AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

11-27-85
Vol. 50 No. 229
Pages 48741-49026

Federal Register

Wednesday
November 27, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Philadelphia, PA, see announcement on the inside cover of this issue.

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Chemicals
Environmental Protection Agency

Common Carriers
Federal Communications Commission

Hazardous Substances
Environmental Protection Agency

Exports
International Trade Administration

Hazardous Wastes
Environmental Protection Agency

Milk Marketing Agreements
Agricultural Marketing Service

Pesticides and Pests
Environmental Protection Agency

Pipeline Safety
Research and Special Programs Administration

Radio Broadcasting
Federal Communications Commission

Savings and Loan Associations
Federal Home Loan Bank Board

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

Television Broadcasting
Federal Communications Commission

Trade Practices
Federal Trade Commission

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

PHILADELPHIA, PA

WHEN: Dec. 17; at 1 pm.
Dec. 18; at 9 am. (identical session)

WHERE: Room 3306/10,
William J. Green, Jr., Federal Building,
600 Arch Street, Philadelphia, PA.

RESERVATIONS: Laura Lewis,
Philadelphia Federal Information Center.
215-597-1709

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

Contents

Federal Register
Vol. 50, No. 229
Wednesday, November 27, 1985

Agency for International Development
NOTICES
Meetings:
48845 International Food and Agricultural Development Board (2 documents)

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
48776 Oregon-Washington

Agricultural Stabilization and Conservation Service
NOTICES
Marketing quotas and acreage allotments:
48814 Tobacco

Agriculture Department
See also: Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Food and Nutrition Service; Forest Service; Soil Conservation Service.
RULES
48741 Intergovernmental review of agency programs and activities
NOTICES
48814 Agency information collection activities under OMB Review

Commerce Department
See: Foreign-Trade Zones Board; International Trade Administration; National Technical Information Service.

Defense Department
NOTICES
Meetings:
48829 Defense Equal Opportunity Management Institute Board of Visitors
48829 Defense Management, President's Blue Ribbon Commission

Energy Department
NOTICES
Atomic energy agreements; subsequent arrangements:
48829 Canada
48830 European Atomic Energy Community and Switzerland
48829 International Atomic Energy Agency
48830 Switzerland

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
48762 Petroleum dry cleaners
Air quality planning purposes; designation of areas:
48761 Michigan
Air quality planning purposes; designation of areas, etc.:
48759 Missouri
Hazardous waste:
48886 Identification and listing; exclusions
Pesticide programs:
48998 Registration standards; docketing and public participation procedures
49001 Special review procedures
Toxic substances:
~~49022~~ 48967 Propylene oxide; testing requirements
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
48798 California
48796 Indiana
Hazardous waste:
48911-48943 Identification and listing; exclusions (3 documents)
48800 Identification and listing; exclusions; extension of time
Hazardous waste program authorizations:
48801 Wisconsin
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions:
48799 Ethylene dibromide
Toxic substances:
48805 Chlorinated benzenes; testing requirements
48803 Propylene oxide; testing requirements
NOTICES
Meetings:
48835 Science Advisory Board
Pesticide, food, and feed additive petitions:
48832 Shell Oil Co.
Pesticide programs:
48835 Montana Department of Livestock et al.; specific exemption issuance for use of strychnine to control rabid skunks
48833 Test data; review disclosure
Pesticides; emergency exemption applications:
48830 Sodium chlorate, etc.
Pesticides; experimental use permit applications:
48831 American Cyanamid Co. et al.

Farm Credit Administration
NOTICES
Farm credit system:
48839 Federal land bank associations, consolidation; proposed charter
48838 Production credit associations, consolidation; proposed charter

Federal Aviation Administration
RULES
48742 Airport radar service areas; correction
48745 Non-Federal navigation facilities; distance measuring equipment requirements; technical amendment
48743-48744 Restricted areas (2 documents)
PROPOSED RULES
Airworthiness standards:
48786 Helicopter minimum flightcrew; advance notice

Federal Communications Commission
RULES
Common carrier services:
48770 Obscene materials transmission; enforcement of prohibitions; effective date
PROPOSED RULES
Radio stations; table of assignments:
48807 Florida
48808 Idaho
Television stations; table of assignments:
48806 North Carolina
NOTICES
48839 Agency information collection activities under OMB review

Federal Deposit Insurance Corporation
NOTICES
48859 Meetings; Sunshine Act

Federal Home Loan Bank Board
PROPOSED RULES
Federal home loan bank system:
48970 Conservators and receivers

Federal Labor Relations Authority
RULES
Offices addresses and geographical jurisdictions:
48741 Honolulu Sub-Regional office; closing

Federal Maritime Commission
NOTICES
48839 Agreements filed, etc.
48840 Agreements filed, etc.; correction
Casualty and nonperformance certificates:
48839-48840 Dominican Ferries (2 documents)

Federal Reserve System
NOTICES
48859 Meetings; Sunshine Act

Federal Trade Commission
RULES
Prohibited trade practices:
48749 National Association of Temporary Services, Inc.
48749 Service One International Corp., et al.
PROPOSED RULES
Prohibited trade practices:
48789 John William Costello Associates, Inc., et al.
48791 Kelly, Roy B.

Fish and Wildlife Service
NOTICES
48843 Endangered and threatened species permit applications
48844 Marine mammal permit applications

Food and Nutrition Service
RULES
Food stamp program:
48741 Certification of eligible households; notice of adverse action; CFR correction

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
48818 Wisconsin

Forest Service
NOTICES
Environmental statements; availability, etc.:
48816 Payette National Forest, ID
Land and jurisdiction transfers, etc.:
48816 Chattahoochee-Oconee National Forests, GA, et al.; intercharge order with Air Force Department

Housing and Urban Development Department
NOTICES
Manufactured home construction and safety standards:
48840 Fleetwood Enterprises, Inc. and Fleetwood Homes of Texas, Inc.; hearing

Indian Affairs Bureau
NOTICES
Indian tribes, acknowledgment of existence determinations, etc.:
48841 Tuscarora Nation of North Carolina

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office.

International Development Cooperation Agency
See Agency for International Development.

International Trade Administration
RULES
Export licensing:
48745 Applications, processing time limits
NOTICES
Antidumping and countervailing duties:
48825 Administrative review request
48827 Circular welded carbon steel line pipe from Venezuela
48826 Iron and heavy iron construction castings from Brazil
Countervailing duties:
48819 Deformed steel concrete reinforcing bar from Peru
Meetings:
48819 Automated Manufacturing Equipment Technical Advisory Committee et al.; meeting change
Trade adjustment assistance determination petitions:
48824 Bixby International Corp. et al.

International Trade Commission
NOTICES
48859 Meetings; Sunshine Act

Labor Department
See Occupational Safety and Health Administration.

Land Management Bureau
NOTICES
Withdrawal and reservation of lands:
48842 Idaho; termination
48841 New Mexico; termination
48841 Washington
48842 Wyoming; correction

Maritime Administration
NOTICES
Applications, etc.:
48856 Lykes Bros. Steamship Co., Inc., et al.

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
48772 Windshield defoggers
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
48857 Olin Corp.

National Mediation Board
NOTICES
48860 Meetings; Sunshine Act

National Technical Information Service
NOTICES
Patent licenses, exclusive:
48828 Questel, Inc.

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
48845 Alabama Power Co.
48847 Gulf States Utilities et al.
48846 Niagara Mohawk Power Corp. et al.
48847 University of Lowell

Occupational Safety and Health Administration
RULES
Health and safety standards:
48750 Hazard communication; chemical manufacturers, etc.; interim
PROPOSED RULES
Health and safety standards, construction, etc.:
48794 Hazard communication; advance notice

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
48860 Meetings; Sunshine Act (3 documents)

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
48842 Grass Valley Creek Debris Dam Study, CA
48842 Westlands Water District Disposal Project, CA

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
48811 Hazardous liquids transportation; gathering lines in rural areas
48809 Hazardous liquids transportation; steel line pipe specifications update

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
48848 American Stock Exchange, Inc.
48849 Depository Trust Co.
48849 Midwest Securities Trust Co.
48850–48851 National Association of Securities Dealers, Inc. (2 documents)
48852 Pacific Clearing Corp. et al. (2 documents)
48853 Pacific Stock Exchange, Inc. (2 documents)
48855 Philadelphia Stock Exchange, Inc.

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
48817–48818 Little Contentnea Creek Watershed, NC (2 documents)

State Department
NOTICES
Meetings:
48856 Private International Law Advisory Committee

Surface Mining Reclamation and Enforcement Office
NOTICES
Environmental statements; availability, etc.:
48844 Red Rim Area, WY

Textile Agreements Implementation Committee
NOTICES
Textile consultation; review of trade:
48828 Korea

Transportation Department
See Federal Aviation Administration; Maritime Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration.

Treasury Department
NOTICES
Notes, Treasury:
48857 AC—1987 series

Veterans Administration
NOTICES
48857–48858 Agency information collection activities under OMB review (2 documents)

Separate Parts in This Issue:

Part II
48886 Environmental Protection Agency

Part III
48970 Federal Home Loan Bank Board

Part IV
48998 Environmental Protection Agency

Part V
49022 Environmental Protection Agency

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.

5 CFR
Ch XIV 48741

7 CFR
273 48741
3015 48741

Proposed Rules:
1124 48776

12 CFR

Proposed Rules:
547 48970
548 48970
549 48970
563 48970
569a 48970
569b 48970
569c 48970

14 CFR
71 (3 documents) 48742–48744
73 (2 documents) 48743–48744
171 48745

Proposed Rules:
1 48786
27 48786
29 48786

15 CFR
370 48745
372 48745
386 48745

16 CFR
13 (2 documents) 48749

Proposed Rules:
13 (2 documents) 48789, 48791

29 CFR
1910 48750

Proposed Rules:
1910 48794
1915 48794
1926 48794

40 CFR
52 48759
60 49022
81 (2 documents) 48759, 48761
154 48998
155 48998
162 48998
172 48998
261 48886
799 48762

Proposed Rules:
52 (2 documents) 48796, 48798
180 48799
261 (4 documents) 48800, 48911, 48926, 48943
271 48801
799 (2 documents) 48803, 48805

47 CFR
64 48770

Proposed Rules:
73 (3 documents) 48806–48808

49 CFR
571 48772

Proposed Rules:
192 48809
195 (2 documents) 48809, 48811

Rules and Regulations

Federal Register
Vol. 50, No. 229
Wednesday, November 27, 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.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Final Rules and Regulations (Closing of Sub-Regional Office)

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

ACTION: Amendment of rules and regulations.

