results with these test systems.

In vitro sister chromatid exchange (SCE) assays show a better correlation with in vivo carcinogenicity; 40 of 41 carcinogens tested, or 97.5 percent, were correctly identified in these assays. However, the Agency was, and still is, reluctant to adopt these tests as direct triggers for oncogenicity testing because neither the mechanistic basis nor the genetic significance of this event is known. However, in light of the high degree of correlation shown by SCE assays with in vivo oncogenicity, the Agency is revaluating its position and may in the future recommened such assays as triggers for oncogenicity testing.

Only 10 carcinogens have been tested in the in vivo cytogenetics assay; nine were correctly identified (REF. 16). In spite of this limited number of chemicals evaluated, EPA believes that this assay is of sufficient significance that a positive response should be used to trigger long-term testing.

The only second tier assay to be used as a trigger for oncogenicity studies is the *Drosophila* sex-linked recessive lethal (SLRL) assay. This assay shows a good correlation with in vivo test results; 67 of 76, or 88.2 percent, of carcinogens tested in this assay were positive (Ref. 16). It measures a genetic event of known significance, and is an in vivo eukaryotic system. It will not serve as a single test trigger since chemicals which are tested in *Drosophila* will first have shown a positive response in another system such as *Salmonella typhimurium* or the SCE assay. EPA feels that this combination of responses is sufficient to warrant in vivo testing for oncogenicity.

6. *Reproductive effects.* API stated that any debate over the issue of whether the 2-generation inhalation reproduction study should be carried through the second generation belongs in the second phase of rulemaking. The Agency agrees that it is more appropriate to address the second generation question in the second phase of rulemaking, but emphasizes that study plans designed for the performance of such studies should reflect OTS test guideline recommendations, which for reproductive effects testing recommend a 2-generation study, or should provide justification why the protocols

submitted differ from those recommended by EPA.

7. *Estimated test costs.* API stated that the Agency's estimated range of test costs is significantly lower than the actual costs industry will incur to perform the battery of tests proposed in the C9 rule.

The Agency acknowledges that the cost of the mouse specific locus test, for example, is in excess of $100,000, not $10,000, as cited in the proposed rule. The Agency has reviewed its estimated range of test costs for the remaining tests required in this rule, and has revised the test cost estimates where appropriate. A complete discussion of test cost estimates is included in Unit V.

IV. Final Test Rule for C9 Aromatic Hydrocarbon Fraction

A. TSCA Section 4 Findings

The EPA is basing the final testing requirements for the C9 aromatic hydrocarbon fraction on the authority of section 4(a)(1)(B) of TSCA.

1. EPA finds that there are substantial amounts of the C9 aromatic hydrocarbon fraction manufactured, processed and sold for use as solvent end products in the U.S. each year (approximately 500 million pounds), and that a substantial number of persons (approximately 20,000) are exposed to the C9 aromatic hydrocarbon fraction through exposure to solvents. Additional persons are or may be exposed during the manufacture and processing of the much larger volume (approximately 70 billion pounds/year) of the C9 fraction which is blended into gasoline and other fuels. The bases for these findings are set forth in the Agency's ET and TMB support documents.

Data submitted to EPA since the publication of the Notice of Proposed Rulemaking (NPRM) for the C9 fraction (48 FR 23068, May 23, 1983) indicate that certain commercial solvents contain substantial concentrations of C9 aromatic hydrocarbons and that the C9 aromatic hydrocarbon content of solvents in general is much greater than originally estimated. API submitted data which represented 80 percent of the domestic production of C9 aromatic solvents, showing a median ET/TMB content of 80 percent, with a range of 75 to 90 percent. One TSCA section 8(d) submission showed a commercial solvent C9 content of 95 percent (Ref. 18).

2. Based on the large number of persons exposed to the C9 aromatic hydrocarbons through the manufacture and processing of the C9 fraction and the use of C9-containing solvents, taking into account the high percentage of C9 in many of those solvents and the use categories and general use patterns of C9 solvents, EPA finds that there is substantial human exposure to the C9 fraction.

3. EPA finds that although there are sufficient data on the subchronic effects and metabolism of the C9 fraction, currently available data are insufficient to allow the Agency to reasonably determine or predict the neurotoxic, reproductive, teratogenic (or, more appropriately, developmentally toxic), mutagenic and oncogenic effects of exposures to the C9 aromatic hydrocarbons resulting from the manufacture and processing of the C9 fraction and the use of C9-containing solvents. EPA finds that testing is necessary to develop such data.

4. EPA has reconsidered those exposures associated with the processing, distribution and use of motor gasoline and has decided not to include such exposures as a part of the basis of its section 4(a)(1)(B) findings to require testing of the C9 fraction. However, manufacturers and processors of the C9 fraction who do so in the course of producing gasoline and other motor or heating fuels are subject to this rule because the Agency's section 4(a)(1)(B)(ii) findings are based on the manufacture and processing as well as on the use of the C9 aromatic hydrocarbon fraction. Thus, in accordance with TSCA section 4(b)(3)(B), both manufacturers and processors of the C9 fraction are subject to the requirements of this rule (see Unit IV. D.)

B. Required Testing

The EPA is requiring that the C9 aromatic hydrocarbon fraction be tested for neurotoxicity, developmental toxicity, mutagenicity, and reproductive effects, and for oncogenicity unless specific mutagenicity test results are negative.

C. Test Substance

EPA is requiring that a C9 petroleum fraction, composed of mixed isomers of ET (22 percent minimum content) and 1,2,4-, 1,2,3- and 1,3,5-TMB (15 percent minimum content), with a total minimum ET–TMB content of 75 percent, be used as the test substance.

D. Persons Required To Test

Section 4(b)(3)(B) specifies that the activities for which the Administrator makes section 4(a) findings (manufacturing, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import".) Processors are required to test if the findings are based on processing. (Section 3(10) of TSCA, defines "process" as the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce.) Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution or disposal. Because EPA has found that the manufacture and processing of the C9 fraction and its use in solvents may give rise to substantial exposure, persons who manufacture or process, or who intend to manufacture or process, the C9 aromatic hydrocarbon fraction (other than as an impurity) at any time from the effective date of this test rule to the end of the reimbursement period are subject to this rule. The end of the reimbursement period will be 5 years, or an amount of time equal to that which was required to develop data if more than 5 years, after the submission of the last final report required under the test rule. As discussed in the Agency's Test Rule Development and Exemption Procedures (40 CFR Part 790), EPA expects that manufacturers will conduct testing and that processors will ordinarily be exempted from testing.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any persons required to test may apply to EPA for an exemption from that requirement. The Agency anticipates that the current manufacturers of C9 aromatic hydrocarbon fractions will form the reimbursement pool and sponsor the testing required. Manufacturers and processors who are subject to the testing requirements of this rule must comply with the test rules and exemption procedures in 40 CFR Part 790.

E. Test Rule Development and Exemptions

Test rule development for the C9 aromatic hydrocarbon fraction will be conducted according to the two-phase process described in 40 CFR Part 790. Under the two-phase process, this Phase I test rule is being promulgated for the C9 aromatic hydrocarbon fraction specifying the test substance, the effects for which test data are to be developed

and which persons are subject to the rule. In Phase II, following promulgation of this Phase I test rule, those persons subject to the rule will be required to develop study plans for the development of data pertaining to the effects specified in the Phase I rule or to obtain exemptions from the testing requirements.

This rule for the C9 aromatic hydrocarbon fraction is a final Phase I test rule. Within 30 days from the effective date of this final Phase I test rule, manufacturers subject to this rule must submit to EPA a letter stating their intention to sponsor testing or an application for exemption. Test sponsors must submit their study plans to EPA within 90 days from the effective date of this Phase I test rule. After an opportunity for public comments, EPA will promulgate a rule adopting the study plans, as proposed or modified, as the chemical specific test standards and schedules for the tests required by the Phase I rule. Testing will also be subject to EPA's generic TSCA Good Laboratory Practice (GLP) standards (40 CFR Part 792). Persons who submit study plans will be obligated to perform the tests in accordance with the test standards and schedules developed. Modification to the adopted study plans can be made only with EPA approval.

Processors of the C9 aromatic hydrocarbon fraction subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent, exemption applications or study plans or to conduct testing unless manufacturers fail to sponsor the required tests. The basis for this decision is that manufacturers are expected to pass an appropriate portion of the costs of testing on to processors through the pricing of their C9 aromatic hydrocarbon products.

EPA's final regulations for the issuance of exemptions from testing requirements are in 40 CFR Part 790. In accordance with those regulations, any manufacturer or processor subject to this Phase I test rule may submit an application to EPA for an exemption from submitting study plans and from conducting any or all of the tests required under this rule. If manufacturers perform all the required testing, processors will be granted exemptions automatically without having to file applications.

F. Reporting Requirements

EPA is requiring that all data developed under this rule be reported in accordance with the EPA Good Laboratory Practice (GLP) standards [40 CFR Part 792], published in the **Federal Register** of November 29, 1983 (48 FR 53922).

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. These deadlines will be established in the second phase of this rulemaking in which study plans are approved. The procedures for the second phase rulemaking are described in 40 CFR Part 790.

TSCA section 12(b) requires that persons who export or intend to export to a foreign country any C9 aromatic hydrocabon product subject to the testing requirements of this rule notify EPA of such exportation or intent to export. While the results of required testing may not be available for some time, a notice to the foreign government about the export of such substances serves to alert them to the Agency's concern about the substances. It gives these governments the opportunity to request such data that the Agency may currently possess plus whatever data may become available as a result of testing activities. Thus, upon the effective date of this rule, persons who export or intend to export the C9 aromatic hydrocarbon product must submit notices to the Agency pursuant to TSCA section 12(b)(1). For additional information, see 49 FR 45581 (November 19, 1984).

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d). Test data received pursuant to this rule will be made available for public inspection by any person except in those cases where the Agency determines that confidential treatment must be accorded pursuant to section 14(b) of TSCA.

G. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to : (1) Establish or maintain records or (2) submit reports, notices, notices, or other records required by the Act or any regulations issued under TSCA.

Additionally, TSCA section 15 (4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce. . . . " The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits and/or inspections will be conducted periodically in accordance with the procedures outlined in TSCA section 11 by designated representatives of the EPA for the purpose of determining compliance with the final rule for the C9 aromatic hydrocarbon fraction. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to EPA GLP standards and the test standards established in the second phase of this rulemaking.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data.

These standards are defined in section 3(2)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties calculated as if they had never submitted their data. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation. Intentional violations could lead to the imposition of criminal penalties up to $25,000 for each day of violation and imprisonment for up to one year. Other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular this includes individuals who report false information or who cause it

to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Economic Analysis of Final Test Rule

EPA has prepared an economic evaluation that examines the cost of the required testing and the potential economic impacts of those costs on the manufacturers and processors of C9 aromatics subject to this rule. The analysis considered four market characteristics of the C9 aromatic fraction: (1) The price sensitivity of demand for the C9 fraction, (2) producer cost characteristics, (3) industry structure, and (4) market expectations. Costs of conducting the health effects tests required in this rule are estimated to range from $1,187,656 to $3,414,369, with annualized test costs ranging from $307,742 to $884,720. Based on these test costs and an analysis of the market characteristics of the C9 aromatic fraction, the economic evaluation indicates that the potential for a significant adverse economic impact is low. This conclusion is based primarily on the following observations:

1. The demand for C9 for solvent use is relatively inelastic due to its selective performance advantage in its major uses.

2. The market expectations for C9 solvents are generally favorable.

3. The relative magnitude of the test cost is small (i.e., an estimated 0.001 cents per pound in the upper bound case); this represents 0.07 percent of the sales value of C9.

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," October, 1981, can be obtained through the NTIS under publication number PB 82-140773.

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this test rule.

VII. Guidelines and Reports

The following guidelines and reports referenced in this rulemaking are available from the: National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703-487-4650).

NTIS publication No.	Title	Price
PB 83-140773	Chemical Testing Industry: Profile of Toxicological Testing	$16.00
PB 83-257691	OTS Health Effects Test Guidelines—new and revised	25.00
PB 83-233295	OTS Health Effects Test Guidelines—new and revised	11.50
PB 83-153918	Pesticide Assessment Guidelines; Subdivision F—Human and Domestic Animals	16.00

The OECD Guidelines for Testing of Chemicals referenced in this rulemaking are available for $80.00 from: OECD Publications and Information Center, Suite 1207, 1750 Pennsylvania Ave., NW., Washington, D.C. 20006, (202-274-1857).

VIII. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA has decided to promulgate this rule for purposes of judicial review two weeks after publication in the **Federal Register**, as reflected in "**DATES**" in this notice. The effective date has, in turn, been calculated from the promulgation date.

IX. Rulemaking Record

EPA has established a public record for this rulemaking (docket number OPTS-42034). This record includes the basic information the Agency considered in developing this proposal, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received. Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. E-107, 401 M St., SW., Washington, D.C.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice of final rule on the C9 aromatic hydrocarbon fraction.

(b) Notice of the proposed rule on ET/TMB and the C9 aromatic hydrocarbon fraction (48 FR 23088).

(c) Notice containing the ITC designation of ET and 1,2,4-TMB to the Priority List (47 FR 22585).

(d) Notice containing the ITC recommendation of 1,2,3- and 1,3,5-TMB to the Priority List (47 FR 54624).

(e) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922).

(f) Notice of final rule on test rule development and exemption procedures (49 FR 39774, October 10, 1984).

(g) Notice of final rule concerning data reimbursement (48 FR 41786).

(2) Support documents consisting of:

(a) ET and TMB Technical Support documents.

(b) Economic impact analysis of final test rule for the C9 aromatic hydrocarbon fraction.

(c) Economic impact analysis of NPRM for the C9 aromatic hydrocarbon fraction.

(3) Communications consisting of:

(a) Written public comments.

(b) Summary of telephone conversations.

(c) Meeting summaries.

(4) Reports—published and unpublished factual materials, including contractors' reports.

B. References

(1) *Shell Oil Company 1975.* Air monitoring data on gasoline vapor concentrations in employee breathing zones at four representative bulk terminals. In: Letter from J.P. Sepesi (Shell) to Document Control Officer, OPTS, USEPA, dated July 8, 1982.

(2) *Shell Oil Company 1977.* Service station air sampling at seven representative service stations. In: Letter from J.P. Sepesi (Shell) to Document Control Officer, OPTS, USEPA, dated July 8, 1983.

(3) *Shell Oil Company 1982.* Exposure to driver salemen. In: Letter from J.P. Sepesi (Shell) to Document Control Officer, OPTS, USEPA, dated July 8, 1982.

(4) *API 1983.* Comments on Proposed Test Rule on Ethyltoluenes, Trimethylbenzenes and the C9 Aromatic Hydrocarbon Fraction. Letter from Phil G. Goulding, American Petroleum Institute, to Document Control Officer, OPTS, USEPA, dated Sept. 1, 1983.

(5) *Shell Oil Company 1980.* Report on the inhalation toxicity of SHELLSOL A to rats following 13 weeks exposure. Study No. TGLR.79.176.

(6) *Shell Oil Company 1980.* Report on toxicity of SHELLSOL A/SOLVESSO 100 to rats following daily exposure to vapor atmosphere for 12 months. Study No. SBGR.81.172. (Shell/Exxon joint submission).

(7) *Ehlins, U.H., Neuhouser, A. 1979.* "Procarbazine-induced specific locus mutations in male mice." *Mutation Res* 59:245–256.

(8) *National Academy of Sciences 1981.* "Review of the alkyl benzenes." National Academy Press, Washington, D.C.

(9) *National Academy of Sciences 1982.* National Research Council Committee on Chemical Environmental Mutagens. "Identifying and estimating the genetic impact of chemical mutagens." National Academy Press, Washington, D.C., pp. 141–142.

(10) *de Serres, F.J., Ashby, J. 1981.* "Evaluation of short-term tests for carcinogens." Report of the International Collaborative Program. Elsevier/North Holland. New York. Amsterdam. Oxford.

(11) *Lee, W.R., Abrahamson, S., Valencia, R., von Halle, E.S., Wurgler, F.E., and Zimmering, S. 1983.* "The sex-linked recessive lethal test for mutagenesis in *Drosophila melanogaster.*" A report of the U.S. Environmental Protection Agency Gene-Tox Program. *Mutation Res* 123:183–279.

(12) *Brusick and Auletta. 1984.* "Developmental status of bioassays in genetic toxicology." A report of Phase II of the USEPA's Gene-Tox Program. *Mutation Res.* In Press.

(13) *National Research Council, Advisory Committee on the Biological Effects of Ionizing Radiations. 1972.* The effects on populations of exposures to low levels of ionizing radiation. (BIER I). National Academy of Science, Washington, D.C.

(14) *UNSCEAR. 1977.* United Nations General Assembly. Report of the United Nations Scientific Committee on the Effects of Atomic Radiation. Official records of the General Assembly. Thirty-second session. Supplement No. 40 (A/32/40). United Nations, New York.

(15) *Brewen, J.G., Payne, H.S., Jones, K.P., Preston, R.J. 1975.* "Studies on chemically induced dominant lethality. I. The cytogenetic basis of MMS-induced dominant lethality in post-meiotic germ cells." *Mutations Res* 33:239–250.

(16) *Generoso, W.M., Bishop, J.B., Goss Lee, D.G. Newell, G.W., Sheu, C-J, von Halle, E. 1980.* "Heritable translocation test in mice." *Mutation Res* 76:191–215.

(17) *USEPA. 1978.* Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). 40 CFR Part 58. Guidelines for Registration for FIFRA.

(18) *Marathon Oil Company 1984.* April 2 letter to USEPA. TSCA–8(d) submission (cover letter) on aromatic C9 fraction from petroleum refining.

(19) *API 1983.* September 29. TSCA 8(d) submission No. FYI–AX–1083–0148 (Sequence N). Chronic inhalation of unleaded motor fuel. Dated Sept. 15, 1983 conducted by International Research and Development Corporation, Mattawan, Michigan, 49071.

X. Other Regulatory Requirements

A. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The regulation for this chemical substance is not major because it does not meet any of the criteria set forth in section 1(b) of the order. First, the actual annual cost of the testing prescribed for the C9 aromatic hydrocarbon fraction is less than $704,647 over the expected market life of the C9 fraction for use in solvents. Second, because the cost of the required testing will be distributed over a large production volume, the rule will have only very minor effects on producers' costs or users' price for this chemical substance. Finally, taking into account the nature of the market for this substance, the low level of costs involved, and the expected nature of the mechanisms for sharing the costs of the required testing, EPA concludes that there will be no significant adverse economic impact of any type as a result of this rule.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, are included in the public record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA certifies that this test rule will not have a significant impact on a substantial number of small businesses for the following reasons:

1. There are no small manufacturers of the C9 aromatic hydrocarbon fraction.

2. Small processors are not likely to perform testing themselves, or to participate in the organization of the testing effort.

3. Small processors will experience only minor costs in securing exemption from testing requirements.

4. Small processors are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0033.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous material, Chemicals, Reporting and recordkeeping requirements.

Dated: May 7, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

40 CFR Part 799 is amended as follows:

1. The authority citation for Part 799 is revised to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Part 799 is amended by adding § 799.2175 to Subpart B to read as follows:

§ 799.2175 C9 aromatic hydrocarbon fraction.

(a) *Identification of chemical substance.* The C9 aromatic hydrocarbon fraction obtained from the reforming of crude petroleum shall be tested in accordance with this Part.

(b) *Identification of test substance.* A C9 substance consisting of *ortho-*, *meta-* and *para*-ethyltoluene (minimum 22 percent), and 1,2,4-, 1,2,3,- and 1,3,5-trimethylbenzene minimum 15 percent) that is representative of a typical C9 aromatic hydrocarbon fraction obtained from the reforming of crude petroleum (minimum total ET–TMB content 75 percent) and intended for use as a solvent end product shall be prepared and used as the test substance in all tests.

(c) *Persons required to submit study plans, conduct tests and submit data.* All persons who manufacture or process, or intend to manufacture or process, the C9 aromatic hydrocarbon fraction, other than as an impurity, from July 1, 1985, to the end of the reimbursement period shall submit letters of intent to test, exemption applications, and study plans, and shall

conduct tests and submit data as specified in this section, Subpart A of this part, and Part 790 of this chapter.

(d) *Health Effects Testing*—(1) *Mutagenic effects—Chromosomal aberrations*—(i) *Required testing.* (A) An in vitro cytogenetics test shall be conducted with the C9 test substance.

(B) An in vivo cytogenetics test shall be conducted for the C9 test substance if the in vitro cytogenetics test conducted pursuant to paragraph (d)(1)(i)(A) of this section produces a negative result.

(C) A dominant lethal assay shall be conducted with the C9 test substance unless the in vitro cytogenetics test conducted pursuant to paragraph (d)(1)(i)(A) of this section and the in vivo cytogenetics test conducted pursuant to paragraph (d)(1)(i)(B) of this section (if required) produce negative results.

(D) A heritable translocation assay shall be conducted with the C9 test substance if the dominant lethal assay conducted pursuant to paragraph (d)(1)(i)(C) of this section produces a positive result.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the OTS Health Effects Test Guidelines for Chromosomal Effects, published by NTIS (PB 83–257691), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects-Genetic Toxicology, published by OECD, and the Pesticide Assessment Guidelines; Subdivision F, published by NTIS (PB 83–153916).

(2) *Mutagenic effects—Gene mutation*—(i) *Required testing.* (A) A *Salmonella typhimurium* mammalian reverse mutation microsomal assay shall be conducted with the C9 test substance, both with and without activation.

(B) A sister chromatid exchange (SCE) assay shall be conducted with the C9 test substance.

(C) A gene mutation in mammalian cells in culture assay shall be conducted with the C9 test substance.

(D) A second gene mutation in mammalian cells in culture assay, using a different cell line from that used in the first assay, shall be conducted with the C9 test substance if the first gene mutation in cells in culture assay, conducted pursuant to paragraph (d)(2)(i)(C) of this section, produces a negative result, unless the *Salmonella* microsomal assay, conducted pursuant to paragraph (d)(2)(i)(A) of this section, and the SCE assay, conducted pursuant to paragraph (d)(2)(i)(B) of this section, produce negative results.

(E) A *Drosophila* sex-linked recessive lethality test shall be conducted with the C9 test substance unless the *Salmonella* microsomal assay conducted pursuant to paragraph (d)(2)(i)(A) of this section and the gene mutation in cells in culture assays conducted pursuant to paragraphs (d)(2)(i) (C) and (D) of this section produce negative results.

(F) A mouse specific locus assay shall be conducted with the C9 test substance if the *Drosophila* sex-linked recessive lethality test, conducted pursuant to paragraph (d)(2)(i)(E) of this section produces a positive result.

(ii) *Study plans.* For guidance in preparing study plans it is recommended that the OTS Health Effects Test Guidelines for Gene Mutations and DNA Effects, published by NTIS (PB 83–257691 and PB 84–233295), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects-Genetic Toxicology, published by OECD, and the Pesticide Assessment Guidelines; Subdivision F, published by NTIS (PB 83–153916).

(3) *Oncogenicity*—(i) *Required testing.* A 2-year inhalation oncogenicity bioassay shall be conducted with the C9 test substance unless it produces negative results in all of the following tests: In vitro cytogenetics test, in vivo cytogenetics test (if required), first gene mutation in cells in culture assay, second gene mutation in cells in culture assay (if required), and *Drosophila* sex-linked recessive lethality test (if required) conducted pursuant to paragraphs (d)(1)(i) (A) and (B) and (d)(2)(i) (C), (D) and (E) of this section.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the OTS Health Effects Test Guidelines for Chronic Exposure-Oncogenicity published by NTIS (PB 83–257691), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects Section 451, published by OECD, and the Pesticide Assessment Guidelines; Subdivision F, published by NTIS (PB 83–153916).

(4) *Developmental Toxicity*—(i) *Required testing.* An inhalation developmental toxicity study shall be conducted with the C9 test substance.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the OTS Health Effects Test Guideline for Inhalation Development Toxicity Study Teratogenicity, published by NTIS (PB 84–233295), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects, and the Pesticide Assessment Guidelines; Subdivision F, published by NTIS (PB 83–153916).

(5) *Reproductive Effects*—(i) *Required testing.* An inhalation reproductive effects study shall be conducted with the C9 test substance.

(ii) *Study plans.* For guidance in preparing study plans it is recommended that the OTS Health Effects Test Guidelines for Specific Organ/Tissue Toxicity-Reproduction and Fertility Effects, published by NTIS (PB 83–257691), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects Section 416, published by OECD, and the Pesticide Assessment Guidelines; Subdivision F, published by NTIS (PB 83–153916).

(6) *Neurotoxicity*—(i) *Required testing.* A neurotoxicity test battery consisting of a 90-day subchronic inhalation exposure incorporating the following tests shall be conducted with the C9 test substance:

(A) A neuropathology test;

(B) A motor activity test; and

(C) A functional observation battery.

(ii) *Study plans.* For guidance in preparing study plans it is recommended that the OTS Health Effects Test Guidelines for Neurotoxicity, published by NTIS (PB 83–257691), be consulted.

(Information collection requirements approved by the Office of Management and Budget under control number 2070–0033.)

[FR Doc. 85–11590 Filed 5–16–85; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 798 and 799

[OPTS-42065; FRL-TSH-FRL 2818-1]

2-Ethylhexanoic Acid, Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 4 of the Toxic Substances Control Act (TSCA), EPA is proposing that manufacturers and processors conduct health effects tests for 2-ethylhexanoic acid (EHA, CAS No. 149-57-5). The proposed health effects tests include pharmacokinetic studies, and 90-day subchronic toxicity and developmental toxicity tests. This notice constitutes EPA's response to the Interagency Testing Committee's designation of EHA for priority consideration for testing.

DATES: Submit written comments on or before July 16, 1985. If persons request time for oral comment by July 1, 1985, EPA will hold a public meeting on this proposed rule in Washington, DC. For further information on arranging to speak at the meeting see Unit VII of this preamble.

ADDRESS: Submit written comments, identified by the document control number OPTS-42065, in triplicate to: TSCA Public Information Office (TS-783), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, DC 20460.

Include the document control number (OPTS-42065) on all submissions.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, DC 20460. Toll Free (800-424-9065). In Washington, DC: (554-1404). Outside the USA (operator—202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is issuing a proposed test rule under section 4(a) of TSCA in response to the Interagency Testing Committee's designation of EHA for health effects testing consideration.

I. Background

A. ITC Recommendation

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act. The ITC may designate substances on the list for EPA's priority consideration for requiring testing.

The ITC designated EHA for priority consideration for health effects tests in its 14th Report, published in the Federal Register on May 29, 1984 (49 FR 22389). The ITC recommended that EHA be tested for chronic health effects including carcinogenicity. The ITC further identified, although it did not specifically recommend for testing, the following biological effects of concern to human health: acute toxicity, teratogenicity/embryo-toxicity, metabolism and toxicokinetics, genotoxicity, and other effects (peroxisome induction). These biological effects of concern were identified by the ITC because there is either insufficient information to characterize these effects or there is a structural similarity between EHA, which is known to induce peroxisomal proliferation, and other chemicals which also induce peroxisomes and are animal carcinogens.

The ITC's testing recommendations were based upon a U.S. production volume in 1977 of 11 to 61 million pounds. The ITC, using the National Occupational Hazard Survey, identified over 16,000 persons potentially exposed to EHA in different occupational settings. Also, the ITC stated that EHA is a chemical intermediate used primarily in the manufacture of 2-ethylhexanoate metal soaps (salts of EHA) which have a variety of uses. The ITC further commented that, although EHA itself is not used in consumer products, the salts of EHA are used in various consumer products. The ITC believed that general population exposure to the 2-ethylhexanoate anion may occur from the use of products containing these salts. The ITC further stated that suspicion exists as to the potential toxicity of the 2-ethylhexyl moiety on the basis of results from carcinogenicity studies of four 2-ethylhexyl compounds [di(2-ethylhexyl) phthalate, di(2-ethylhexyl)adipate, 2-ethylhexyl sulfate, and tris (2-ethylhexyl)phosphate] and of the ability of a group of 2-ethylhexyl compounds, including 2-ethylhexanoic acid, to induce peroxisomal proliferation and hypolipidemia in rats.

No environmental effects tests were recommended by the ITC. According to the ITC, chemicals with a similar structure to EHA have been found to have a low to moderate toxicity to aquatic organisms. The ITC did not believe that EHA would be toxic to aquatic organisms at the levels at which it is likely to occur in the environment.

B. Test Rule Development Under TSCA

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop appropriate test data if the Administrator finds that:

> **(A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,**
>
> **(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and**
>
> **(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or**
>
> **(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,**
>
> **(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and**
>
> **(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.**

EPA uses a weight-of-evidence approach in making section 4(a)(1)(A)(i) findings; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure and release. For the findings under sections

4(a)(1)(A)(ii) and 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to or environmental release of the chemical. In making the finding under section 4(a)(1)(A)(iii) or 4(a)(1)(B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules. The section 4(a)(1)(A) findings are discussed in the Federal Register of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300) and the section 4(a)(1)(B) findings are discussed in the Federal Register of June 5, 1981 (46 FR 30302).

In evaluating the ITC's testing recommendations concerning EHA, EPA considered all available relevant information including the following: information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of EHA under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) concerning EHA; and published and unpublished data available to the Agency. Based on its evaluation, as described in this proposed rule, EPA is proposing health effects testing requirements for EHA under section 4(a)(1)(A). By these actions, EPA is responding to the ITC's designation of EHA for testing consideration.

C. Change in Process for Adopting Test Standards

In the Federal Register of March 26, 1982 (47 FR 13012), EPA announced an approach to adopting test rules that involved two-phase rulemaking. In the first phase of rulemaking EPA would specify the test substance, who would be responsible for testing, and the required tests. In the second phase, EPA would establish the tests methodologies (test standards) and the deadlines for submission of test data. EPA has used this approach for most of the test rules it has proposed for chemicals recommended in the first through the thirteenth ITC reports.

In December 1983 the Natural Resources Defense Council (NRDC) and the Industrial Union Department of the American Federation of Labor-Congress of Industrial Organizations (AFL–CIO) filed an action under TSCA section 20, which challenged, among other things, the use of the two-phase process. In an August 23, 1984 Opinion and Order, the Court found that utilization of the two-phase rulemaking process was permissible. However, the Court also held that the Agency was subject to a standard of promulgating test rules within a reasonable time frame (*NRDC* and *AFL–CIO* v. *EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984)).

Subsequent to the issuance of this Opinion, the Agency submitted papers to the Court which indicated that, in order to expedite the test rule development process, EPA would utilize a single-phase rulemaking process for most future test rules. The Agency also indicated that EPA would publicly announce this policy in the first test rule proposal to be published in the spring of 1985 (Declaration of Don R. Clay at 12 (September 24, 1984)). In accordance with this commitment, the Agency is setting forth in the preamble of this proposed rule and elsewhere in this issue of the FEDERAL REGISTER, interim final guidelines and procedure for utilization of single-phase rulemaking in the test rules program.

Section 4(b)(i) specifies that test rules shall include standards for the development of test data ("test standards") and deadlines for submission of test data. Under the two-phase process, both test standards and data submission deadlines are established during the second phase of rulemaking. However, in the single-phase approach, EPA will propose the pertinent Office of Toxic Substances (OTS) guideline(s), Organization for Economic Co-operation and Development (OECD), or other suitable test guideline(s) as the required test standard(s) in the notice of proposed rulemaking; at this time EPA will also propose time frames for the submission of the test data. Industry and other commenters may suggest an alternative methodology or modifications to the guideline, i.e., the proposed test standard, during the public comment period, and such comments should state why the alternative methodology or modification is more suitable for the chemical substance in question than the EPA-proposed test standard.

Comment will also be sought on the proposed data submission deadlines. All such submissions, including alternative test methodologies, will be placed in the rulemaking record and will be available for review by the public. The final rule will promulgate as the test standards either the OTS guidelines, OECD or other suitable guidelines, a modified version of these guidelines, the alternative methodology submitted by commenters, or a modified version of the alternative methodology. The proposed test standards and data submission deadlines will be open for discussion at any public meeting held pursuant to TSCA section 4(b)(1).

The single-phase approach offers a number of advantages over the two-phase approach. First, the Agency believes that the single-phase approach will shorten rulemaking by as much as 18 months, resulting in the expedited initiation of the required testing. Secondly, because the OTS guidelines, OECD guidelines, or other appropriate methodologies will be proposed as the test standards, the one-phase process eliminates the requirement under the two-phase approach for industry to prepare and submit test protocols. Yet, by allowing commenters to submit alternative test methodologies during the comment period, it preserves the flexibility of the two-phase process, but at reduced administrative cost.