SUMMARY: This document amends Appendix A, paragraph (d)(8)(a) (45 FR 80467) of the rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 5 CFR Part 2400 *et seq.*, to announce the closing of the Honolulu, Hawaii Sub-Regional Office within the Los Angeles, California Regional Office (Region 8).

EFFECTIVE DATE: November 15, 1985.

FOR FURTHER INFORMATION CONTACT: Robert J. Perry, Associate General Counsel, (202) 382-0842.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority, General Counsel and Panel published at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority, General Counsel and Panel under chapter 71 of title 5 of the United States Code. These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR Part 2400 *et seq.* (1985). Appendix A, paragraph (d) of the foregoing rules and regulations sets forth office addresses and telephone numbers of the Regional and Sub-Regional Offices of the Authority. Effective December 2, 1980, Appendix A, paragraph (d)(8) of the rules and regulations was amended by adding (a), at 45 FR 80467, to set forth the address and telephone numbers for the location of the Authority's Honolulu, Hawaii Sub-Regional Office within the Authority's Los Angeles, California Regional Office. Effective April 5, 1982, Appendix A, paragraph (d)(8)(a) was amended, at 47 FR 16611, to set forth a new office address for the location of the Honolulu, Hawaii Sub-Regional Office. This amendment announces the closing of the Honolulu, Hawaii Sub-Regional Office. The closing of the Honolulu, Hawaii Sub-Regional Office does not alter the geographic jurisdiction of Region 8. Based upon a careful review of case intake, costs, and operating efficiencies, it has been concluded that the transaction of Authority business would be enhanced by closing the Honolulu, Hawaii Sub-Regional Office.

CHAPTER XIV, APPENDIX A—[AMENDED]

Accordingly, in the rules and regulations of the Authority, General Counsel, and Panel (5 CFR Part 2400 *et seq.* (1985)) are amended by removing paragraph (d)(8)(a), *Honolulu, Hawaii Sub-Regional Office*, under Appendix A to 5 CFR Chapter XIV.

(5 U.S.C. 7134)

Dated: November 21, 1985.

For the Authority:

Henry B. Frazier III,
Acting Chairman.
William J. McGinnis, Jr.,
Member.
John C. Miller,
General Counsel.

[FR Doc. 85-28172 Filed 11-26-85; 8:45 am]
BILLING CODE 6727-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

Certification of Eligible Households; Notice of Adverse Action

CFR Correction

In Title 7 of the Code of Federal Regulations, Parts 210–299, revised as of January 1, 1985, in § 273.13, appearing on page 469, the following sentence should be added at the beginning of paragraph (a)(2).

§ 273.13 Notice of adverse action.

(a) * * *

(2) The notice of adverse action shall be considered adequate if it explains in easily understandable language: The proposed action; the reason for the proposed action; the household's right to request a fair hearing; the telephone number and, if possible, the name of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. * * *

* * * * *

BILLING CODE 1505-01-M

Office of the Secretary

7 CFR Part 3015

Department of Agriculture Programs and Activities Covered Under Executive Order 12372

AGENCY: Department of Agriculture, USDA.

ACTION: Final rule related notice.

SUMMARY: The purpose of this notice is to inform State and Local Governments and other interested persons of Farmers Home Administration (FmHA) programs and activities included within and excluded from the scope of Executive Order 12372, "Intergovernmental Review of Federal Programs." A full understanding of the requirements of the Order may be gained by referring to the final rules published in 7 CFR Part 3015, Subpart V, at 48 FR 29100, dated June 24, 1983.

DATE: November 27, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Zimmerman, Branch Chief, Federal Assistance, Office of Finance and Management, USDA, Room 2117-B Auditors Building, 201 14th Street SW., Washington, DC 20250. (Telephone (202) 382-1553)

SUPPLEMENTARY INFORMATION:

Background

On April 24, 1985, the Department published a Notice (50 FR 16056) which proposed to continue exclusion of the

Emergency Loans Program, the Farm Operating Loans Program, and the Farm Ownership Loans Program. These FmHA programs were previously excluded solely from the Order on the basis of "assistance of nongovernmental entities." Based on a reexamination of the three programs, the Notice set forth justification to continue exclusions on the basis that the programs do not directly affect State and local governments.

Discussion of Comments

Only two comments were received during the comment period. One commenter had no objection to the proposed exclusions. The other commenter questioned how individual farmers and ranchers could make use of Farm Ownership Loans. Upon further examination of the program's regulations, it was determined that these loans could be used, in part, to finance nonfarm enterprises in order to supplement farm income. Such enterprises do not have to be physically located on the farmer's land and may consist of: facilities and structures for nonfarm enterprise uses; fish farming such as docks, fish hatcheries; shooting blinds; refreshment or marketing stands; processing or assembly plants for nonfarm enterprise; sales buildings, repair shops, lodging facilities, trailer parks, picnic areas, target ranges, tennis courts, shuffleboard courts, golf driving ranges, campsites and modest rental housing.

Based on the above uses of loans for nonfarm enterprises, the Department believes that they may have a direct effect on State and local governments. Therefore, loans for nonfarm enterprises use are included as an activity within the scope of the Order.

Since no adverse comments were received on FmHA programs listed in the **Federal Register** Notice of April 24, 1985, the following programs, listed by Catalog of Federal Domestic Assistance Numbers, are excluded from the scope of Executive Order 12372 for the reasons stated:

10.404 Emergency Loans—There is no direct effect on State and local governments. The basic objective of the program is to provide credit and management assistance necessary for individual farmers and ranchers to conduct successful operations and improve their economic situation to the extent that they can obtain credit elsewhere.

10.406 Farm Operating Loans—There is no direct effect on State and local governments. The basic objective of the program is to provide credit and management assistance necessary for individual farmers and ranchers to conduct successful operations and improve their economic situation to the extent that they can obtain credit elsewhere.

10.407 Farm Ownership Loans—Other than nonfarm enterprise loans, there is no direct effect on State and local governments. The basic objectives of this loan program are to assist individual applicants to become owner-operators of family farms, to make efficient use of land, labor and other resources; to carry on sound and successful operations on the farm; and to enable farm families to have a reasonable standard of living.

Based on the Department's reevaluation of Farm Ownership loans, the following activity is included within the scope of the Executive Order:

10.407 Farm Ownership Loans—Direct effect on State and local governments. All loans for nonfarm enterprise activities.

States interested in reviewing nonfarm enterprise activities under Executive Order 12372 should have their State Single Point of Contact notify the Office of Finance and Management Division, USDA, Room 2117, Auditors Building, 201 14th Street SW., Washington, DC 20250, Attention Ms. Lyn Zimmerman.

Dated: November 7, 1985.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 85-28254 Filed 11-26-85; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWA-1]

Establishment of Airport Radar Service Areas; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the descriptions of the Long Island MacArthur Airport, Islip, NY, the Anchorage International Airport, AK, and the Whiting Naval Air Station (NAS), FL, Airport Radar Service Areas (ARSA). In the final rule errors were made in the establishment of the ceilings over secondary airports in the descriptions of the Long Island MacArthur and Whiting NAS ARSA's. An error was made in the latitude coordinate of Anchorage International Airport ARSA. This action corrects those errors.

EFFECTIVE DATE: 0901G.M.T., December 19, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Smith, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 85-26149 was published on November 1, 1985, that establishes the Long Island MacArthur Airport, Islip, NY, the Anchorage International Airport, AK, and the Whiting NAS, FL, ARSA's (50 FR 45718). In the final rule errors were made in the spelling of the Bayport Aerodrome, and in establishing the ceiling over Bayport Aerodrome for the Long Island MacArthur Airport ARSA, and in establishing the ceiling over Milton T Airport for the Whiting NAS ARSA. The ceiling of the cutout for Bayport Aerodrome should have been up to but not including 700 feet above mean sea level (MSL) rather than to and including 700 feet MSL. In the case of Milton T Airport, the ceiling above the airport was erroneously decribed as 700 feet MSL on the basis of a 700 foot traffic pattern. That airport in fact does not use a 700 foot traffic pattern, and the ceiling adopted should have been 1,400 feet MSL. Also, an error was found in the Anchorage International Airport ARSA lititude coordinate. This action corrects those errors.

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, and the FAA finds that good cause exists for making this correction effective less than 30 days after publication.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me **Federal Register** Document 85-26149, as published in the **Federal Register** on November 1, 1985, (50 FR 45718) is corrected as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Corrected]

2. Section 1.501 is amended as follows:

Long Island MacArthur Airport, Islip, NY, is amended by removing the words "excluding that airspace from the surface to and including 700 feet MSL" and substituting the words "excluding that airspace from the surface to but not including 700 feet MSL" and also by removing the words "Bayport Aerodome" and substituting "Bayport Aerodrome"

Anchorage International Airport, AK, is amended by removing the words "lat. 61°10'39"N.," and substituting the words "lat. 61°10'29"N.,"

Whiting NAS, FL, is amended by removing the words "extending upward from the surface to and including 700 feet MSL"

Issued in Washington, D.C., on November 21, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-28235 Filed 11-26-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Parts 71 and 73

[Airspace Docket No. 84-AWA-30]

Establishment of Restricted Areas; Lompoc and Santa Maria, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes restricted airspace at Lompoc and Santa Maria, CA, to encompass Space Shuttle vehicle launch, recovery, and flight training operations. Space Shuttle activities in the area would create an unsafe environment for the shuttle vehicle and other aircraft because of the unique limitations on the ability of the shuttle vehicle, or aircraft simulating the shuttle vehicle's flight characteristics, to see and avoid other aircraft. The restricted areas will segregate nonparticipating aircraft during actual and simulated shuttle vehicle operations.

EFFECTIVE DATE: 0901 G.m.t., January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3128.

SUPPLEMENTARY INFORMATION:

History

On September 25, 1985, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish new Restricted Areas R-2539A, B, C and D near Lompoc and Santa Maria, CA (50 FR 38857). The restricted areas will provide discrete airspace for actual and simulated shuttle vehicle operations. All of the restricted areas will also be added to the Continental Control Area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment objecting to the proposal was received. Mr. Arlen T. Kucera objected to the airspace action because of the economic impact to Lompoc Airport if R-2539D was established. However, as stated in the NPRM, R-2539D would be activated only for actual launch/recovery operations, for a total of only a few hours over a period of five years. As a result, R-2539D would not have a substantial impact on aeronautical, agricultural, or business activity in the Lompoc, CA, area. The economic impact of R-2539D would, therefore, be minimal. Except for editorial changes and a minor correction of coordinates, these amendments are the same as that proposed in the notice. The change of coordinates restores the restricted area boundary near Vandenburg AFB to the configuration originally agreed upon prior to issuance of the NPRM. The boundary inadvertently was slightly altered in the NPRM and is corrected in the final rule to reflect the original intentions of the proposal and the needs of the shuttle operation. The change will have no significant effect on the aeronautical or economic impact of the rule. Sections 71.151 and 73.25 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations establishes new Restricted Areas R-2539A, B, C and D near Lompoc and Santa Maria, CA. All of the proposed restricted areas will also be added to the Continental Control Area. This action establishes the necessary restricted airspace required by the National Aeronautics and Space Administration (NASA) and the military to conduct Space Shuttle vehicle launch, recovery, and flight training operations.

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; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). As stated in the NPRM, all of the provisions of the original proposal which would have had a significant economic impact have been deleted or modified. Therefore, the FAA has determined that the rule as adopted 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 Parts 71 and 73

Aviation safety, Continental control area, Restricted areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R-2539A USAF Space Shuttle Operations, Vandenberg AFB, CA [New]

R-2539B USAF Space Shuttle Operations, Vandenberg AFB, CA [New]

R-2539C USAF Space Shuttle Operations, Vandenberg AFB, CA [New]

R-2539D USAF Space Shuttle Operations, Vandenberg AFB, CA [New]

PART 73—[AMENDED]

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

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

§ 73.25 [Amended]

4. Section 73.25 is amended as follows:

R-2539A USAF Space Shuttle Operations, Vandenberg AFB, CA [New]

Boundaries. Beginning at lat. 35°00'00"N., long. 120°42'00"W.; to lat. 35°03'00"N., long. 120°39'00"W.; to lat. 34°48'00"N., long. 120°16'00"W.; to lat.34°37'00"N., long. 120°16'00"W.; to lat. 34°46'00"N., long. 120°27'00"W.; to lat. 34°50'00"N., long. 120°32'00"W.; to lat. 34°54'00"N., long. 120°33'00"W.; to the point of beginning.

Altitudes. 9,000 feet MSL to unlimited.

Time of designation. Intermittent, activated by NOTAM.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. USAF, Western Space and Missile Center (WSMC)/SE, Vandenberg AFB, CA.

Remarks. Activation authorized only in support of actual Space Shuttle launch/recovery operations, or Space Shuttle training aircraft flights.

R-2539B USAF Space Shuttle Operations, Vandenberg AFB, CA [New]

Boundaries. Beginning at lat. 34°46'00"N., long. 120°27'00"W.; to lat. 34°37'00"N., long. 120°16'00"W.; to lat. 34°30'00"N., long. 120°15'30"W.; to lat. 34°36'20"N., long. 120°27'20"W.; to lat. 34°40'00"N., long. 120°25'00"W.; to lat. 34°42'45"N., long. 120°29'20"W.; to the point of beginning.

Altitudes. 5,000 feet MSL to unlimited.

Time of designation. Intermittent, activated by NOTAM.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. USAF, Western Space and Missile Center (WSMC)/SE, Vandenberg AFB, CA.

Remarks. Activation authorized only in support of actual Space Shuttle launch/recovery operations, or Space Shuttle training aircraft flights.

R-2539C USAF Space Shuttle Operations, Vandenberg AFB, CA [New]

Boundaries. Beginning at lat. 34°42'00"N., long. 120°30'00"W.; to lat. 34°42'45"N., long. 120°29'20"W.; to lat. 34°40'00"N., long. 120°25'00"W.; to lat. 34°36'20"N., long. 120°27'20"W.; to lat. 34°35'45"N., long. 120°28'10"W.; to lat. 34°38'35"N., long. 120°31'20"W.; to the point of beginning.

Altitudes. 1,500 feet MSL to unlimited.

Time of designation. Intermittent, activated by NOTAM.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. USAF, Western Space and Missile Center (WSMC)/SE, Vandenberg AFB, CA.

Remarks. Activation authorized only in support of actual Space Shuttle training aircraft flights.

R-2539D USAF Space Shuttle Operations, Vandenberg AFB, CA [New]

Boundaries. Beginning at lat.34°42'00"N., long. 120°30'00"W.; to lat. 34°42'45"N., long. 120°29'20"W.; to lat. 34°40'00"N., long. 120°25'00"W.; to lat. 34°36'20"N., long. 120°27'20"W.; to lat. 34°35'45"N., long. 120°28'10"W.; to lat. 34°38'35"N., long. 120°31'20"W.; to the point of beginning.

Altitudes. 100 feet AGL to unlimited.

Time of designation. Intermittent, activated by NOTAM.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. USAF, Western Space and Missile Center (WSMC)/SE, Vandenberg AFB, CA.

Remarks. Activation authorized only during actual Space Shuttle recovery operations, and those launches identifying Vandenberg as a potential return to launch site location.

Issued in Washington, D.C., on November 19, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-28233 Filed 11-26-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Parts 71 and 73

[Airspace Docket No. 85-AWA-40]

Alteration of Restricted Areas R-4005 and R-4006, Patuxent River, MD, and Establishment of R-4008, Patuxent River, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These actions alter the eastern boundary and altitudes of R-4006, the altitudes of R-4005, and they also establish a new restricted area over R-4005 and R-4006. They are designed to permit better management and utilization of the restricted area complex near Patuxent, MD, and provide necessary airspace required by the Expanded East Coast Plan.

EFFECTIVE DATE: 0901 G.m.t., January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald C. Montague, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-3128.

SUPPLEMENTARY INFORMATION:

History

On October 16, 1985, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to alter R-4005 and R-4006 and establish R-4008 (50 FR 41904). R-4008 will be added to the Continental Control Area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and one minor technical coordinate change necessary to allow for airway establishment, these amendments are the same as those proposed in the notice. Sections 71.151 and 73.40 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations establish a new Restricted Area, R-4008, near Patuxent Naval Air Station, and add it to the Continental Control Area. These amendments also alter the shape and altitudes of R-4006 and the altitudes of R-4005. These alterations to the restricted area complex near Patuxent, MD, will provide necessary airspace for airways requried by the Expanded East Coast Plan. They will also permit better management and utilization of the restricted area complex.

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 Parts 71 and 73

Aviation Safety, Continental control area and Restricted areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.15 [Amended]

2. 71.151 is amended as follows:

R-4008 Patuxent River, MD [New]

PART 73—[AMENDED]

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

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

§ 73.40 [Amended]

4. 73.40 is amended as follows:

R-4005 Patuxent River, MD [Amended]

Remove "Surface to FL 850." and substitute "Surface to but not including FL 250."

R-4006 Patuxent River, MD [Amended]

Remove "along Pennsylvania Railroad to lat. 38°12'30"N; long. 75°41'30"W.; to lat. 38°02'30"N., long. 75°52'30"W.;" and also remove "3,500 feet MSL to FL 850." and substitute "3,500 feet MSL to but not including FL 250."

R-4008 Patuxent River, MD [New]

Boundaries. Beginning at lat. 38°42'00"N., long 7552°00"W.; to lat. 38°40'00"N., long. 75°35'00"W.; to lat. 38°20'00"N., long. 75°39'00"W.; to lat. 37°45'00"N., long. 76°11'00"W.; to lat. 37°45'00"N., long. 76°24'00"W.; to lat. 37°51'00"N., long. 76°32'00"W.; to lat. 37°55'00"N., long. 76°33'00"W.; to lat. 38°17'00"N., long. 76°18'00"W.; thence to the point of beginning.

Designated altitudes. FL 250 to FL 850

Time of designation. Continuous.

Controlling agency. FAA, Washington ARTCC.

Using agency. U.S. Navy, Commanding Officer, NAS Patuxent River, MD.

Issued in Washington, D.C., on November 20, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division

[FR Doc. 85-28234 Filed 11-26-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 171

[Docket No. 10116, Amdt 171-13]

Non-Federal Navigation Facilities; Distance Measuring Equipment Requirements for Non-Federal Navigational Facilities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: In 1970, the FAA published a rule that established minimum requirements for the approval and operation of distance measuring equipment (DME) that is not operated and maintained by the FAA. The final rule contained an error in a reference to Annex 10 to the Convention on International Civil Aviation that contains the Specification for UHF Distance Measuring Equipment (DME). This action corrects that reference. This corrective amendment is necessary to properly reference the performance requirements of a DME.

EFFECTIVE DATE: November 27, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Sotires P. Mantis, Federal Aviation Administration, Maintenance Engineering Division, Program Engineering and Maintenance Service, APM-120, Washington, DC 20591; Telephone: (202) 426-3628.

SUPPLEMENTARY INFORMATION: On August 11, 1970, the FAA published Amendment 171-7 to Part 171 of the Federal Aviation Regulations (14 CFR Part 171), (35 FR 12709). The rule, at § 171-157(a), contained an incorrect reference to a section of Annex 10 to the Convention on International Civil Aviation. This amendment corrects that reference and informs non-Federal sponsors that Annex 10 to the Convention on International Civil Aviation now also includes the specification for a precision DME. Because this action is necessary to correct an improper legal reference in a regulation and to prescribe the originally intended regulatory requirements of FAR § 171.157(a), and since this action is only corrective in nature, I find that notice and public procedure regarding this action are impractical and unnecessary. Further, since it would not be in the public interest to delay making necessary corrections to a legal reference contained in the regulation, good cause exists for making the amendment effective upon its publication.

The FAA has determined that this document involves a regulation which (1) is not considered to be major under the procedures and criteria prescribed by Executive Order 12291, and (2) is not considered to be significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) does not require a regulatory evaluation because the impact is so minimal. Furthermore, because there is no identifiable economic impact from the rule, it is certified that this amendment will not have a signficant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 171

Navigation facilities, Aviation safety.