Because of these advantages, the Agency intends to utilize single-phase rulemaking for most rules promulgated under TSCA section 4(a). However, EPA may continue to utilize the two-phase process for rules where the two-phase process may be a more expeditious route to a final test rule, e.g., in cases where no well accepted test methodology is available for inclusion in a proposed test rule.

II. 2-Ethylhexanoic Acid

A. Human Exposure and Environmental Release

1. *Profile and production.* EHA is a colorless liquid with a mild odor. It has a vapor pressure of 0.03 torr at 20 °C, boils at 228.9 °C at 760 torr, and is 0.1 percent soluble in water at 20 °C. EHA is used exclusively as a chemical intermediate or reactant in the production of 2-ethylhexanoate metal soaps, peroxy esters, or other derivatives (Refs. 24 and 40).

There are two domestic manufacturers and three importers of EHA (Ref. 32). Eastman Kodak Co. is the primary domestic manufacturer of EHA. Union Carbide Corp. is also a domestic manufacturer of EHA; American Hoechst Corp., BASF Wyandotte, and Filo Chemical Inc. are importers of EHA. The annual U.S. supply (domestic production plus imports) of EHA is currently between 20 to 25 million pounds.

The import level of EHA is about 1 million to 2 million pounds annually.

The TSCA Inventory identified the 1977 U.S. production/importation of EHA as 11 to 61 million pounds, the same figure used by the ITC (Refs. 16, 24, and 25).

2. *Exposure during manufacturing and processing.* In evaluating the exposure of workers to EHA, the Agency considered: (a) The effectiveness of in-place engineering controls and manufacturing methods; (b) the number of workers that manufacture, handle, transport, and/or process EHA; (c) the frequency and duration of such activities; (d) typical and worstcase concentrations (estimated) of EHA which might be inhaled or dermally absorbed; and (e) the use of protective clothing to minimize dermal exposure.

Inhalation and dermal exposure to EHA are limited by engineering features and controls employed in manufacturing and processing. EHA is manufactured using enclosed, automated, continuous feed chemical processes (Refs. 16, 24, and 39). The raw materials are pumped from storage tanks to closed, continuous feed vertical reactors. After reaction, the product (EHA) is refined through distillation and pumped to storage tanks, where the EHA remains until pumpted directly to another process for use, or loaded into tank cars, trucks, or drums. Waste from the distillation column is recycled to the reactor or disposed by incineration or chemical treatment. During clean-up for changeover or maintenance, the distillation column is drained, a heel of water or solvent added and put on total reflux, then the equipment is blown back. The water or solvent is drained and incinerated or treated as a chemical waste stream.

The equipment and methods used to process EHA derivatives are generally the same as those used to produce naphthenate metal soaps. The ethylhexanoate metal soaps are typically manufactured in mineral spirits by reaction of either the free metal, its oxide, or its hydrate with EHA in a closed reactor. During production the EHA and mineral spirits are charged through feed lines directly from closed storage tanks. The solids (i.e., the metal or metal oxide hydrates) are introduced by means of screw or bucket feeders equipped with dust collectors. Processing typically consists of a batch reaction followed by a neutralizing step where excess acid is stripped off. The solids from this step (not the desired salt) are removed by filtration and disposed. At the end of the neutralization step, all the EHA should have been consumed or removed from the process stream. Engineering controls for the processing equipment are described by industry as satisfactory to comply with OSHA standards currently regulating the handling of the raw materials, including lead compounds, and the product's base solvent (Ref. 38).

The number of workers exposed to EHA is significantly less than reported by the ITC. The ITC utilized the 1970 National Occupational Hazard Survey (NOHS) which estimated that as many as 16,000 workers in 28 occupations were potentially exposed to EHA (Ref. 26). However, over 95 percent of these workers were exposed to products that contained ethylhexanoate metal soaps or other derivatives of EHA. For comparison, the National Occupational Exposure Survey (NOES), a survey that more closely represents actual observations, estimates that approximately 1,600 workers may be exposed to EHA (Ref. 27). More recent information reported to EPA indicated that approximately 400 workers are potentially exposed to EHA (Ref. 39). Industry estimates that at most 75 workers are currently involved in manufacturing and 300 in processing EHA nationwide.

During manufacturing, the duration of occupational exposure to EHA is typically less than 2 hours per day per worker. Rotation of assignments further limits exposure of any given individual. Workers may be exposed to EHA via inhalation of vapors and dermally. Exposure may occur primarily during sampling of reactors and distillation columns and loading/unloading of drums, tank cars, and trucks EHA is manufactured at two sites, 24 hours per day, approximately 300 days per year, with on the order of 75 workers potentially exposed to EHA. The reactor and distillation column are sampled several times per day. During sampling, the 2 to 5 workers involved are collectively exposed to EHA for approximately 2 hours per day per site.

Exposure is also expected during loading/unloading of EHA. Tank cars and trucks are loaded approximately 100 days per year. This loading also involves 2 to 5 workers per site for a total of 1 o 2 hours per day per site. A small percentage of the EHA is drummed and this is done approximately 60 days per year, 1 to 2 hours per day. Occupational exposure to EHA at processing facilities is also possible. EHA is processed at an estimated 30 to 100 sites. At these sites, 1 to 3 workers are typically involved in the manufacture of EHA derivatives up to 8 hours per day, 30 to 250 days per year. (Ref. 39).

Industry has not monitored EHA in the workplace nor provided estimates of airborne concentrations. In order to estimate airborne concentrations of EHA, the Agency utilized its "Standard Parameters for Worker Exposure Models" (Ref. 39), which are based upon vapor pressure during typical activities. Actual conditions may be different; however, the results given by these models should represent the range from typical to worst-case airborne concentrations. For EHA manufacture, estimated exposure is greatest during the loading of tank cars and trucks. To estimate this worst-case exposure (0.1 to 0.2 mg/kg/day), the Agency assumed that the worker would stay on top of the tank car or truck while it is being filled, positioned immediately downwind of the vent. Actual exposure may be an order of magnitude lower (0.01 to 0.02 mg/kg/day) since the worker typically stands away from the truck during most of the time it is being filled. During sampling and processing activities, airborne concentrations of EHA are probably less than 0.01 mg/m^3, resulting in inhalation of less than 0.01 $\theta g/kg/day$.

Workers who sample, load, unload, and/or drum EHA or clean the filter press in processing may also be dermally exposed. This potential is considered to be negligible by industry because gloves and other protective clothing and equipment are "routinely worn" during these activities (Refs. 24, 25, and 38). However, the Agency notes that worker hygiene procedures can vary widely throughout the industry and believes that a worker might be exposed to as much as 500 mg/kg/contact if both hands were immersed in EHA, and 100 percent of the EHA film on the hands was absorbed through the skin (Ref. 39).

3. *Exposure associated with consumer goods.* EHA is not an ingredient or constituent in any consumer product, and consumers are not exposed to manufactured EHA. Consumers, however, may be exposed to a wide variety of products that contain ethylhexanoate metal soaps or other derivatives of EHA.

The ethylhexanoate metal soaps and other derivatives of EHA have the following uses (Refs. 24 and 40):

(a) Vinyl stabilizer (barium, cadmium, and zinc salts). Typically, the final vinyl article contains one percent of the EHA salt.

(b) Paint and ink dryers (cobalt, lithium, zinc and manganese salts). Typically, the paint or ink would contain about 0.5 percent of the EHA salt.

(c) Peroxide catalysts (such as t-amylperoxy 2-ethylhexanoate).

(d) Catalyst in oxo chemical production (cobalt salt).

(e) Manufacture of plasticizer for synthetic rubbers.

(f) Promoter for curing thermoset polyester resins (cobalt salt). Typically, the final resin would contain 0.005 to 0.1 percent of the EHA salt.

Products that contain these derivatives of EHA include dried paint films, coatings and inks, PVC products, and fiberglass reinforced products. However, potential for consumer exposure to EHA from use or contact with such products is extremely low because of their expected low volatility, low water solubility, high resin solubility, and the small concentration (usually less than 1 percent) in the product. Therefore, EPA believes that there is minimum potential for EHA (or its derivatives) to migrate from the polymerized products in which they are incorporated.

Products containing EHA derivatives that are available for direct use by consumers are limited to oil base paints, varnishes, stains and polyester fiberglass resins. The Agency found no stability constant or other data to support the ITC's contention that EHA derivatives in these consumer products dissociate (hydrolyze) resulting in indirect exposure to the EHA anion. Both industry (Ref. 41) and EPA (Ref. 43) Believe that significant hydrolysis does not occur during the use of these products. These derivatives are not expected to hydrolyze at the near neutral pH's maintained by buffers and the low moisture levels in these products. Potential exposure is further reduced because the amount of EHA derivatives in these products is typically less than 0.005 to 0.5 percent of the product (Ref. 16), and most of the product that might contact the skin would be removed by clean-up. Therefore, the Agency believes that indirect consumer exposure to EHA anion, even if it were to occur, would be negligible.

4. *Environmental and general population exposure.* The Agency has no reason to believe that present levels of EHA released to the environment result in human exposure from either contaminated drinking water or foods. Eastman Kodak Co. reports that more than 99.5 percent of the EHA in their process effluents is either incinerated or biodegraded on-site in a wastewater treatment plant (Refs. 24 and 25). Furthermore, because of EHA's low vapor pressure, little atmospheric release is expected from venting of storage tank cars, and trucks. Union Carbide Corp. treats its process effluents containing EHA in an on-site wastewater treatment plant prior to discharge to Galveston Bay, Texas. The reported volume and frequency of this release (Ref. 39) and the anticipated concentrations of EHA discharged to the bay in treated effluents are considered insignificant. EHA should be readily biodegraded, similar to other short chain carboxylic acids. Both its persistence and bioaccumulation potential are considered to be low and of no consequence.

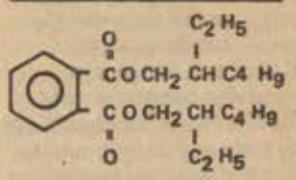
Environmental release of EHA from processing facilities is also considered low. Because of its metal and mineral spirit content, the filter cake waste is disposed of according to Resource Conservation and Recovery Act regulations (Ref. 38). Airborne emissions of EHA are expected to be low because of the low vapor pressure of EHA (and its derivatives) and the engineering features and controls that are generally utilized.

5. *Summary.* The Agency believes that dermal exposure to EHA may be a significant concern during manufacturing, handling, and processing operations if gloves and other protective equipment are not worn. Since all workers who may come in contact with EHA are not required to wear gloves, the Agency assumes that potential exists for exposure of up to 500 mg EHA/kg body weight/contact. The Agency also believes that airborne exposure in the workplace, consumer exposure, and general population exposure to EHA are not of sufficient magnitude to be of concern at this time.

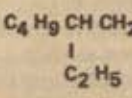
B. Health Effects

1. *Similarities in chemical structure.* A variety of chemicals with structures similar to EHA have been or are currently being tested by the National Toxicology Program (NTP). These chemicals possess a similar range of biological activity. As can be seen from the chemical structures below, they all contain similar structural features.

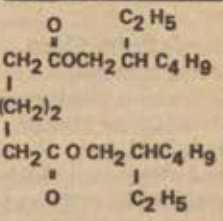
1. Di (2-ethylhexyl) phthalate (DEHP)



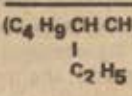
2. Sodium 2-Ethylhexyl Sulfate (EHS)



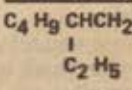
3. Di (2-ethylhexyl) adipate (DEHA)



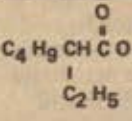
4. Tris (2-ethylhexyl) Phosphate (TEHP)



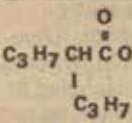
5. 2-Ethylhexanol (EH)



6. 2-Ethylhexanoic Acid (EHA)



7. Valproic Acid (2-Propylpentanoic Acid)



As illustrated by the chemical structures, the first 5 chemicals have one or more 2-ethylhexyl groups while the last 2 chemicals, EHA and valproic acid, are short, branched chain carboxylic acids.

2. *Carcinogenicity.* The first four chemicals that contain the 2-ethylhexyl moiety (DEHP, EHS, DEHA, TEHP) were tested by the NTP for carcinogenic and other chronic toxic effects in 90-day and 2-year studies in male and female

Fischer 344 rats and B6C3F1 mice. All four of these chemicals caused increased occurrence of hepatocellular tumors, principally carcinomas, in female mice. DEHP and DEHA also caused hepatocellular tumors in male mice, while DEHP caused hepatocellular tumors in both male and female rats as well. These four 2-ethylhexyl containing chemicals have been shown by the NTP bioassays to be animal oncogens, though the response appears to be relatively species, sex, and site specific (Refs. 11 through 15). These studies suggest that compounds containing the 2-ethylhexyl moiety (including EHA) possess some carcinogenic hazard (Ref. 7).

3. *Other biological effects.* The 2-ethylhexyl containing chemicals (including EHA) have also illustrated a spectrum of other biological effects. EHA, DEHP, DEHA, EHS, 2-ethylhexanol, and 2-ethylhexyl aldehyde induce peroxisomal proliferation and, in addition, may be associated with hepatomegaly and hypolipidemia in rats (Refs. 9 and 17). Peroxisomal induction is primarily an enzymatic biochemical event typically associated with the liver (Ref. 9). Furthermore, there is evidence to suggest an association between peroxisomal induction and hepatocarcinogenicity in rats and mice (Refs. 9, 17, and 18). However, there is currently insufficient information to understand the nature and importance of this association.

4. *Metabolism.* In addition to peroxisomal induction, the 2-ethylhexyl type chemicals have some metabolic interrelationships. Both DEHP and DEHA are diesters that are metabolically hydrolyzed to their corresponding monoesters and 2-ethylhexanol (Refs. 28 and 30). Albro (Ref. 23) reported that within 28 hours after administration of ^{14}C-labeled 2-ethylhexanol to rats by gavage, 80 to 82 percent was excreted in urine; 8 to 9 percent in feces; and 6 to 7 percent in respirable CO_2. EHA was identified as the major (61 percent) urinary metabolite of 2-ethylhexanol, while probable metabolites of EHA accounted for almost all of the remaining urinary excreted radioactivity. Only 3 percent of the 2-ethylhexanol was excreted unchanged. In contrast, sodium 2-ethylhexyl sulfate (EHS) is excreted primarily unchanged by rats with only a small percentage excreted as 2-ethylhexanol (Ref. 29). Although no confirming metabolic data are available, TEHP is probably hydrolyzed to 2-ethylhexanol as well. Thus it appears that three of the four 2-ethylhexyl containing chemicals tested by the NTP are converted to 2-ethylhexanol and EHA. The NTP is planning further comparative feeding studies with 2-ethylhexanol, DEHP, and mono (2-ethylhexyl) phthalate to compare toxic effects and dose response relationships (Ref. 31). They are also planning a 2-year oncogenicity bioassay with 2-ethylhexanol (Ref. 42).

5. *Neurological effects.* EHA has been shown to have pronounced anticonvulsant activity similar to that of valproic acid (Ref. 22) which affects brain enzyme chemistry (Refs. 19, through 21). However, although EHA has been shown to have therapeutic anticonvulsive activity in experimental mice with induced audiogenic seizures, this is not a sifficient basis to indicate that significant neurological effects may occur in humans from exposure to EHA.

6. *Developmental toxicity.* EHA, along with 12 other short chain carboxylic acids, was tested in an *in vitro* screen using a whole rat embryo culture system (Ref. 1). EHA produced a spectrum of malformations similar to those produced by valproic acid, a known human teratogen. Valproic acid produces the same spectrum of malformations *in vivo* as it does *in vitro* (Ref. 2). Furthermore, an *in vivo* teratogenicity screen conducted on 2-ethylhexanol indicated significant adverse effects (Ref. 5). Severe maternal toxicity, however, was also observed and could have caused the adverse effects of these fetuses. The positive results of both EHA and valproic acid (and several other short chain carboxylic acids) in the same *in vitro* test, coupled with the close structural analogy between EHA, valproic acid, and 2-ethylhexanol, suggests that EHA may possess some developmental toxicity hazard.

Furthermore, a recent TSCA section 8(e) submission (Ref. 36) for [[[3,5-bis(1,1-dimethylethyl)-4-hydroxyphenyl]methyl]thio] acetic acid, 2-ethylhexyl ester (CAS No. 80387-97-9) reported teratogenic and embryolethal effects in pregnant rats which were administered a dose of 300 mg/kg/day orally. This 2-ethylhexyl ester can be expected to be metabolized to 2-ethylhexanol which will be metabolized to EHA. If EHA is the causal agent, it may cause similar developmental toxicity effects.

7. *Acute toxicity.* The acute toxicity of EHA has been adequately characterized in the 14th ITC Report (49 FR 22389). In brief, EHA has an oral LD_{50} equal to 3g/kg in rats; a dermal LD_{50} equal to 6.3 ml/kg in rabbits and 6.3 g/kg (4-day contact period) in guinea pigs; and an inhalation LC_{50} greater than 400 ppm for 6 hours in guinea pigs (Refs. 3, 4, and 6). Full-strength EHA has also been shown to cause corneal necrosis and skin erythema in rabbits (Ref. 4).

C. Findings

EPA is basing its proposed testing of EHA on the authority of section 4(a)(1)(A) of TSCA.

EPA finds that EHA may present an unreasonable risk of subchornic toxicity, oncogenicity, and developmental toxicity. These findings are based on potential dermal exposure of workers engaged in manufacturing, transfer, storage and processing of EHA and the suggestive evidence of toxicity discussed in Unit II. B of this preamble.

Inadequate data exist to characterize the pharmacokinetics, subchronic toxicity, and developmental toxicity of EHA. In addition, the dermal exposure of an estimated 400 workers during the manufacturing, transfer, storage, and processing of EHA has not been sufficiently characterized to conclude that there is no unreasonable risk from this exposure to EHA. Furthermore, the potential health hazard of EHA is significant because of: (1) Its structural similarity to several chemicals that have been associated with such health effects; (2) the metabolic interrelationships of certain of these chemicals to EHA; and (3) the suggestive evidence that chemicals such as EHA that induce peroxisomal proliferation may have oncogenic potential. The available data on the health effects of concern are inadequate to reasonably predict or determine the health risks posed by present exposure to EHA.

The National Toxicology Program's planned testing of 2-ethylhexanol (Ref. 42) should resolve much of the uncertainty over the oncogenic potential of EHA since EHA is the principal metabolite/excretion product of animals dosed with 2-ethylhexanol (Refs. 23 and 37). The Agency, therefore, is not proposing a 2-year bioassay of EHA at this time since such testing would most likely not be necessary given the current knowledge of the pharmacokinetics and metabolism of 2-ethylhexanol to EHA and the proposed pharmacokinetic testing of EHA. EHA has also been nominated for genotoxicity testing by the NTP (Ref. 10). NTP's genotoxicity testing may include the *Salmonella* assay, cytogenetic testing of chromosomal aberrations, and sister chromatid exchange in Chinese hamster ovary cells.

Data are not available to characterize the pharmacokinetics, subchronic toxicity, and developmental toxicity of EHA. The Agency is unaware of any on-going or planned testing in these areas of concern. Therefore, the Agency finds that the testing specified below is necessary to characterize these risks.

D. Proposed Testing and Test Standards

On the basis of these findings, the Agency is proposing pharmacokinetic tests, 90-day subchronic tests, and developmental toxicity tests as a basis for determining the health risks of EHA.

The Agency is proposing that the following health effects test guidelines be adopted as test standards for the purposes of the proposed tests for EHA.

The Agency believes that the metabolism test standards developed by OTS for this proposed rule (Ref. 8) is appropriate for determining and comparing the pharmacokinetics of EHA for both the oral and dermal routes of administration. Data from these studies on the absorption, distribution, excretion, and metabolism of EHA are necessary to aid in the evaluation of test results from other toxicology studies and to determine the comparability of oral and dermal dosing.

The purpose of these studies is to determine: (1) The bioavailability of EHA after dermal administration, (2) whether or not the biotransformation of EHA is qualitatively and quantitatively the same after dermal and oral administration, (3) whether or not the biotransformation of EHA is changed qualitatively or quantitatively by repeated dosing, and (4) the extent of transport of EHA and its metabolites to the fetus.

The Agency proposes that 7 to 9 week old Fischer 344 rats and 5 to 7 week old Hartley guinea pigs be used for these studies. Fischer 344 rats are proposed for subchronic testing of EHA and have been used extensively by NTP for testing ethylhexyl containing chemicals. They have also been used extensively in percutaneous absorption studies. Hartley guinea pigs are proposed because their skin resembles human skin. Two doses will be required in these studies, a "low" dose and a "high" dose. When administered orally, the "high" dose level should ideally induce some overt toxicity such as weight loss. The "low" dose level should correspond to a no-effect level. The same "high" and "low" dose will be administered orally and dermally. The proposed studies evaluate blood levels, urinary and fecal excretion, biotransformation, and placental transport of EHA when administered dermally and/or orally. In addition, the extent to which washing removes dermally applied EHA is also evaluated.

The Agency believes that this OTS metabolism test methodology represents the state-of-the-art and forms the basis for a valid and scientifically acceptable test standard. This test standard is proposed under § 798.460 of 40 CFR Chapter I.

The Agency believes that the subchronic exposure oral toxicity test standard developed by OTS for this proposed rule is appropriate for determining the subchronic toxicity of EHA. This test permits the determination of the no-observed-effect level, the characterization of toxic effects associated with continuous or repeated exposure for a period of 90 days, and provides information on target organs.

The subchronic test is conducted by administering a chemical substance such as EHA orally for 90 days in graduated daily doses to several groups of experimental animals, one dose level per group. During the period of administration the animal are observed daily to detect signs of toxicity. Animals which die during the period of administration are necropsied, and at the conclusion of the test all surviving animals are sacrificed and histopathological examinations are conducted on the tissues. Given the test results of Moody and Reddy (Refs. 9 and 17), the subchronic toxicity evaluation should pay particular attention to hepatotoxicity and serum lipid alterations. In addition, Fischer 344 rats and B6C3F1 mice are proposed for this testing since results from these tests will allow comparison with subchronic and other testing of 2-ethylhexanol by NTP.

The Agency believes that this subchronic toxicity test methodology represents the state-of-the-art and forms the basis for a valid and scientifically acceptable test standard. This test standard is proposed under § 789.75 of 40 CFR Chapter I.

The Agency believes that either the OTS test guideline entitled "Developmental Toxicity (HG-Organ/Tissue-Developmental Toxicity-Oral, OTS Health Effects Test Guidelines)" or the OECD test guideline entitled "Teratogenicity", No. 414, adopted May 12, 1981 is appropriate for determining the developmental hazard of EHA. Both developmental toxicity test guidelines using the oral route of administration have been designed to determine the potential of a chemical substance such as EHA to induce structural and/or other abnormalities in the fetus which may arise from exposure of the mother to the chemical substance during pregnancy.

The developmental toxicity test is conducted by administering a chemical substance such as EHA orally in graduated doses, for at least that part of the pregnancy covering the period of organogenesis, to several groups of pregnant experimental animals, one dose level being used per group. Shortly before the expected date of delivery, the pregnant females are sacrificed, the uteri removed, and the contents examined for structural malformations, *in utero* death, growth retardation, and functional deficits. The Agency proposes two modifications to this protocol:

1. Rats and a non-rodent mammalian species should be utilized instead of rats and mice. EPA recommends rabbits as the non-rodent species. The Agency believes that multispecies testing is a more sensitive means of detecting developmental hazards than single species testing (Refs. 33, 34, and 35). Testing EHA in the rat and a non-rodent mammalian species will provide the Agency with the data needed to reasonably determine or predict whether EHA poses a risk of developmental toxicity to humans.

2. EPA does not specify the strains or precise ages of the animals to be used; it recommends that young adult rats and rabbits be used. The Agency is unaware of specific strains of test animals which might be sensitive to EHA for developmental effects.

The Agency believes that either the OTS or OECD oral developmental toxicity test guideline represents the state-of-the-art methodology and forms the basis for a valid and scientifically acceptable test standard for evaluating the developmental toxicity of a chemical substance such as EHA. Both guidelines have been reviewed to ensure that they reflect the most current scientific approach to developmental toxicity testing.

E. Test Substance

EPA is proposing that EHA of at least 99 percent purity be used as the test substance. EHA of this purity is commercially available at nominal cost. EPA has specified a relatively pure substance for testing because the Agency is interested in evaluating the effects attributable to EHA itself. Radiolabeled ^{14}C-EHA will be needed for the pharmacokinetics testing.

F. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which the Administrator makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and

processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that the manufacture, transport, storage, and processing of EHA may present an unreasonable risk to human health, EPA is proposing that persons who manufacture or process, or intend to manufacture or process EHA at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the pharmacokinetic, subchronic toxicity, and developmental toxicity testing requirements contained in this proposed rule. The end of the reimbursement period is proposed to be 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement.

EPA promulgated in the **Federal Register** of October 10, 1984 (49 FR 39774) procedures for the granting of exemptions under TSCA section 4(c) for use with two-phase rulemaking. Elsewhere in this issue to the **Federal Register**, EPA is promulgating interim final exemption procedures for use with single-phase rulemaking. These new procedures differ only slightly from those previously adopted. In brief, when both manufacturers and processors are subject to a test rule, processors will be granted an exemption without filing exemption applications if manufacturers perform all of the required testing. Manufacturers are required to submit either a letter of intent to perform testing or an exemption application.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for EHA. As noted in Unit II. E of this preamble, EPA is interested in evaluating the effects attributable to EHA itself and has specified a relatively pure substance for testing.

G. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its final TSCA good laboratory practice (GLP) standards, which appear in 40 CFR Part 792.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. Specific reporting requirements for each of the proposed test standards follow:

The pharmacokinetic tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final test rule. Interim progress reports shall be provided quarterly.

The subchronic toxicity tests shall be completed and the final results submitted to the Agency within 15 months of the effective date of the final test rule. Interim progress reports shall be provided quarterly.

The developmental toxicity tests shall be completed and the final results submitted to the Agency within 18 months of the effective date of the final test rule. Interim progress reports shall be provided quarterly.

NTP's experience with testing other ethylhexyl moiety substances and the Agency's experience with Negotiated Testing Agreements with industry suggests that the proposed time allowances and reporting requirements are reasonable.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

H. Issue

This proposed rule identifies various OTS developed test standards and an OTS or OECD test guideline as a test standard for health effects testing of EHA. The Agency is soliciting comments as to whether these health effects test standards and guidelines are appropriate and applicable for the testing of EHA. The Agency also requests comments on the adequacy of this testing, and the reporting times for the identified health effects tests.

III. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issue under TSCA.

Additional, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *" The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with any final rule for EHA. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations thereof, and that the TSCA GLP standards and the test standards established in the rule are being complied with.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or proccessors that fail to submit a letter of intent or an exemption requst and that continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of

the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

IV. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of test rules, EPA has adopted a two-stage approach. All candidates for test rules go through a Level I analysis. This consists of evaluating each chemical or chemical group on four principal market characteristics: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The results of the Level I analysis, along with the consideration of the costs of the required tests indicate whether the possibility of a significant adverse economic impact exists. Where the indication is negative, no further economic analysis is done for the chemical substance or group. However, for those chemical substances or groups where the Level I analysis indicates a potential for significant econmic impact, a more comprehensive and detailed analysis is conducted. This Level II analysis attempts to predict more precisely the magnitude of the expected impact.

Based upon the Level I analysis, total testing costs for the proposed rule for EHA are estimated to range from $185,600 to $491,700. The Level I economic analysis (Ref. 16) suggests that the potential for adverse economic effects due to the estimated test costs is low. Annualized costs should be $48,100 to $127,400 and should increase the price 0.2 to 0.6 cents per pound which is equivalent to 0.4 to 1 percent of the current base price.

V. Availaility of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of tests facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing (PB 82-140773)", can be obtained through the National Technical Information Service (NTIS).

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

VI. Guidelines

The OTS developmental toxicity testing guideline cited in this proposed test rule is available from the NTIS, 5285 Port Royal Rd., Springfield, VA 22161 (703-487-4657). This OTS guideline is within NTIS publication PB 84-233295 which costs $11.00. The OECD teratogenicity testing guideline cited in this proposed test rule is available from the OECD Publication and Information Center, Suite 1207, 1750 Pennsylvania Ave. NW., Washington, DC. 20006 (202-724-1857). This guideline is within OECD Guidelines for Testing Chemicals, publication ISBN-9264-12229-4, which costs $80.00. These guidelines are included in the docket for this proposed rule. The pharmocokinetics and subchronic toxicity test standards are contained in the proposed test rule and will be codified under § 798.460 and § 798.75 of 40 CFR Chapter I.

VII. Public Meetings

If persons indicate to EPA that they wish to present comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analysis, EPA will hold a public meeting in Washington, DC. Persons who wish to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800-424-9065); In Washington, DC: (554-1404); Outside the U.S.A. (operator 202-554-1404), by July 1, 1985. The meeting will not be held if members of the public do not indicate that they wish to make oral presentations. This meeting will be scheduled after the deadline for submission of written comments, so that issues raised in the written comments can be discussed by EPA and the public commenters. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether the meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VIII. Rulemaking Record

EPA has established a record for this rulemaking, (OPTS-42065). This record includes basic information considered by the Agency in developing this proposal and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice containing the ITC designation of EHA to the Priority List. (49 FR 22389, May 29, 1984).

(b) Notice of final rule of EPA's TSCA good laboratory practice standards (48 FR 53922, November 29, 1983).

(c) Notice of final rule on two-phase test rule development and exemption procedures (49 FR 39774, October 10, 1984).

(d) Notice of interim final rule on single-phase test rule development and exemption procedures.

(e) Notice of final rule on data reimbursement policy and procedures (48 FR 31786, July 11, 1983).

(f) Notices relating to the availability of OTS health effects test guidelines (49 FR 39911, October 11, 1984; 48 FR 44898, September 30, 1983).

(g) Notices requiring TSCA section 8(a) and 8(d) reporting for EHA (49 FR 22284, 49 FR 22286, May 29, 1984).

(2) Support documents: consisting of:

(a) Study of availability of test facilities and personnel.

(b) EHA economic analysis.

(3) Records of minutes of informal meetings.

(4) Communications before proposal consisting of:

(a) Written public and intra- or interagency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Reports—published and unpublished factual materials.

(5) Test guidelines proposed as standards.

B. References

(1) Brown, N.A. and Coakley, M.E. Valproic acid teratogenesis. II. Actions of related acids and potential antagonists and the role of coenzyme A. *Teratology* 29:20A. 1984.

(2) Brown N.A., and Colhoun, C.W. Valproic acid teratogenesis. I. In vitro/in vivo comparisons and effects on somite morphogenesis. *Teratology* 29:20A. 1984

(3) Smyth, H.F. Jr., and Carpenter C.P. The place of the range-finding test in the industrial laboratory. *J. Ind. Hyg. Toxicol 26:269–273.*

(4) Union Carbide. Unpublished summary toxicity data submitted to the Interagency Testing Committee by T.R. Tyler, Union Carbide Corp. September 26, 1983.

(5) Hazleton Laboratories America, Inc. Screening of priority chemicals for potential reproductive hazard. Final report. NIOSH Contract No. 200–82–2542. Hazleton Study Nos. 6125–101 though 6125–110. Atlanta, GA: Centers for Disease Control, NIOSH. 1983.

(6) Clayton, G.D. and Clayton, F.E. (ed.). Patty's Industrial Hygiene and Toxicology, 3rd. revised edition, Vol. II C. New York, NY.: Wiley-Interscience. pp. 4925–4926. 1982.

(7) USEPA. U.S. Environmental Protection Agency. Memorandum. Documentation of HERD Oncogenicity concerns for 2-Ethylhexanoic Acid (14th ITC List)-Second Draft. J.H. Brantner, Toxicologist, Oncology Branch, Health and Environmental Review Division. January 3, 1984.

(8) USEPA. U.S. Environmental Protection Agency. Memorandum. Proposed Rule for Investigation of the Metabolism of 2-Ethylhexanoic Acid (EHA). F.J. Di Carlo, Ph.D., Senior Science Advisor, Toxic Effects Branch, Health and Environmental Review Division, Office of Toxic Substances, March 12, 1985.

(9) Moody, D.E., and Reddy, J.K. Hepatic Peroxisome (Microbody) Proliferation in Rats Fed Plasticizers and Related Compounds. *Toxicology and Applied Pharmacology.* 45:497–504. 1978.

(10) U.S. Department of Health and Human Services. National Toxicology Program. Memorandum from D.A. Canter to E. Seiger. Subject: 2-Ethylhexanoic Acid. November 2, 1983.

(11) U.S. Department of Health and Human Services. Public Health Service. National Institutes of Health. Carcinogenesis Bioassay of Di(2-Ethylhexyl)phthalate (CAS No. 117–81–7) in F344 Rats and B_6C_3F Mice (Feeding Study). National Toxicology Program. Technical Report Series No. 217.