Adoption of the Amendment

For the reasons set forth above, Part 171 of the Federal Aviation Regulations (14 CFR Part 171) is amended as follows:

PART 171—[AMENDED]

1. The authority citation for Part 171 is revised to read as follows:

Authority: 49 U.S.C. 1343, 1348, 1354(a), 1421, and 1426; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 171.157 [Amended]

2. In § 171.157, paragraph (a) is amended by removing the term "3.5.1" and replacing it with "3.5".

Issued in Washington, D.C., on November 20, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85-28232 Filed 11-26-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 370, 372, and 386

[Docket No. 51184-5184]

Revision of Processing Times for Applications for Export Licenses

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Section 10 of the Export Administration Act of 1979 (the Act) established time limits for processing applications for export licenses issued by the Office of Export Administration (OEA). The 1985 amendments to the Act shortened these time limits. In addition, the amendments further shortened processing times for exports to COCOM countries and required other procedural changes. These rules implement the amendments.

The former rule required OEA to issue or deny a license within 90 days of receipt of the application when referral to other agencies was not necessary. This rule reduces the time to 60 days. Time limits for other stages of processing are also reduced.

The amendments also provide for an extra reduction in the processing time for applications to export COCOM controlled items to a consignee in one of the COCOM (Coordinating Committee) countries. This rule requires the issuance of such export licenses for COCOM destinations within 15 *working* days after receipt in OEA. If OEA advises the applicant that additional time is necessary to review the application, the processing time is extended to a total of 30 working days.

The Act, as amended, permits additional time for applicants to respond to negative considerations raised on applications for export licenses. It also allows applicants the additional opportunity to respond in person within 15 days after receiving notification of such negative considerations to their applications.

EFFECTIVE DATE: November 12, 1985.

FOR FURTHER INFORMATION CONTACT: Richard Seppa, Operations Division, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377–4738).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is exempted from the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and delay in effective date (5 U.S.C. 553) pursuant to section 13(a) of the Export Administration Act of 1979, as amended. This regulation also involves a foreign affairs and military function of the United States.

2. This rule involves no new collections of information subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collections mentioned in this rule have been approved by the Office of Management and Budget under control numbers: (0625–0001), (0625–0003), (0625–0009), (0607–0018) and (0607–0152).

3. Because a notice of proposed rulemaking is not required to be published for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act, and is not subject to the requirement of that Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects

15 CFR Part 370

Administrative practice and procedure.

15 CFR Parts 372 and 386

Exports.

Accordingly, Parts 370, 372, and 386 of the Export Administration Regulations are amended as follows:

1. The authority citation for 15 CFR Part 386 continues to read as follows, and the authority citations for 15 CFR Parts 370 and 372 are revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; and E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 370—[AMENDED]

§ 370.1 [Amended]

2. Section 370.1 is amended by removing paragraph (c).

3. In § 370.1, paragraph (d) is redesignated as paragraph (c), paragraph (e) is redesignated as paragraph (d), paragraph (f) is redesignated as paragraph (e), and paragraph (g) is redesignated as paragraph (f).

4. Section 370.2 is amended by the addition of a new term. Between the definitions of terms "*Canadian Airline*" and "*Commodity*" a new term is inserted as follows:

* * * * *

COCOM (Coordinating Committee). A multilateral organization that cooperates in restricting strategic exports to controlled countries. It consists of 15 member nations: Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Turkey, the United Kingdom, and the United States.

* * * * *

5. In § 370.13, paragraph (a), the introductory text and paragraph (a)(2) are revised to read as follows:

§ 370.13 Procedures for processing license applications.

(a) *General.* This section implements section 10 of the Export Administration Act of 1979, as amended (the Act), which prescribes procedures for processing export license applications, including time limits for certan stages of the process. For time limits on certain exports to COCOM participating countries, as required by section 10(o) of the Act, see § 370.14. The procedures and time limits set forth in this section apply to all applications received in the Office of Export Administration (OEA) on or after July 12, 1985. The procedures and time limits in effect prior to July 12, 1985 will apply to applications received prior to July 12, 1985. As set forth in paragraph (g) of this section, applications subject to nuclear non-proliferation controls are not subject to all the requirements of this section. As used in this section:

* * * * *

(2) "Date of receipt" is the date a case number is assigned to the application by OEA.

* * * * *

6. In § 370.13, paragraph (c) is revised to read as follows:

§ 370.13 Procedures for processing license applications.

* * * * *

(c) *Decision by Office of Export Administration when referral to other agencies is not necessary.* When an application need not be referred to other agencies, OEA will either issue or deny a license within 60 days of receipt.

* * * * *

§ 370.13 [Amended]

7. In § 370.13, paragraph (d)(1) is amended by revising the phrase in the second sentence "within 30 days of receipt," to read "within 20 days of receipt,"

8. In § 370.13, paragraph (e) is revised to read as follows:

§ 370.13 Procedures for processing license applications.

* * * * *

(e) *Action of other agencies.* When an application is submitted to another agency, section 10 of the Act imposes specific requirements. The agency shall furnish to OEA, within 20 days of the receipt by the agency, the requested information or recommendations. If the agency is unable to complete its review within 20 days it shall advise OEA that

it requries an additional 20 days. If no response is received by OEA at the end of the 20 days, or at the end of 40 days if the extension is used, OEA will deem that agency to have no objections to approval.

* * * * *

§ 370.13 [Amended]

9. In §370.13, paragraph (f)(2) is amended by revising the phrase "Not later than 30 days (or 60 days if the extension described in paragraph (e) of this seciton is required)" to read "Not later than 20 days (or 40 days if the extension described in paragraph (e) of this seciton is required)".

10. In § 370.13, paragraph (h) is revised to read as follows:

§ 370.13 Procedures for processing licenses applications.

* * * * *

(h) *Action on agency recommendations.* Except as provided in paragraph (k) of this section within 60 days of receipt of the recommendations of other agencies or expiration of the times allowed for comment by paragraphs (e) and (f) of this section, whichever is earlier, OEA shall resolve any interagency conflict and issue or deny a license.

* * * * *

11. Section 370.13, paragraph (j) is redesignated as paragraph (i), and new paragraph (i)(3) is revised to read as follows.

§ 370.13 Procedures for processing license applications.

* * * * *

(i) * * *

(3) If an applicant is informed of any questions, negative considerations or recommendations, OEA will allow the applicant 30 days after receipt to provide a written response, but will consider reasonable requests for extensions. "Day of receipt" is the day on which the applicant receives the negative consideration letter. In the absence of evidence to the contrary, OEA will presume "receipt" by the applicant 7 days after the date of the letter. Within 15 days after receipt, the applicant may file a written request to respond in person to the department or agency raising such questions, considerations or recommendations. Such requests will be granted to the maximum extent consistent with the national security and foreign policy interests of the United States. Failure to respond within the time periods set by OEA may result in a denial of the application or return of the application without action.

* * * * *

12. Section 370.13, paragraph (i) is redesignated as paragraph (j) and is revised to read as follows:

§ 370.13 Procedures for processing license applications.

* * * * *

(j) *Denials of licenses.* (1) The applicant will be notified in writing of the intent to deny a license. Such notification will be provided within 5 days of OEA's decision.

(2) The notice will state the statutory basis for denial, the policies set forth in section 3 of the Act that would be furthered by denial, the specific considerations that led to denial (to the extent consistent with national security and foreign policy), and the availability of appeal procedures. If appropriate, the notice will indicate what modifications in or restrictions on the goods or technology would allow the export to be compatible with export control policies, or indicate which officers or employees of OEA will be made reasonably available for consultation with the applicant. The applicant may respond in writing to the notification of intent to deny within 30 days of the date of the notification. OEA will advise the applicant if the intent to deny is changed as a result of the applicant's response. Unless the applicant is so advised by the 45th day after the date of the notification of intent to deny, the denial will become final without further notification by OEA. The applicant will then have 45 days from the date of final denial to exercise the right to appeal under Part 389.

§ 370.13 [Amended]

13. Section 370.13, paragraph (l) is amended by revising the phrase, "within 60 days of the date of tentative approval," to read, "within 40 days of the date of tentative approval," and the phrase, "both at the expiration of the original 60 day period and, if necessary, at 60 day intervals thereafter," to read, "both at the expiration of the original 40 day period and, if necessary, at 40 day intervals thereafter."

§ 370.13 [Amended]

14. Section 370.13, paragraph (m)(1) is amended by deleting the phrase "on or after July 1, 1980."

15. A new § 370.14 is added to read as follows:

§ 370.14 Processing license applications for COCOM participating countries.

(a) *General.* Section 10(o) of the Act provides for different processing time frames for license applications for exports of COCOM controlled items to countries participating in COCOM, the multilateral Coordinating Committee that cooperates in maintaining strategic export controls. The procedures and time limits set forth in this section apply to applications received in the Office of Export Administration on or after November 12, 1985. Applications received prior to that date will be processed under the previous time frames. Applications subject to nuclear nonproliferation controls that are referred to the interagency Subgroup on Nuclear Export Coordination are not subject to the time limits in this section, but will be processed in accordance with § 370.13(g). As used in this section:

(1) "Application" means applications for individual validated export licenses, requests for authorization to reexport, and requests to amend validated licenses and reexport authorizations, properly completed and accompanied by all required supporting documentation. OEA will not consider requests to amend a pending application that is subject to this procedure. (If amendment of a pending application is necessary, the application may be withdrawn and a new application submitted). A properly completed application under this procedure must include the name, telephone number and telex number (if any) of the responsible party who has knowledge of the proposed transaction and has authority to control shipment of the subject items.

(2) "Date of receipt" is the date a case number is assigned to the application by OEA.

(3) "COCOM participating country" means Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Turkey, and the United Kingdom.

(4) "COCOM controlled item" means any item on the Commodity Control List identified by the letter "A" following the four-digit Export Control Commodity Number, and technical data identified in § 379.4(d) (10), (12), (13), (16), (17), and (18).

(5) "Working days" means Monday through Friday, except federal holidays.

(6) "Export to a COCOM participating country" means a direct export or reexport to that country. Applications that include intermediate consignees in non-COCOM participating countries or requests to reexport to non-COCOM countries will not be processed under this section, but will be subject to § 370.13.

(b) *Initial screening.* Promptly after receipt of an application to export a COCOM controlled item to a COCOM participating country and in no case later than 10 days, OEA will either

accept the application for processing or, if it determines that the application is improperly completed or additional information is required, return the application to the applicant without action. When returning an application, OEA will inform the applicant of the specific deficiencies that must be corrected. Any such applications that are resubmitted to OEA must be submitted on a new Form ITA-622P or ITA-699P, as appropriate, attaching the previous application. Such resubmitted applications will be treated as new applications for the purpose of establishing processing time limits. If OEA accepts an application for further processing, it will immediately send the applicant a written acknowledgement that—

(1) Provides the date of receipt, the applicable case number, a description of the procedures required by section 10 of the Act and in particular section 10(o), the responsibilities of the various agencies that may review the application, and the rights of the applicant; and

(2) Notifies the applicant whether or not the application will be referred to another agency, and identifies the agency.

(c) *Action by the Office of Export Administration.* (1) Within 15 working days of receipt, OEA will either

(i) Issue the license;

(ii) Deny the license; or

(iii) Notify the applicant that an additional 15 working days will be required to process the application. Notification of the need for additional time may be included in the initial acknowledgement or in a separate communication.

(2) If the applicant is notified that additional time is required, OEA will, within 30 working days of receipt, either—

(i) Issue the license, or

(ii) Deny the license.

(3) Notification of return without action, rejection, conditions attached to an approval, or the need for an additional 15 days (unless included in the original acknowledgement) will be made by telex, courier service, or other means that assures prompt delivery and verification of receipt. When timely written notification is not possible, the responsible party named on the application will be advised by telephone, with written confirmation sent the next working day.

(d) *Review by other agencies.* When review by another agency is necessary, OEA will allow that agency reasonable time for concurrent review of the application within the 15 to 30 working days allowed by the Act.

(e) *Denials.* (1) Within five days of a decision to deny an application, the applicant will be sent written notice of intent to deny. The written notice will state the statutory basis for denial, the policies set forth in section 3 of the Act that would be furthered by denial, the specific considerations that led to denial, (to the extent consistent with national security and foreign policy), and the availability of appeal procedures. If appropriate, the notice will indicate what modifications in or restrictions on the goods or technology would allow the export to be compatible with export control policies, or indicate which officers or employees of OEA will be made reasonably available for consultation with the applicant.

(2) The applicant may respond in writing to the notice of intent to deny within 30 days of the date of the written notice. OEA will advise the applicant if the intent to deny is changed as a result of the applicant's response. Unless the applicant is so advised by the 45th day after the date of the notification of intent to deny, the denial will become final without further notification by OEA. The applicant will then have 45 days from the date of final denial to exercise the right to appeal under Part 389.

(f) *Action by applicant.* (1) If the applicant has received written acknowledgement pursuant to paragraph (b) of date of receipt and case number, but has received no notification of intent to deny, return without action, need for an additional 15 working days, or license approval, the applicant may, on the 16th working day after the date of receipt of the application by OEA:

(i) Assume the license to be issued and effective; and

(ii) Export the COCOM controlled item to the COCOM participating country, using the case number assigned in the written acknowledgement of receipt as the license number. The transaction must conform in all respects with the description contained in the application.

(2) If the applicant has received written acknowledgement pursuant to paragraph (b) notice of date of receipt and case number, and notification of the need for an additional 15 days, but has received no notification of intent to deny, return without action, or license approval, the applicant may, on the 31st working day after the date of receipt of the application by OEA;

(i) Assume the license to be issued and effective; and

(ii) Export the COCOM controlled item to the COCOM participating country using the case number assigned in the written acknowledgement of receipt as the license number. The transaction must conform in all respects with the description contained in the application.

(3) When exporting under paragraphs (1) or (2) above, the exporter must insert "370.14" directly after the license number on the Shipper's Export Declaration, or on other available shipping documents if the Shipper's Export Declaration is not required or is not readily available for inspection. The Shipper's Export Declaration may be signed by an agent of the exporter who was identified as point of contact on the license application or other authorized agent of the exporter who has knowledge of the transaction and has authority to control shipment of the subject items. Use of "370.14" on a Shipper's Export Declaration constitutes a certification by the exporter that the exporter has received written acknowledgement pursuant to paragraph (b) of date of receipt and case number from OEA, that the exporter has not received notification of intent to deny, return without action, or conditional approval, or (during the first 15 working days) need for additional processing time, and that the applicant has not received a license or notification of license approval.

(4) Knowledge of date of receipt and case number through return postcard, telephone contact with OEA, or other means does not constitute sufficient basis for shipment under this § 370.14(f). The applicant *must* have received the written acknowledgement described in § 370.14(b).

(g) *Extention of time limits.* The applicant may voluntarily extend the processing time limits. Any application that would normally be processed under the accelerated time limits of this § 370.14 will be processed, following a voluntary extension, in accordance with the time limits of § 370.13.

PART 372—[AMENDED]

16. In Section 372.4, paragraph (g) is revised to read as follows:

§ 372.4 How to apply for a validated license.

* * * * *

(g) *Second application*—(1) *Pending action.* A second application covering the same proposed export shall not be submitted pending actior on the first application.

(2) *Resubmission.* When an application has been returned without action and is being resubmitted, a new application form must be submitted. When a new form is submitted, the original application must be attached to the new one. When a license application has been returned without action with instructions that it is not to be resubmitted until a later date, the resubmission of the application must be in accordance with the requirements existing at the time of resubmission.

* * * * *

17. Section 372.11 is amended by adding a new paragraph (d)(3) to read as follows:

§ 372.11 Amending export licenses.

* * * * *

(d) * * *

(3) Changes in a pending application to export COCOM controlled items to COCOM participating countries under the accelerated processing procedure described in § 370.14.

* * * * *

PART 386—[AMENDED]

18. In § 386.3, paragraph (j) is revised to read as follows:

§ 386.3 Shipper's export declaration.

* * * * *

(j) Validated license number or general license designation. (1) Exports under a validated license. The license number, the Export Control Commodity Number and the commodity description, shall be shown in the designated spaces of a Declaration covering an export under a validated license. When an export is made prior to receipt of a license, as authorized by 370.14(f), the symbol "370.14" shall be entered immediately after the license number.

(2) Exports under a general license. In addition to the commodity description, the general license designation shall be shown in the appropriate column of each Declaration covering a shipment under a general license. If the commodity is to be exported under the provisions of General License *GLV*, the Export Control Commodity Number shall also be shown in the designated space.

* * * * *

Dated: November 22, 1985

Walter J. Olson,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 85-28330 Filed 11-26-85; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3173]

National Association of Temporary Services, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires an Alexandria, Va. association of temporary help companies, among other things, to cease engaging in any practices or maintaining any code of ethics provisions or other written provision that has the purpose or effect of restraining the recruitment or employment of employees registered with another temporary help firm; the solicitation of another temporary help firm's clients; and the provision of temporary help employees to companies involved in a strike or lock-out. The Association is barred from affiliating or federating any organization of temporary help firms that has adopted by-laws or a code of ethics containing a prohibited provision; and required to maintain records relating to disaffiliations and refused affiliations or federations for three years. The order further requires that the Association send a copy of the complaint and order, together with an explanatory letter, to each of its current members and provide a copy of the order to all new members for a period of three years.

DATE: Complaint and Order issued Nov. 5, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Ross D. Petty, Seattle Regional Office, Federal Trade Commission, 2806 Federal Bldg., 915 Second Ave., Seattle, WA 98174 (206) 442-4656.

SUPPLEMENTARY INFORMATION: On Wednesday, June 26, 1985, there was published in the **Federal Register**, 50 FR 26373, a proposed consent agreement with analysis In the Matter of National Association of Temporary Services, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Combining or Conspiring: § 13.388 To control allocation and solicitation of customers; § 13.390 To control employment practice. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records. Subpart—Enticing Away Competitors' Employees: § 13.1050 Enticing away competitors' employees.

List of Subjects in 16 CFR Part 13

Temporary employment services, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 85-28329 Filed 11-26-85; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. C-3172]

Service One International Corp. et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires at Chatsworth, Calif. credit counseling service and two corporate officers, among other things, to cease misrepresenting that they will obtain credit or credit cards for applicants; have developed working relationships with any creditors; or will provide a full or partial refund of any fees paid by consumers seeking credit or credit cards. Additionally, respondents are prohibited from misrepresenting the likelihood of any consumer obtaining credit or credit cards; the extent to which it can help consumers seeking credit or credit cards; or the conditions under which it will furnish refunds. Further, respondents are required to send to all customers who paid for the service and did not receive a credit card, a notice that gives them the option of

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

receiving a full refund within 30 days or participating in respondent's new credit-counseling service without additional charge.

DATE: Complaint and Order issued Oct. 29, 1985.[1]

FOR FURTHER INFORMATION CONTACT: John F. Lefevre, FTC/I-500, Washington, DC 20580. (202) 724-1185.

SUPPLEMENTARY INFORMATION: On Monday, July 29, 1985, there was published in the **Federal Register**, 50 FR 30717, a proposed consent agreement with analysis In the Matter of Service One International Corporation, a corporation, also trading and doing business as Service One Corporation and First Credit Services, and Reza Fayazi and Ali Fayazi, individually and as officers of said corporations, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.15 Business status, advantages, or connections; § 13.15-70 Financing activities; S 13.50 Dealer or seller assistance; § 13.70 Fictitious or misleading guaranties; § 13.71 Financing; § 13.175 Quality of product or service; § 13.185 Refunds, repairs, and replacements. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures. Subpart—Furnishing False Guaranties: § 13.1053 Furnishing False guaranties. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1395 Connections and arrangements with others; § 13.1417 Financing activities.—Goods; § 13.1725 Refunds.

List of Subjects in 16 CFR Part 13

Consumer credit, Credit cards, Trade practices.

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 85-28328 Filed 11-26-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-022C]

Hazard Communication

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Interim final rule, and corrections.

SUMMARY: On November 25, 1983, OSHA published a final rule in the **Federal Register** entitled "Hazard Communications" (48 FR 53280) (29 CFR 1910.1200). Various aspects of the rule were subsequently challenged in the U.S. Court of Appeals for the Third Circuit. On May 24, 1985, the Third Circuit issued its decision on the rule, upholding the OSHA standard in most respects. *United Steelworkers of American* v. *Auchter*, 763 F. 2d 728 (3d Cir. 1985).