(12) U.S. Department of Health and Human Services. Public Health Service. National Institutes of Health. Carcinogenesis Bioassay of Di(2-ethylhexyl)adipate (CAS No. 103–23–1) F344 Rats and B_6C_3F Mice (Feed Study). National Toxicology Program. Technical Report Series No. 212.

(13) U.S. Department of Health and Human Services. Public Health Service. National Institutes of Health. Carcinogenesis Bioassay of Sodium 2-Ethylhexyl Sulfate (CAS No. 126–92–1) in F344N Rats and B_6C_3F Mice (Feed Study). Draft NTP Technical Report. Prepared for the Board of Scientific Counselors, September 22, 1982.

(14) U.S. Department of Health and Human Services. Public Health Service. National Institutes of Health. NTP Technical Report on the Toxicity and Carcinogenicity Tris(2-ethylhexyl) Phosphate (CAS No. 78–42–2) in F344N Rats and B_6C_3F Mice (Gavage Study). Draft NTP Technical Report. Prepared September 8, 1983.

(15) U.S. Department of Health and Human Services. Public Health Service. National Institutes of Health. Memorandum with Attachment from W. Kluwe to 12 Addressees. Attachment: Comparative Chronic Toxicities and Carcinogenic Potentials of Four 2-ethyhexyl-Containing Compounds in Rats and Mice. December 19, 1983.

(16) USEPA. U.S. Environmental Protection Agency. Economic Impact Analysis of Proposed Test Rules for 2-Ethylhexanoic Acid. Washington, D.C.: Office of Pesticides and Toxic Substances. Contract No. 68–01–6630. August 25, 1985.

(17) Moody, D.E. and Reddy J.K. Serum Triglyceride and Cholesterol Contents in Male Rats Receiving Diets containing Plasticizers and Analogues of the Ester 2-Ethylhexanol. *Toxicology Letters* 10:379–383. 1982.

(18) Warren, J.R., Lalwani, N.D., and Reddy, J.K. Phthalate Esters as Peroxisome Proliferator Carcinogens. *Environmental Health Perspectives* 45:35–40. 1982.

(19) Whittle, S.R. and Turner, A.J. Effects of Anticonvulsants on the Formation of Hydroxybutyrate from Aminobutyrate in Rat Brain. *Journal of Neurochemistry* 38:848–851. 1982.

(20) Whittle, S.R. and Turner, A.J. Anti-Convulsants and Brain Aldehyde Metabolism. Inhibitory Characteristics of Ox Brain Aldehyde Reductase. *Biochem. Pharmacology* 30:1191–1196. 1981.

(21) Whittle, S.R. and Turner, A.J. Biogenic Aldehyde Metabolism in Rat Brain. Differental Sensitivity of Aldehyde Reductase Isoenzymes to Sodium Valproate. *Biochimica et Biolphysica Acta* 657:94–105. 1981.

(22) Chapman, A.G., Meldrum, B.S. and Mendes, E. Acute Anticonvulsant Activity of Structural Analogues of Valproic Acid and Changes in Brain GABA and Aspartate Content. *Life Sciences* 32:2023–2031. 1983.

(23) Albro, P.W. The Metabolism of 2-Ethylhexanol in Rats. *Xenobiotica* 5:625–636. 1975.

(24) Eastman Kodak Co. Eastman Chemicals Division, Kingsport, Tennessee. Letter from R.D. Gerwe to TSCA Public Information Office on 2-Ethylhexanoic Acid. July 5, 1984.

(25) Chemical Manufacturers Association. Letter from E.J. Moran to C.R. McCormack on Production, Exposure and Health Effects of 2-Ethylhexanoic Acid. August 1, 1984.

(26) NIOSH. National Institute for Occupational Safety and Health. National Occupational Hazard Survey Data Base (NOHS). Washington, D.C. U.S. Department of Health and Human Services. Computer Printout. August 8, 1984.

(27) NIOSH. National Institute for Occupational Safety and Health. National Occupational Exposure Survey Data Base (NOES). Washington, D.C. U.S. Department of Health and Human Services Computer Printout. July 16, 1984.

(28) Kluwe, W.M. Overview of Phthalate Ester Pharmacokinetics in Mammalian Species. *Environmental Health Perspectives* 45:3–10. 1982.

(29) Knaak, J.B., Kozbelt, S.J., and Sullivan, L.J. Metabolism of 2-Ethylhexyl Sulfate by the Rat and Rabbit. *Toxicology and Applied Pharmacology* 8:369–379. 1966.

(30) Peck, C. and Albro, P.W. Toxic Potential of the Plasticizer Di(2-ethylhexyl) Phthalate in the Context of its Disposition and Metabolism in Primates and Man. *Environmental Health Perspectives* 45: 11–17. 1982.

(31) Department of Health and Human Services. National Institutes of Health. Letter from R.L. Melnick to C.R. McCormack. November 7, 1984.

(32) USEPA. U.S. Environmental Protection Agency. Computer Printout. TSCA Inventory retrieved June 1984. Washington, D.C.

(33) Schardein, J.L. In: "Drugs as Teratogens". CRC Press Inc., Cleveland. 291 pp. 1976.

(34) Ferngren, H. and Forsberg, U. Evaluation in Animals of Teratogenic Effects of Drugs Submitted to The Swedish Drug Control 1963–1968. *Proc. Eur. Soc. Study Drug Tox.* 12: 347–351. 1971.

(35) USEPA. U.S. Environmental Protection Agency. Rationale for Requiring Teratogenicity Testing in two Species. Washington, D.C.: Office of Pesticides and Toxic Substance, USEPA. 1981.

(36) CIBA–GEICY Corp. TSCA Section 8(e) Notice on [[[3,5-bis(1,1-dimethylethyl)-4-hydroxphenyl]methyl]thio]acetic acid, 2-ethylhexyl ester. Submitted by Anthony DiBattista to Document Control Officer, Office of Toxic Substances, U.S. Environmental Protection Agency. January 31, 1985. [EPA document control number 8EHQ–0285–0544, 88–8500724.]

(37) USEPA. U.S. Environmental Protection Agency. Memorandum. Chemical Substances Designated for the 14th ITC List: Review of Proposed Test Rule for 2-Ethylhexanoic Acid. R. Haque, Team Leader. Toxics and Pesticides Division (RD–682), Office of Research and Development. January 15, 1985.

(38) Chemical Manufacturers Association. Comments of the Naphthenate Metal Soaps Program Panel on the Interagency Testing Committee's Recommendations on the Need for Additional Testing on Calcium, Cobalt, and Lead Naphthenates. August 25, 1983.

(39) USEPA. U.S. Environmental Protection Agency. Memorandum. Exposure assessment for 2-Ethylhexanoic Acid. E. Ward, Engineer, Chemical Engineering Branch, Economics and Technology Division, Office of Toxic Substances. February 27, 1985.

(40) Eastman Kodak Co. Letter from R.G. Gerwe to F. Benenati on the use of 2-Ethylhexanoic Acid in Mining Applications. February 11, 1985.

(41) Eastman Kodak Co. Letter From R.D. Gerwe to F. Benenati on Hydrolysis Potential of 2-Ethylhexanoic Acid. February 27, 1985.

(42) Department of Health and Human Services. Memorandum. Nomination of Additional Compounds Containing the 2-Ethylhexyl Moiety for Mutagenicity Testing. D.A. Canter, National Toxicology Program, National Institutes of Health. May 2, 1983. (Note: Table 1 lists carcinogenicity status.)

(43) USEPA. U.S. Environmental Protection Agency. Memorandum. Hydrolytic Stability of 2-Ethylhexanoic Acid. F.L. Metz, Chemist, Industrial Chemisty Branch, Economics and Technology Division, Office of Toxic Substances. February 12, 1985.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Rm. E-107, 401 M St., S.W., Washington, DC from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

IX. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. First, the total cost of all the proposed testing for EHA is $125,000 to $332,000 over the testing and reimbursement period. Second, the cost of the testing is not likely to result in a major increase in users' costs or prices. Finally, based on our present analysis, EPA does not believe that there will be any significant adverse effects as a result of this rule.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*), Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They will not perform testing themselves, or will not participate in the organization of the testing effort; (2) they will experience only very minor costs in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070-0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked, "Attention: Desk Officer for EPA". The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Parts 798 and 799

Testing, Environmental Protection, Hazardous Material, Chemicals, Reporting and recordkeeping requirements.

Dated: May 7, 1985.

John A. Moore,

Assistant Administrator.

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

1. By adding new Part 798, consisting at this time of Subpart B, § 798.75, and Subpart F, § 798.460, to read as follows:

PART 798—HEALTH EFFECTS TEST STANDARDS

Sec.

Subpart A—[Reserved]

Subpart B—General Toxicity Testing

798.75 Subchronic oral toxicity test standard.

Subparts C-E—[Reserved]

Subpart F—Special Studies

798.460 Pharmacokinetic test standard.

Authority: 15 U.S.C. 2603, 2611, 2625.

Subpart A—[Reserved]

Subpart B—General Toxicity Testing

§ 798.75 Subchronic oral toxicity test standard.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of a chemical, the determination of subchronic oral toxicity may be carried out after initial information on toxicity has been obtained by acute testing. The subchronic oral study has been designed to permit the determination of the no-observed effect level and toxic effects associated with continuous or repeated exposure to a test substance for a period of 90 days. The test is not capable of determining those effects that have a long latency period for development (e.g., carcinogenicity and life shortening). It provides information on health hazards likely to arise from repeated exposure by the oral route over a limited period of time. It will provide information on target organs, the possibilities of accumulation, and can be of use in selecting does levels for chronic studies and for establishing safety criteria for human exposure.

(b) *Definitions.* (1) Subchronic oral toxicity is the adverse effects occurring as a result of the repeated daily exposure of experimental animals to a chemical by the oral route for a part (approximately ten percent for rats) of a life span.

(2) Does is the amount of test substance administered. Does is expressed as weight of test substance (g, mg) per unit weight to test substance per unit weight of food or drinking water.

(3) No-effect level/No-toxic-effect level/No-adverse-effect level/No-observed-level is the maximum dose used in a test which produces no observed adverse effects. A no-observed-effect level is espressed in terms of the weight of a substance given daily per unit weight of test animal (mg/kg). When administered to animals in food or drinking water, the no-observed-effect level is expressed as mg/kg of food or mg/ml of water.

(4) Cumulative toxicity is the adverse effects of repeated doses occurring as a result of prolonged action on, or increased concentration of the administered substance or its metabolites in susceptible tissue.

(c) *Principle of the test method.* The test substance is administered orally in graduated daily doses to several groups of experimental animals, one dose level per group, for a period of 90 days. During the period of administration the animals are observed daily to detect signs of toxicity. Animals which die during the period of administration are necropsied. At the conclusion of the test all animals are necropised and histopathological examinations carred out.

(d) *Test procedures*—(1) *Animal selection*—

(i) *Species and strain.* A variety of rodent species may be used, although the rat is the preferred species. Commonly used laboratory strains should be employed. The commonly used non-rodent species is the dog, preferably of a defined breed; the beagle is frequently used. If other mammalian species are used, the tester shall provide justification/reasoning for their selection.

(ii) *Age.* (A) Young adult animals shall be employed. At the commencement of the study the weight variation of animals used shall not exceed ±20 percent of the mean weight for each sex.

(B) Dosing of rodents shall begin as soon as possible after weaning, ideally before the rats are 6, and in any case, not more than 8 weeks old.

(C) Dosing of dogs shall commence after acclimatization, preferably at 4-6 months and not later than 9 months of age.

(iii) *Sex.* (A) Equal numbers of animals of each sex should be used at each dose level.

(B) The females should be nulliparous and non-pregnant.

(iv) *Numbers.* (A) At least 20 rodents (10 females and 10 males) shall be used at each dose level.

(B) At least eight non-rodents (4 females and 4 males) shall be used at each dose level.

(C) If interim sacrifices are required, the number shall be increased by the number of animals scheduled to be sacrificed before the completion of the study.

(2) *Control groups.* A concurrent control group is required. This group shall be an untreated or sham treated control group or, if a vehicle is used in administering the test substance, a vehicle control group. If the toxic properties of the vehicle are not known or cannot be made available, both untreated and vehicle control groups are required.

(3) *Satellite group.* A satellite group of 20 rodents (10 animals per sex) shall be treated with the high does level for 90 days and observed for reversibility, persistence, or delayed occurrence of toxic effects for a post treatment period of not less than 28 days.

(4) *Dose levels and dose selection.* (i) In subchronic toxicity tests, it is desirable to have a dose response relationship as well as no-observed-toxic-effect level. Therefore, at least three dose levels with a control and, where appropriate, a vehicle control (corresponding to the concentration of vehicle at the highest exposure level) shall be used. Doses should be spaced appropriately to produce test groups with a range of toxic effects. The data shall be sufficient to produce a dose response curve.

(ii) The highest dose level in rodents shall result in toxic effects but not produce an incidence of fatalities which would prevent a meaningful evaluation; for non-rodents there should be no fatalities.

(iii) The lowest dose level shall not produce any evidence of toxicity. Where there is a usable estimation of human exposure the lowest dose level shall exceed this.

(iv) Ideally, the intermediate dose level(s) should produce minimal observable toxic effects. If more than one intermediate dose is used, the dose levels should be spaced to produce a graduation of toxic effects.

(v) For rodents, the incidence of fatalities in low and intermediate dose groups and in the controls should be low, to permit a meaningful evaluation of the results; for non-rodents, there should be no fatalities.

(5) *Exposure conditions.* The animals shall be dosed with the test substance on a 7-day per week basis over a period of 90 days. However, based primarily on practical considerations, dosing by gavage or capsule studies on a 5-day per week basis shall be acceptable.

(6) *Observation period.* (i) Duration of observation shall be for at least 90 days.

(ii) Animals in the satellite group scheduled for follow-up observations shall be kept for not less than 28 days without treatment to detect recovery from, or persistence of, toxic effects.

(7) *Administration of the test substance.* (i) The test substance shall be administered in the diet or in capsules. Alternatively for rodents it may be administered by gavage or in the drinking water.

(ii) All animals shall be dosed by the same method during the entire experimental period.

(iii) Where necessary, the test substance is dissolved or suspended in a suitable vehicle. If a vehicle or diluent is needed, ideally it should not elicit important toxic effects itself nor substantially alter the chemical or toxicological properties of the test substance. It is recommended that wherever possible the usage of an aqueous solution be considered first, followed by consideration of a solution of oil, and then by possible solution in other vehicles.

(iv) For substances of low toxicity, it is important to ensure that when administered in the diet the quantities of the test substance involved do not interfere with normal nutrition. When the test substance is amdinistered in the diet, either a constant dietary concentration (ppm) or a constant dose level in terms of the animals' body weight shall be used; the alternative used shall be specified.

(v) For a substance administered by gavage or capsule, the dose shall be given at similar times each day, and adjusted at intervals (weekly or bi-weekly) to maintain a constant dose level in terms of animal body weight.

(8) *Observation of animals.* (i) Each animal shall be handled and its physical condition appraised at least once each day.

(ii) Additional observation shall be made daily with appropriate actions taken to minimize loss of animals to the study (e.g. necropsy or refrigeration of those animals found dead and isolation or sacrifice of weak or moribund animals).

(iii) Signs of toxicity shall be recorded as they are observed including the time of onset, degree and duration.

(iv) Cage-side observations shall include, but not be limited to, changes in skin and fur, eyes and mucous membranes, respiratory, circulatory, autonomic and central nervous systems, somatomotor activity and behavior pattern.

(v) Measurements shall be made weekly of food consumption or water consumption when the test substance is administered in the food or drinking water, respectively.

(vi) Animals shall be weighed weekly.

(vii) At the end of the 90-day period all survivors in the non-satellite treatment groups shall be sacrificed. Moribund animals shall be removed and sacrificed when noticed.

(9) *Clinical examinations.* (i) The following examinations shall be made on at least five animals of each sex in each group for rodents and all animals when non-rodents are used as test animals.

(A) Certain hematology determinations shall be carried out at least three times during the test period: just prior to initiation of dosing (baseline data), after approximately 30 days on test, and just prior to terminal sacrifice at the end of the test period. The following hematology determinations shall be carried out: hematocrit, hemoglobin concentration, erythrocyte count, total and differential leucoyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(B) Certain clinical biochemistry determinations shall be carried out at least three times during the test period: just prior to initiation of dosing (baseline data), after approximately 30 days on test, and just prior to terminal sacrifice at the end of the test period. The following clinical biochemical test areas shall be carried out: electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of additional tests shall be influenced by observations on the mode of action of the substance. Suggested additional determinations include: calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with period of fasting appropriate to the species/breed), serum glutamic-pyruvic transaminase (now known as serum alanine aminotransferase), serum glutamic oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, urea nitrogen, albumen, blood creatinine, total bilirubin and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include analyses of lipids, hormones, acid/base balance, methemoglobin and cholinesterase activity. Additional

clinical biochemistry may be employed where necessary to extend the investigation of observed effects. Non-rodents shall be fasted for a period (not more than 24 hours) before taking blood samples.

(ii) The following examinations shall be made on at least five animals of each sex in each group for rodents and all animals on test for non-rodents.

(A) Ophthalmological examination, using an ophthalmoscope or equivalent suitable equipment, shall be made prior to the administration of the test substance and at the termination of the study. If changes in the eyes are detected, all animals shall be examined.

(B) Urinalysis is required only when there is an indication based on expected or observed toxicity.

(10) *Gross necropsy.* (i) all animals shall be subjected to a full gross necropsy which includes examination of the external surface of the body, all orifices, and the cranial, thoracic and abdominal cavities and their contents.

(ii) At least the liver, kidneys, adrenals, and gonads shall be weighed wet, as soon as possible after dissection to avoid drying. In addition, for the rodent, the brain; for the non-rodent, the thyroid with parathyroids also shall be weighed wet.

(iii) The following organs and tissues, or representative samples thereof, shall be preserved in a suitable medium for possible future histopathological examination: all gross lesions; brain-including sections of medulla/pons, cerebellar cortex and cerebral cortex; pituitary; thyroid/parathyroid; thymus; lungs; trachea; heart; sternum with bone marrow; salivary glands; liver; spleen; kidneys/adrenals; pancreas; gonads; uterus; accessory genital organs (epididymis, prostrate, and, if present, seminal vesicles); aorta, (skin), (non-rodent gall bladder); esophagus; stomach; duodenum; jejunum; ileum; cecum; colon; rectum; urinary bladder; representative lymph node; (mammary gland), (thigh musculature), peripheral nerve; (eyes); (femur including articular surface); (spinal cord at three levels—cervical, midthoracic and lumbar); and, (rodent-exorbital lachrymal glands).

(11) *Histopathology.* (i) Full histopathology shall be performed on the organs and tissues, listed under paragraph (d)(10) (ii) and (iii) of this section of all rodents in the control and high dose groups, all non-rodents, and all rodents that died or were killed during the study.

(ii) Histopathology shall be performed on all gross lesions in all animals.

(iii) Histopathology shall be performed on target organs in all animals.

(iv) Histopathology shall be performed on the tissues mentioned in brackets under paragraph (d)(10)(iii) of this section if indicated by signs of toxicity or target organ involvement.

(v) Histopathology shall be performed on lungs, liver and kidneys of all animals. Special attention to examination of the lungs of rodents should be made for evidence of infection since this provides a convenient assessment of the state of health of the animals.

(vi) For the satellite group of rodents, histopathology shall be performed on tissues and organs identified as showing effects in the treated groups.

(e) *Data and reporting*—(1) *Treatment of results.*

(i) Data shall be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals showing lesions, the type of lesions, and the percentage of animals displaying each type of lesion.

(ii) All observed results, quantitative and incidental, shall be evaluated by an appropriate statistical method. Any generally acceptable statistical methods may be used; the statistical methods should be selected during the design of the study.

(2) *Evaluation of the study results.* (i) The findings of a subchronic oral toxicity study should be evaluated in conjunction with the findings of preceding studies and considered in terms of the toxic effects and the necropsy and histopathological findings. The evaluation shall include the relationship between the dose of the test substance and the presence or absence, the incidence and severity, of abnormalities, including behavioral and clinical abnormalities, gross lesions, identified target organs, body weight changes, effects or mortality and any other general or specific toxic effects. The test shall provide a satisfactory estimation of a no-effect level.

(ii) In any study which demonstrates and absence of toxic effects, further investigation to establish absorption and bioavailability of the test substance shall be considered.

(3) *Test report.* In addition to the reporting requirements as specified in the TSCA Good Laboratory Practice Standards, 40 CFR Part 792, Subpart J, the following specific information shall be reported:

(i) *Group animal data.* Tabulation of toxic response data by species, strain, sex, and exposure level for:

(A) Number of animals dying.

(B) Number of animals showing signs of toxicity.

(C) Number of animals exposed.

(ii) *Individual animal data.*

(A) Time of death during the study or whether animals survived to termination.

(B) Time of observation of each abnormal sign and its subsequent course.

(C) Body weight data.

(D) Food consumption data when collected.

(E) Hematological tests employed and all results.

(F) Clinical biochemistry tests employed and all results.

(G) Necropsy findings.

(H) Detailed description of all histopathological findings.

(I) Statistical treatment of results where appropriate.

Subparts C–E—[Reserved]

Subpart F—Special Studies

§ 798.460 Pharmacokinetic test standard.

(a) *Purpose.* The purpose of these studies is to determine:

(1) The bioavailability of 2-ethylhexanoic acid (EHA) after dermal administration.

(2) Whether or not the biotransformation of EHA is qualitatively and quantitatively the same after dermal and oral administration.

(3) Whether or not the biotransformation of EHA is changed qualitatively or quantitatively by repeated dosing.

(4) The extent of transport of EHA and its metabolites to the fetus.

(b) *Definitions.* (1) Bioavailability refers to the rate and extent to which the administered compound is absorbed, i.e., reaches the systemic circulation.

(2) Relative percent of percutaneous absorption is defined as 100 times the ratio between total urinary excretion of compound following topical administration and total urinary excretion of compound following oral administration.

(c) *Test procedures*—(1) *Animal selection*—

(i) *Species.* The species utilized for investigating EHA shall be the rat, a species for which historical data on the toxicity and carcinogenicity of several compounds are available and which is used extensively in percutaneous absorption studies, and the guinea pig, a species whose skin resembles human skin.

(ii) *Animals.* Adult female Fischer 344 rats and Hartley guinea pigs shall be used. The rats shall be 7 to 9 weeks old and weigh 125 to 175 grams, and the guinea pigs, 5 to 7 weeks old and weigh

400 to 500 grams. Prior to testing the animals shall be selected at random for each group. Animals showing signs of ill health shall not be used. For studying EHA transport to the fetus, pregnant rats shall be used in accordance with the OTS or OECD guideline on teratogenicity.

(iii) *Animal care.* (A) The animals should be housed in environmentally controlled rooms with 10 to 15 air changes per hour. The rooms should be maintained at a temperature of 25±2 °C and humidity of 50±10 percent with a 12 hour light/dark cycle per day. The rats and guinea pigs should be kept in a quarantine facility for at least 7 days prior to use.

(B) During the acclimatization period, the rats and guinea pigs should be housed in cages on hardwood chip bedding. All animals shall be provided with conventional laboratory diets and water *ad libitum.*

(2) *Administration of EHA*—(i) *Test compound.* These studies require the use of both non-radioactive EHA and ^{14}C-labeled EHA. Both preparations are needed to investigate under paragraph (a)(2) of this section. The use of ^{14}C-EHA is required to investigate under paragraphs (a) (1), (2) and (4) of this section because it will facilitate the work, improve the reliability of quantitative determinations, and increase the probability of observing the presence of previously unidentified metabolites.

(ii) *Dosage and treatment.* (A) Two doses shall be used in the study, a "low" dose and a "high" dose. When administered orally, the "high" dose level should ideally induce some overt toxicity such as weight loss. The "low" dose level should correspond to a no-effect level.

(B) The same "high" and "low" doses shall be administered orally and dermally.

(C) Oral dosing shall be performed by gavage or by administering encapsulated EHA.

(D) For dermal treatment, the doses shall be applied at a volume adequate to deliver the prescribed doses. The backs of the rats and guinea pigs should be lightly shaved with an electric clipper shortly before treatment. The dose shall be applied with a micropipette on a specific area (2 cm^2 for rats, 5 cm^2 for guinea pigs) on the freshly shaven skin. The dosed areas shall be occluded with an aluminum foil patch which is secured in place with adhesive tape.

(iii) *Washing efficiency study.* Before initiation of the dermal absorption studies described in paragraphs (c)(2)(iv) (A) and (B) of this section, an initial washing efficiency experiment shall be performed to assess the extent of removal of the applied EHA by washing with soap and water. Four rats and 4 guinea pigs should be lightly anesthesized with sodium pentobarbital. These animals shall then be treated with dermal doses of test compound at the low dose level. Soon after application (5 to 10 min) the treated animals shall be washed with soap and water then housed in individual metabolism cages for excreta collection. Urine and feces shall be collected at 8, 24, and 48 hours following dosing. Collection of excreta shall continue every 24 hours if significant amounts of EHA and metabolites continue to be eliminated.

(iv) *Determination of bioavailability.* (A) Rat studies.

(*1*) Eight animals shall be dosed once orally with the low dose of ^{14}C-EHA.

(*2*) Eight animals shall be dosed once orally with the high dose of ^{14}C-EHA.

(*3*) Eight animals shall be dosed once dermally with the low dose of ^{14}C-EHA.

(*4*) Eight animals shall be dosed once dermally with the high dose of ^{14}C-EHA.

(*5*) In the oral studies, the animals shall be placed in individual metabolic cages for collection of excreta at 8, 24, 48, 72 and 96 hours following administration.

(*6*) In the dermal studies, doses of ^{14}C-EHA shall be kept on the skin for the duration of the study (96 hours). After application, the animals shall be placed in metabolism cages for excreta collection. Urine and feces shall be collected at 8, 24, 48, 72 and 96 hours.

(B) *Guinea pig studies.* The same procedures shall be followed as specified in paragraph (c)(2)(iv)(A) (*1*) through (*6*) of this section.

(v) *Repeated dosing study.* Four rats shall receive a series of single daily oral doses of non-radioactive EHA over a period of at least 14 days, followed at 24 hours after the last dose by a single oral dose of ^{14}C-EHA. Each does shall be at the low dose level.

(vi) *Study of placental transport.* A single low dose of ^{14}C-EHA shall be administered orally to four pregnant rats during the period of organogenesis.

(3) *Observation of animals*—(i) *Bioavailability*—

(A) *Blood levels.* The levels of total ^{14}C shall be determined in whole blood, blood plasma or blood serum at 8, 24, 48, 72, and 96 hours after dosing rats as specified in paragraph (c)(2)(iv)(A)(*1*) of this section and guinea pigs as specified in paragraph (c)(2)(iv)(B) of this section. Four animals from each group shall be used for this purpose.

(B) *Urinary and fecal excretion.* The quantities of total ^{14}C excreted in urine and feces by rats dosed as specified in paragraph (c)(2)(iv)(A) of this section and guinea pigs dosed as specified in paragraph (c)(2)(iv)(B) of this section shall be determined at 8, 24, 48, 72 and 96 hours after dosing, and if necessary, daily thereafter until at least 90 percent of the dose has been excreted or until 7 days after dosing (whichever occurs first). Four animals from each group shall be used for this purpose.

(ii) *Biotransformation after oral and dermal dosing.* Appropriate qualitative and quantitative methods shall be used to assay urine specimens collected from rats dosed as specified in paragraph (c)(2)(iv)(A) of this (c)(2)(iv)(B) of this section. Any metabolite which comprises greater than 10 percent of the dose shall be identified.

(iii) *Change(s) in biotransformation.* Appropriate qualitative and quantitative assay methodology shall be used to compare the composition of ^{14}C-labeled components of urine collected at 24 and 48 hours after dosing rats as specified in paragraph (c)(2)(iv)(A)(*1*) of this section with those in the urine collected at 24 and 48 hours after the ^{14}C-EHA dose in the repeated dosing study. Any metabolite which comprises greater than 10 percent of the dose shall be identified.

(iv) *Placental transport.* Reference shall be made to OTS or OECD guidelines on teratogenicity to assist in deciding when fetuses should be removed for ^{14}C assay. The percentage dose transferred to the whole fetus shall be determined. If EHA is found to cause developmental toxicity s specified in § 799.2050(c)(3) of this chapter, an effort shall be made to identify the proximate teratogen transferred to the fetus.

(d) *Data and Reporting*—(1) *Treatment of results.* Data shall be summarized in tabular form.

(2) *Evaluation of results.* All observed results, quantitative or incidental, shall be evaluated by an appropriate statistical method.

(3) *Test report.* In adition to the reporting requirements as specified in the TSCA Good Laboratory Practice Standards, 40 CFR 792 Part, Subpart J, the following specific information shall be reported:

(i) Species, strain, and supplier of laboratory animals.

(ii) Information on the degree (i.e., specific activity for a radiolabel) and site(s) of labeling of the test substances.

(iii) A full description of the sensitivity and precision of all procedures used to produce the data.

(iv) Relative percent absorption by the dermal route for rats and guinea pigs administered low and high doses of

^{14}C-EHA, assuming 100 percent absorption of the oral doses.

(v) Quantity of isotope, together with percent recovery of the administered dose, in feces, urine, and blood.

(vi) Biotransformation pathways and quantities of EHA and metabolites in urine collected after administering single high and low oral and dermal doses to rats and guinea pigs.

(vii) Biotransformation pathways and quantities of EHA and metabolites in urine collected after administering repeated low doses of EHA to rats.

(viii) Extent of placental transfer of radioactivity from ^{14}C-EHA to fetuses as a percent of dose transfered to the whole fetus.

2. The authority citation for Part 79 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

3. In Part 799, Subpart B, by adding § 799.2050 to read as follows:

§ 799.2050 2-Ethylhexanoic acid.

(a) *Identification of test substance.* (1) 2-Ethylhexanoic acid (CAS No. 149-57-5)((hereinafter "EHA") shall be tested in accordance with this section.

(2) EHA of at least 99 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests and submit data.* All persons who manufacture or process EHA other than as an impurity from the effective date of this section (44 days after the publication date of the final rule in the **Federal Register**) to the end of the reimbursement period shall submit an exemption application, or shall submit a letter of intent to conduct testing, study plans, conduct tests, and submit data as specified in this section, Subpart A of this Part, and Parts 790 and 798 of this chapter. The end of the reimbursement period shall be 5 years after the submission of the last final report required under this test rule. Information collection requirements are approved by the Office of Management and Budget under control number 2070-0033.

(c) *Health Effects Testing*—(1) *Pharmacokinetics.*

(i) *Required testing.* Metabolism studies of the oral and dermal routes of exposure shall be conducted with EHA in accordance with the test standard specified in §798.460 of this chapter.

(ii) *Reporting requirements.* (A) Study plans shall be provided to the Agency at least 30 days prior to initiating testing.

(B) Interim progress reports shall be provided to the Agency on a quarterly basis beginning 90 days after the effective date of the final test rule.

(C) The final report of results shall be submitted to the Agency no later than 1 year from the effective date of the final test rule.

(2) *Subchronic Toxicity*—(i) *Required testing.* Subchronic toxicity tests shall be conducted with EHA using Fischer 344 rats and B6C3F1 mice in accordance with the test standard specified in § 798.75 of this chapter. Non-rodents need not be tested for subchronic toxicity.

(ii) *Reporting requirements.* (A) Study plans shall be provided to the Agency at least 30 days prior to initiating testing.

(B) Interim progress reports shall be provided to the Agency on a quarterly basis beginning 90 days after the effective date of the final test rule.

(C) The final report of results shall be submitted to the Agency no later than 15 months from the effective date of the final test rule.

(3) *Developmental toxicity*—(i) *Required testing.* Developmental toxicity tests shall be conducted with EHA using one rodent and one non-rodent mammalian species in accordance with either the OTS Health Effects Guideline for HG-Organ/Tissue-Dev Tox or the OECD guideline entitled "Teratogenicity", No. 414, Adopted May 12, 1981. The OTS guideline is available in U.S. Environmental Protection Agency Publication No. EPA 560/6-84-002 which is sold by the NTIS (Accession No. PB 84-233295). The OECD guideline is available in OECD Publication No. ISBN 92-64-12221-4 and is sold by the OECD Publication and Information Center. These documents also are available for inspection at both the Office of the Federal Register Information Center and the OPTS Reading Room (docket no. OPTS-42065). This incorporation by reference was approved by the Director of the Federal Register on [date]. These materials are incorporated as they exist on the effective date of this rule; a notice of any change will be published in the **Federal Register.**

(ii) *Reporting requirements.* (A) Study plans shall be provided to the Agency at least 30 days prior to initiating testing.

(B) Interim progress reports shall be provided to the Agency on a quarterly basis beginning 90 days after the effective date of the final test rule.