This publication responds to the Court's orders with regard to the Hazard Communication Standard's trade secret definition and access of employees and their representatives to trade secrets. The other issue remanded by the Court—the scope of industries covered—will be addressed by the Agency in a separate rulemaking action.

OSHA is publishing these modifications to the Hazard Communication Standard as an interim final rule to be effective upon its publication; as close to November 25, 1985 as possible—the date by which chemical manufacturers and importers were to assess the hazards of the chemicals they produce or import, and were to begin to transmit information on such hazards to employees and employers in the manufacturing sector by means of container labels and material safety data sheets. OSHA invites those affected by the interim rule to submit comments on the issues presented. A final determination will be made after the Agency receives and reviews the public's comments. In addition, two typographical errors in the trade secret access provisions are corrected.

DATES: The interim final rue is effective on November 29, 1985.

Comments must be received on or before January 27, 1986.

ADDRESS: Written comments should be submitted, in quadruplicate, to the Docket Officer, Docket NO. H-022C, Occupational Safety and Health Administration, Room N3670, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523-7894.

Written comments received, as well as all other information already included in Docket H-022, will be available for inspection and copying in Room N3670 at the above address, from 8:15 a.m. to 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523-8148.

SUPPLEMENTARY INFORMATION: References to the rulemaking record are made in the text of this document. The following abbreviations have been used:

1. Ex.: Exhibit number in Docket H-022,

2. Tr.: Hearing transcript page number.

I. Background

OSHA published its final Hazard Communication Standard (HCS) on November 25, 1983. The purpose of the HCS is to provide employees in the manufacturing sector with information about the identity and hazards of the chemicals to which they are exposed in their workplaces. The standard is designed to accomplish this by requiring producers of chemicals, (chemical manufacturers and importers) to evaluate the hazards of the chemicals they produce or import, and to prepare container labels and material safety data sheet conveying this hazard information, as well as precautions for safe handling and use. These labels and meterial safety data sheets are then required to be transmitted to employers purchasing these chemicals. All employers in the manufacturing sector are required to have hazard communication programs for their employees, to transmit and explain hazard information to them through the required labels and material safety data sheets, as well as through employee training programs. For a detailed explanation of the rule's requirements, please see 48 FR 53334-53340.

The rule itself was published at

48 FR 53340–53348, and is codified at 29 CFR 1910.1200.

The underlying purpose of these information transmittal requirements in the HCS is to reduce the incidence of chemical source illnesses and injuries in the manufacturing sector. OSHA believes, and the record supports, that when employers have complete information on the hazards of the chemicals in their workplaces, they are better able to devise and implement protective measures for their employees. When employees have such information, they are better able to support and participate in these protective programs, and to take steps to protect themselves.

On November 22, 1983, petitions for judical review of the HCS were filed in the U.S. Court of Appeals for the Third Circuit by the United Steelworkers of America, AFL–CIO, and by Public Citizen Inc., representing themselves and a number of labor groups. Motions to intervene in the case were filed by the Chemical Manufacturers Association, the American Petroleum Institute, the National Paint and Coatings Association, and the States of New York, Connecticut, and New Jersey. In addition, petitions for review of the standard were filed by the State of Massachusetts in the First Circuit; the State of New York in the Second Circuit; the State of Illinois in the Seventh Circuit; the Flavor and Extract Manufacturers' Association in the Fourth Circuit; and the Fragrance Materials Association in the District of Columbia Circuit. These cases were transferred to the Third Circuit and consolidated into one proceeding. The cases brought by the Flavor and Extract Manufacturers' Association and the Fragrance Materials Association were subsequently withdrawn.

The Court issued its decision on May 24, 1985. The rule was upheld in most respects. The Court remanded the HCS to the Agency for reconsideration and revision of three aspects: (1) To broaden the scope of industries covered to include employees exposed to hazardous chemicals in non-manufacturing industries, except to the extent that it is infeasible; (2) to narrow the definition of "trade secret" incorporated into the rule to ensure that it is not broader than applicable state laws, and does not permit chemical identities to be claimed as trade secrets if such identities can be readily discovered through reverse engineering; and (3) to extend access to trade secret information in non-emergency situations to employees and collective bargaining agents.

Since the first compliance date for the rule was November 25, 1985, OSHA believes it is imperative to have trade secret provisions, revised in accordance with the Court's direction, in place as soon after that date as possible. This is necessary to avoid confusion about the requirements of the standard. Therefore, the Agency determined that the issue of broadening the scope of industries covered should be dealt with in a separate rulemaking action so as not to delay completion of the trade secret revisions. OSHA believes that it is not in the best interests of employee protection to delay the effective dates of the HCS rule to provide time to comply with the Court's order, and that dealing with the remanded issues separately will ensure that those employees currently covered by the rule will receive the protection provided as close to the scheduled effective dates as possible.

II. Summary and Explanation of the Interim Final Rule, and Corrections

The treatment of hazardous chemical identities that are considered to be trade secrets by the chemical manufacturer, importer, or employer, was clearly one of the most difficult issues addressed during the development of the HCS. The information required to be given to employees under the HCS includes the specific chemical identity of the hazardous chemicals to which they are exposed, as well as information regarding the hazards of the substances, physical and chemical characteristics, and precautions for safe handling and use. Although all participants in the rulemaking substantially agreed on the need for disclosure of hazard information and precautionary measures, there was less agreement regarding the need to divulge specific chemical identity information. *See generally* 48 FR 53312–14.

Employee representatives generally supported requiring employers to disclose all chemical identities, including those that are trade secrets, particularly to ensure that they would have such identities to enable them to do independent evaluations of the hazards of the substances if they wished to do so. *See* 48 FR 53313. *See also* Exs. 19–172, 19–175, 122, 123, 168, and 180A; Tr. 305, 612, 1647, 1838, 1938, 2092, 2235, 2643, 2693, 2934, 3057, 3105, 3279, 3602, 3640, 3788, 3978, 4031, 4107. Downstream employers who purchase chemicals from chemical manufacturers and are therefore dependent upon them for chemical identity information, expressed views similar to the unions' with respect to their own need for access to trade secret identity information. *See* 48 FR 53313–14. *See also* Exs. 19–73, 19–150, 19–201; Tr. 564, 675–681, 3684–86.

Conversely, chemical manufacturers, particularly those engaged in formulating mixtures of chemicals, stressed the importance of protecting trade secret chemical identities. These employers argued that chemical identities are legitimate trade secrets in some situations, that protection of *bona fide* trade secrets is well-recognized in common law, and that such trade secrets are often essential to maintaining a viable business. *See* 48 FR 53312–13. *See also* Exs. 19–44, 19–36, 19–87, 19–91, 19–115, 19–155, 19–165, 19–168, 27–15, 177, 179, 182.

The general policy of OSHA reflected in the HCS is that the interests of employee safety and health are best served by full disclosure of chemical identity information. OSHA acknowledges, however, and the record in this proceeding fully supports, the critical need to protect trade secret information because the economic well-being of the employer and its employees may be dependent upon the protection of such information, and once lost, its value as a trade secret cannot be recaptured. OSHA took into account these competing concerns by requiring disclosure of the specific chemical identity to employees, and downstream employers and their employees, in all cases except those few where it is a *bona fide* trade secret. The HCS further requires that even trade secret identities of chemicals be divulged to health professionals providing medical or other occupational health services to exposed employees, provided that the health professional can demonstrate a need for the information, and the means to maintain its confidentiality.

In response to the Third Circuit Court of Appeals order, OSHA is amending its trade secret definition to better reflect the nation's common law, and is extending access to trade secret chemical identities to employees and their designated representatives who demonstrate a "need-to-know" the information, and the means to maintain its confidentiality.

A: Definition of "Trade Secret"

The trade secret concept has been described by courts and textwriters in various ways, and is at best "nebulous". *See* 55 American Jurisprudence 2d section 705 (1971). A trade secret is essentially anything which a business in fact keeps secret from its competitors and the public, provided it is minimally novel and commercially valuable. *Restatement of Torts*, section 757, comment *b* (1939); Cavitch, *Business*

Organizations section 232.01 (1975). Absolute secrecy is not essential; the trade secret may be divulged to employees or licensees with a "need-to-know", provided the holder of the secret has taken the steps to restrict unnecessary access to, and the use of, this privileged knowledge. Cavitch, *supra*, section 232.01[1]. In addition, others may also know of the secret, as for example, when they have discovered the information by independent invention and are also keeping it secret. *Restatement, supra*, at 6. Nevertheless, a substantial element of secrecy must exist, so that it would be difficult for another to acquire the information except by improper means. *Id.* Matters of public knowledge within the business, as well as matters that are "fully available and easily obtainable", cannot be trade secrets. Cavitch, *supra*, at section 232.01[1].

Trade secret protection entitles the holder of a trade secret to its commercial exploitation and to certain judicial remedies for a breach of confidence or dispossession of the trade secret through improper or unethical means (industrial theft, bribery, spying, etc.). The existence of a trade secret, however, will not protect against "discovery by fair and honest means, such as independent invention, accidental disclosure, or by so-called reverse engineering," that is by starting with the known product and working backwards to divine its constituents or process of manufacture. *Kewanee Oil Co.* v. *Bicron Corp.*, 416 U.S. 470, 476 (1974).

The United States Supreme Court has identified the maintenance of standards of commercial ethics and the encouragement of invention as the broadly stated policies behind trade secret law. *Kewanee Oil Co.* v. *Bicron Corp., id.* at 481. Unlike patents or copyrights, however, there is no comprehensive Federal law of trade secrets, as it is basically a State-created right.

The conflict between hazard communication and trade secret interests arises whenever an employer is asked to reveal information, such as the identity of a chemical, which he or she considers to be a trade secret. While most trade secrets relate to process information, or formula or percentage mixture information, none of which is required to be disclosed by the standard, the identity of a chemical or mixture ingredient may itself be a *bona fide* trade secret.

The HCS requires that the specific chemical identity of each hazardous chemical be indicated on the material safety data sheet for the substance, unless the specific chemical identity is a *bona fide* trade secret. 29 CFR 1910.1200(g)(2). The "specific chemical identity" of a substance is defined in the standard as "the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance". 29 CFR 1910.1200(c).