(C) The final report of results shall be submitted to the Agency no later than 18 months from the effective date of the final test rule.

[FR Doc. 85-11589 Filed 5-16-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42067; TSH-FRL 2815-3]

Bisphenol A; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that manufacturers and processors of bisphenol A (4,4'-isopropylidenediphenol, BPA, CAS No. 80-05-7) be required, under the Toxic Substances Control Act (TSCA), to perform testing for 90-day inhalation subchronic toxicity with emphasis on pulmonary effects, and acute and chronic aquatic toxicity testing. This proposed rule is in response to the Interagency Testing Committee's (ITC's) designation of BPA for priority consideration for health and environmental effects testing.

DATES: Submit written comments on or before July 16, 1985. Make requests to submit oral comments by July 1, 1985. If requests are made to submit oral comments, EPA will hold a public meeting on this rule in Washington, D.C. For further information on arranging to speak at the meeting see Unit VI of this preamble.

ADDRESS: Submit written comments in triplicate identified by the document control number (OPTS-42067) to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm E-108, 401 M St., SW., Washington, D.C. 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday though Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Rm. E-543, 401, M St., SW., Washington, D.C. 20460. Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (operator—202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is issuing a proposed test rule under section 4(a) of TSCA in response to the ITC's designation of BPA for health and environmental effects testing consideration.

I. Background

A. ITC Recommendation

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2010 *et seq.*; 15 U.S.C. 2603 *et seq.*) established the ITC to recommend

to EPA a list of chemicals to be considered for testing under section 4(a) of the Act.

The ITC designated BPA (CAS No. 80-05-7) for priority consideration in its 14th Report submitted to EPA on May 8, 1984. The report was published in the **Federal Register** of May 29, 1984 (49 FR 22389). The ITC recommended that BPA be considered for chemical fate testing, including octanol/water partition coefficient and persistence, health effects testing, including reproductive effects, chronic effects and oncogenicity specifically as a result of inhalation exposures, and ecological effects testing, including acute and chronic toxicity to fish, aquatic invertebrates, and algae, and bioconcentration. The bases for these recommendations were as follows: annual production of 479 million pounds, estimated occupational exposure of 9,446 workers, expected environmental releases from manufacture and processing, and lack of sufficient data to characterize the effects of concern for BPA.

B. Test Rule Development Under TSCA

Under section 4(a) of TSCA, the EPA shall by rule require testing of a chemical substance or mixture to develop appropriate test data if the Administrator finds that:

> (A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,
> (ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or
> (B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,
> (ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight of evidence approach in making section 4(a)(1)(A)(i) findings; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure and release. For the findings under sections 4(a)(1)(A)(ii) and 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine if existing information is adequate to reasonably determine or predict the effects of human exposure to or environmental release of the chemical. In making the finding under section 4(a)(1)(A)(iii) or 4(a)(1)(B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules. The section 4(a)(1)(A) findings are discussed in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300) and the section 4(a)(1)(B) findings are discussed in the **Federal Register** of June 5, 1981 (46 FR 30302).

In evaluating the ITC's testing recommendations concerning BPA, EPA considered all available relevant information including the following: information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of BPA under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) concerning BPA; and published and unpublished data available to the Agency. Based on its evaluation, as described in this proposed rule, EPA is proposing health and environmental effects testing requirements for BPA under section 4(a)(1)(A). By these actions, EPA is responding to the ITC's designation of BPA for priority testing consideration.

C. Change in Process for Adopting Test Standards

EPA announced an approach to adopting test rules that involved two-phase rulemaking in the **Federal Register** of March 26, 1982 (47 FR 13012). In the first phase of rulemaking, EPA would specify the test substance, who would be responsible for testing, and the required tests. In the second phase, EPA would establish the test methodologies (test standards) and the deadlines for submission of test data. EPA has used this approach for most of the test rules it has proposed for chemicals designated in the first through the thirteenth ITC reports.

In December 1983 the Natural Resources Defense Council (NRDC) and the Industrial Union Department of the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) filed an action under TSCA section 20 which challenged, among other things, the use of the two-phase process. In an August 23, 1984 Opinion and Order, the Court found that utilization of the two-phase rulemaking process was permissible. However, the Court also held that the Agency was subject to a standard of promulgating test rules within a reasonable time frame. (*NRDC* and *AFL-CIO* v. *EPA*, 595 F. Supp. 1255 (S.D.N.Y.)).

Subsequent to the issuance of this Opinion, the Agency submitted papers to the Court which indicated that in order to expedite the test rule development process, EPA would utilize a single-phase rulemaking process for most test rules. The Agency also indicated that EPA would publicly announce this policy in the first test rule proposal to be published in the spring of 1985. (Declaration of Don R. Clay, at 12 (September 24, 1984)). In accordance with this commitment, the Agency is setting forth in the preamble of this proposed rule and elsewhere in today's **Federal Register** notice, guidelines and procedures for utilization of single-phase rulemaking in the test rules program.

Section 4(b)(1) specifies that test rules shall include standards for the development of test data ("test standards") and deadlines for submission of test data. Under the two-

phase process, both test standards and data submission deadlines are established during the second phase of rulemaking. However, in the single-phase approach, EPA will propose the pertinent OTS test guideline(s) or other suitable test guideline(s) as the required test standards in the initial notice of proposed rulemaking, and EPA will also propose time frames for the submission of the test data. Industry and other commenters may suggest an alternative methodology or modifications to the OTS guideline, i.e., the proposed test standard, during the public comment period, and such comments should state why the alternative methodology or modification is more suitable for the chemical substance in question than the EPA-proposed test standard. Comment will also be sought on the proposed data submission deadlines. All such submissions, including alternative test methodologies, will be placed in the rulemaking record and will be available for review by the public. The final rule will promulgate as the test standards either the OTS guidelines or other suitable guidelines, a modified version of these guidelines, an alternative methodology submitted in comments, or a modified version of the alternative methodology. The proposed test standards and data submission deadlines will be open for discussion at any public meeting held pursuant to TSCA section 4(b)(5).

The single-phase approach offers a number of advantages over the two-phase approach. First, the Agency believes that the single-phase approach will shorten rulemaking, resulting in the expedited initiation of the required testing. Secondly, because the OTS guidelines or other appropriate methodologies will be proposed as the test standards, the one-phase process eliminates the requirement under the two-phase approach for industry to submit test protocols for approval. Yet, by allowing submission of alternative test methodologies during the comment period, it preserves the flexibility of the two-phase process, but at reduced administrative cost.

Because of these advantages, the Agency intends to utilize single-phase rulemaking for most rules promulgated under TSCA section 4(a). However, EPA will continue to utilize the two-phase process for rulemakings where the two-phase process may be a more expeditious route to a final test rule, e.g., in cases where no well-accepted test methodology is available for inclusion in a proposed test rule.

II. Bisphenol A

A. Profile

BPA is a white solid with a mild phenolic odor. Depending on purity, its melting point ranges between 153 °C and 157 °C (Ref. 1). It has a rather low vapor pressure at ambient temperatures, but it can be distilled at 220 °C at 4 mm Hg (Ref. 2). EPA has calculated its solubility in water to be 120 mg/1 at 25 °C. BPA is soluble in polar organic solvents, and various octanol/water partition coefficients have been reported from several sources to be 3.32 (Ref. 3) and 2.20 (Ref. 4) as experimentally determined log K_{ow} values, and 3.84 (Ref. 5) as a calculated log K_{ow} value.

By applying these data to the EPA ENPART model the environmental distribution of BPA can be estimated. Using the relative volumes of the water, soil, and air compartments built into the ENPART model, the mass environmental distribution of BPA is 96 percent in water, 4 percent in soil, and a trace in air. Based on partitioning data, estimated rates of hydrolysis, photolysis and biodegradation, and inter-media transport rates, the environmental persistence from the steady state condition after loading ceases is approximately 90 years for a 50 percent mass reduction.

B. Production

In the commercial process for producing BPA, phenol and acetone are charged to a glass-lined reactor, in a molar ratio of two or three to one. Dry hydrogen chloride, as the catalyst, is bubbled through the mixture, which is kept at about 50°C for 8 to 12 hours. Careful control is necessary to prevent a number of side reactions which would yield impurities.

The product slurry is then washed with water, neutralized, and distilled under vacuum to remove water and phenol. The BPA, which is still molten, is then sprayed with steam to remove traces of methyl mercaptan, which was added initially as a catalyst promoter, quenched in water, washed, filtered and dried. More recently, the purification process has been carried out continuously, using distillation and extractive crystallization. For BPA to be used as a polycarbonate feedstock, an additional purification step is necessary to remove all BPA isomers (Refs. 6 and 7).

The manufacturers of BPA have included Dow Chemical USA, General Electric (GE), Shell Chemical, Union Carbide, and USS Chemicals. Union Carbide put its facility on standby in 1982 and has not announced plans for resuming production. Thus, four companies are current producers. Shell reportedly planned to increase its capacity in its existing plant during 1984 (Ref. 7).

All of these companies have captive on-site or nearby sources of the BPA feedstocks, phenol and acetone. All of the companies, except USS Chemicals, also use much or all of their production captively. Dow, GE, and Shell produce the necessary coreactants for their epoxy and polycarbonate derivatives which are downstream products of BPA. Although it currently sells BPA only in the merchant market, USS Chemicals is considering the construction of a polycarbonate plant (Ref. 7).

BPA production grew at annual rates of 15 percent in the 1960's and then ten percent in the 1970's. After reaching a peak of 576 million pounds in 1979, production fell to 480 million in 1982, due to the general recession and a major decline in exports. In 1983, production reportedly rose past the 1979 peak to 643 million pounds, due to recovery in the construction, automobile, appliance and electronics industries (Ref. 7). Preliminary figures through October 1984 indicate a further significant increase. If the ten month trend continued through year end, BPA production in 1984 would be up 22 percent to 785 million pounds. Imports of BPA have been minor. Exports were about 40 million pounds per year in the early 1980's (Ref. 7).

C. USE

Domestically, BPA is used in the manufacture of polycarbonate resins (50 percent of manufactured BPA), epoxy resins (44 percent), polysulfone and phenoxy resins (2 percent), and miscellaneous products (4 percent) (Ref. 7).

Polycarbonates are linear polyesters of carbonic acid. The principal commercial polycarbonate (PC) is formed from BPA and phosgene ($COCl_2$). The dominant commercial process for making PC uses a batch-wise direct reaction of the feedstocks in aqueous sodium hydroxide, with a small amount of phenol added to control the chain length. The resulting polymer dissolves across a liquid-liquid interface into an immiscible methylene chloride phase in the reactor. When the reaction is complete, the phases are separated and the PC is purified (Ref. 7).

The two domestic producers of PC are the General Electric Co., Plastics Business Operations, with 300 million pounds of capacity in Mount Vernon, IN, and the Plastics and Coatings Division of Mobay Chemical Corp. (a Bayer subsidiary), with 130 million pounds of

capacity in Cedar Bayou, TX (Ref. 7). Dow Chemical Co. has been operating a ten million pound per year pilot plant in Freeport, TX, for several years. It plans to bring a 30 million pound plant on-line in the first quarter of 1985, with a duplicate unit to follow later (Ref. 7).

The principal end-use categories of PC plastics are glazing, communication and electronics equipment, appliances, sports equipment, transportation equipment, lighting, and signs.

Epoxy resins are the other major use of BPA. Epoxies are a class of thermosetting resins with versatile composition and superior toughness, adhesion, heat and chemical resistance, and electrical properties. They are generically polyethers with terminal, and sometimes side-chain, epoxy groups. The dominant epoxy is formed by the reaction of epichlorohydrin and bisphenol A.

The epoxy resins are manufactured in several steps which involve BPA in different ways. The common practice uses the direct reaction of an excess of epichlorohydrin with BPA in an alkaline solution to give crude epoxy. Such products are known as unmodified epoxies.

The advancement process is commonly used to achieve higher molecular weight resins. BPA is added to crude epoxy produced above, in the presence of a catalyst. Comonomers such as flame-retardants, can also be added, either directly or as a prepolymer (reaction product) with the BPA or crude expoxy (Ref. 7). The resulting materials are known as advanced, or modified, epoxies. In the final uses, a curing agent (anhydride, aliphatic amine, polyamide, or one of a variety of others) is added to form cross-linkages among the hydroxy groups and terminal epoxides (or a catalyst promotes self-polymerization), causing the epoxy to harden and form its final properties (Ref. 7). Thus, in much of their use, epoxy resins are more strictly a chemical intermediate, rather than a final end-use resin as is the case for PC (Ref. 7).

Unmodified BPA-epoxies are produced in the United States by five major companies at eight locations. The companies, and their capacities for both unmodified and advanced BPA-epoxies (thus double-counting some BPA demand), are (in millions of pounds): Celanese Corp. (30); Ciba-Geigy Corp. (70); Dow (230); Reichhold Chemicals (32); and Shell (270), for total capacity of 632 million pounds. Two-thirds to three-fourths of this capacity is for liquid BPA-epoxy resins. A dozen other companies also report the production of unmodified BPA-epoxies. Advanced or modified BPA-epoxies are made by 30 to 40 companies, including major paint, electronics, and adhesives companies (Ref. 7).

The principal uses of BPA-epoxy resins are for coatings, laminates and composites, castings and molded items, flooring and construction materials (Ref. 7).

BPA is used as a basic component of a variety of other plastic resins. The most important is polysulfone, which is a thermoplastic polymer produced by condensing BPA with 4,4'-dichlorophenylsulfone. With U.S. production estimated at 15 million pounds in 1982, polysulfone consumes about one percent of BPA (Ref. 7).

Polysulfone is used as a specialty engineering plastic to make power-tool housings, medical and electrical equipment, electronic and computer components such as printed circuit boards, professional food processing equipment, and extruded pipe, pressure valves, distillation tower components and other chemical processing equipment.

D. Exposure and Release

The National Occupational Hazard Survey (NOHS) data base (Ref. 8) estimates that as many as 33,000 people in the chemical industries may be exposed to BPA at 911 plants. The National Occupational Exposure Survey (NOES) data base (Ref. 9) estimates that 9,446 workers (of whom 1,541 are female) are exposed to BPA. Whereas the NOHS data base uses actual exposures, exposure to tradename products thought to contain BPA, and exposures to products of the type that contain BPA, the NOES data base is limited to workers present where BPA has been identified to be present.

During production of the flaked BPA, there are fugitive air emissions associated with packaging and bulk loading operations. Plant monitoring studies show BPA average air concentrations ranging from less than 0.01 to 5.7 mg/m^3 (Ref. 10). The particle size of 99 percent of the packaged BPA is greater than 100 mesh (147 microns). BPA dust in 3 samples of the packaged product from one company had a particle size distribution ranging from 81.2 to 90.5 percent for mesh size less than 20, 8.6 to 17.2 percent for mesh sizes 20–100, and 0.7 to 1.6 percent for mesh sizes greater than 100. Additionally, estimation of particle sizes for 2 samples of airborne dust collected during packaging of flaked BPA indicated less than 30 and 14 percent of the estimated BPA dust by weight was less than 10 microns in size (Ref. 10).

Dow Chemical reported BPA dust present in work stations handling flaked product at levels between 0.3 and 2.6 mg/m^3 for extended monitoring periods and between 2.3 and 3.4 mg/m^3 during shorter periods (Ref. 11). Plant area monitoring studies showed daily levels between 0.4 to 6.8 mg/m^3 (Ref. 11).

Only one reference to BPA in envirionmental samples in the U.S. has been found (Ref. 12). This sample was actually an effluent from a plant in Mt. Vernon, IN., rather than a true environmental matrix. Neither the analytical method used nor the concentration of BPA found was reported. No other monitoring surveys detecting BPA in U.S. waters are known.

There are two reports of BPA contamination of the environment in Japan. Matsumoto and Hanya (Ref. 13) found BPA amount the phenolic and carboxylic compounds in atmospheric fallout near Tokyo. Deposition rates for BPA ranged from 0.04 to 0.2 μg/m^2 per day, compared to total phenolics that ranged from 1.5 to 12 μg/m^2 per day, and total organic carbon that averaged 12,000 μg/m^2 per day. BPA was not found in surface soil.

BPA was also found at low levels in river water sediments (Ref. 14). In two out of three samples from the Tama River in Japan taken during 1973, it was not detected, and in the third sample, it was detected in the range of 10 to 90 ng/1. The authors concluded that the BPA was probably from an industrial source.

Domestically, Shell Chemical determined the amount of BPA in plant wastewater effluents at its Deer Park, TX., facility to be 0.08 ppm or less on three sampling days (Ref. 15). A second company measured BPA levels in production/processing wastewater effluents at less than 0.1 ppm for three consecutive days. A third company's wastewater effluent concentration of BPA was described as typically less than 0.1 ppm (Ref. 10). Another company has detected no BPA at levels greater than 40 ppb in sampling wells around a landfill for BPA wastes.

The manufacturers believe that polycarbonates and cured epoxy resins are insoluble in water and most solvents, and non-biodegradable, and because of their long life applications, resistant to degradation. Furthermore, any unreacted BPA in the resin is expected to remain encapsulated in the polymer.

Thus, consumer and general population exposure to BPA also is not expected to be very significant. To prove this point, extraction studies were carried out on molded polycarbonates using various digestion precedures. No BPA was detected in washings (Ref. 10).

At BPA manufacturing and major processing facilities, production is continuous and continuous biotreatment wastwater systems are used. One company produces and processes BPA, both via continuous processes. At this facility BPA is a component of several waste streams which go to disposal. These streams are liquid organic mixtures (50 percent BPA), dry solids (i.e., sweeping, small spills) (95 to 100 percent BPA), and wet solids (i.e., sumps, etc.) (70 percent BPA) (Ref. 10).

The liquid organic waste streams are incinerated on site and the dry solid wastes are currently sent to a commercial hazardous waste facility. Some of the dry solid wastes and all of the wet solid wastes are periodically dumped into a primary solids lagoon. The pH of the lagoon is maintanied at 10 to ensure solubility of the BPA. The decant water from the lagoon, containing 20 to 70 ppm BPA salts, is sent to a neutralizing distributor box. The content of the outflow of the distributor box is 4 to 10 ppm BPA. Further dilution with other streams reduces BPA content to 0.2 to 0.5 ppm. The usual aeration in activated sludge, followed by clarification, reduces the BPA to less than 0.1 ppm in the outfall from the plant. The analysis of three outfall samples resulted in two values described as non-detectable and one value of 0.08 ppm; the detectability limit is 0.05 ppm (Ref. 10).

Another company which maufacturers and processes BPA uses a similar biotreatment process. The influent to the system averaged 0.2 ppm and the effluent was less than 0.01 ppm on three consecutive days (Ref. 10).

A third company which also manufactures and processes BPA uses a similar biological effluent treatment system. Input to the system contains 5 to 10 ppm of BPA; outfall from this plant averages 0.1 ppm of BPA (Ref. 10).

E. Environmental Fate and Effects

BPA can enter the environment as dust or in wastewaters. Its low vapor pressure (0.20 mm Hg at 170 °C; Ref. 2), moderate solubility in water, and moderate octanol/water partition coefficient (experimentally determined log P=3.32 and 2.20, and calculated log P=3.84; Refs. 3, 4 and 5) indicate that BPA should partition mainly to water as opposed to soil and air. BPA is not expected to bioconcentrate significantly in aquatic animals because of its moderately low water solubility and partition coefficient. The bioconcentration factors calculated using the available log K_{ow} values are 133 (based on log K_{ow} 3.32), 15 (2.20), and 366 (3.84) (Ref. 16).

Photo-oxidation of BPA in surface water is likely based on analogy with other phenols (Ref. 17). BPA was easily decomposed by test-activated sludge in wastewater (Ref. 18). BPA and phenol were decomposed by *Chlorella vulgaris* and *Scenedesmus obliquus* in laboratory experiments (Ref. 19). Studies from Dow Chemical Company also indicate that BPA will be degraded by acclimated cultures (Ref. 20). The biochemical oxygen demand (BOD) reported at 5 days (BOD_5) was 26 percent of the theoretical oxygen demand; the BOD_5 and BOD_{20} were 56 and 71 percent, respectively.

However, the rate of BPA degradation by fresh mixed microbial cultures is much lower. Using widely accepted test methods for determining a chemical's "ready biodegradability," Shell Chemical Company produced test data indicating that BPA does not readily biodegrade (Ref. 21). In a Closed Bottle Test (procedure described in OECD test guidelines 301D), BPA consumed none of its theoretical oxygen demand in 28 days from an initial test concentration of 3 ppm, nor did it significantly inhibit the test system. Using the Modified Sturm test only 1 to 2 percent of BPA's theoretical carbon dioxide production was observed in 28 days based on an initial test concentration of 20 ppm. BPA also inhibited the growth of *Pseudomonas fluorescens* with an IC_{50} of 54.5 mg/l (Ref. 21).

There was little information in the available literature on the environmental effects of BPA. Polozova *et al.* (Ref. 22) reported that BPA completely inhibited the growth of the fungus *Septoria avenae* at a concentration of 0.1 percent in culture media. BPA was mixed with agar in Petri dishes at concentrations of 0.0, 0.005, 0.01, 0.02, 0.03, 0.1, 0.2, and 0.5 percent, the fungi inoculated, and the cultures incubated for 5 days. However, additional information on the methods, incubation conditions, and number of replicates used was not reported. The effects of BPA on peroxidase and catalase activities, and ascorbic acid and gluten content in wheat plants, as well as its effects on some sugars and amino acids in black currants were reported (Ref. 23). The data suggest that at low concentrations, BPA had favorable effects on plant growth and yield.

Dow Chemical Company (Ref. 24) reported that the 96-hour LC_{50} value for BPA to the sheepshead minnow, *Cyprinodon Variegatus*, in flow-through experiments was 7.5 ppm. The tests utilized 10 fish per group, each weighing approximately 1.3 g, maintained at 80 °F. The report, however, does not describe the analytical results of the study, responses observed at other concentrations, nor the stability of the compound in the stock solution.

Other aquatic toxicity data made available to the Agency through the BPA manufacturers include a 96-hour LC_{50} nominal value of 4–6 ppm for the Lake Emerald shiner (Ref. 25), a 96-hour LC_{50} nominal value of 3–3.5 ppm for the rainbow trout, *Salmo gairdneri* (Ref. 26), a 48-hour LC_{50} nominal value of 3.9 ppm for *Daphnia magna* (Ref. 27), and a 96-hour EC_{50} nominal value of 2.5 ppm for *Selenastrum capricornutum* (Ref. 27).

F. Findings for Environmental Fate and Effects

The Agency finds that sufficient data are available from testing done by Shell Chemical Co. and Dow chemical Co. to reasonably predict BPA's persistence in the environment.

The Agency also finds that sufficient data are available on BPA's octanol/water partition coefficient from values calculated and experimentally derived. EPA believes that additional testing would probably serve only to confirm that the log k_{ow} for BPA lies between 3.3 to 3.8, and within that range closer to the 3.3 value. This is because the method used by Thorp (Ref. 4) for experimentally determining BPA's log k_{ow} of 2.2 is only expected by EPA to give a value within ±1 log unit of the "true" experimental value. The value of 2.2 is nearly 1 log unit from the 3.3 to 3.8 range. The Agency believes that by using this information sufficient data are available on the octanol/water partition coeffecient to reasonably predict BPA's ability to bioconcentrate.

After reviewing and evaluating the existing aquatic acute toxicity data for the BPA, EPA has determined that they are not reliable because the concentrations reported in most studies are not measured and where they are, the results are not completely described. Therefore, these data are insufficient to accurately quantify the levels of acute toxicity and to reasonably predict the chronic effects levels of BPA. These data are sufficient, however, to indicate that BPA may be toxic to sensitive aquatic species at less than 1 ppm. The Agency believes that data on other compounds have demonstrated that if a compound is not acutely toxic to aquatic organisms at less than or equal to 1 ppm, it is not likely to cause chronic effects at the ppb levels (i.e., the levels at which EPA has determined from confidential business information that BPA may be found in the environment). Conversely, data have shown that compounds with LC_{50}s less than 1 ppm ofter have chronic

effects at levels in which BPA may be found in the environment. The Agency finds that BPA may present an unreasonable risk of acute and chronic aquatic toxicity, that data are insufficient to reasonably determine or predict these effects as a result of manufacturing and processing, and that testing is necessary to develop such data. EPA is therefore proposing that acute aquatic toxicity testing be conducted to determine the sensitivity of freshwater and marine algae, invertebrates and fish to BPA under TSCA section 4 (a)(1)(A).

EPA is also proposing that if the LC_{50} value derived from any of the invertebrate or veratebrate acute tests is less than 1.0 ppm, or there are indications of chronicity (i.e., the ratio of the 48-hour to 96-Hour LC_{50}s greater than 2), then chronic toxicity tests with the most sensitive vertebrate or invertebrate species shall be performed. If neither or the above criteria is met, the Agency believes that chronic aquatic toxicity testing is not needed.

Consequently, the Agency is proposing that acute toxicity testing of the aquatic species listed in Unit II.I. using the OTS Test Guidelines shall be required. Upon completion of these studies, the results shall be evaluated to determine if they meet the criteria described above indicating the likelihood of chronic effects occurring at ppb levels. If the criteria are met, chronic toxicity tests with the most sensitive test species shall be automatically required through finalization of this proposed rule for BPA.

G. Health Effects

1. *Metabolism.* BPA is absorbed from the gastrointestinal tract after oral administration. Experiments conducted by Knaak and Sullivan (Ref. 29) showed that in rats 56 percent of the radioactivity of an orally administered dose of 120 mg of BPA was excreted via feces and 28 percent via urine. Less than 1 percent of metabolities in urine were present as free BPA, while 88 percent appeared as glucuronide conjugate. In feces, 35 percent was excreted as free BPA, 35 percent as hydroxylated BPA, and 30 percent unidentified.

2. *Acute toxicity.* Acute toxicity studies of BPA resulted in LD_{50} values ranging between 3,250 and 5,660 mg/kg when given orally to rats (Refs. 2 and 28). The oral LD_{50}s for mice and rabbits were 2,500 and 2,230 mg/kg, respectively (Ref. 28). BPA also showed eye- and skin-irritating properties.

A 14-day repeated dose study was performed as part of the National Toxicology Program's (NTP) range-finding activities for the subchronic testing of BPA (Ref. 30). Groups of five males and five females of each species (Fischer-344 rats or B6C3F1 mice) were administered BPA in their diet for 2 weeks at concentrations of 0, 500, 1,000, 2,500, 5,000, or 10,000 ppm. No deaths occurred in either rats or mice. However, mean body weight gain in male rats was decreased by 60 percent or more, as compared to that of the controls, at doses of 2,500 ppm or more. Doses of 5,000 ppm or more produced a decrease in body weight gain averaging 40 percent in female rats. Body weight changes in male and female mice at all dose levels were comparable to those of the control group.

3. *Subchronic toxicity.* To determine suitable dosage levels of BPA to be used in oncogenicity studies, the NTP performed a 90-day study on rats and mice (Ref. 30.). Groups of 10 animals per sex of Fisher-344 rats were given 0, 250, 500, 1,000, 2,000, or 4,000 ppm of BPA in their diet for 13 weeks. Two of the ten male rats that received 1,000 ppm of BPA died. The time of death was not reported. Although food consumption was not changed at any dose level, weight gain in males and females that received 1,000 ppm or more of BPA was depressed by 18 percent and 10 percent, respectively. Hyaline masses were found in the urinary bladder lumen of 30–60 percent of all dosed male animals. A compound related cecal enlargement was also found in 60–100 percent of animals in all dosed groups except female rats that received 250 ppm. No abnormalities were detected when cecal walls were examined histologically.

In the same study (Ref. 30), groups of B6C3F1 mice (10 per sex) were fed BPA in concentrations of 0, 5,000, 10,000, 15,000, 20,000, or 25,000 ppm in diet for 13 weeks. Two female animals from the group that received the lowest dose of BPA (5,000 ppm) died. Body weight gain was decreased by 14 percent or more in male mice that received 15,000 ppm or more and in females of all groups. Multinucleated giant hepatocytes were also observed to be dose related in male mice.

Stasenkova *et al.* (Ref. 31) administered BPA to rats by inhalation ("dynamic method," otherwise unspecified) at concentrations approximately those of workroom atmospheres (i.e., about 50 mg/m³, an average of 47 mg/m³ with a range of 15–86 mg/m³ for 4 hours/day for 4 months. Whether it was for 5 or 7 days a week was not clear. By the end of the fourth month, there were "pronounced signs of intoxication." Body-weight gain was depressed in exposed animals relative to controls (89 percent *v.* 107 percent); synthesis of hippuric acid was likewise depressed (92 mg in exposed *v.* 126 mg in control); the ascorbic-acid content of the exposed group was decreased compared to controls in the liver and kidney (20.1 and 34.6 mg, respectively, *v.* 23.5 and 41.1 mg in controls). The relative organ weights of liver and kidney were increased relative to controls (4.2 and 0.81, respectively, compared with 3.5 and 0.73 in the controls). These differences were all reported to be statistically significant. Histological signs of intoxication included a slight "plethora" of the liver, "protein swelling of cells" in the kidney, and a thickening of interalveolar partitions. The authors reported that all toxic changes had resolved within 1 month after cessation of exposure.

4. *Oncogenicity.* The NTP oncogenicity bioassay of BPA (98 percent pure) was conducted by feeding diets containing 1,000 (equivalent to 74 mg/kg/day) or 2,000 ppm (equivalent to 148 mg/kg/day for male and 135 mg/kg/day for female rats) of the compound to groups of 50 Fischer-344 rats of either sex, 1,000 or 5,000 ppm to groups of 50 male B6C3F1 mice and 5,000 or 10,000 ppm to groups of 50 female B6C3F1 mice for 103 weeks (Ref. 30). Groups of 50 rats and 50 mice of each sex served as controls.

In rats, the survival was the same for treated and untreated animals up to 65 weeks. Beyond this time the percent of survival began to decline. In male rats, the control group had the lowest survival, and the low-dose group had the highest survival. The low-dose group consistently maintained a 5 to 10 percent higher rate of survival than the control (no explanation was given). In the female rats, the survival was essentially the same for the control and two treated groups.

In mice, the controls had a higher survival than those treated in both sexes. All the mean body weights of the treated animals were lower than the controls except the male mice on the low dose diet. The food consumption of the dosed male rats was 90 percent that of the controls, and that of the dosed female rats was only 70–80 percent that of the controls. The data on food consumption of mice were incomplete due to spilling, but the investigators considered it to be similar among all groups of mice. Major tissues were examined grossly and microscopically.

Leukemia occurred at increased incidences in dosed rats of both sexes and in dosed male mice. In male rats, the dose-related trend was 13/50 (controls), 12/50, and 23/50.

The incidences of leukemia in female rats were 7/50 (controls), 13/50, and 12/50. In male mice the combined incidence of leukemias and lymphomas was 2/49, 9/50, and 5/50. However, these effects were not considered by NTP to be compound related effects. Interstitial-cell tumors of the testes occurred in low- and high-dose male rats; however, the increased incidence observed in this study (35/49, 48/50, 46/49) was not considered compound-related because this lesion normally occurs at a high incidence in aging Fischer-344 male rats.

5. *Mutagenicity.* The mutagenic potential of BPA was tested by NIOSH in *Salmonella typhimurium* strains with and without activation (Ref. 23). The compound was not mutagenic in these tests. These results were later confirmed by NTP testing in *Salmonella* (Ref. 23). A separate study (Ref. 23) reported that BPA had no effect on somatic cells of *Drosophila melanogaster.* Dominant lethal tests on rats and sperm abnormality tests in mice were also negative for BPA (ref. 32).

6. *Developmental toxicity.* The developmental toxicity (teratogenic) potential of BPA was studied using young adult female Sprague-Dawley rats (Ref. 33). BPA dissolved in corn oil was injected intraperitoneally on day 1 through day 15 of gestation. Doses used were 85 mg/kg (0.37 mmol/kg, the 5-day maximum tolerated dose (MTD) for male rats in a dominant lethal study (Ref. 32)), and 125 mg/kg (0.55 mmol/kg, the MTD in this study).

A significant decrease in the mating index (number pregnant per number mated × 100) was observed in animals that received the high dose level (3 of 12; 25 percent) as compared to that of the control (11 of 12; 91.7 percent). The mating index of the animals in the low dose group was 100 percent; however, only 4 animals were used, compared to 12 in the control and high dose groups. Both dose levels decreased the number of live fetuses and the number of implants per litter. The significant decrease in the mating index of rats that received the 125 mg/kg dose was ascribed to an estrogenic effect of bisphenol A resulting in blockage of implantation.

Fetal toxicity included significant decreases in fetal body weights and crown-rump length, which were observed at both dose levels used.

Although the number of litters in the treated groups was limited, several significant changes were found in the treated groups when compared to those in the control group. These changes included enlarged cerebral ventricles (in both dose levels), incomplete skeletal ossification (in both dose levels) and hydrocephaly (in the 125 mg/kg group). Imperforate anus was also observed in three fetuses from a single litter that received 125 mg/kg of BPA.

An NTP teratology study on rats and mice that received BPA orally is in progress; the study protocol is available for review in the public docket for this rule (docket no. OPTS-42069).

7. *Reproductive effects.* Ovariectomized adult Sprague-Dawley rats injected intraperitoneally with a single dose of 50 or 100 mg/kg of BPA showed a significant increase in the percentage of uterine weight (Ref. 33). In the same study, doses of 85 mg/kg per day of BPA injected intraperitoneally for 5 consecutive days to adult male Sprague-Dawley rats and adult male C3H/He mice failed to show an effect in a dominant lethal study (rats) or produce evidence of sperm abnormality (mice).

Reproductive effects testing sponsored by GE in which BPA was fed in the diet of Charles River CD® rats for 17 weeks (F_0 generation) and for 13 weeks (F_1 generation) at 1,000, 3,000, and 9,000 ppm produced no compound-related effects in the fertility indices, number of pups per litter, or pup survival (Ref. 34). Decreased body gains were the only observed effects in either generation of rats.

In a followup reproductive effects study (Ref. 34), using BPA dietary levels of 100, 250, 500, 750, and 1,000 ppm, no differences were seen in F_0 female estrus cycles, male and female fertility indices, length of gestation period, number of pups per litter, or pup body weights.

NTP is completing a continuous breeding BPA reproductive effects study in mice. The test protocol for this study is available for review in the public record for this notice. Final study results should be available in mid-1985.

H. Findings for Health Effects

EPA finds that sufficient data are available from the NTP bioassay report to reasonably predict that ingested BPA is not oncogenic. EPA therefore accepts NTP's conclusion that the ingestion carcinogenicity study results give no convincing evidence that BPA was carcinogenic to laboratory animals under the conditions of study. There also is no reason at this time to believe that inhalation of BPA, as suggested by the ITC, would present any greater oncogenic potential than ingestion. Differences in metabolism when BPA is ingested versus inhaled are not expected to be significant. Therefore, BPA is not expected to be any more active in producing tumors via inhalation than via ingestion.

The Agency also finds that additional reproductive effects testing is underway at NTP. EPA believes that when considered in conjunction with available industry testing of reproductive effects, sufficient data are available to reasonably predict BPA's reproductive effects potential in humans.

EPA believes appropriate developmental toxicity testing has been conducted at NTP. Preliminary study results indicate that the final reports should provide sufficient data to reasonably predict BPA's teratogenic potential.

EPA believes, however, that insufficient data are available to reasonably predict BPA's localized effect on lung tissue after chronic inhalation exposure, which is the most likely route of workplace exposures. Available monitoring data indicate that in a large portion of the workplace environments BPA dust is readily available for inhalation because of its respirable size. The BPA manufacturers have also supplied information showing that workers have registered compliants of eye, nose, and throat irritation when exposed to this dust at levels equal to OSHA's 8-hr. time weighted average (TWA) workplace nuisance dust limit of 5 mg/m^3.

Therefore, because of this information, the fact that several hundred to 9,500 workers may be exposed to BPA dusts, and the findings of one study which describes observable changes in lung tissues of rats after extended inhalation exposures to BPA, the Agency finds that: (1) Subchronic inhalation exposures to BPA may present an unreasonable risk of lung injury to workers involved in the manufacture and processing of BPA; (2) there are insufficient data to reasonably determine or predict the risk of injury to the lungs from subchronic inhalation of BPA; and (3), testing is necessary to develop such data. EPA is proposing under TSCA section 4(a)(1)(A) that manufacturers and processors of BPA conduct a 90-day subchronic dust inhalation toxicity study in rats, including a 21 to 35 day post-exposure recovery and observation period, to characterize the effects of BPA dust on lung tissues.

There is no information currently available that raises concern for other health effects of BPA.

I. Proposed Testing and Test Standards

On the basis of the findings given above for environmental fate and effects testing (Unit II.F.), the Agency is proposing that acute aquatic toxicity testing of BPA shall be conducted on (1)

the freshwater alga, *Selenastrum capricornutum*, and the saltwater alga, *Skeletonema costatum*, using the OTS test guideline entitled "Algal Acute Toxicity Test" (EG–8), (2) the freshwater invertebrate, *Daphnia magna*, using the OTS test guideline entitled "Daphnid Acute Toxicity Test" (EG–1), (3) the saltwater invertebrate, *Mysidopsis bahia*, using the OTS test guideline entitled "Mysid Shrimp Acute Toxicity Test" (EG–3), (4) the freshwater vertebrate, *Pimephales promelas* (fathead minnow), using the OTS test guideline entitled "Fish Acute Toxicity Test" (EG–9), and (5) the saltwater vertebrate, *Menidia peninsulae*, using the "Flow-Through Methods for Acute Toxicity Tests Using Fishes and Macroinvertebrates" given in an EPA published document entitled "Bioassay Procedures for the Ocean Disposal Permit Program".

The Agency also is proposing that if the 96-hour LC_{50} value from any of the vertebrate or invertebrate acute test species is less than 1.0 ppm, or there are indications of chronicity (i.e., the ratio of the 48-hour to 96-hour LC_{50}s is greater than 2), then chronic toxicity testing with the most sensitive (i.e., that with the lowest LC_{50} value or in the absence of an LC_{50} lower than 1 ppm the test species that showed the greater tendency for chronicity) vertebrate or invertebrate species shall be performed. Where one of the above criteria for chronic testing is met for any of the vertebrate or invertebrate acute test species, chronic testing shall be conducted on either (1) Daphnia using the OTS test guideline entitled "Daphnid Chronic Toxicity Test" (EG–2) or Mysid using the OTS test guideline entitled "Mysid Shrimp Chronic Toxicity Testing" (EG–4), or (2) fathead minnow using the OTS test guidelines entitled "Fish Early Life Stage Toxicity Test" (EG–11) or *Menidia* using the procedures of Goodman *et al.* (Ref. 35). EPA is proposing that if nether criterion is met for any of the four required invertebrate and vertebrate acute toxicity test species, no chronic toxicity test shall be required.

The Agency is proposing that the above refereneed OTS Environmental Effects Test Guidelines and other cited methods be considered the test standards for the purposes of the proposed test for BPA. The OTS guidelines for aquatic toxicity testing specify generally accepted minimal conditions for determining aquatic plant and animal toxicities for substances like BPA to which aquatic life is expected to be exposed. The Agency's review of the guidelines, which occurs on a yearly basis according to the process described in 47 FR 41857 (September 22, 1982), has found no reason to conclude that these protocols need to be modified significantly. Additionally, the "Bioassay Procedures for the Ocean Disposal Permit Program" and the test procedures employed by Goodman *et al.* (Ref. 35) specify, in EPA's judgement, minimal test conditions and practices for acceptable investigation of BPA's acute and chronic toxicities to the saltwater vertebrate, *Menidia peninsulae*. Although the Agency has not issued OTS testing guidelines for saltwater vertebrates, the testing procedures found in these references reflect the current state-of-the-art for such testing and are being proposed as acceptable methods of testing BPA in a saltwater fish.

On the basis of the findings given above for health effects testing (Unit II. H), the Agency is proposing that a 90-day subchronic inhalation toxicity test with a 21 to 35 day post-exposure recovery and observation period shall be conducted for BPA.

EPA is proposing that this testing be done in accordance with the procedures given in the OTS Health Effects Test Guideline entitled "HG-Subchronic-Inhal 1983" which reflects current standards among toxicologists for obtaining reliable data on effects that might occur during and immediately after subchronic exposure to a substance via inhalation. The guideline specifies generally accepted minimal conditions for determining a no-observed-effect-level for substances like BPA to which people are expected to be exposed repeatedly over a limited period of time. The Agency has not received any new data since the last revision in 1983 (48 FR 44898) which would justify a major reappraisal of the guideline. The Agency reviews its OTS test guidelines once a year according to the process described in the **Federal Register** of September 22, 1982 (47 FR 41857), and has found no reason to indicate that this guideline needs to be modified significantly. Therefore, EPA is proposing that this guideline be considered the test standard for the purposes of the proposed subchronic inhalation test for BPA.

Certain modifications and clarifications of the subchronic inhalation test guideline have been included in the proposed test standard for this substance. They reflect the Agency's particular concern with the respiratory system after exposure to BPA via inhalation.

J. Test Substance

EPA is proposing that BPA of at least 95 percent purity be used as the test substance; EPA has specified a relatively pure substance for testing because the Agency is interested in evaluating the effects attributable to BPA itself. Commercial BPA ranges in purity from 92 to 99 percent (Ref. 36).

K. Persons Required To Test

Section 4(b)(3)(B) specifies that the activities for which the Administrator makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that the manufacture and processing of BPA may present an unreasonable risk to human health and the environment, EPA is proposing that persons who manufacture or process, or intend to manufacture or process BPA at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the aquatic toxicity testing and subchronic toxicity testing requirements contained in this proposed rule. The end of the reimbursement period is proposed to be 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement.

EPA promulgated procedures for applying for TSCA section 4(c) exemptions for use with two-phase rulemaking published in the **Federal Register** of October 10, 1984 (49 FR 39774). Elsewhere in today's **Federal Register**, EPA is issuing an interim final exemption policy for use with single-phase rulemaking. Procedurally, these differ only slighty from those previously adopted. In brief, when both manufacturers and processors are

subject to a test rule, processors will be granted an exemption automatically without filing applications if manufacturers perform all of the required testing. Manufacturers are required to submit either a letter of intent to perform testing or an exemption application.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for BPA. As noted in Unit II.J, EPA is interested in evaluating the effects attributable to BPA itself and has specified a relatively pure substance for testing.

L. Study Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its final TSCA GLP standards which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 792 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans within 30 days before initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing specific reporting requirements for each of the proposed test standards as follows:

1. The aquatic vertebrate, invertebrate and algal acute toxicity tests shall be completed and the final results submitted to the Agency within one year of the effective date of the final test rule. No progress reports shall be required.

2. The aquatic vertebrate and invertebrate chronic toxicity tests shall be completed and the final results submitted to the Agency within 2 years of the effective date of the final test rule if those criteria necessary to trigger chronic aquatic toxicity testing are met. No progress reports shall be required.

3. The subchronic toxicity and recovery tests shall be completed and the final results submitted to the Agency within one year of the effective date of the final test rule. Progress reports shall be submitted quarterly.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the Federal Register as required by section 4(d).

M. Issues

1. This proposed rule identifies various OTS test guidelines and other published test methods as test standards for health and environmental effects testing of BPA. The Agency is soliciting comments as to whether the health and environmental effects test guidelines and other cited methods are appropriate and applicable for the testing of BPA. Also regarding the testing of BPA, the Agency requests comments on the adequacy of this testing, the reporting times for the identified health and environmental effects tests, and the criteria used in the environmental effects testing to trigger the chronic aquatic toxicity studies.

2. The Agency is soliciting comments on which of the procedures specified in the OTS Environmental Effect Test Guidelines and the OTS Health Effect Test Guideline for Subchronic Inhalation Testing should be made mandatory.

3. Comments are requested on whether the Agency should define BPA-respirable particles for use in the subchronic inhalation toxicity testing guideline as particles having an aerodynamic diameter enabling them to be inhaled deep into the lungs where gaseous exchange occurs (respiratory bronchioles and alveoli). For man, the Agency believes this is a BPA particle size ranging from 0.1 to 5μm.

4. EPA is requesting comments on whether a concurrent control group should be required in the subchronic inhalation toxicity study; whether a vehicle should be used; and if the toxic properties of the vehicle are not known or cannot be made available, whether both untreated and vehicle control group should be tested.

5. Comments are requested on EPA's belief that a satellite group of 20 animals (10 animals per sex) for the inhalation study be included with the high concentration level for 90 days and observed for reversibility, persistence, or delayed occurrence of toxic effects with a post-treatment period of not less than 21–35 days.

6. EPA is soliciting comments on whether the clinical examination to be conducted in the inhalation study be limited to an acid/base balance determination of the blood at least three times; just prior to initiation of dosing (base line data), after approximately 30 days on test, and just prior to terminal sacrifice at the end of the test period.

7. Comments are requested on limiting the gross pathology to an examination of the external surfaces of the body, all orifices, thoracic and abdominal cavities and their contents, and the esophagus, stomach, and upper small intestine.

8. The Agency is also soliciting comments on whether the full histopathological examination should be initially limited only to the respiratory tract and lungs of all animals in the control and high dose groups, and if further examinations of other dose groups should be contingent on the findings of the initial examination.

III. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce . . ." The Agency considers a testing facility to be a place where the chemical is held or stored, and therefore, subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with any final rule for BPA. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations to determine compliance with TSCA GLP standards and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of the TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted

their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Section 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

IV. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of test rules, EPA has adopted a two-stage approach. All candidates for test rules go through a Level I analysis. This consists of evaluating each chemical or chemical group on four principal market characteristics: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The results of the Level I analysis, along with the consideration of the costs of the required tests, indicate whether the possibility of a significant adverse economic impact exists. Where the indication is negative, no further economic analysis is done for the chemical substance or group. However, for those chemical substances or groups where the Level I analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted. This Level II analysis attempts to predict more precisely the magnitude of the expected impact.

Total testing costs for the proposed rule for BPA are estimated to range from $66,900 to $197,000. This estimate includes the costs for both the required minimum series of tests as well as the conditional ones. The annualized test costs (using a cost of capital of 25 percent over a period of 15 years) range from $17,300 to $51,000. Based on the projected 1984 production of 785 million pounds, the unit tests costs range from 0.002 to 0.008 cents per pound. In relation to the current list price of 67 to 71 cents per pound for BPA, these costs are equivalent to 0.003 to 0.01 percent of price.

The Level I economic analysis (Ref. 7) indicates that the potential for adverse economic effects due to the estimated test cost is low. This conclusion is based on the following observations: (1) demand for BPA appears relatively inelastic due to its dominant use as a captive intermediate; (2) the market expectations for BPA are optimistic; and (3) the estimated unit test costs are very low. A Level II analysis is not necessary.

V. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the NTIS (PB 82–140773). On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

VI. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting subsequent to the close of the public comment period in Washington, D.C. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800–424–9065); In Washington, D.C.: (554–1404); Outside the U.S.A. (operator 202–554–1404), by July 1, 1985. The meeting will not be held if members of the public do not indicate that they wish to make oral presentations. This meeting is scheduled after the deadline for submission of written comments, so that issues raised in the written comments can be discussed by EPA and the public commenters. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VII. Judicial Review

When this proposed rule is promulgated, judicial review may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA intends to promulgate this rule for purposes of judicial review two weeks after publishing the final rule in the **Federal Register**. The effective date will be calculated from the promulgation date.

VIII. Public Record

EPA has established a record for this rulemaking, [docket number (OPTS–42067)]. This record includes basic information considered by the Agency in developing this proposal, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice containing the ITC designation of BPA to the Priority List (49 FR 22389).

(b) Notice of final rule on two-phase test rule development and exemption procedures (49 FR 39774).

(c) Notice of final rulemaking on data reimbursement (48 FR 31786).

(d) Notice of interim final rule on single-phase test rule development and exemption procedures.

(e) TSCA GLP Standards (48 FR 53922).

(f) Rules requiring TSCA section 8(a) and 8(d) reporting on BPA (49 FR 22284 and 22286).

(g) OTS test guidelines and other published test methodologies cited as test standards for this rule.

(2) Support documents consisting of:

(a) Study of availability of test facilities and personnel.

(b) BPA economic analysis.

(3) Communications before proposal consisting of:

(a) Written public and intra- or interagency memoranda and comments.

(b) Records of telephone conversations.

(c) Records or minutes of informal meetings.

(4) Reports—published and unpublished factual materials.

B. References

(1) Aldrich Chemical Company. 1982–1983 Catalog/Handbook of Fine Chemicals. Milwaukee, WI, Aldrich. 1982.

(2) American Industrial Hygiene Association. Bisphenol A (4,4'-isopropylidenediphenol; 2,2-bis[4-hydroxyphenyl]propane). Am. Ind. Hyg. Assoc. J. May–June: 301–304. 1967.

(3) Korenman, Y.I., Gorokhov, A.A. Certain characteristics of extraction of di(hydroxyphenyl) propane. Russ. J. Phys. Chem. 47:2058–2059. (English Translation.) 1973.

(4) The Society of the Plastics Industry, Inc. Bisphenol A—Information. Letter from Fran W. Lichtenberg, SPI, to Philip Wirdzek, Office of Pesticides and Toxic Substances, EPA, and appendices A–I. August 2, 1984.

(5) Handbook of Chemical Property Estimation Methods. Octanol/water partition coefficients. Lyman, W.J., Reehl, W.F., Rosenblatt, D.H., eds. New York: McGraw-Hill, pp 1–1 thru 1–14. 1982.

(6) Lowenheim, F.A., Moran, M.K. Faith, Keyes, and Clark's Industrial Chemicals, 4th ed. New York: Wiley, pp. 149–152. 1975.

(7) USEPA. U.S. Environmental Protection Agency. Economic Impact Analysis of Proposed Test Rule for Bisphenol A. Washington, D.C., Office of Toxic Substances, EPA. 1984.

(8) NIOSH. National Institute for Occupational Safety and Health. Computer printout: National Occupational Hazard Survey. Cincinnati, OH. Retrieved May 17, 1984.

(9) NIOSH. National Institute for Occupational Safety and Health. Computer printout: National Occupational Exposure Survey. Cincinnati, OH. Retrieved May 5, 1984.

(10) The Society of the Plastics Industry, Inc. Responses to Toxicology and Exposure Assessment Questions. Letter from Fran W Lichtenberg, SPI, to Philip Wirdzek, Office of Pesticides and Toxic Substances, EPA. August 15, 1984.

(11) The Society of the Plastic Industry, Inc. Additional Information. Letter from Fran W Lichtenberg, SPI, to Philip Wirdzek, Office of Pesticides and Toxic Substances, EPA. September 5, 1984.

(12) USEPA. U.S. Environmental Protection Agency. Frequency of organic compounds identified in water. Shackelford, W.M., Keith, L.H. Athens, GA., Office of Research and Development, USEPA, PB–600/4–76–062. 1976.

(13) Matsumoto, G., Hanya, T. Organic Constituents in the atmospheric fallout in the Tokyo area. Atmos. Environ. 14–1409–1419. 1980.

(14) Matsumoto, G, Ishiwatari, R, Hanya, T. Gas chromatographic-mass spectrometric identification of phenols and aromatic acids in rain waters. Water Res. 11:693–698. 1977.

(15) The Society of the Plastic Industry, Inc. Additional Information. Letter from Fran W. Lichtenberg, SPI, to Philip Wirdzek, Office of Pesticides and Toxic Substances, EPA. August 30, 1984.

(16) Veith, G.H., Macek, K.J., Petrocelli, S.R., Carroll, J. An evaluation of using partition coefficients and water solubility to estimate bioconcentration factors for organic chemicals in fish. Aquatic Toxicology, ASTM STP 707. J.G. Eaton, P.R. Parrish, and A.C. Hendricks, eds., American Society for Testing and Materials, pp. 116–129. 1980.

(17) USEPA. U.S. Environmental Protection Agency. Water Related Environmental Fate of 129 Priority Pollutants. Washington, D.C., Office of Water Planning and Standards, EPA. EPA Publication No. 440/4–79–0296. 1979.

(18) Matsui, S., Murakami, T., Sasaki, T., *et al.* Activated sludge degradability of organic substances in the wastewater of the Kashima Petroleum and Petrochemical Industrial Complex in Japan. Prog. Water Technol. 7(3/4): 645–659. 1975.

(19) Pivovarova, N.E. Biological purification of wastewaters from the production of diphenylolpropane. Teor. Prakt. Biol. Samochishcheniya Zagryaz Vod Tr Vses Soveshich Vop Sanit Gidrobiol, 119–121. (abstract in Russian; English Translation.) 1972.

(20) Dow Chemical U.S.A. Analysis of bisphenol A (p,p') in lagoon feed and 303 outfall (biodegradability data). Memorandum containing report from Dow Environmental Services to L.M. Thomka, Dow. August 6, 1984.

(21) Shell Oil Company. Health and Safety Studies on Bisphenol A. Letter from G.T. Youngblood, Shell, to Philip Wirdzek, Office of Pesticides and Toxic Substances, EPA. August 23, 1984.

(22) Polozova, N.L., Radzevenchuk, I.F., Lovkova, T.N. Effectiveness of some disinfectants for controlling out septoria infection in the Leningrad Region. Zap. Lenigr. S–kh. Inst. 270:97–102. (In Russian; English Translation.) 1975.

(23) USEPA. U.S. Environmental Protection Agency. Preliminary Information Review—Bisphenol A (PIR–375). Washington, D.C., Office of Pesticides and Toxic Substances, EPA. EPA Contract No. 68–01–5789. July 31, 1982.

(24) Dow Chemical U.S.A. The acute toxicity of parabis A and bisphenol A to the sheepshead minnow. R&D Report No. D–001226. Dow Chemical U.S.A., Midland, MI. January 1978.

(25) Dow Chemical U.S.A. Bisphenol A biochemical oxygen demand and fish toxicity data. Memorandum from H.C. Alexander, Dow, to L.M. Thomka, Dow. August 21, 1984.

(26) Shell Toxicology Laboratory. The acute toxicity of diphenylolpropane to rainbow trout (*Salmo gairdneri*). GRR–TLGR, 79.146. (Also appendix G to reference 4.) Shell Toxicology Laboratory (Tunstall), Kent, England. November 1979.

(27) Shell Toxicology Laboratory. Diphenylolpropane: acute toxicity to *Daphnia magna* and *Selenastrum capricornutum*. SBGR. 83.216. (Also appendix F to reference 4.) Shell Toxicology Laboratory (Tunstall), Kent, England. May 1983.

(28) USEPA. U.S. Environmental Protection Agency. Bisphenol A—Chemical Hazard Information Profile (draft report). Washington, D.C., Office of Toxic Substances, EPA. September 18, 1981.

(29) Knaak, J.B., Sullivan, L.J. Metabolism of bisphenol A in the rat. Toxicol. Appl. Pharmacol. 8:175–184. 1966

(30) National Toxicology Program. Carcinogenesis bioassay of bisphenol A in F–344 rats and B6C3F1 mice (feed study). Springfield, VA.: National Technical Information Service. PB82–184060. March 1982.

(31) Stasenkova, K.P., Shumskaya, N.I., Grinberg, A.E. Certain laws governing the biological action of bisphenol A derivatives, depending on their chemical structure. Gig. Tr. Prof. Zabol. 6:30–33. (In Russian; English Translation.) 1973.

(32) Bond, G.P., McGinnis, P.M., Cheever, K.L. *et al.* Reproductive effects of bisphenol A. Paper No. 69 presented at the Society of Toxicology's 19th Annual Meeting, Washington, D.C. March 9–13, 1980 (abstract).

(33) Hardin, B.D. Bond, G.P., Sikov, M.R., Andrew, F.D., Beliles, R.P., Niemeier, R.W. Testing of selected workplace chemicals for teratogenic potential. Scand. J. Work. Environ. Health. 7 (suppl. 4):66–75. 1981.

(34) General Electric Company. Bisphenol A—TSCA section 8(d) submission. Letter from Ladd W. Smith, G.E., to Philip Wirdzek, Office of Pesticides and Toxic Substances, EPA. August 23, 1984.

(35) Goodman, L.R., Middaugh, D.P., Housen, D.J., *et al.* Early life-stage toxicity test with tidewater silversides (*Menidia peninsulae*) and chlorine-produced oxidants. Environ. Toxicol. and Chem. 2:337–342. 1983

(36) Szap, P., Kesse, I., Klapp, J. The analysis of bisphenol A by high performance liquid chromotography. J. Liq. Chromotogr. 1(1):89–96. 1978.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Rm. E–107, 401 M St., SW., Washington, D.C. from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

IX. Other Regulatory Requirements

A. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This test rule is not major

because it does not meet any of the criteria set forth in section 1(b) of the Order. First, the actual cost of all the proposed testing for BPA is estimated to range from $66,900 to $197,000 or less than $1 million over the testing and reimbursement period. Second, the cost of the testing is not likely to result in a major increase in users' costs or prices. Finally, based on our present analysis, EPA does not believe that there will be a significant adverse effect as a result of this rule.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.* Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They will not perform testing themselves, or will not participate in the organization of the testing effort; (2) they will experience only very minor costs in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB number 2070–0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 799

Environmental protection, Hazardous material, Chemicals, Testing, Reporting and recordkeeping requirements.

Dated: May 7, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

It is proposed that 40 CFR Part 799 be amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Part 799 is amended by adding § 799.940 to subpart B to read as follows:

§ 799.940 Bisphenol A.

(a) *Identification of test substance.* (1) Bisphenol A (CAS No. 80–05–7) (hereinafter "BPA") shall be tested in accordance with this rule.

(2) BPA of at least 99 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests and submit data.* All persons who manufacture or process BPA from the effective date of this rule (44 days from the publication date of the final rule in the **Federal Register**) to the end of the reimbursement period shall submit letters of intent to conduct testing or exemption applications, submit study plans, conduct tests and submit data as specified in this section, Subpart A of this Part, and Part 790—Test Rule Development and Exemption Procedures for Single-phase Rulemaking.

(c) *Environmental effects testing*—(1) Aquatic acute toxicity—(i) *Required testing.* (A) Aquatic vertebrate, invertebrate, and aquatic plant acute toxicity tests shall be conducted with BPA with the fathead minnow *(Pimephales promelas)*, silversides (*Menidia peninsulae*), *Daphnia magna*, *Mysidopsis bahia*, *Selenastrum capricornutum*, and *Skeletonema costatum* in accordance with the OTS Environmental Effects Test Guidelines for acute aquatic toxicity testing (EG–1, 3, 8, and 9), published by the NTIS (PB 82–232992), and other cited methods which are incorporated by reference.

(B) The OTS Environmental Effects Test Guidelines for acute toxicity testing were published by the EPA with the publication number EPA–560/6–82–002 and are for sale from the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia, 22161. When ordering use NTIS Accession No. PB 82–232992. These guidelines are also available for inspection at the Office of the Federal Register, Room 8301, 1100 L Street NW., Washington, D.C. 20005. A copy of this publication has also been included in the public record for this rule (docket no. OPTS–42067) and is available for inspection in the OPTS Reading Room, E–107, 401 M Street, SW., Washington, D.C. 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. This incorporation by reference was approved by the Director of the Federal Register on [date]. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register.**

(C) The document "Bioassay Procedures for the Ocean Disposal Permit Program," which specifies acute toxicity testing procedures for *Menidia peninsulae*, has the EPA document Publication No. EPA–600/9–78–010 and is dated March 1978. A copy of this procedure is included in the public record for this rule (docket no. OPTS–42067) and is also available for inspection at the Office of the Federal Register, Room 8301, 1100 L Street NW., Washington, D.C. 20005. This incorporation by reference was approved by the Director of the Federal Register on [date]. This document is also available from EPA, Office of Research and Development, Technical Information Staff, Cincinnati, OH 45268. This material is incorporated as it exists on the date of the approval and a notice of any changes in it will be published in the **Federal Register.**

(ii) *Reporting requirements.* (A) The acute toxicity tests shall be completed and the final results submitted to the Agency within one year of the effective date of the final rule.

(B) No quarterly progress reports are required to be submitted.

(2) *Aquatic chronic toxicity*—(i) *Required testing.* (A) Aquatic vertebrate and invertebrate chronic toxicity tests shall be conducted with BPA using the most sensitive vertebrate and invertebrate test species (i.e., that with the lowest LC_{50} value or in the absence of an LC_{50} less than 1 ppm the test species that showed the greater tendency for chronicity) from the acute toxicity testing conducted in accordance with paragraph (c)(1)(i) of this section if the following criteria are met. The chronic test shall be conducted only if the 96-hour LC_{50} value for the test species is less than 1 ppm, or there are indications of chronicity (i.e., the ratio of the 48 hour to 96 hour LC_{50} greater than 2) in that species. If neither of these criteria is met, chronic testing is not required. The chronic testing, if required, shall be conducted in accordance with the OTS Environmental Effects Test Guidelines for chronic toxicity (EG–4 and 11), published by the NTIS (PB 82–232992), and other cited methods which are incorporated by reference.

(B) The OTS Environmental Effects Test Guidelines for chronic toxicity testing are incorporated by reference and available as described above in § 799.940(c)(1)(i)(B).

(C) The chronic aquatic toxicity testing procedures to be used for BPA testing in *Menidia peninsulae* are specified in a publication by Goodman

et al. entitled "Early life-stage toxicity test with tidewater silversides (*Menidia peninsulae*) and chlorine-produced oxidants" available in *Environmental Toxicology and Chemistry*, Vol. 2, pp. 337–342, 1983. A copy of this publication has been included in the public record for this rule (docket no. OPTS–42067) and is available for inspection in the OPTS Reading Rm., E–107, 401 M St., SW., Washington, D.C. 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. This incorporation by reference was approved by the Director of the Federal Register on [date]. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register.**

(ii) *Reporting requirements.* (A) Chronic toxicity tests shall be completed and the final results submitted to the Agency within two years of the effective date of the final rule.

(B) No quarterly progress reports are required to be submitted.

(e) *Health effects testing*—(1) *Subchronic toxicity*—(i) *Required testing.* (A) Subchronic toxicity and recovery tests shall be conducted with BPA in accordance with the OTS Health Effects Test Guidelines for Subchronic Exposure/Inhalation Toxicity, published by the NTIS (PB 83–257691) which is incorporated by reference.

(B) The OTS Health Effects Test Guideline for Subchronic Toxicity/Inhalation Toxicity was published by the EPA with the publication number EPA 560/6–83–001 and is for sale from the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia, 22161. When ordering use NTIS Accession No. PB 83–257691. It is also available for inspection at the Office of the Federal Register, Rm. 8301, 1100 L Street NW., Washington, D.C. 20005. A copy of this publication has also been included in the public record for this rule (docket no. OPTS–42067) and is available for inspection in the OPTS Reading Rm., E–107, 401 M St., SW., Washington, D.C. 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. This incorporation by reference was approved by the Director of the Federal Register on [date]. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register.**

(ii) *Reporting Requirements.* (A) Subchronic toxicity tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(B) Progress reports shall be submitted quarterly.

[Information collection requirements have been approved by the Office of Management and Budget under control number 2070–0033.]

[FR Doc. 85–11588 Filed 5–16–85; 8:45 am]

BILLING CODE 6560–50–M

federal register

Friday
May 17, 1985

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

District of Columbia: DC84–3009	Apr. 6, 1984.
Florida: FL85–3024	Apr. 26, 1985.
Illinois:	
IL85–5006	Feb. 8, 1985.
IL85–5007	Do.
IL85–5002	Jan. 11, 1985.
IL84–5042	Dec. 14, 1984.
Indiana:	
IN83–2067	Sept. 2, 1983.
IN83–2069	Do.
Kansas:	
KS84–4052	Aug. 24, 1984.
KS84–4053	Do.
Michigan:	
MI83–2015	Mar. 11, 1983.
MI83–2008	Feb. 11, 1983.
MI85–5019	Mar. 8, 1985.
New York:	
NY85–3019	Mar. 29, 1985.
NY84–3036	Sept. 14, 1984.
Tennessee: TN83–1087	Nov. 25, 1983.
Utah: UT83–5120	Sept. 30, 1983.
Washington: WA84–5040	Nov. 16, 1984.
Wisconsin: WI84–5016	June 22, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Ohio: OH81–2015 (OH85–5023)	Apr. 10, 1981.
Wyoming: WY84–5009 (WY85–5025)	Apr. 6, 1984.