In the proposed standard for Hazard Communication (March 19, 1982; 47 FR 12092), OSHA did not include a definition for "trade secret". However, a number of participants in the rulemaking urged the Agency to include such a definition in the final rule. *See* 48 FR 53314 (referencing Exs. 19–65, 19–91, 19–116, 19–155, 19–164, 19A–11, 182). *See also* Comments of AFL–CIO, et al., Ex. 180A at 72 ("[F]further guidance to employers and employees should be provided . . . outlining the factors OSHA will consider, in accordance with applicable law, in determining whether a trade secret claim has been substantiated.") The Chemical Manufacturers Association (Ex. 19–91; 182), Procter and Gamble (Ex. 19–116), and Michelin Tire Company (Ex. 19–155), each recommended that a definition be taken from the *Restatement of Torts* section 757 (1939), since it is widely accepted and has been adopted by the common and statutory law of many states. 48 FR 53314.

In response to these comments, OSHA adopted a trade secret definition derived from the commentary in *Restatement of Torts* section 757, comment *b* (1939). The *Restatement of Torts* was published by the American Law Institute (ALI) in 1939 as an "orderly statement of the general common law of the United States . . . ." *Introduction* to *Restatement of Torts* at x ("The sections . . . may be regarded both as the product of expert opinion and as the expression of the law by the legal profession.").

The *Restatement's* trade secret definition is certainly the most often used. The Supreme Court, in its leading decision on trade secrets, used the *Restatement* definition and called it "widely relied-upon." *Kewanee Oil Co.* v. *Bicron Corp.*, 416 U.S. at 474. The major treatise on the subject states, "[t]he most comprehensive definition is that . . . set out in [the] *Restatement*. . . . Various portions of [Section 757], comment *b*, have been cited approvingly in many jurisdictions." 12 Business Organizations, *Milgrim on Trade Secrets*, section 2.01, at 3 (hereinafter *Milgrim*). *See also Milgrim* section 2.01, at 3 n.2 (listing over one hundred and fifty cases in numerous state and Federal jurisdictions that cited the *Restatement* approvingly). The *Restatement's* "principles became primary authority by adoption in virtually every reported case." Klitzke, *The Uniform Trade Secrets Act*, 64 Marquette Law Review 277, 282 (1980).

Therefore, OSHA selected a trade secret definition for the HCS based on the first sentence of the *Restatement's* comments regarding the definition of trade secrets, which reads:

> A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.

OSHA, however, modified this general definition by adding a parenthetical phrase regarding chemical identities. Thus, the HCS trade secret definition read:

> "Trade secret" means any confidential formula, pattern, process, device, information or compilation of information (including chemical name or other unique chemical identifier) that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it. 29 CFR 1910.1200(c).

The Agency added the parenthetical phrase to clarify that the only type of trade secret information that would be subject to disclosure under this rule would be that dealing with specific chemical identity, not the more common process or percentage types of trade secrets mentioned above.

The Third Circuit Court of Appeals was not persuaded that the addition of this parenthetical phrase served merely to clarify the definition. The Court concluded that the addition of the parenthetical phrase broadened the definition by providing protection for chemical identities which are determinable by reverse engineering, thus permitting information to be considered a trade secret in situations where states utilizing the *Restatement* definition would not. 763 F.2d at 740. The Court directed OSHA "to reconsider a trade secret definition which will not include chemical identity information that is readily discoverable through reverse engineering." *Id.* at 743.

OSHA did not intend through inclusion of the parenthetical phrase to allow employers to make spurious claims of trade secrecy, or even to change the criteria currently used in common practice to determine the legitimacy of a trade secret claim. "[The] definition adopted . . . was not intended to exclude the various factors noted in the [Restatement] comment. Rather they

remain relevant to construing the definition." Brief for the Secretary of Labor at 66 n.61. The HCS requires employers to substantiate the legitimacy of their trade secret claims (29 CFR 1910.1200 (i)(7)(iii)). OSHA maintains that this is the appropriate approach, and that employers should continue to bear the burden of demonstrating that their trade secret claim is *bona fide*. The Agency will evaluate the appropriateness of that substantiation in the event that an employer denies a request for disclosure of the trade secret, and a complaint is made to OSHA.

To carry out the Court's direction regarding the definition, and clarify the intent of the Agency with regard to enforcement of the rule, OSHA is hereby deleting the parenthetical phrase included in the definition of trade secret. This makes the definition identical to the *Restatement of Torts* definition, eliminates the potential for interpreting the definition in a broader manner than was intended, and, therefore, is consistent with state laws.

It should be noted, however, that the *Restatement of Torts* section 757, comment *b*, does not define trade secrets in "blackletter law." As the *Restatement* itself acknowledges: "An exact definition of a trade secret is not possible." *Accord Milgrim* section 2.01, at 16–17; 55 Am. Jur. 2d section 705 (1971). The *Restatement* is a commentary on the commonly accepted factors that should be considered when determining whether given business information is a trade secret. The determination is a factual question—it must be made based on the facts of the particular case. *See Milgrim* section 203, at 32.

Therefore, to fully respond to the Court's concerns and to help ensure uniform interpretation by affected parties, OSHA is adopting the principles enunicated by the *Restatement*. Section 757, comment *b*, as the criteria the Agency will use to evaluate an employer's substantiation of a trade secret claim. OSHA is publishing, verbatim, the *Restatement of Torts*, section 757, comment *b* (1939), in a new Appendix D to 29 CFR 1910.1200.

OSHA is publishing the pertinent provisions of the *Restatement* with the knowledge that the ALI has chosen to omit trade secret commentary, along with other Restatements of the law regarding unfair trade practices, from the *Second Restatement of Torts* published in 1979. The omission was made, according to ALI, because the fields of Unfair Competition and Trade Regulations, within which trade secret law falls, have developed into independent bodies of law with little reliance upon the traditional principles of Tort law. 4 *Restatement of Torts*, 2d 1–2 (1979). OSHA is publishing section 757, comment *b*, because the Restatement no longer contains the trade secret provisions and they are still apposite. *See, e.g. FMC Corp.* v. *Taiwan Tainan Giant Industrial Co.*, sections 730 F.2d 61, 63 & n.3 (2d Cir. 1984) (applying New York law which follows *Restatement* section 757, comment *b*, despite the Second Restatement's omission of those provisions).

The *Restatement* section 757, comment *b* lists six factors to be examined when determining whether a trade secret exists. These factors are commonly accepted as being indicative of a legitimate trade secret claim. *Accord* McGarity & Shapiro, *The Trade Secret Status of Health and Safety Testing Information: Reforming Agency Disclosure Policies*, 93 Harvard Law Review 837, 862 n.126 (1980) ("The oft-quoted factors for determining trade secrecy. . . .").

The first of these factors is the extent to which the information is known outside of the employer's business. If the information is widely known, the employer cannot make a credible argument for the specific chemical identity being a legitimate trade secret, and thus justify withholding it from health professionals, downstream employers, and employees.

The second factor is the extent to which the information is known by employees and others involved in the business. If the specific chemical identity is truly a trade secret, it can be expected that the employer would use some means to limit access to it within the facility.

A related factor is the extent of measures taken by the employer to guard the secrecy of the information. If a specific chemical identity is a trade secret, it can be assumed that security measures to protect the information would be designed and implemented by the employer.

The trade secret must have some value to the employer or to his competitors. If holding the information as a trade secret does not result in a competitive or economic advantage to the employer, then the existence of a legitimate trade secret is questionable.

The amount of effort or money expended by the employer in developing the information is also a factor to be considered. Many employers spend considerable time and effort developing novel products, and protection of the information allows them to develop a market and recoup the costs of development. Such effort would help establish the legitimacy of the trade secret as well. It should be noted that some employers might be able to obtain a patent for this type of information, and thus gain exclusive use of their findings for some specified period of time. In this situation a trade secret cannot be claimed because the information must be divulged to obtain the patent, and is thus public.

The sixth factor is the ease or difficulty with which the information could be properly acquired or duplicated by others. This is the factor related to the reverse engineering concept that was of concern to the Court. If the specific chemical identity of a component can be readily determined, it does not qualify as a legitimate trade secret. If the product is a complex mixture, and extensive analysis would be required to determine its ingredients, it is more likely that the product would qualify for some trade secret status.

With the information provided by the employer relating to these factors, OSHA will be better able to judge the legitimacy of the claim; employers will be aware of the level of proof to which they will be held; and employees will be better assured that trade secret claims will not be spurious. Administratively, these factors and principles are best specified within an Appendix to the standard, rather than including them in the definition itself. With the deletion of the parenthetical phrase, the definition is now conceptually identical to that found in the *Restatement of Torts*, section 757, comment *b* (1939). It appears that maintaining this identical wording is essential to ensure that further differences of opinion regarding intent do not arise through the introduction of novel language. The specific language for the change to the definition is indicated below. OSHA believes that these changes and the additional discussion of the criteria for evaluation address the Court's concerns, are consistent with the rulemaking record, and clarify the intent of the rule for purposes of compliance and enforcement.

B. Employee Access to Trade Secret Information

Although the provisions of the HCS permit employers to withhold the specific chemical identity information if it is a *bona fide* trade secret, the standard also requires this information be disclosed to health professionals under certain conditions of need and confidentiality. In medical emergencies, a treating physician or nurse would be entitled to receive the information immediately. After the emergency is

abated, the holder of the trade secret could require the treating physician or nurse to sign a written statement of need and a confidentiality agreement, but it is left to the determination of the health professional as to whether an emergency which necessitates immediate disclosure exists. *See* 29 CFR 1910.1200(i)(2).

In non-emergency situations, a health professional providing medical or other occupational health services to exposed employees would be entitled to the information under certain conditions. The health professionals entitled to this non-emergency disclosure would be physicians, industrial hygienists, toxicologists and epidemiologists. The request for the disclosure of trade secret information has to be submitted to the holder of the trade secret in writing; it must specify the occupational health need for the information; explain why disclosure of the specific chemical identity is necessary, and why other information would not allow the health professional to provide the necessary services; describe the procedures that will be used to maintain the confidentiality of the information; and the requestor must agree to keep the information confidential. *See* 29 CFR 1910.1200(i)(3).

As stated previously, in the development of the final rule, OSHA sought to take into account the competing interests of the employer in maintaining the confidentiality of legitimate trade secrets, and of the employee in having access to the information. The record seemed to indicate that use of the specific chemical identity information would require some professional expertise. Workers generally stated that their need for the information would be to give it to someone providing services to them, *e.g.*, their physician (48 FR 53318).