Signed at Washington, D.C. this 10th day of May 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510–27–M

DECISION NO. DC84-3009-MOD. #12 (49 FR 13800-April 6, 1984) DISTRICT OF COLUMBIA, MARYLAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES.	Basic Hourly Rates	Fringe Benefits
DELETE:		
BRICKLAYERS:		
Apartment buildings over 4-stories	11.15	.85
Light commercial - New buildings and additions limited to 50,000 sq. ft. in floor space and not to exceed 4-stories in height above ground; schools, churches, warehouses, chain food stores; shopping malls (excluding all stores over 50,000 sq. ft. in floor space)	13.00	3.10
All other work	16.30	3.10
ADD:		
BRICKLAYERS	16.50	3.40

DECISION NO. FL85-3024-MOD. #2 (50 FR 16610-April 26,1985) Cape Canaveral AFS,Patrick AFB,Kennedy Space Flight Center, & Melabar Radar Site in Brevard & Volusia Counties in Florida BUILDING, HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits
ADD:		
GLAZIERS:		
JOURNEYMAN	$11.50	.73
WORK ON SWING STAGE	12.00	.73
WORK ON HIGH REACH	12.00	.73

DECISION NO. IN83-2067 - MOD. #3 (48 FR 40064 - September 2, 1983) Brown, Clark, ..., Wayne Counties, Indiana	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS		
Area 1	18.15	2.26+3%

DECISION NO. IN83-2069 - MOD. #3 (48 FR 40069 - September 2, 1983) Clay, Davies, ..., and Warrick Counties, Indiana	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS		
Area 1	18.15	2.26+3%

DECISION NO. IL85-5008 - Mod#4 (50 FR 5486 - Feb. 8, 1985) ADAMS, BOND, BOONE, BROWN, BUREAU, CALHOUN, CARROLL, CASS, CLINTON, DEKALB, FULTON, GREENE, HANCOCK, HENDERSON, HENRY, JERSEY, JO-DAVIESS, KNOX, LASALLE, LEE, LIVINGSTON, LOGAN, MCDONOUGH, MCLEAN, MACOUPIN, MARSHALL, MASON, MENARD, MERCER, MONROE, MONTGOMERY, MORGAN, OGLE, PIKE, PUTNAM, RANDOLPH, ROCK ISLAND, SCHUYLER, SCOTT, STARK, STEPHENSON, WARREN, WASHINGTON, WHITESIDE, WINNEBAGO & WOODFORD COUNTIES, ILLINOIS	Basic Hourly Rates	Fringe Benefits
CHANGE:		
AREA DESCRIPTIONS:		
BOILERMAKERS:		
Area 1: Adams, Bond, Brown, Calhoun, Cass, Clinton, Greene, Jersey, Macoupin, Menard, Morgan, Montgomery, Morgan, Pike, Randolph, and Washington Counties		

DECISION NO. IL85-5007 - Mod#2 (50 FR 5478 - February 8, 1985) ALEXANDER, CHAMPAIGN, CHRISTIAN, CLARK, CLAY, COLES, CRAWFORD, CUMBERLAND, DEWITT, DOUGLAS, EDGAR, EDWARD, EFFINGHAM, FAYETTE, FORD, FRANKLIN, GALLATIN, HAMILTON, HANCOCK, IROQUOIS, JACKSON, JASPER, JEFFERSON, JOHNSON, LAWRENCE, MARION, MASSAC, MOULTRIE, PERRY, PIATT, POPE, PULASKI, RICHLAND, SALINE, SHELBY, UNION, VERMILLION, WABASH, WAYNE, WHITE & WILLIAMSON COUNTIES, ILLINOIS	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BOILERMAKERS:		
Area 2	$19.20	$3.905
CARPENTERS: LATHERS, MILLWRIGHT, PILEDRIVERMEN & SOFT FLOOR LAYER		
Area 5:		
Carpenters, Piledrivermen & Soft Floor Layers	15.61	1.93
Millwrights	16.01	1.93

	Basic Hourly Rates	Fringe Benefits
IRONWORKERS:		
Area 1	$15.55	$2.45
Area 2:		
Ironworkers	15.00	3.68
Fence Erectors	12.00	3.68
Marble setters, Terrazzo Workers & Tile Setters:		
Area 4	16.00	1.87
PAINTERS:		
Area 11:		
Brush, Roller, Paperhangers, Hand Taper	15.24	
Swing Stage, Scaffold over 30 ft, Epoxy, Toxic materials Sandblast, Spray, Machine Taper	16.24	

DECISION NO. IL85-5002 - Mod#1 (50 FR 1876 - Jan. 11, 1985) PEORIA & TAZEWELL COUNTIES, ILLINOIS	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BOILERMAKERS	18.50	3.03
CARPENTERS: Commercial:		
Peoria Co. (Chillicothe area)		
Millwrights	16.48	3.25
Carpenters, Piledrivermen & Soft Floor Layers	15.30	2.95
RESIDENTIAL CARPENTERS:		
Peoria Co. (Chillicothe Area)	12.00	2.95

DECISION NO. IL84-5042 - MOD#1 (49 FR 48881 - Dec. 14, 1984) Sangamon County, Illinois	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BOILERMAKERS	19.29	3.905
BRICKLAYERS, Caulkers, Cleaner Pointers, Stonemasons	16.00	1.87
CEMENT MASONS	16.03	1.50
ELEVATOR MECHANICS	16.425	3.00+ab
Helpers	708	3.00+ab
IRONWORKERS	16.28	2.73
MARBLE, TILE SETTER, TERRAZZO	16.00	1.87
PLUMBER PIPE & STEAMFITTERS	17.23	2.68

MODIFICATIONS P. 3

	Basic Hourly Rates	Fringe Benefits
DECISION NO. MI83-2015 - MOD. #5 (48 FR 10579-March 11, 1983) Allegan, Barry, Berrien, etc., Counties, Michigan		
Change:		
Laborers:		
Clinton, Eaton and Ingham Counties:		
Group 1	$11.75	$1.69
Group 2	11.99	1.69
DECISION NO. MI83-2008 - MOD. #11 (48 FR 6456 - February 11, 1983) Alger, Baraga, Chippewa, etc., Counties, Michigan		
Change:		
Boilermakers	16.94	5.70
DECISION NO. MI85-5019 - MOD. #1 (50 FR 9567-March 8, 1985) Kent County, Michigan		
Change:		
Plumbers & Steamfitters	14.30	3.22
Sheet Metal Workers	15.18	3.42
DECISION NO. KS84-4052 - MOD. #2 (49 FR 33780 - August 24, 1984) Sedgwick County, Kansas		
CHANGE:		
CARPENTERS	$12.00	$1.08
MILLWRIGHTS & PILEDRIVERMAN	12.30	1.08
ELECTRICIANS	15.00	2.05+ 4%
CABLE SPLICERS	15.25	2.05+ 4%
LABORERS (Building Construction)		
Group 1	8.00	1.55
Group 2	8.20	1.55
PLUMBERS & PIPEFITTERS	15.40	2.60

	Basic Hourly Rates	Fringe Benefits
DECISION NO. KS84-4053 - MOD. #4 (49 FR 33784 - August 24, 1984) Leavenworth County, Kansas		
CHANGE:		
CEMENT MASONS	16.325	1.95
IRONWORKERS	17.51	3.39
PLASTERERS	18.05	
DECISION NO. NY85-3019 - MOD. #1 (50 FR 12690 - March 29, 1985) Jefferson County, New York		
CHANGE:		
BRICKLAYERS & CEMENT MASONS	16.59	2.91
DECISION NO. TN83-1087 Mod #8 (48 FR 53270 - November 25, 1983) Hamilton, Marion, Polk & Rhea Counties, Tennessee		
CHANGE:		
BRICKLAYERS & STONE MASONS:		
Polk County	$12.75	
Hamilton County	13.92	1.57
All Other Counties	12.00	1.57

MODIFICATIONS P. 4

	Basic Hourly Rates	Fringe Benefits
DECISION NO. UT83-5120 - MOD. # 11 (48 FR 44592 - Sept. 30, 1983 STATEWIDE, UTAH		
OMIT:		
Electricians as issued in original decision		
Cable Splicers as issued in original decision		
ADD		
Electricians:		
Projects $250,000 to $5,000,000 Total Electricial contract	16.25	2.50+ 3&8/10%
Projects over 5,000,000 Total Electricial contract	18.35	2.50+ 3&8/10%
CHANGE:		
Laborers:		
Building Construction:		
Group 1	9.47	2.09
Group 2	10.47	2.09
DECISION NO. WI 84-5016 - MOD. #5 (49 - FR-25829 - June 22, 1984) Statewide, Wisconsin		
Correct Decision Number on Modification Number 4 to read WI 84-5016		

	Basic Hourly Rates	Fringe Benefits
DECISION NO. NY84-3036 - MOD. #3 (49 FR 36230 - Sept. 14, 1984) Onondaga County, New York		
CHANGE:		
ASBESTOS WORKERS	18.70	3.41
BOILERMAKERS	18.93	1.875+ 10%
SHEETMETAL WORKERS	18.12	5.335+ 3%
Projects with Sheetmetal work contracts totaling $5 million or less	17.12	5.335+ 3%
TRUCK DRIVERS		
Building projects where total project cost is over $5 million		
Class 1	14.58	2.72
Class 2	14.73	2.72
Class 3	14.78	2.72
Class 4	14.98	2.72
Building Construction where total project cost is under $5 million		

DECISION NO. WA84-5040 - Mod#7
(49 FR 45532 - Nov 16, 1984)
Statewide Washington

	Basic Hourly Rates	Fringe Benefits
ADD:		
CARPENTERS:		
Area 2:		
Buildings under $500,000 and Bridges under $350,000:		
All Classifications	$15.00	$2.81
LABORERS:		
Area 2:		
(See Footnote "f" regarding cost of project.) On projects as described in Footnote "f" the following rates apply:		
Group 1	8.46	3.43
Group 2	10.78	3.43
Group 3	12.69	3.43
Group 4	13.20	3.43
Group 5	13.40	3.43
Area 5: Kittitas, Yakima, and the parts of Chelan, Douglas, and Okanogan Cos. lying West of the 120th Meridian. (See Footnote "g" regarding cost of project.) On projects as described in Footnote "g" the following rates apply:		
Group 1	8.46	3.43
Group 2	9.60	3.43
Group 3	9.60	3.43
Group 4	9.98	3.43
Group 5	10.27	3.43
All other work not covered in Footnote "g"		
Group 1	8.46	3.43
Group 2	10.78	3.43
Group 3	12.00	3.43
Group 4	12.48	3.43
Group 5	12.84	3.43
POWER EQUIPMENT OPERATORS:		
Area 2:		
(See Footnote "g" regarding cost of project). On projects as described in Footnote "g" the rate for each group shall be 85% of the base rate plus full fringe benefits		
POWER EQUIP. OPERATORS (cont'd)		
Area 5: Kittitas, Yakima, and the parts of Chelan, Douglas & Okanogan Cos. lying West of the 120th Meridian (See Footnote "g" regarding cost of project) On projects as described in Footnote "g" the rate for each group shall be 85% of the base rate plus full fringe benefits.		
All other work not covered by Footnote "g", the following rates apply:		
Group 1	16.73	4.16
Group 2	16.23	4.16
Group 3	15.74	4.16
Group 4	15.43	4.16
Group 5	15.11	4.16
Group 6	13.33	4.16
TRUCK DRIVERS:		
Area 2:		
All Counties and portions of Counties lying West of the 120th Meridian except those enumerated in Area 3. Includes the Northern portion of Pacific, and all of Kittitas and Yakima Counties. (See Footnote "g" regarding cost of project) On projects as described in Footnote "g" the rate for each group shall be 85% of the base rate plus full fringe benefits.		

NOTE: Classification Descriptions for LABORERS and POWER EQUIPMENT OPERATORS in Area 5 are identical to those in Area 2 contained in the Wage Decision.

DECISION NO. WA84-5040 (Cont'd)

ADD:

FOOTNOTE "f"

f. LABORERS (AREA 2):

Reduced rates as indicated in the wage decision may be paid on projects which involve work on structures such as buildings, bridges or docks which have a total value of less than $1.5 million, excluding the cost of electrical, mechanical and utilities. These rates may also be paid on projects where no building is involved which have a total value of less than $1 million, surfacing and paving included but utilities excluded. For the purposes of this footnote, utilities are defined to include sanitary and storm sewerage and facilities for the delivery of water, electricity, gas and communications.

Footnote "g":

g. LABORERS (AREA 5), POWER EQUIPMENT OPERATORS (AREA 2 and AREA 5) & TRUCK DRIVERS (AREA 2):

Reduced rates, as indicated in the wage decision, may be paid on the following kinds of projects:

1. Marine type projects (docks, wharfs & similar) which have a total value of less than $150,000.

2. Projects involving work on non-marine structures, such as buildings and bridges, which have a total value of less than $1.5 million, excluding the mechanical, electrical and utility portions of the contract.

3. Non-marine projects where no building is included which have a value of less than $1 million, surfacing and paving included, but utilities excluded.

For the purposes of this footnote, utilities are defined to include sanitary and storm sewerage and facilities for the delivery of water, electricity, gas and communications.

MODIFICATIONS P. 7

DECISION NO. WA84-5040 (Cont'd)

CHANGE:

FOOTNOTE "e"

e. LABORERS (AREA 1), POWER EQUIPMENT OPERATORS (AREA 1), AND TRUCK DRIVERS (AREA 1): All Counties and portions of Counties East of the 120th Meridian except DOE Hanford Site in Benton and Franklin Counties:

On all projects involving one or more of the components listed below, where the dollar value of the component is less than the amount shown, the rate to be paid for work on that component shall be 80% of the base rate plus full fringe benefits. Work on any other components or on component with dollar values in excess of the amounts shown shall be paid at the full base rate plus the full fringe benefit rate.

Paving (includes fine grading and final laydown of surface material including asphalt, bituminous surface treatments, and emulsion seal coats)	$ 75,000
Crushing (including delivery to jobsite).	200,000
Grading & Clearing (highway only)	350,000
	350,000
Bridges (including related work such as approaches and landscaping)	500,000
Utilities (storm, sanitary sewerage and facilities for the delivery of electricity, gas, communications and domestic water)	Unlimited
Buildings	$2,000,000 exclusive of mechanical and electrical subcontracts

EXCEPTIONS: Paving within a 45 mile radius of Spokane or Lewiston shall receive the full rate.
Laborers only: For work on buildings over $2,000,000, excluding mechanical and electrical, shall receive the full rate on all components including any that fall below the amounts shown.

CHANGE:

LINE CONSTRUCTION:
Fringe Benefits:
Groups 1 to 3 $3.25 + 3 1/2%
Groups 4 to 7 $2.55 + 3 1/2%

SUPERSEDEAS DECISION

STATE: OHIO COUNTY: MEDINA
DECISION NUMBER: OH85-5023 DATE: Date of Publication
Supersedes Decision No. OH81-2015, dated April 10, 1981 in 46 FR 21585
DESCRIPTION OF WORK: Residential Construction Projects Consisting of single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$10.19	
CARPENTERS	9.95	
CEMENT MASONS	9.19	
ELECTRICIANS	9.19	
INSULATORS	7.00	
LABORERS	6.00	
PAINTERS	9.19	
PLUMBERS	9.85	
SOFT FLOOR LAYERS	8.00	
POWER EQUIPMENT OPERATORS:		
Backhoes	9.12	
Bulldozers	9.12	
TRUCK DRIVERS	6.25	
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).		

Basic Hourly Rates	Fringe Benefits

SUPERSEDEAS DECISION

STATE: Wyoming
COUNTY: Statewide
DECISION NUMBER: WY85-5025
DATE: Date of Publication
Supersedes Decision No. WY84-5009 dated April 6, 1984 in 49 FR-50432

DESCRIPTION OF WORK: Heavy and Highway Projects

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$ 11.66	
CEMENT MASONS	11.90	
IRONWORKERS:		
Structural	14.11	
Reinforcing	10.52	
PAINTERS:		
Brush and Spray	10.94	
LINE CONSTRUCTION:		
All work over 34.5 KV all work on steel towers and/or multiple wood structures, all cross country underground communications work, and all motor traffic controlling, streets and highway lighting:		
Cable Splicer	14.00	
Linemen	16.00	
Equipment Operators	14.39	
Groundmen	10.60	
All work 34.5 KV and under:		
Lineman	16.00	
Line Equipment Operator	13.74	
Groundman	10.60	
Line Construction Fringe Benefits $1.75+3-1/2%		

LABORERS:	Basic Hourly Rates	Fringe Benefits
Group 1	8.23	
Group 2	8.83	
Group 3	8.48	
Group 4	8.75	
Group 5:		
(a)	8.71	
(b)	8.55	
(c)	8.98	
(d)	8.82	
POWER EQUIPMENT OPERATORS:		
Group 1	10.74	
Group 2	10.79	
Group 3	10.84	
Group 4	10.88	
Group 5	10.91	
Group 6	10.96	
Group 7	11.00	
Group 8	11.02	
Group 9	11.13	
Group 10	11.19	
Group 11	11.21	
Group 12	11.38	
Group 13	11.43	
Group 14	11.50	
Group 15	11.56	
Group 16	11.73	
Group 17	12.07	

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits
Pick-up Truck Drivers (when used for hauling)	$ 9.16	
Dump Trucker Drivers (water level capacity box):		
7 cu. yds. and less	9.21	
Over 7 cu. yds. to and including 10 cu. yds.	9.36	
Over 10 cu. yds. to and including 13 cu. yds.	9.46	
Over 13 cu. yds. to and including 20 cu. yds.	9.96	
Over 20 cu. yds. to and including 25 cu. yds.	9.96	
Over 25 cu. yds. to and including 30 cu. yds.	10.06	
Over 30 cu. yds. to and including 35 cu. yds.	10.11	
Over 35 cu. yds. to and including 40 cu. yds.	10.16	
Over 40 cu. yds. to and including 45 cu. yds.	10.21	
Over 45 cu. yds. (to be negotiated prior to use)		
Snow Plow Truck Drivers (the cu. yd. rate of the truck driver classification):		
Pilot Car Drivers	9.16	
Gravel Spreader	9.21	

TRUCK DRIVERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits
Flat Rack Material Truck Drivers:		
Less than 2 tons	9.21	
2 tons to 5 tons	9.36	
Over 5 tons	9.46	
Low Boy and Tandem Axle Float Drivers	9.96	
Gang Truck Drivers	9.21	
Stringing Truck Drivers:		
Single axle type truck	9.21	
Multiple axle type truck, semi	9.96	
Winch Trailer Truck Drivers (cable and hoist)	9.46	
Utility Winch Truck Drivers	9.46	
"A" Frame Truck Drivers	9.46	
Transit Mix or Wet Mix Truck Drivers:		
Less than 5 cu. yds.; single axle	9.46	
Over 5 cu. yds. to and including 10 cu. yds.; Tandem axle	9.56	
Over 10 cu. yds.	9.66	
Power Broom Drivers and/or Operator	9.36	

TRUCK DRIVERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits
Water Truck Drivers:		
2500 gallons or less (straight truck)	9.21	
2500 gallons or less (semi truck)	9.36	
Over 2500 gallons to and including 3600 gallons	9.46	
Over 3600 gallons (straight truck)	9.56	
Over 3600 gallons (semi truck)	9.66	
Heavy Duty (Euclids, electric or similar type)	9.96	
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental		

LABORERS

Group 1: Axeman and Hand Faller; Concrete Worker (wet or dry); Concrete Worker (curing and drying); Dumpman; Erector and Installer (includes the installation and erection of fences, snow fences, guard rails, median rails, median posts, signs and right-of way marker); Form Stripper; General Labor; Heater Tender; Material Handler (lumber, rods, cement, concrete); Nozzleman, air and water; Pre-watering, pre-wetting and pre-irrigation (all work); Riprap Man; Sandblaster Pot Tender; Signal Men, Grade Concrete, etc.; Scissor Man or Hopper Man; Stake Jumper for equipment; Tar and Asphalt Pot Tender; Wrecking and demolition crews

Group 2: Asphalt Raker and Tamper; Bin Wall Installer; Bituminous Curb Builder; Cement Mason or Finisher and Tender; Chuck Tender; Form Setter; (paving); Hand operated Vibratory Roller; Landscaper; Mortar Man on Stone Riprap; Operator of pneumatic, electric, gas tamper and similar mechanical tools; Pipe Setter (corrugated culvert pipe sectional, multiplate and similar type); Pipe Setter; Pipelayer (non-metallic); Pipe Wrapper, Power type concrete buggy (push or ride); Power Saw Operator (clearing); Vibrator - concrete

Group 3: Concrete Saw; Gunite Nozzleman; High Scaler (using air tools from Bos'n Chair, Swing Stage, Lift Belt or Block and Tackle, shall receive $.20 per hour more than the classified rate); Jackhammer and Pavement Breaker; Sandblaster Nozzleman; Sewer Pipe Installer (non-metallic), clay, concrete, etc. (Caulker, Collarman, Jointer, Mortarman, Rigger, Jacker)

Group 4: Powderman and Blaster; Wagon Drill, Air-trac, Diamond and other drills for blasting powder or grouting

Group 5: Tunnel and Underground Work:

(a) Brakeman; Swamper, Vibrator Man
(b) Bull Gang; Dumpman; Mucker; Trackman
(c) Miners (Drillers); Machine Men; Timbermen; Steelmen; Drill Doctor, Form Setter and Mover; Spader; Tuggers spilling and/or Caisson Workers; Powderman; Jackhammer-men Finishers
(d) Nipper; Chucktender; Topman; Toploader

POWER EQUIPMENT OPERATORS

Group 1: Auger Machine Operator (post holes, etc.); Batch Bin Weighman, Scissorman or Hopperman; Brakeman; Crusher Oiler; Oiler Utility; Screed Operator; Tractor Operators (farm, crawler or wheel type, 60 HSP - drawbar) or less with or without use of power attachments, except for use of Backhoe or Bucket)

Group 2: Broom Operators, self-propelled; Cableway Signalman (Bellboy); Concrete Saw (self-propelled); Fireman; Power Loader, belt and bucket type

Group 3: Air Compressor over 315 cu. ft. capacity; Chip Spreader Operator; Form Grader Operator; Joint Machine Operator; Longitudinal Float Operator; Mixer Operator Concrete (under one yard); Roller Operators, self-propelled)neumatic, rubber tired, sheep foot vibratory or combination type); Tire Repairman

Group 4: Pump Operator (all others)

Group 5: Conveyor Belt Operator; Fork Lift and Lumber Stacker; Screening Plant Operator

Group 6: A-Frame Truck; Tractor Operators (farm, crawler or wheel type, over 60 HSP - drawbar) without use of power attachments

Group 7: Oiler, Lead Utility

Group 8: Gunnite and Grout Machine Operator; Mulching Machine Operator; Oil Distributor

Group 9: Front End Loader (up to and including 1½ cu. yds.); Pavement Breakers, Hydro-tamper and similar type machines; Pumps, well points

Group 10: Hoist Operator (one drum)

Group 11: Haulage Motorman and Industrial type Motorman; Motor Patrol Operator (all others); Pump Operator (in tunnels, shafts, raises); Hydro type Cranes (up to 15 tons)

POWER EQUIPMENT OPERATORS (Cont'd)

Group 12: Air Compressor, two or more machines or tunnels, shafts, raises of Plant Operator; Asphalt Plant Operator; Bituminous Laydown Machine Operator; CMI Machine or similar; Concrete Batch Plant; Concrete Finish Machine Operator; Concrete Multi Blade Span Saw (Hunt process or similar); Concrete Spreader and Paver Operator; Crusher Operator; Drilling Machine, integrated (Core, Rotary, Caisson, Diamond); Elevating Grader; Front End Loader (over 1½ cu. yds.); Jumbo Form Operator; Mixer Operator, base course pug mill type; Mixer Bituminous Opeartor (travel plant); Mixer Operator Concrete (over one yard); Motor Patrol Operator (finish); Mucking Machine Operator (all types); Pneumatic Guns; Pumpcrete Operator; Roller Operator (Tandem steel wheel, three axle or three wheel); Scraper Equipment (all types); Shovels, Draglines, Cranes, Piledrivers, all truck mounted cranes (manufacturers' rating) up to 3½yds., all attachments; Hydro type cranes (15 ton and over); Shuttle Car Operator; Subgrade Machine Operator (power); Tractor Operator, all with use of power attachments and including Pushcat, Dozer, Tournadozer, etc. (The use of power attachment shall not include disking, pulling or rollers, and similar unskilled actions); Trenching Machine Operator; Wash Plant Operator

Group 13: Welder, Machine Doctor

Group 14: Hoist Operator (two or more drums of shafts or raises); Repairman; Mechanics; Machine Doctors, Welders, Heavy Duty Mechanic, Machine Doctor

Group 15: Cableway Operators; Mixer Dual Drum; Cranes, (Whirley, Gantry, Stiffleg, Overhead traveling)

Group 16: Shovels, Draglines, Cranes, Piledrivers, all truck mounted cranes manufacturer's rating) 3¼ yds. to 7 cu. yds.; all attachments; Wheel Excavator Operator

Group 17: Shovels, Draglines, Cranes, Piledrivers, all truck mounted Cranes, (manufacturer's rating) 7 cu. yds. and over, all attachments

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii).

[FR Doc. 85–11763 Filed 5–16–85; 8:45 am]

BILLING CODE 4510-27-C

Federal Register

Friday
May 17, 1985

Part IV

Office of Management and Budget

Budget Rescissions and Deferrals; Cumulative Report; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

May 1, 1985.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of May 1, 1985, of 242 rescission proposals and 69 deferrals contained in the first eight special messages of FY 1985. These nessages were transmitted to the Congress on October 1, October 31, and November 29, 1984; and January 4, Febfuary 6 (two special messages), March 1, and March 22, 1985.

Rescissions (Table A and Attachment A)

As of May 1, 1985, there were no rescission proposals pending before the Congress. Attachment A shows the history and status of the 242 rescissions proposed by the President in 1985.

Deferrals (Table B and Attachment B)

As of May 1, 1985, $5,241.7 million in 1985 budget authority was being deferred from obligation and $9.1 million in 1985 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1985.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the **Federal Registers** listed below:

Vol. 49, FR p. 39464, Friday, October 5, 1984

Vol. 49, FR p. 44870, Friday, November 9, 1984

Vol. 49, FR p. 47804, Thursday, December 6, 1984

Vol. 50, FR p. 1420, Thursday, January 10, 1985

Vol. 50, FR p. 6582, Friday, February 15, 1985

Vol. 50, FR p. 6648, Friday, February 15, 1985

Vol. 50, FR p. 9410, Thursday, March 7, 1985

Vol. 50, FR p. 12504, Thursday, March 28, 1985

David A. Stockman,

Director, Office of Management and Budget.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1985 RESCISSIONS

	Amount (In millions of dollars)	
Rescissions proposed by the President	$1,805.9	
Accepted by the Congress	0	
Rejected by the Congress	1,805.9	a/
Pending before the Congress	0	

****

TABLE B

STATUS OF 1985 DEFERRALS

	Amount (In millions of dollars)	
Deferrals proposed by the President	$14,846.6	
Routine Executive releases through May 1, 1985 (OMB/ Agency Releases of $9,794.3 million and cumulative adjustments of $199.6 million)	-9,595.9	
Overturned by the Congress	0	
Currently before the Congress	$ 5,250.7	b/

---

a/ Rescission proposals transmitted with the FY 1986 Budget were released on April 25, 1985, the day following expiration of the 45-day clock on rescissions under the Impoundment Control Act. However, the proposals continue to be subject to Congressional action.

b/ This amount includes $9.1 million in outlays for a Department of the Treasury deferral (D85-13).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
Appalachian Regional Development Programs	R85-1		99,000	2-6-85		99,000	4-25-85	
International Development Assistance Functional development assistance program	R85-2		5,168	2-6-85		5,168	4-25-85	
Peace Corps Peace Corps operating expenses	R85-3		1,231	2-6-85		1,231	4-25-85	
verseas Private Investment Corporation Overseas Private Investment Corporation.	R85-4		838	2-6-85		838	4-25-85	
DEPARTMENT OF AGRICULTURE								
Office of the Secretary Office of the Secretary	R85-5		114	2-6-85		114	4-25-85	
Departmental Administration Departmental Administration	R85-6		149	2-6-85		149	4-25-85	
Office of Governmental and Public Affairs Office of Governmental and Public Affairs	R85-7		497	2-6-85		497	4-25-85	
Office of the Inspector General Office of the Inspector General	R85-8		41	2-6-85		41	4-25-85	
Office of the General Counsel Office of the General Counsel	R85-9		24	2-6-85		24	4-25-85	
Agricultural Research Service Agricultural Research Service	R85-10		1,313	2-6-85		1,313	4-25-85	
Buildings and facilities	R85-11		16,950	2-6-85		16,950	4-25-85	
	R85-12		20,950	2-6-85		20,950	4-25-85	
Cooperative State Research Service Cooperative State Research Service	R85-13		151	2-6-85		151	4-25-85	
Extension Service Extension Service	R85-14		310	2-6-85		310	4-25-85	
National Agricultural Library National Agricultural Library	R85-15		11	2-6-85		11	4-25-85	
Statistical Reporting Service Salaries and expenses	R85-16		206	2-6-85		206	4-25-85	
Economic Research Service Salaries and expenses	R85-17		132	2-6-85		132	4-25-85	
World Agricultural Outlook Board World Agricultural Outlook Board	R85-18		32	2-6-85		32	4-25-85	
Foreign Agricultural Service Foreign Agricultural Service	R85-19		424	2-6-85		424	4-25-85	
Office of International Cooperation and Development Salaries and expenses	R85-20		52	2-6-85		52	4-25-85	
Scientific activities overseas (special foreign currency program)	R85-21		9	2-6-85		9	4-25-85	
Agricultural Stabilization and Conservation Service Salaries and expenses	R85-22		100	2-6-85		100	4-25-85	
Dairy indemnity program	R85-23		88	2-6-85		88	4-25-85	
Federal Crop Insurance Corporation Administrative and operating expenses	R85-24		1,906	2-6-85		1,906	4-25-85	
Commodity Credit Corporation Commodity Credit Corporation fund	R85-25		31	2-6-85		31	4-25-85	
Office of Rural Development Policy Salaries and expenses	R85-26		36	2-6-85		36	4-25-85	
Rural Electrification Administration Salaries and expenses	R85-27		288	2-6-85		288	4-25-85	
Reimbursement to the Rural Electrification and Telephone revolving fund	R85-28		215,964	2-6-85		215,964	4-25-85	
Purchase of Rural Telephone Bank capital stock	R85-29		30,000	2-6-85		30,000	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Farmers Home Administration								
Salaries and expenses	R85-30		1,315	2-6-85		1,315	4-25-85	
Soil Conservation Service								
Conservation operations	R85-31		5,174	2-6-85		5,174	4-25-85	
River basin surveys and investigations	R85-32		235	2-6-85		235	4-25-85	
Watershed planning	R85-33		133	2-6-85		133	4-25-85	
Watershed and flood prevention operations	R85-34		918	2-6-85		918	4-25-85	
Great plains conservation program	R85-35		126	2-6-85		126	4-25-85	
Resource conservation and development	R85-36		164	2-6-85		164	4-25-85	
Animal and Plant Health Inspection Service								
Salaries and expenses	R85-37		1,464	2-6-85		1,464	4-25-85	
Federal Grain Inspection Service								
Salaries and expenses	R85-38		94	2-6-85		94	4-25-85	
Agricultural Marketing Service								
Marketing services	R85-39		150	2-6-85		150	4-25-85	
Office of Transportation								
Office of Transportation	R85-40		18	2-6-85		18	4-25-85	
Food Safety and Inspection Service								
Salaries and expenses	R85-41		2,473	2-6-85		2,473	4-25-85	
Food and Nutrition Service								
Food stamp administration	R85-42		684	2-6-85		684	4-25-85	
Food stamp program	R85-43		8,762	2-6-85		8,762	4-25-85	
Human Nutrition Information Service								
Human Nutrition Information Service	R85-44		34	2-6-85		34	4-25-85	
Packers and Stockyards Administration								
Packers and Stockyards Administration	R85-45		117	2-6-85		117	4-25-85	
Agricultural Cooperative Service								
Salaries and expenses	R85-46		50	2-6-85		50	4-25-85	
Forest Service								
Forest research	R85-47		923	2-6-85		923	4-25-85	
State and private forestry	R85-48		463	2-6-85		463	4-25-85	
National forest system	R85-49		12,134	2-6-85		12,134	4-25-85	
Construction	R85-50		1,922	2-6-85		1,922	4-25-85	
Land acquisition	R85-51		68	2-6-85		68	4-25-85	
DEPARTMENT OF COMMERCE								
General Administration								
Salaries and expenses	R85-52		3,700	2-6-85		3,700	4-25-85	
	R85-53		499	2-6-85		499	4-25-85	
Economic Development Administration								
Salaries and expenses	R85-54		120	2-6-85		120	4-25-85	
Economic development assistance programs	R85-55		24,000	2-6-85		24,000	4-25-85	
	R85-56		179,000	2-6-85		179,000	4-25-85	
Bureau of the Census								
Salaries and expenses	R85-57		241	2-6-85		241	4-25-85	
Periodic censuses and programs	R85-58		791	2-6-85		791	4-25-85	
Economic and Statistical Analysis								
Salaries and expenses	R85-59		433	2-6-85		433	4-25-85	
International Trade Administration								
Operations and administration	R85-60		2,783	2-6-85		2,783	4-25-85	
	R85-60A		18,750	2-6-85		18,750	4-25-85	
Participation in United States expositions	R85-61		6	2-6-85		6	4-25-85	
Minority Business Development Agency								
Minority business development	D85-62		305	2-6-85		305	4-25-85	
United States Travel and Tourism Administration								
Salaries and expenses	R85-63		468	2-6-85		468	4-25-85	
	R85-63A		3,417	2-6-85		3,417	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
National Oceanic and Atmospheric Administration								
Operations, research, and facilities....	R85-64		4,140	2-6-85		4,140	4-25-85	
	R85-64A		100,200	2-6-85		100,200	4-25-85	
Fisheries loan fund.....	R85-65		1,550	2-6-85		1,550	4-25-85	
Patent and Trademark Office								
Salaries and expenses.....	R85-66		1,472	2-6-85		1,472	4-25-85	
National Bureau of Standards								
Scientific and technical research and services.....	R85-67		1,019	2-6-85		1,019	4-25-85	
National Telecommunications and Information Administration								
Salaries and expenses.....	R85-68		183	2-6-85		183	4-25-85	
Public telecommunications facilities, planning and construction.....	R85-69		32	2-6-85		32	4-25-85	
	R85-69A		9,968	2-6-85		9,968	4-25-85	
DEPARTMENT OF DEFENSE - CIVIL								
Corps of Engineers - Civil								
General investigations.....	R85-70		2,000	2-6-85		2,000	4-25-85	
Construction, general.....	R85-71		4,000	2-6-85		4,000	4-25-85	
Operation and maintenance, general.....	R85-72		8,000	2-6-85		8,000	4-25-85	
General expenses.....	R85-73		1,200	2-6-85		1,200	4-25-85	
Flood control, Mississippi River and tributaries.....	R85-74		1,000	2-6-85		1,000	4-25-85	
Revolving fund.....	R85-75		3,900	2-6-85		3,900	4-25-85	
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Special programs.....	R85-76		80,000	2-6-85		80,000	4-25-85	
Office of Bilingual Education and Minority Languages Affairs								
Grants to schools with substantial numbers of immigrants.....	R85-77		30,000	2-6-85		30,000	4-25-85	
Office of Postsecondary Education								
Higher education.....	R85-78		59,750	2-6-85		59,750	4-25-85	
Departmental Management								
Salaries and expenses.....	R85-79		4,189	2-6-85		4,189	4-25-85	
DEPARTMENT OF ENERGY								
Atomic Energy Defense Activities								
Atomic energy defense activities.....	R85-80		8,280	2-6-85		8,280	4-25-85	
Energy Programs								
General science and research activities.	R85-81		38	2-6-85		38	4-25-85	
Energy supply, research and development activities.....	R85-82		2,676	2-6-85		2,676	4-25-85	
Uranium supply and enrichment activities	R85-83		968	2-6-85		968	4-25-85	
Fossil energy research and development..	R85-84		3,276	2-6-85		3,276	4-25-85	
	R85-85		860	2-6-85		860	4-25-85	
Naval petroleum and oil shale reserves..	R85-86		181	2-6-85		181	4-25-85	
Energy conservation.....	R85-87		931	2-6-85		931	4-25-85	
Strategic petroleum reserve.....	R85-88		156	2-6-85		156	4-25-85	
Energy Information Administration.....	R85-89		846	2-6-85		846	4-25-85	
Emergency preparedness.....	R85-90		51	2-6-85		51	4-25-85	
Economic regulation.....	R85-91		156	2-6-85		156	4-25-85	
Federal Energy Regulatory Commission....	R85-92		204	2-6-85		204	4-25-85	
Alternate fuels production.....	R85-93		23	2-6-85		23	4-25-85	
Power Marketing Administration								
Operation and maintenance, Alaska Power Administration.....	R85-94		29	2-6-85		29	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Operation and maintenance, Southeastern Power Administration	R85-95		15	2-6-85		15	4-25-85	
Operation and maintenance, Southwestern Power Administration	R85-96		243	2-6-85		243	4-25-85	
Construction, rehabilitation, operation and maintenance, Western Area Power Administration	R85-97		432	2-6-85		432	4-25-85	
Departmental Administration Departmental administration	R85-98		2,786	2-6-85		2,786	4-25-85	
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Food and Drug Administration Salaries and expenses	R85-99		2,194	2-6-85		2,194	4-25-85	
Health Resources and Services Administration Health resources and services	R85-100		2,263	2-6-85		2,263	4-25-85	
Indian health	R85-101		161	2-6-85		161	4-25-85	
Centers for Disease Control Disease control	R85-102		2,261	2-6-85		2,261	4-25-85	
National Institutes of Health National Cancer Institute	R85-103		4,362	2-6-85		4,362	4-25-85	
National Heart, Lung and Blood Institute	R85-104		1,401	2-6-85		1,401	4-25-85	
National Institute of Dental Research	R85-105		166	2-6-85		166	4-25-85	
National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases	R85-106		1,171	2-6-85		1,171	4-25-85	
National Institute of Neurological and Communicative Disorders	R85-107		462	2-6-85		462	4-25-85	
National Institute of Allergy and Infectious Diseases	R85-108		428	2-6-85		428	4-25-85	
National Institute of General Medical Sciences	R85-109		211	2-6-85		211	4-25-85	
National Institute of Child Welfare and Human Development	R85-110		309	2-6-85		309	4-25-85	
National Eye Institute	R85-111		173	2-6-85		173	4-25-85	
National Institute of Environmental Health Sciences	R85-112		542	2-6-85		542	4-25-85	
National Institute on Aging	R85-113		196	2-6-85		196	4-25-85	
Research resources	R85-114		250	2-6-85		250	4-25-85	
John E. Fogarty International Center	R85-115		241	2-6-85		241	4-25-85	
National Library of Medicine	R85-116		354	2-6-85		354	4-25-85	
Office of the Director	R85-117		182	2-6-85		182	4-25-85	
Alcohol, Drug Abuse, and Mental Health Administration Alcohol, drug abuse, and mental health	R85-118		3,972	2-6-85		3,972	4-25-85	
Office of Assistant Secretary for Health Public health service management	R85-119		493	2-6-85		493	4-25-85	
Health Care Financing Administration Program management	R85-120		1,540	2-6-85		1,540	4-25-85	
Human Development Services Human development services	R85-121		1,334	2-6-85		1,334	4-25-85	
Family social services	R85-122		396	2-6-85		396	4-25-85	
Community services block grant	R85-123		34	2-6-85		34	4-25-85	
Departmental Management General departmental management	R85-124		1,246	2-6-85		1,246	4-25-85	
Office of the Inspector General	R85-125		496	2-6-85		496	4-25-85	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing Programs Payments for operation of low income housing projects	R85-126		253,138	2-6-85		253,138	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Management and Administration								
Salaries and expenses	R85-127		6,919	2-6-85		6,919	4-25-85	
DEPARTMENT OF INTERIOR								
Bureau of Land Management								
Management of lands and resources	R85-128		5,778	2-6-85		5,778	4-25-85	
Oregon and California grant lands	R85-129		679	2-6-85		679	4-25-85	
Working capital fund	R85-130		2,951	2-6-85		2,951	4-25-85	
Minerals Management Service								
Minerals and royalty management	R85-131		1,764	2-6-85		1,764	4-25-85	
Office of Surface Mining Reclamation and Enforcement								
Regulation and technology	R85-132		546	2-6-85		546	4-25-85	
Abandoned mine reclamation fund	R85-133		333	2-6-85		333	4-25-85	
	R85-133A		2,900	2-6-85		2,900	4-25-85	
Bureau of Reclamation								
Construction program	R85-134		2,571	2-6-85		2,571	4-25-85	
General investigations	R85-135		209	2-6-85		209	4-25-85	
Operation and maintenance	R85-136		1,540	2-6-85		1,540	4-25-85	
General administrative expenses	R85-137		1,468	2-6-85		1,468	4-25-85	
Geological Survey								
Surveys, investigations and research	R85-138		4,519	2-6-85		4,519	4-25-85	
Bureau of Mines								
Mines and minerals	R85-139		1,355	2-6-85		1,355	4-25-85	
United States Fish and Wildlife Service								
Resource management	R85-140		3,869	2-6-85		3,869	4-25-85	
Construction	R85-141		40	2-6-85		40	4-25-85	
National Park Service								
Operation of the national park system	R85-142		8,598	2-6-85		8,598	4-25-85	
National recreation and preservation	R85-143		94	2-6-85		94	4-25-85	
Construction	R85-144		397	2-6-85		397	4-25-85	
Land acquisition and state assistance	R85-145		52	2-6-85		52	4-25-85	
	R85-146		30,000	2-6-85		30,000	4-25-85	
Bureau of Indian Affairs								
Operation of Indian programs	R85-147		5,570	2-6-85		5,570	4-25-85	
Office of Territorial Affairs								
Administration of territories	R85-148		107	2-6-85		107	4-25-85	
DEPARTMENT OF JUSTICE								
General Administration								
Salaries and expenses	R85-149		166	2-6-85		166	4-25-85	
Working capital fund	R85-150		3,000	2-6-85		3,000	4-25-85	
Legal Activities								
Salaries and expenses, General Legal Activities	R85-151		470	2-6-85		470	4-25-85	
Salaries and expenses, Antitrust Division	R85-152		65	2-6-85		65	4-25-85	
Salaries and expenses, United States Attorneys and Marshals	R85-153		889	2-6-85		889	4-25-85	
Fees and expenses of witnesses	R85-154		309	2-6-85		309	4-25-85	
Salaries and expenses, Community Relations Service	R85-155		43	2-6-85		43	4-25-85	
Federal Bureau of Investigation								
Salaries and expenses	R85-156		3,505	2-6-85		3,505	4-25-85	
Drug Enforcement Administration								
Salaries and expenses	R85-157		876	2-6-85		876	4-25-85	
Immigration and Naturalization Service								
Salaries and expenses	R85-158		947	2-6-85		947	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Federal Prison System								
Salaries and expenses	R85-159		451	2-6-85		451	4-25-85	
National Institute of Corrections	R85-160		894	2-6-85		894	4-25-85	
Buildings and facilities	R85-161		13	2-6-85		13	4-25-85	
Office of Justice Programs								
Justice assistance	R85-162		2,031	2-6-85		2,031	4-25-85	
DEPARTMENT OF LABOR								
Employment and Training Administration								
Program administration	R85-163		218	2-6-85		218	4-25-85	
	R85-163A		1,703	2-6-85		1,703	4-25-85	
Training and employment services	R85-164		11,447	2-6-85		11,447	4-25-85	
	R85-164A		244,291	2-6-85		244,291	4-25-85	
Labor-Management Services Administration								
Salaries and expenses	R85-165		1,678	2-6-85		1,678	4-25-85	
Employment Standards Administration								
Salaries and expenses	R85-167		1,635	2-6-85		1,635	4-25-85	
	R85-167A		600	2-6-85		600	4-25-85	
Occupational Safety and Health Administration								
Salaries and expenses	R85-168		1,694	2-6-85		1,694	4-25-85	
Mine Safety and Health Administration								
Salaries and expenses	R85-169		1,776	2-6-85		1,776	4-25-85	
Bureau of Labor Statistics								
Salaries and expenses	R85-170		765	2-6-85		765	4-25-85	
	R85-170A		5,000	2-6-85		5,000	4-25-85	
Departmental Management								
Salaries and expenses	R85-171		728	2-6-85		728	4-25-85	
Inspector General salaries and expenses	R85-172		3,766	2-6-85		3,766	4-25-85	
Special foreign currency program	R85-173		20	2-6-85		20	4-25-85	
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses	R85-174		2,432	2-6-85		2,432	4-25-85	
DEPARTMENT OF TRANSPORTATION								
Federal Highway Administration								
Motor carrier safety	R85-175		164	2-6-85		164	4-25-85	
National Highway Traffic Safety Administration								
Operations and research	R85-176		767	2-6-85		767	4-25-85	
Trust fund share of operations and research	R85-177		408	2-6-85		408	4-25-85	
Highway traffic safety grants	R85-178		250	2-6-85		250	4-25-85	
Federal Railroad Administration								
Office of the Administrator	R85-179		100	2-6-85		100	4-25-85	
Railroad research and development	R85-180		170	2-6-85		170	4-25-85	
Rail service assistance	R85-181		90	2-6-85		90	4-25-85	
Railroad safety	R85-182		140	2-6-85		140	4-25-85	
Northeast corridor improvement program	R85-183		200	2-6-85		200	4-25-85	
Urban Mass Transportation Administration								
Urban mass transportation fund, administrative expenses	R85-184		265	2-6-85		265	4-25-85	
Federal Aviation Administration								
Operations	R85-185		18,888	2-6-85		18,888	4-25-85	
Headquarters administration	R85-186		1,065	2-6-85		1,065	4-25-85	
Operation and maintenance, Washington metropolitan airports	R85-187		17	2-6-85		17	4-25-85	
Facilities and equipment (Airport and airway trust fund)	R85-188		10,000	2-6-85		10,000	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Coast Guard								
Operating expenses	R85-189		14,724	2-6-85		14,724	4-25-85	
Acquisition, construction and improvements	R85-190		500	2-6-85		500	4-25-85	
Reserve training	R85-191		441	2-6-85		441	4-25-85	
Research, development, test, and evaluation	R85-192		135	2-6-85		135	4-25-85	
Maritime Administration								
Operations and training	R85-193		888	2-6-85		888	4-25-85	
Office of the Inspector General								
Salaries and expenses	R85-194		300	2-6-85		300	4-25-85	
Office of the Secretary								
Salaries and expenses	R85-195		435	2-6-85		435	4-25-85	
Transportation planning, research and development	R85-196		65	2-6-85		65	4-25-85	
DEPARTMENT OF THE TREASURY								
Office of the Secretary								
Salaries and expenses	R85-197		969	2-6-85		969	4-25-85	
Office of Revenue Sharing								
Salaries and expenses	R85-198		90	2-6-85		90	4-25-85	
Federal Law Enforcement Training Center								
Salaries and expenses	R85-199		75	2-6-85		75	4-25-85	
Financial Management Service								
Salaries and expenses	R85-200		972	2-6-85		972	4-25-85	
Bureau of Alcohol, Tobacco and Firearms								
Salaries and expenses	R85-201		397	2-6-85		397	4-25-85	
United States Customs Service								
Salaries and expenses	R85-202		1,223	2-6-85		1,223	4-25-85	
Bureau of the Mint								
Salaries and expenses	R85-203		87	2-6-85		87	4-25-85	
Bureau of the Public Debt								
Administering the public debt	R85-204		52	2-6-85		52	4-25-85	
Internal Revenue Service								
Salaries and expenses	R85-205		198	2-6-85		198	4-25-85	
Processing tax returns and executive direction	R85-206		781	2-6-85		781	4-25-85	
Examinations and appeals	R85-207		1,588	2-6-85		1,588	4-25-85	
Investigation, collection, and taxpayer service	R85-208		1,633	2-6-85		1,633	4-25-85	
United States Secret Service								
Salaries and expenses	R85-209		1,465	2-6-85		1,465	4-25-85	
ENVIRONMENTAL PROTECTION AGENCY								
Salaries and expenses	R85-210		1,863	2-6-85		1,863	4-26-85	
Research and development	R85-211		4,125	2-6-85		4,125	4-26-85	
Abatement, control, and compliance	R85-212		7,413	2-6-85		7,413	4-26-85	
GENERAL SERVICES ADMINISTRATION								
Real Property Activities								
Federal buildings fund	R85-213		3,204	2-6-85		3,204	4-25-85	
Personal Property Activities								
Operating expenses	R85-214		300	2-6-85		300	4-25-85	
General supply fund	R85-215		30,848	2-6-85		30,848	4-25-85	
Office of Information Resources Management								
Operating expenses	R85-216		45	2-6-85		45	4-25-85	
Consumer information center fund	R85-217		63	2-6-85		63	4-25-85	
Federal telecommunications fund	R85-218		415	2-6-85		415	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Automatic data processing fund.....	R85-219		145	2-6-85		145	4-25-85	
Federal Property Resources Activities Operating expenses.....	R85-220		207	2-6-85		207	4-25-85	
Expenses, disposal of surplus real and related personal property.....	R85-221		1,832	2-6-85		1,832	4-25-85	
General Activities General management and administration, salaries and expenses.....	R85-222		403	2-6-85		403	4-25-85	
Office of the Inspector General.....	R85-223		35	2-6-85		35	4-25-85	
Allowances and staff for former Presidents.....	R85-224		19	2-6-85		19	4-25-85	
Working capital fund.....	R85-225		8	2-6-85		8	4-25-85	
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and program management.....	R85-226		4,000	2-6-85		4,000	4-25-85	
OFFICE OF PERSONNEL MANAGEMENT								
Salaries and expenses.....	R85-227		1,161	2-6-85		1,161	4-25-85	
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses.....	R85-228		3,781	2-6-85		3,781	4-25-85	
VETERANS ADMINISTRATION								
Medical care.....	R85-229		10,261	2-6-85		10,261	4-25-85	
Medical and prosthetic research.....	R85-230		323	2-6-85		323	4-25-85	
Medical administration and miscellaneous operating expenses.....	R85-231		2,109	2-6-85		2,109	4-25-85	
General operating expenses.....	R85-232		4,334	2-6-85		4,334	4-25-85	
Construction, minor projects.....	R85-233		377	2-6-85		377	4-25-85	
OTHER INDEPENDENT AGENCIES								
ACTION Operating expenses.....	R85-234		1,139	2-6-85		1,139	4-25-85	
Federal Emergency Management Agency Salaries and expenses.....	R85-235		786	2-6-85		786	4-25-85	
Emergency management planning and assistance.....	R85-236		1,287	2-6-85		1,287	4-25-85	
National Archives and Records Administration Operating expenses.....	R85-237		166	2-6-85		166	4-25-85	
National Labor Relations Board Salaries and expenses.....	R85-238		1,070	2-6-85		1,070	4-25-85	
National Science Foundation Research and related activities.....	R85-239		2,002	2-6-85		2,002	4-25-85	
Nuclear Regulatory Commission Salaries and expenses.....	R85-240		4,329	2-6-85		4,329	4-25-85	
Tennessee Valley Authority Tennessee Valley Authority fund.....	R85-241		1,538	2-6-85		1,538	4-25-85	
United States Information Agency Salaries and expenses.....	R85-242		433	2-6-85		433	4-25-85	
Subtotal, rescissions.....			1,805,913			1,805,913 /1		

/1 Rescission proposals transmitted with the FY 1986 Budget were released on April 25, 1985, the day following expiration of the 45 day clock on rescissions under the Impoundment Control Act. However, the proposals continue to be subject to Congressional action.

Attachment B - Status of Deferrals - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 5-1-85
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs..	D85-1	10,000		10-1-84					10,000
International Security Assistance									
Foreign military sales credit.....	D85-24	4,939,500		11-29-84	4,356,000				583,500
Economic support fund.....	D85-2	280,500		10-1-84					
	D85-2A		3,826,000	11-29-84					
	D85-2B		73,233	1-4-85	3,511,400				668,333
Military assistance.....	D85-3	18,500		10-1-84					
	D85-3A		782,770	11-29-84	695,145				106,125
International military education and training.....	D85-25	55,521		11-29-84	55,521				0
Peacekeeping operations.....	D85-38	7,000		1-4-85	7,000				0
African Development Foundation									
African Development Foundation.....	D85-40	2,287		2-6-85					2,287
DEPARTMENT OF AGRICULTURE									
Forest Service									
Timber salvage sales.....	D85-4	9,704		10-1-84					
	D85-4A		3,471	3-1-85	5,000			5,000	13,175
Expenses, brush disposal.....	D85-5	55,850		10-1-84					
	D85-5A		22,063	3-1-85					77,913
Soil Conservation Service									
Watershed and flood prevention operations.....	D85-59	8,365		3-1-85					8,365
DEPARTMENT OF COMMERCE									
Patent and Trademark Office									
Salaries and expenses.....	D85-41	15,993		2-6-85					15,993
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, all services.....	D85-6	300,008		10-1-84					
	D85-6A		906,322	11-29-84	827,090				379,240
Family Housing									
Family housing, all services.....	D85-26	230,790		11-29-84	73,870				156,920
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation.....	D85-7	1,127		10-1-84					
	D85-7A		64	1-4-85	150			135	1,177
DEPARTMENT OF ENERGY									
Energy Programs									
Uranium Supply and Enrichment Activities...	D85-65	90,000		3-22-85					90,000
Fossil energy research and development.....	D85-27	4,871		11-29-84					
	D85-27A		43,525	2-6-85	7,042				41,355
Fossil energy construction.....	D85-28	2,165		11-29-84					
	D85-28A		2,973	2-6-85					5,137
Naval petroleum and oil shale reserves.....	D85-29	23		11-29-84					
	D85-29A		155,644	2-6-85					
	D85-29B		1	3-22-85					155,668
Energy conservation.....	D85-30	3,398		11-29-84					
	D85-30A		2,374	3-22-85					5,772
Strategic petroleum reserve.....	D85-31	401		11-29-84					
	D85-31A		270,337	2-6-85					270,738
SPR petroleum account.....	D85-42	827,028		2-6-85					827,028

Attachment B - Status of Deferrals - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 5-1-85
Energy security reserve and alternative production	D85-32	852		11-29-84					
	D85-32A		297	2-6-85					
	D85-32B		89	3-22-85					1,238
Power Marketing Administrations									
Southeastern Power Administration, Operation and maintenance	D85-16	12,467		10-31-84					
	D85-16A		3,494	2-6-85	1,216				14,745
Southwestern Power Administration, Operation and maintenance	D85-17	7,260		10-31-84					
	D85-17A		1,514	2-6-85					8,774
Western Area Power Administration, Construction, rehabilitation, operation and maintenance	D85-18	3,000		10-31-84					
	D85-18A		27,300	2-6-85					30,300
Departmental Administration									
Departmental administration	D85-43	8,501		2-6-85					8,501
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program)	D85-8	424		10-1-84					
	D85-8A		590	1-4-85					1,013
Health Care Financing Administration									
Program management	D85-66	4,271		3-22-85					4,271
Social Security Administration									
Limitation on administrative expenses (construction)	D85-9	15,488		10-1-84					
	D85-9A		224	3-1-85					15,712
Limitation on administrative expenses (information technology systems)	D85-44	81,926		2-6-85					81,926
Limitation on administrative expenses	D85-67	9,176		3-22-85					9,176
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management									
Payments for proceeds, sale of water, Mineral Leasing Act of 1920, sec. 40 (d)	D85-10	49		10-1-84					49
National Park Service									
Construction (trust fund)	D85-45	38,172		2-6-85	3,500				34,672
Land Acquisition	D85-68	3,356		3-22-85					3,356
Bureau of Indian Affairs									
Construction	D85-33	8,918		11-29-84	893				8,025
DEPARTMENT OF JUSTICE									
General Administration									
Salaries and expenses	D85-46	3,890		2-6-85					3,890
Legal Activities									
Support of United States prisoners	D85-47	5,319		2-6-85					5,319
Federal Prison System									
Buildings and facilities	D85-19	44,534		10-31-84					44,534
Office of Justice Programs									
Justice assistance	D85-60	13,026		3-1-85					13,026
DEPARTMENT OF LABOR									
Employment and Training Administration									
Program administration	D85-61	162		3-1-85					162
State unemployment insurance and employment service operations	D85-34	3,767		11-29-84					
	D85-34A			3-1-85					3,767
	D85-62	37,000		3-1-85					37,000
Unemployment trust fund (veterans employment and training)	D85-63	119		3-1-85					119

Attachment B - Status of Deferrals - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 5-1-85
Pension Benefit Guaranty Corporation									
Pension Benefit Guaranty Corporation.....	D85-64	228		3-1-85					228
Bureau of Labor Statistics									
Salaries and expenses.....	D85-35	5,000		11-29-84	5,000				0
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund.....	D85-20	32,928		10-31-84					
	D85-20A		153	1-4-85	24,905				8,175
DEPARTMENT OF TRANSPORTATION									
Federal Highway Administration									
Limitation on general operating expenses...	D85-48	2,155		2-6-85					2,155
Federal Railroad Administration									
Rail service assistance.....	D85-49	413		2-6-85					413
Northeast corridor improvement program.....	D85-50	30,000		2-6-85					30,000
Railroad rehabilitation and improvement financing funds.....	D85-51	7,200		2-6-85					7,200
Urban Mass Transportation Administration									
Research, training and human resources.....	R85-52	25,206		2-6-85					25,206
Federal Aviation Administration									
Construction, metropolitan Washington airports.....	D85-53	910		2-6-85					910
Facilities and equipment (airport and airway trust).....	D85-11	537,205		10-1-84					
	D85-11A		652,957	1-4-85					
	D85-11B		93,731	2-6-85	163,000			163,000	1,283,894
Maritime Administration									
Operations and training.....	D85-54	8,500		2-6-85					8,500
Office of the Secretary									
Salaries and expenses.....	D85-55	800		2-6-85					800
Payments to air carriers.....	D85-69	14,741		3-22-85					14,741
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund.....	D85-12	55,400		10-1-84	32,458			31,395	54,337
	D85-13	19,900		10-1-84	10,802			33	9,131
OTHER INDEPENDENT AGENCIES									
Board for International Broadcasting									
Grants and expenses.....	D85-21	4,408		10-1-84	4,408				0
National Archives and Records Service									
Operating expenses.....	D85-36	4,700		11-29-84					4,700
National Science Foundation									
Science and engineering education activities.....	D85-56	31,450		2-6-85					31,450
Panama Canal Commission									
Operating expenses.....	D85-37	6,346		11-29-84	6,086				260
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund.....	D85-14	14,300		10-1-84	5,000				9,300
Railroad Retirement Board									
Milwaukee railroad restructuring, administration.....	D85-15	108		10-1-84					
	D85-15A		7	2-6-85					115
Limitation on administration.....	D85-57	3,098		2-6-85					3,098
Limitation on Railroad Unemployment Insurance Administration fund.....	D85-58	502		2-6-85					502

Attachment B - Status of Deferrals - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 5-1-85
U. S. Information Agency									
Salaries and expenses.....	D85-22	2,433		10-31-84					2,433
Salaries and expenses, special foreign currency program.....	D85-23	852		10-31-84					852
U.S. Institute of Peace									
U.S. Institute of Peace.....	D85-39	4,000		1-4-85					4,000
TOTAL, DEFERRALS.....		7,977,489	6,869,133		9,795,486	0		199,563	5,250,699

Notes: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D85-13) of outlays only.

The Bureau of Labor Statistics deferral of $5.0 million (D85-35) was released and the funds were proposed for rescission as part of R85-170A.

[FR Doc. 85-11901 Filed 5-16-85; 8:45 am]

BILLING CODE 3110-01-C

federal register

Friday
May 17, 1985

Part V

Department of Energy

Western Area Power Administration

10 CFR Part 904

Charges for the Sale of Power From the Boulder Canyon Project; Proposed Rule

DEPARTMENT OF ENERGY

Western Area Power Administration

10 CFR Part 904

General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Proposed rulemaking.

SUMMARY: In accordance with the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*) (Project Act); the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*) (Adjustment Act); the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*) and the Hoover Power Plant Act of 1984 (98 Stat. 1333) (Hoover Power Plant Act), the Western Area Power Administration (Western) has developed these proposed General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project (General Regulations) defining the methodology to be used in the computation of the charges for the sale of power from the Boulder Canyon Project (Project). These proposed General Regulations shall supersede the "General Regulations for Lease of Power" dated April 25, 1930, and the "General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act" approved and promulgated on May 20, 1941 (1941 General Regulations), which will be terminated on May 31, 1987. These proposed General Regulations shall serve as the basis for computation of all charges for the sale of power from and after June 1, 1987, from the Boulder Canyon Project. The Boulder Canyon Project is under the marketing jurisdiction of Western's Boulder City Area Office.

Interested parties are invited to submit comments concerning these proposed General Regulations to Western. The final General Regulations will be published by the Secretary of Energy, acting by and through the Administrator of Western, upon completion of the comment period. Western will review and consider each comment prior to publishing the final General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project in the **Federal Register**. Also to be included in that **Federal Register** will be responses to all major comments, criticisms, and alternatives offered during the comment period.

DATES: Written comments concerning the proposed General Regulations should be submitted on or before July 15, 1985. A public information forum on this subject will be held on June 4, 1985, beginning at 9:30 a.m. An opportunity will be given all interested to present written or oral statements at a public comment forum to be held on July 1, 1985, beginning at 9:30 a.m.

ADDRESSES: Both the public information forum and the public comment forum will be held at the Plaza Room, Tropicana Hotel, Las Vegas, Nevada, on the dates cited above. Written comments concerning the General Regulations should be sent to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, Nevada 89005, (702) 293–8800.

FOR FURTHER INFORMATION CONTACT:

Tom Carter, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, Nevada 89005, (702) 293–8800

Gary D. Miller, Attorney, Office of the General Counsel, Western Area Power Administration, P.O. Box 3402, Golden, Colorado 80401, (303) 231–1531.

SUPPLEMENTARY INFORMATION: The Project Act provides for the construction of works for the protection and development of the Colorado River Basin and for other purposes. Section 5 of the Project Act addresses the Secretary of the Interior's authority, under such regulations as he may prescribe, to contract for the generation and delivery of electrical energy upon charges that will provide sufficient revenue that will cover all expenses of operation and maintenance and repayment of all amounts advanced from the Treasury with interest for the Boulder Canyon Project.

The Project Adjustment Act further defined the Secretary of the Interior's authority to promulgate the charges or the basis of computation thereof, for electrical energy generated at Hoover Dam. In accordance with this authority the Secretary of the Interior approved and promulgated the 1941 General Regulations. Those General Regulations provide for the basis of computation of the charges for electrical energy generated at Hoover Dam through May 31, 1987.

The Department of Energy Organization Act of 1977 transferred the responsibility for the power marketing and transmission functions of the Boulder Canyon Project to Western from the Bureau of Reclamation (Reclamation). The operation, maintenance, and replacement responsibilities of the Project remained with Reclamation. The power marketing function includes the responsibilities for promulgating charges for the sale of power. The marketing of power from the Boulder Canyon Project is the responsibility of Western's Boulder City Area Office. The marketing of power from the Boulder Canyon Project after June 1, 1987, shall be in accordance with the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects published in the **Federal Register** (49 FR 50582) on December 28, 1984. That document conforms the Boulder City Area Office marketing criteria to the Hoover Power Plant Act.

The Hoover Power Plant Act amends and is supplemental to the Project Act and the Adjustment Act. The Hoover Power Plant also sets forth requirements and guidelines for the marketing and allocation of power from the Boulder Canyon Project for the period beginning June 1, 1987.

These proposed General Regulations, promulgated pursuant to section 8 of the Adjustment Act and article 27 of the 1941 General Regulations, are necessary and appropriate for the administration of the Project in accordance with the Project Act and the Adjustment Act, as amended.

Executive Order 12291

Under the provisions of section 3 of Executive Order 12291, dated February 17, 1981, a Regulatory Impact Analysis must be made prior to the publication of a major rule. The proposed general regulations are of a technical nature and are considered to be a non-major rule within the meaning of the Executive Order. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291; accordingly, no clearance of these proposed regulations by the Office of Management and Budget (OMB) is required.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required to publish a general notice of proposed rule, shall prepare for public comment, an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act of 1980, the Secretary of Energy, acting by and through the Administrator of Western, hereby certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that certain information collection requirements be approved by the OMB before information is demanded of the public. OMB has issued a final rule controlling Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity is provided in the proposed rule for the interested public to participate in the development of the general regulations. Nevertheless, this is at their sole election. There is no requirement that members of the public participating in the development of the General Regulations supply information about themselves to the Government. It follows that the proposed general regulations are exempt from the Paperwork Reduction Act.

National Environmental Policy Act

Pursuant to the National Environmental Policy Act of 1969 and Department of Energy regulations published in the **Federal Register** on February 23, 1982 (47 FR 7976), as amended, Western evaluated the potential for environmental impact of the Boulder City General Consolidated Power Marketing Criteria or Regulations for the Boulder City Area Projects (Environmental Assessment No. DOE EA-0204). On May 2, 1983, the Department of Energy executed a Finding of No Significant Impact for that proposal. Part of the original Consolidated Marketing Plan was a reference to the rate formula and application criteria that are now developed and proposed in this notice. At the time of the Criteria EA, the formula and its application were determined to not, either by themselves or cumulatively, have a significant impact. Now that these general regulations are better defined, Western will make an environmental determination of their possible impacts prior to their final implementation.

List of Subjects in 10 CFR Part 904

Electric power rates.

Issued at Golden, Colorado, May 3, 1985.

William H. Clagett,

Administrator.

It is proposed to amend Title 10 of the Code of Federal Regulations by adding a new Part 904 to read as follows:

PART 904—GENERAL REGULATIONS FOR THE CHARGES FOR THE SALE OF POWER FROM THE BOULDER CANYON PROJECT

Sec.

904.1 Authorities.
904.2 Purpose.
904.3 Scope.
904.4 Definitions.
904.5 Power generation and marketing responsibilities.
904.6 Revenue requirements.
904.7 Basis of charge for contingent capacity and firm energy.
904.8 Base charge.
904.9 Lower Basin Development Fund contribution charge.
904.10 Application of base charge.
904.11 Application of Lower Basin Development Fund contribution charge.
904.12 Adjustment of base charge.
904.13 Adjustment of Lower Basin Development Fund contribution charge.
904.14 Charge for excess energy.
904.15 Payments to contractors.
904.16 Payments to states and transfers from lower Colorado River Dam Fund.
904.17 Repayment periods.
904.18 Disputes.
904.19 Future regulations.

Authority: Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*); the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*); the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*); and the Hoover Power Plant Act of 1984 (98 Stat. 1333).

§ 904.1 Authorities.

The Secretary of Energy, acting by and through the Administrator, is authorized and directed to promulgate charges for the power generated at the boulder Canyon Project powerplant, and also to promulgate general regulations as the Secretary finds necessary and appropriate in accordance with the power marketing authorities in Federal Reclamation laws (43 U.S.C. 372 *et seq.*, and all acts amendatory thereof and supplementary thereto).

§ 904.2 Purpose.

In accordance with the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*) as amended and supplemented (Project Act); the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*) as amended and supplemented (Adjustment Act); the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*) and the Hoover Power Plant Act; the Western Area Power Administration (Western—promulgates these General Regulations defining the methodology to be used in the computation of the charges for the sale of power from the Boulder Canyon Project (Project). These General Regulations shall supersede the "General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act" (1941 General Regulations) approved and promulgated on May 20, 1984, which will be terminated on May 31, 1987, and the "General Regulations for Lease of Power" dated April 25, 1930. These General Regulations shall serve as the basis for computation of all charges for the sale of power from and after June 1, 1987, from the Boulder Canyon Project.

§ 904.3 Scope.

These General Regulations are effective June 1, 1987, and shall apply to the charges applicable to any sale of power from the Boulder Canyon Project after May 31, 1987. "The General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act" dated May 20, 1941 and the "General Regulations for Lease of Power" dated April 25, 1930, are heregy repealed as of the effective date of these regulations.

§ 904.4 Definitions.

The following terms wherever used therein shall have the following meanings:

(a) "Additions and betterments" shall mean such additions and betterments constructed or acquired which enhance or improve the Project and do more than restore the Project to a former good operating condition.

(b) "General Arizona Project" shall mean works as described in section 301(a) of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 *et seq.*).

(c) "Contingent Capacity" shall mean the capacity which is normally available from the Project, subject to water availability for generation or forced or planned outages that affect powerplant capability.

(d) "Contract" shall mean any contract for the sale of Boulder Canyon Project power after May 31, 1987, between the United States and any contractor.

(e) "Contractor" shall mean any entity which has a fully executed contract for the purchase of power.

(f) "Firm Energy" shall mean energy obligated from the Project pursuant to section 105(a)(1)(A) and section 105(a)(1)(B) of the Hoover Power Plant Act.

(g) "Overruns" shall mean the use of capacity or energy in amounts greater than the United States contract delivery obligation in effect for each type of service provided for in the Contract except with the approval of the United States.

(h) "Project" or "Boulder Canyon Project" shall mean all works authorized by the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, and the Hoover Power Plant Act, to be constructed and owned by the United States, and any future authorized additions, but exclusive of the main canal and appurtenances mentioned therein, now known as the All-American Canal.

(i) "Renewal Contractor"shall mean a contractor offered power in accordance with section 105(a)(1)(A) of the Hoover Power Plant Act.

(j) "Replacements" shall mean such replacements as determined by the United States to be necessary to keep the Project in good operating condition, but shall not include (except where used in conjunction with the word "emergency" or the word "however necessitated") replacements made necessary by any act of God, or of the public enemy, or by any major catastrophe.

(k) "Uprating Program" shall mean the replacements and betterments made to increase the capacity of existing generating equipment and appurtenances at the Hoover Power Plant as authorized by the Hoover Power Plant Act.

§ 904.5 Power generation and marketing responsibilities.

(a) Power generation and associated operation, maintenance and replacement shall be the responsibility of the United States Department of the Interior, Bureau of Reclamation (Reclamation).

(b) Power generated for sale from the Project will be marketed by Western under terms of the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" (Boulder City Area Marketing Criteria) published in the Federal Register on December 28, 1984 (49 FR 50582). Western shall allocate the power from the Project in accordance with section 105(a)(1) of the Hoover Power Plant Act.

(c) Procedures for the scheduling and delivery of power shall be provided for in the Contract between the Contractor and Western.

§ 904.6 Revenue requirements.

(a) Costs and financial obligations associated with the Project shall be identified annually by Reclamation and Western for compliance with § 904.12 of these regulations.

(b) Western shall collect all revenues from the Project in accordance with statutes and regulations and deposit such revenue into the Colorado River Dam Fund. Reclamation shall use such deposited revenue to repay all costs associated with the Project. Revenue from the Project shall be derived from a charge for power that shall yield sufficient revenues, together with other revenues from the Project, to recover all costs as follows:

(1) Annual operation and maintenance;

(2) Annual interest on unpaid investments in accordance with appropriate statutory authorities;

(3) Investment costs within a period not to exceed 50 years;

(4) Replacements;

(5) Additions and betterments; and

(6) Any other financial obligations of the Project.

(c) The charge shall specifically provide revenue for statutory requirements relating to the Boulder Canyon Project as follows:

(1) The payment of $300,000 annually for each of the States of Arizona and Nevada provided for in section 2(c) of the Adjustment Act and section 403(c)(2) of the Colorado River Basin Project Act (43 U.S.C. 1501 *et seq.*) (Basin Act), as amended or supplemented.

(2) Repayment of the cost, with interest, of the visitor facilities pursuant to section 106 of the Hoover Power Plant Act.

(3) Repayment of funds, with interest, contributed to the Secretary of the Interior for the Uprating Program and associated work.

(4) Repayment to the Treasury, of the first $25,000,000 of advances made to the Colorado River Dam Fund deemed to be allocated to flood control by section 2(b) of the Project Act as provided by section 7 of the Adjustment Act. Such deferred advance payment shall be repaid with interest at a 3 percent interest rate, compounded annually, over a 50-year period beginning June 1, 1987.

(5) Repayment to the Treasury, of the advance to the Colorado River Dam Fund for the Project made prior to May 31, 1987, that was deferred because of a deficiency in firm energy generation due to a shortage of available water, as provided for in article 14(a) of the 1941 General Regulations and section 8 of the Boulder City Act of 1958, Public Law 85-900 (72 Stat. 1726) (Boulder City Act). Such deferred principal payment shall be repaid with interest at a 3 percent interest rate, compounded annually, over the power contract period beginning June 1, 1987, and ending September 30, 2017. The amount of such deferred principal payment to be repaid shall be the amount shown on the books of accounts of Reclamation as of May 31, 1987.

(d) The charge will also provide for surplus revenue for contribution to the Lower Colorado River Basin Development Fund pursuant to section 403(c)(2) of the Basin Act as amended by section 102(c) of the Hoover Power Plant Act to provide revenue for the purposes of sections 403(f) and 403(g) of the Basin Act.

(e) All annual costs will be calculated based on a Federal fiscal year. To accommodate the transition from the pre-1987 operating year of June 1 to May 31, there will be a 4-month transition period beginning June 1, 1987, and ending September 30, 1987.

§ 904.7 Basis of charge for contingent capacity and firm energy.

The charge for contingent capacity and firm energy from the Boulder Canyon Project shall be composed of two separate charges; a charge to provide revenue for the basic revenue requirements (Base Charge) and a charge to provide the surplus revenue for the Lower Colorado River Basin Development Fund contribution (Lower Basin Development Fund Contribution Charge).

§ 904.8 Base charge.

A base rate formula shall be developed by the Administrator of Western and promulgated in accordance with the Administrative Procedure Act and the Department of Energy regulations. The Administrator will provide contractors and all interested parties an opportunity to comment on any proposed base rate formula and the capacity and energy components of the rate design during a public process.

§ 904.9 Lower basin development fund contribution charge.

The capacity and energy components of the Lower Basin Development Fund Contribution Charge will be developed by the Administrator of Western on the basis that the equivalency of 4½ mills and 2½ mills per kilowatthour required to be included in the rates charged to purchasers pursuant to section 403(c)(2) of the Basin Act, as amended by section 102(c) of the Hoover Power Plant Act, shall be equitably apportioned between capacity and energy. The revenue requirement for each of the States of Arizona, California and Nevada will be established in accordance with section 403(c)(2) of the Basin Act as amended by section 102(c) of the Hoover Power Plant Act. Arizona contractors will be obligated to pay an equivalent of 4½ mills per kilowatthour billed and California and Nevada contractors will be obligated to pay an equivalent of 2½ mills per kilowatthour billed until the

end of the repayment period of the Central Arizona Project. After the end of the repayment period of the Central Arizona Project, all contractors will be obligated to pay an equivalent of 2½ mills per kilowatthour billed so long as power revenue is being collected from operation of the Boulder Canyon Project.

§ 904.10 Application of base charge.

The capacity component shall be an amount per kilowatt applied to the annual contract rate of delivery to the contractor. The energy component shall be a mills per kilowatthour amount applied to each kilowatthour either scheduled or metered as provided for by contract. Application of the Base Charge to capacity and firm energy overruns will be provided for by contract. The capacity component and the energy component of the Base Charge shall be applied on a monthly basis for each contractor.

§ 904.11 Application of lower basin development fund contribution charge.

The capacity component shall be an amount per kilowatt applied to the annual contract rate of delivery to the contractor. The energy component shall be a mills per kilowatthour amount applied to each kilowatthour either scheduled or metered as provided for by contract. Application of the Lower Basin Development Fund Contribution Charge to capacity and firm energy overruns will be provided for by contract. The capacity component and the energy component of the appropriate state Lower Basin Development Fund Contribution Charge shall be applied on a monthly basis for each contractor within the State.

§ 904.12 Adjustment of base charge.

The capacity and energy components of the Base Charge shall be reviewed annually. The Base Charge components shall be adjusted either upward or downward, when necessary and administratively feasible, to assure sufficient revenue to effect payment of costs and all other financial obligations associated with the Project.

§ 904.13 Adjustment of lower basis Development Fund Contribution Charge.

The capacity and energy component of the Lower Basin Development Fund Contribution Charge shall be reviewed annually. The Lower Basin Development Fund Contribution Charge components shall be adjusted either upward or downward, when necessary and administratively feasible, to assure compliance with section 403(c)(2) of the Basin Act as amended by section 102(c) of the Hoover Power Plant Act.

§ 904.14 Charge for excess energy.

The charge for energy in excess of the energy obligated under sections 105(a)(1)(A) and 105(a)(1)(B) of the Hoover Power Plant Act shall be developed by Western in accordance with applicable procedures for short-term power sales. The charge for excess energy shall include the applicable Lower Basin Development Fund Contribution Charge developed under section 904.9 of these regulations.

§ 904.15 Payments to contractors.

(a) Those amounts advanced by non-Federal purchasers shall be returned to those purchasers advancing funds throughout the power contract period through credits on monthly billings which include interest costs incurred by such purchasers for funds contributed to the Secretary of the Interior for the Uprating Program and associated work. Monthly credits will be developed pursuant to the terms and conditions agreed to by contract or agreement.

(b) All other obligations of the United States to return funds to a contractor shall be repaid to such contractor through credits on billings, with or without interest, pursuant to terms and conditions agreed to by contract or agreement.

§ 904.16 Payments to states and transfers from/Lower Colorado River Dam Fund.

(a) All receipts from the Project shall be paid into the Colorado River Dam Fund and shall be available for payment of all costs associated with the Project.

(b) Annual payments as provided for in section 2(c) of the Adjustment Act and section 403(c)(2) of the Basin Act for the States of Arizona and Nevada shall be made from revenues received in the Colorado River Dam Fund as long as revenues accure from the operation of the Project.

(c) Transfer will be made to the Lower Colorado River Basin Development Fund established by Title IV of the Basin Act of surplus revenues accrued as a result of application of the provisions of section 403(c)(2) of the Basin Act, as amended by section 102(c) of the Hoover Power Plant Act, from and after June 1, 1987.

§ 904.17 Repayment periods.

(a) *Investment prior to June 1, 1937.* The repayment period for advances to the Colorado River Dam Fund for the Project made prior to June 1, 1937, to be paid within the 50-year period ending May 31, 1987, that were deferred pursuant to section 7 of the Adjustment Act, article 14(a) of the 1941 General Regulations, and section 8 of the Boulder City Act shall be as follows:

(1) The repayment period for the payment to the Treasury of the first $25,000,000 of advances made to the Colorado River Dam Fund deemed to be allocated to flood control by section 2(b) of the Project Act and deferred by section 7 of the Adjustment Act shall be the 50-year period beginning June 1, 1987.

(2) The repayment period for the payment to the Treasury of the advances to the Colorado River Dam Fund for the Project payable prior to May 31, 1987, and deferred pursuant to article 14(a) of the 1941 General Regulations and section 8 of the Boulder City Act shall be repaid within the power contract period provided in the Hoover Power Plant Act beginning June 1, 1987 and ending September 30, 2017. Such repayment period shall be based on a 50-year repayment period beginning June 1, 1937, adjusted for the period the payment was deferred.

(b) *Investment on or after June 1, 1937 and prior to June 1, 1987.* (1) The repayment period for advances to the Colorado River Dam Fund for the Project made on or after June 1, 1937, and prior to June 1, 1987, shall be the 50-year period beginning June 1, immediately following the year of operation in which the funds were advanced.

(2) Except as provided in the Hoover Power Plant Act, the repayment period for advances made to the Colorado River Dam Fund from funds advanced to the Secretary of the Interior by non-Federal entities for the Uprating Program and associated work shall be within the period commencing with the first day of the month following completion of each segment of the Uprating Program and ending September 30, 2017.

(c) *Investment on or after June 1, 1987.* (1) The repayment period for investments made on or after June 1, 1987, shall be a 50-year period beginning with the first day of the fiscal year following the fiscal year the investment goes into service.

(2) Except as provided in the Hoover Power Plant Act, the repayment period for the visitor facilities authorized by section 101(a) of the Hoover Power Plant Act shall be the 50-year period beginning June 1, 1987, or when substantially completed, as determined by the Secretary of the Interior, if later.

§ 904.18 Disputes.

(a) Any disputes or disagreements as to interpretation or performance of the provisions of these regulations under the responsibility of the Secretary of Energy or the Secretary of the Interior, as the

case be, if authorized to act for the United States, shall first be presented to and decided by the appropriate Secretary or the Secretary's delegated representative, hereinafter called the Appropriate Federal Representative. The decision of the Appropriate Federal Representative shall be final and binding unless a written request by the Appropriate Federal Representative within 30 days from the date of receipt of the notice of decision, or the disputing party files a claim in a proper Federal District Court within 6 months of receipt of the notice of decision. The Appropriate Federal Representative, shall have 90 days from the date of receipt of the request for arbitration to either concur in or deny the request for arbitration in writing. Failure by the Appropriate Federal Representative to take any action within the 90 days shall be deemed a denial of the request for arbitration. In the event of a denial of a request for arbitration, the disputing party's remedy lies with the appropriate Federal District Court.

(b) When a timely request for arbitration is received and the Appropriate Federal Representative concurs in writing with the request, the disputing party and the Appropriate Federal Representative shall each name one arbitrator to the panel of arbitrators within 30 days who will decide the dispute. In the event there are more than one disputing party in addition to the Appropriate Federal Representative, the disputing parties shall collectively name one arbitrator to the panel of arbitrators. In addition, the Appropriate Federal Representative shall make a request in writing to the appropriate Federal District Court that a third arbitrator be named to the panel of arbitrators by the Chief Judge of the Federal District Court which have exercised jurisdiction over the dispute but for the mutually agreed to arbitration process. This arbitrator shall act as chairperson of the panel of arbitrators. The panel of arbitrators shall render a final decision in this dispute within 60 days of the date of the naming of the arbitrator by the Chief Judge of the appropriate Federal District Court. A decision by any two of the three arbitrators named to the panel shall be final and binding on all parties involved in the dispute. Pending a final decision by the panel of arbitrators, the Appropriate Federal Representative's prior decision shall be binding upon the parties.

§ 904.19 Future regulations.

Western may from time to time promulgate such additional or amendatory regulations as deemed necessary for the administation of the Project in accordance with applicable law.

[FR Doc. 85-12009 Filed 5-16-85; 8:45 am]
BILLING CODE 6450-01-M

federal register

Friday
May 17, 1985

Part VI

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Limitation of Handling; Final Rule

Part VI

Department of Agriculture

Agricultural Marketing Service

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 516; Lemon Reg. 515, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to the fresh market at 325,000 cartons during the period May 19–25, 1985, and increases the quantity of lemons that may be shipped to 350,000 cartons during the period May 12–18, 1985. Such action is needed to provide for orderly marketing of fresh lemons for such periods due to the marketing situation confronting the lemon industry.

DATES: The regulation (§ 910.816) becomes effective May 19, 1985, and the amendment (§ 910.815) is effective for the period May 12–18, 1985.

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

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on May 14, 1985, at Ventura, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that lemon demand is generally good on most sizes of fruit.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. New § 910.816 is added to read as follows:

§ 910.816 Lemon Regulation 516.

The quantity of lemons grown in California and Arizona which may be handled during the period May 19, 1985, through May 25, 1985, is established at 325,000 cartons.

3. Section 910.815 Lemon Regulation 515 is revised to read as follows:

§ 910.815 Lemon Regulation 515.

The quantity of lemons grown in California and Arizona which may be handled during the period May 12, 1985, through May 18, 1985, is established at 350,000 cartons.

Dated: May 16, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–12157 Filed 5–16–85; 11:25 am]

BILLING CODE 3410–02–M

Reader Aids

Federal Register

Vol. 50, No. 96

Friday, May 17, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MAY

18445-18626.....1
18627-18848.....2
18849-18984.....3
18985-19160.....6
19161-19304.....7
19305-19516.....8
19517-19666.....9
19667-19896.....10
19897-20084.....13
20085-20190.....14
20191-20382.....15
20383-20542.....16
20543-20740.....17

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

The President

Executive Orders:

6206 (Amended by PLO 6604).....20212
10820 (Revoked by EO 12514).....20383
11888 (Amended by EO 12515).....20385
12348 (Revoked by EO 12512).....18453
12511.....18449
12512.....18453
12513.....18629
12514.....20383
12515.....20385

Proclamations:

5331.....18445
5332.....18447
5333.....18451
5334.....18627
5335.....19517
5336.....20191
5337.....20193
5338.....20195
5339.....20543

5 CFR

831.....20064

Proposed Rules:

536.....20422

7 CFR

210.....20545
220.....20545
226.....19305, 20197
250.....20197
272.....20547
273.....20547
274.....20547
277.....20547
282.....20547
301.....19313
800.....18985
810.....18455
907.....19519
908.....18814, 19519, 20085
910.....18979, 19667, 20739
911.....18849
918.....19321
925.....18849
944.....18849
981.....19161
989.....18631
1032.....18459
1106.....18460

Proposed Rules:

6.....20220
52.....18865, 19183
226.....20572
319.....19158
911.....19535
1040.....18677
1124.....18495
1207.....19026
1423.....19026

8 CFR

103.....20389
238.....19322

9 CFR

51.....19162
78.....19163
92.....19323
94.....20389
112.....20085
113.....20085
145.....19897
147.....19897
166.....18632
307.....19990
310.....19900
317.....19903
318.....19903-19905
327.....19906
381.....19906

Proposed Rules:

92.....18865
327.....19029

10 CFR

2.....18852
50.....18852, 19323

Proposed Rules:

40.....19695
50.....20574
70.....19695
150.....19695
904.....20732

11 CFR

Proposed Rules:

110.....18678

12 CFR

7.....19324
268.....18768
535.....19325
561.....20550
563.....20550
563b.....20390, 20555
563c.....20395
569.....20555
584.....19329
611.....20396
617.....20091

Proposed Rules:

5.....19183
226.....20221
545.....20422
563.....20422
564.....19030, 19185

571.....20422
615.....19379

14 CFR

39.....18853-18857, 19332, 19333, 19667-19669, 19908, 20198-20200, 20403
61.....19290
71.....18857, 18858, 18989, 19334, 19670, 19671, 19909, 20091-20093, 20200, 20404, 20558, 20559
97.....19520

Proposed Rules:

Ch. I.....18869
Ch. III.....19260
23.....19108
39.....18870-18875, 19033, 20225, 20430
71.....18877, 19380, 19950, 19951, 20105
75.....19380, 20106
91.....19108, 19381
103.....20432

15 CFR

90.....18989
376.....18461
377.....19521, 19522
379.....18858
399.....18461, 18858
2007.....19671

16 CFR

13.....19334
239.....18462
444.....19335
455.....18471, 20094

Proposed Rules:

13.....19536, 19697, 20107, 20432
702.....18495
1032.....19699

17 CFR

4.....18858
12.....19910
140.....18858
210.....18990
229.....18990
230.....18990, 19010
239.....18990, 19010
240.....18990, 20201
249.....18990
271.....19339
276.....19339

Proposed Rules:

12.....19951
210.....19035
231.....19035
240.....19196
241.....19035
270.....20227
275.....18500

18 CFR

8.....20095
141.....19912
389.....19912

Proposed Rules:

260.....20109

19 CFR

Proposed Rules:

115.....20227

20 CFR

260.....19523
320.....19523
404.....19164
416.....19164

21 CFR

5.....19341
73.....20405
81.....20408
146.....19524
177.....20560
179.....18859
182.....19164
184.....19164
431.....19917
436.....19917
440.....19917
442.....19917
444.....19917
446.....19917
448.....19917
449.....19917
450.....19675, 19917
452.....19917, 20203
453.....19917
455.....19917
460.....19917
520.....19167, 19168
524.....19168
536.....19917
539.....19917
540.....19917
544.....19917
546.....19917
548.....19917
555.....19917
556.....18471
558.....18471, 18859, 18860, 19169, 19525, 20204, 20408
561.....20370
866.....20344, 20351

Proposed Rules:

Ch. I, Subch. C.....20233
74.....19538
201.....19382
334.....20235

22 CFR

1501.....18860
1503.....18634

Proposed Rules:

1502.....18678
1504.....18878

23 CFR

645.....20344, 20351

Proposed Rules:

1309.....20438

24 CFR

200.....20096
201.....19341
203.....19341, 19923, 19924, 20096
226.....19924
232.....18472
234.....19341, 19924
235.....18472
941.....19927

Proposed Rules:

25.....18680, 20235
200.....18680
203.....18680, 20235
205.....18680, 20235
207.....18680
213.....18680, 20235
221.....18680, 20235
227.....18680
232.....18680
234.....18680
242.....18680
244.....18680, 20235

25 CFR

Proposed Rules:

31.....19701

26 CFR

1.....18473, 18861, 19343, 19344
5.....18473
6a.....19344
602.....18473, 19344

Proposed Rules:

1.....18884, 19383

27 CFR

9.....20409, 20560
19.....20098
20.....20098
22.....20098
200.....20098
250.....20098

Proposed Rules:

4.....19384

28 CFR

Proposed Rules:

51.....19122

29 CFR

2619.....20205

Proposed Rules:

2620.....19386

30 CFR

56.....20099
57.....20099
914.....19929, 20206, 20413
918.....19931

Proposed Rules:

701.....19037
736.....19037
740.....19037
746.....19037
750.....19037
772.....19037
901.....19390
913.....18536
916.....19953
931.....19356
935.....18885
943.....19212
946.....19357

31 CFR

103.....18478
540.....19890

Proposed Rules:

128.....19702

32 CFR

544.....20209
706.....20100
841.....20563
1903.....19154

Proposed Rules:

169.....18886
169a.....19703
199.....18888
218.....19538

33 CFR

100.....19526, 19931, 20416, 20568
110.....18635
117.....18479, 18635, 19526, 19527, 19932
165.....18635, 19528, 19933
183.....18636

Proposed Rules:

100.....18688-18692, 19954, 20443, 20444
117.....19955
140.....20445
141.....20445
142.....20445
143.....20445
144.....20445
145.....20445
146.....20445

34 CFR

690.....19296, 19302

Proposed Rules:

76.....19146
581.....19146
768.....20522
769.....20522
770.....20522
771.....20522
772.....20522

35 CFR

101.....19676
107.....19676
111.....19676
113.....19676
123.....19676

Proposed Rules:

256.....19539

36 CFR

7.....19880
13.....19880

Proposed Rules:

7.....19545-19547, 20111
8.....19548

37 CFR

308.....18480

38 CFR

21.....19933

Proposed Rules:

3.....20445

39 CFR

111.....20567

40 CFR

32.....20210
52.....18482-18484, 19529, 19530, 19682, 20568
60.....18636, 19022
81.....18485, 19530
180.....18485, 19358, 19531, 20211, 20371
439.....18486
712.....18861
716.....18861
790.....20652
799.....20652

Proposed Rules:

12.....19136

52 ..... 18537, 18693, 18889, 19038, 19548
60 ..... 19725, 20446
65 ..... 19550, 20453-20458
81 ..... 18890, 19038
141 20164
180 ..... 20235, 20237
261 ..... 18622, 19550, 19956, 20238, 20239
266 19956
403 19664
721 19039
798 20678
799 ..... 19213, 20678, 20691

41 CFR

101-41 20101

42 CFR

400 19684
405 19684
417 20570
447 19684

Proposed Rules:

403 20048

43 CFR

Public Land Orders:

6602 18487
6603 19690
6604 20212

Proposed Rules:

3040 18614
3100 18614
3130 18614
3200 18614

44 CFR

55 18487
56 18487
57 18487
64 19690-19692
67 ..... 19022, 19024

Proposed Rules:

5 19551
6 19551
67 ..... 19039, 19044
205 19870

45 CFR

301 19608
302 19608
303 19608
304 19608
305 19608
307 19608

Proposed Rules:

30 18694
201 18704

46 CFR

45 19532
276 ..... 19170, 20102
580 20103

Proposed Rules:

56 20460
58 20460
107 20460
108 20460
109 20460
111 20460
174 20460
516 19727

47 CFR

0 18487
1 ..... 18637, 19359
2 18662
63 18637
69 19025
73 ..... 18818, 19936
76 18637
78 18637
83 18489
97 ..... 18662, 18665, 19361

Proposed Rules:

Ch. I 18537, 19050
0 19392
1 ..... 18705, 18706
2 19956
15 19551
25 19413
31 19421
43 ..... 18705, 18706
73 ..... 19392, 19956
74 19555
76 18538
90 19956

48 CFR

232 18666
252 18666
525 20103
552 20103
1301 19361
1302 19361
1304 19361
1305 19361
1306 19361
1314 19361
1315 19361
1319 19361
1331 19361
1337 19361
1353 19361
1805 20417
1810 20417
1815 20417
1817 20417
1852 20417

Proposed Rules:

Ch. 5 18708
Ch. 44 18802

49 CFR

23 18493
173 18667
175 18667
1039 20419

Proposed Rules:

Ch. V 18708
541 19728
567 19728
571 ..... 19744, 19961-19986, 20113
1039 19558
1175 19424
1241 ..... 18539, 18891

50 CFR

17 ..... 19370-19374, 20212
20 19178
285 20420
611 19946
652 20215
655 ..... 20103, 20215
661 ..... 18672, 20570
663 ..... 18668, 20420
671 19948
672 19946
675 19946
681 20103

Proposed Rules:

17 ..... 18893, 18968, 19761, 20461
20 19268
32 20462
33 20462
216 18713
630 18717
642 19558
663 20470
669 19559
682 ..... 18983, 19764

LIST OF PUBLIC LAWS

Last List May 3, 1985

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S.J. Res. 64/Pub. L. 99-31

To designate the week beginning May 5, 1985, as "National Correctional Officers Week". (May 14, 1985; 99 Stat. 60) Price: $1.00

S.J. Res. 83/Pub. L. 99-32

Designating the week beginning on May 5, 1985, as "National Asthma and Allergy Awareness Week". (May 14, 1985; 99 Stat. 61) Price: $1.00

H.J. Res. 258/Pub. L. 99-33

To designate May 6, 1985, as "Dr. Jonas E. Salk Day". (May 14, 1985; 99 Stat. 63) Price: $1.00

H.J. Res. 195/Pub. L. 99-34

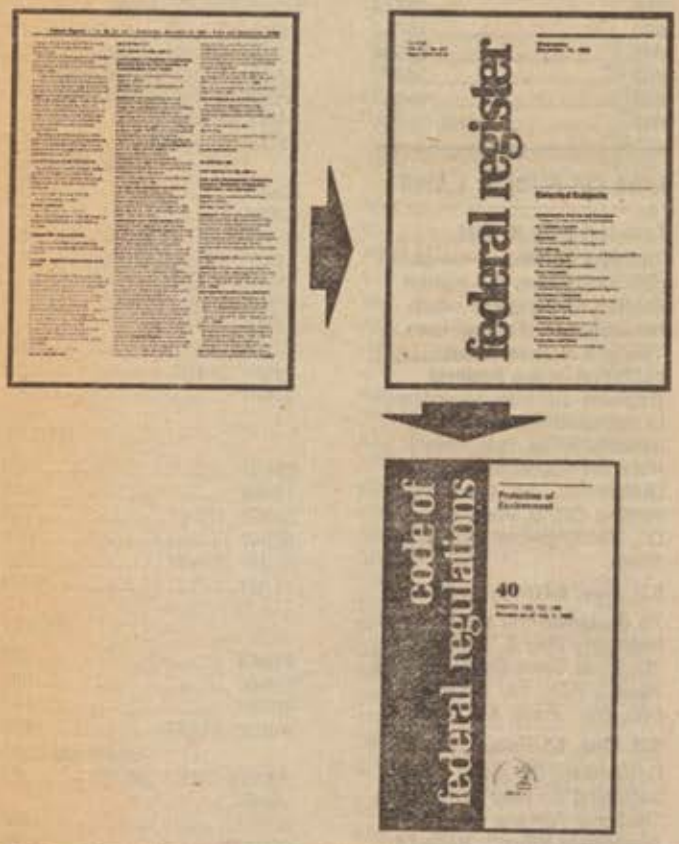
Designating May 1985, as "Older Americans Month". (May 14, 1985; 99 Stat. 65) Price: $1.00

S.J. Res. 128/Pub. L. 99-35

To designate May 7, 1985, as "Vietnam Veterans Recognition Day". (May 14, 1985; 99 Stat. 66) Price: $1.00

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



The **Federal Register**, published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool for you to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps you up to date on the Federal regulations currently in effect.

Mailed monthly as part of a **Federal Register** subscription are: the LSA (List of CFR Sections Affected) which leads users of the **Code of Federal Regulations** to amendatory actions published in the daily **Federal Register**; and the cumulative **Federal Register Index.**

The **Code of Federal Regulations** (CFR) comprising approximately 185 volumes contains the annual codification of the final regulations printed in the **Federal Register.** Each of the 50 titles is updated annually.

Subscription Prices:

- **Federal Register**
  - **Paper:**
    - One year as issued: $300 domestic; $375 foreign
    - Six months: $150 domestic; $187.50 foreign
  - **24x Microfiche Format:**
    - One year as issued: $145 domestic; $181.25 foreign
    - Six months: $72.50 domestic; $90.65 foreign
- **Code of Federal Regulations**
  - **Paper:**
    - One year as issued: $550.00 domestic; $687.50 foreign
    - Single volumes: Individually priced.
  - **24x Microfiche Format:**
    - Current year (as issued): $185 domestic; $231.25 foreign
    - Previous year's full set (single shipment): $155 domestic; $193.75 foreign

Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $_____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐–☐

Order No._____

MasterCard and VISA accepted.

MasterCard VISA

Credit Card Orders Only

Total charges $_____

Fill in the boxes below.

Credit Card No.

Expiration Date Month/Year

Customer's Telephone No.'s: Area Code Home Area Code Office

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Please send me

PAPER:

_____ **Federal Register:** ___ $300 per year domestic; $375 foreign
___ $150 per six-month domestic; $187.50 foreign

_____ **Code of Federal Regulations:** ___ $550 per year domestic; $687.50 foreign

24x MICROFICHE FORMAT:

_____ **Federal Register:** ___ One year as issued: $145 domestic; $181.25 foreign
___ Six months: $72.50 domestic; $90.65 foreign

_____ **Code of Federal Regulations:** ___ Current year: $185 domestic; $231.25 foreign
___ Previous year's full set (single shipment): $155 domestic; $193.75 foreign

PLEASE PRINT OR TYPE

Company or Personal Name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

For Office Use Only

Quantity	Charges
___ Publications	
___ Subscription	
Special Shipping Charges	
International Handling	
Special Charges	
OPNR	
___ UPNS	
___ Balance Due	
___ Discount	
___ Refund	