Thus, in the final rule, OSHA devised a regulatory scheme that permitted employers to withhold specific chemical identity information when it is a *bona fide* trade secret, but required that it be disclosed to health professionals. OSHA believed that this approach would ensure that the information disclosed would result in adequate protection for employees in those few situations where a legitimate trade secret exists, and is withheld from those employees and downstream employers and their employees.

The United Steelworkers of America argued to the Third Circuit Court of Appeals that many employees may not have access to health professionals, yet have a "need-to-know" the trade secret information. If an employee satisfies the need-to-know requirements of the standard at 29 CFR 1910.1200(i)(3)(ii), and is willing to sign a confidentiality agreement, the Steelworkers argued that the employee should also be entitled to access. *See* Brief for Petitioner United Steelworkers of America, AFL–CIO–CLC at 37–43.

The Third Circuit was persuaded by this argument, and "conclude[d] that the restriction in the [HCS] of access to trade secret information to health professionals is not supported by substantial evidence in the record. . . ." section 763 F.2d at section 743. The trade secret access provision was held "invalid insofar as it limits access to health professionals, but is otherwise valid," and the Agency was "directed to adopt a rule permitting access by employees and their collective bargaining representatives". *Id.*

In response to the Court's decision, and since the other provisions relating to trade secret disclosure were held to be valid, OSHA is adding language to the rule to give employees and their representatives access to trade secret chemical identities under the same conditions as health professionals. Consequently, employees and their representatives will have to submit written requests establishing a need-to-know the information, and be willing to sign a confidentiality agreement. Rather than using the term "collective bargaining agent", however, the modifications use "designated representative" to be consistent with the other requirements of the HCS. "Designated representative" is defined in the HCS, and a collective bargaining agent is automatically considered a designated representative under that definition. 29 CFR 1910.1200(c). Thus the modified language carries out the Court's instructions.

C. Corrections

In addition to addressing the issues noted above, OSHA is correcting two typographical errors in the HCS trade secret access provisions. The first regards § 1910.1200(i)(3)(v), which requires that health professionals, and the employers or contractors of their services, agree in a written confidentiality agreement that the health professional will not use the trade secret information for any purpose other than the health need(s) asserted or release it under any circumstances other than to OSHA or as agreed by the parties. The provision notes parenthetically that an employer or contractor of a health professional's services may be a "downstream employer, labor organization or individual employer."

Clearly, "individual employer" should read "individual employee." As explained in the HCS preamble, [t]he requirement that the employer or contractor of the health professional's services be a cosignatory to the agreement applies equally regardless of whether the health professional is providing occupational health or medical services to a downstream employer, labor organization, or *individual employees* . . . ." 48 FR at 53339 (emphasis added). The provision was intended to assure "that both the principal and the agent are legally responsible for compliance with the agreement", whether the principal is an employer, union or employee, and applies "regardless of whether the health professional is being paid for his services." *Id.* OSHA, therefore, is correcting section 1910.1200(i)(3)(v) to indicate that an "individual employee" who employs or contracts for a health professional's services must cosign confidentiality agreements under the HCS.

The second typographical error concerns § 1910.1200(i)(3)(iii). That provision requires that written requests for trade secret chemical identities explain in detail why the disclosure is essential to the requestor, and why disclosure of alternative information by the trade secret holder would not satisfy the requestor's purposes and needs as described in "paragraph (ii)". The reference to paragraph (ii) is a typographical error. No paragraph exists with that designation. The provision should read "paragraph (i)(3)(ii)," the subparagraph that lists acceptable occupational health needs for trade secret disclosure and which immediately precedes the provision in question. OSHA, therefore, is correcting § 1910.1200(i)(3)(iii) so that it references the occupational health needs described in paragraph (i)(3)(ii).

III. Legal Authority for Issuing an Interim Final Rule

In accordance with the Third Circuit Court of Appeals decision, OSHA is making two modifications to the HCS, *i.e.*, deleting the parenthetical phrase from the trade secret definition, and adding employees and designated representatives to the list of individuals entitled to trade secret access. These modifications are issued as an interim final rule to be effective upon its publication in the **Federal Register**, as close to November 25, 1985, as possible—the date by which chemical manufacturers, importers, and distributors were to begin to provide information with shipments of hazardous chemicals by means of labels

on containers and material safety data sheets.

OSHA believes that public comment prior to implementation of these minor changes is legally unnecessary because: (1) The changes merely carry out the Court's explicit direction to the Agency; (2) the issues have already been extensively commented upon during the lengthy HCS rulemaking; (3) the Court did not order OSHA to take more evidence and public comment; and (4) the Court made its own specific findings based on applicable controlling law with regard to the trade secret definition, and on its reading of the rulemaking record with regard to the access issue. Moreover, OSHA believes it has "good cause" under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), for issuing an interim final rule because the Court decision and the November 25, 1985, effective date of the Court validated HCS provisions make it "impracticable, unnecessary and contrary to the public interest" to delay implementation of the modifications past the date of their publication, which would be necessary to receive and review public comments. Likewise, OSHA has concluded that under section 553(d)(3) of the APA, the Agency has "good cause" to dispense with the 30-day delayed effective date ordinarily required, and instead implement the interim rule on the date it is published.

Nevertheless, OSHA invites interested parties to submit comments on the interim provisions contained within this document. Procedures for submitting comments are listed in Part V of this preamble. A final determination on the HCS's trade secret definition and access provisions will be made after the public's comments are reviewed.

The Court did not order the Agency to follow notice and comment procedures prior to modifying the trade secret provisions. The Court decision makes specific findings of law and fact that require OSHA to amend two provisions of the HCS prior to its implementation. Regarding the trade secret definition, the Court had found that a parenthetical phrase added by OSHA to the *Restatement of Torts* definition "enlarge[d] considerably" that definition by providing protection for chemical identities which can be duplicated without great difficulty, a "type of information not traditionally afforded trade secret protection under state laws." 763 F.2d at 740. The Court directed OSHA "to reconsider a definition which will not include chemical identity information that is readily discoverable through reverse engineering." *Id.* at 743. Clearly, the Court made a finding that the addition of the parenthetical phrase was improper.

Regarding the trade secret access rule, the Court held the pertinent provisions valid in all respects, except where they limited access to trade secrets to health professionals. The Court found that the evidence in the record supported the United Steelworkers' contention that employees and their collective bargaining representatives who "need to know" trade secrets should be entitled to access on the same basis as health professionals. *Id.* at 742–743. The Court directed OSHA to adopt a trade secret access rule that permits access to employees and their collective bargaining representatives. *Id.* at 743.

The Third Circuit Court of Appeals, therefore, made its own findings on these two issues based on the controlling law and its reading of the extensive rulemaking record. The Court did not conclude that the record lacked evidence on the issues, or that the Agency failed to discuss them. Consequently, in order to implement the HCS, OSHA need only make technical amendments in accordance with the Court's findings, *i.e.*, delete the parenthetical phrase added to the *Restatement of Torts* trade secret definition, and add employees and their representatives to the list of individuals entitled to trade secret access under the standard. Accordingly, the gathering of more evidence and public comment is legally "unnecessary" before OSHA issues these amendments to the only two provisions of the HCS to be held invalid.

In addition, OSHA has concluded that, under the APA, 5 U.S.C. 553(b)(B) and 553(d)(3), and the Agency's rules for issuing standards (29 CFR 1911.5), "good cause" exists for issuing this interim rule to be effective immediately. Under section 553(b)(B) of the APA, notice and comment procedures are not necessary when an agency finds these procedures are "impracticable, unnecessary, or contrary to the public interest." Under section 553(d)(3), the APA's requirement that agency rules be published at least 30 days before their effective date also may be avoided if the agency has "good cause" for doing so. As noted above, OSHA believes that the manner and extent of the Third Circuit's decision makes notice and comment "unnecessary" in this case. OSHA also believes a 30-day delayed effective date is "unnecessary" because the substance of the rule changes and their imminence have been apparent to the affected public since the date of the Court decision.

In addition, OSHA feels that the circumstances surrounding this action made it "impracticable" to provide 30 days notice or a comment period prior to implementing the modifications. The Court's decision addressed several extremely important issues concerning the regulatory authority and decisionmaking processes of the Agency. OSHA has worked diligently to assess its appeal options within the legally allotted time, decide on a rulemaking agenda, and prepare and draft this and related documents. However, there was not enough time remaining between the date of the Court decision and the effective date of the HCS to provide an adequate period for the public to respond to the proposals, and for the Agency to review those comments and redraft, if necessary, the rule changes in final form. Therefore, the Agency has found it "impracticable" to complete notice and comment procedures before implementing the rule changes. *Cf. Petry* v. *Block*, section 737 F.2d 1193, 1201 (D.C. Cir. 1984) (Department of Agriculture's decision to issue an interim rule was held "entirely reasonable, given the requisite time to conduct a notice-and-comment proceeding.").

The most important factor identified by OSHA in deciding to publish an interim final rule is that to delay implementation of the trade secret provisions or the HCS itself would be "contrary to the public interest". The HCS is an occupational safety and health standard designed to reduce the incidence of chemically-related illnesses and injuries among the 14 million employees exposed to hazardous chemicals in the manufacturing sector. None of the parties challenging the HCS contended that the manufacturing sector should not be covered by a hazard communication standard. *See* 763 F.2d at 736. Indeed, the Third Circuit Court of Appeals found "there is substantial evidence in the record that the manufacturing sector has the highest incidence rate of chemical exposures which the Agency has authority to regulate." *Id.* at section 737. To undermine or delay implementation of the HCS, most of which was upheld by the Court, by undertaking rulemaking proceedings prior to adoption of this interim rule would prevent the due and timely execution of OSHA's function "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions. . . ." 29 U.S.C. 651(b).

Since the Court held the trade secret definition and the rule limiting trade secret access to health professionals

invalid, delay in adopting the provisions of the interim rule would cause confusion among employers and employees alike, serious hazards to employees who need to know trade secret chemical identities but are denied access (in direct contradiction of the Court's decision), and irreversible economic harm to employers who publish *bona fide* trade secret information that they would have legitimately withheld had they been given guidance as to the applicable law. Therefore, because chemical manufacturers, importers, and distributors had to be in compliance with the HCS by November 25, 1985, and require guidance as near to that date as possible, the interim rule is effective immediately. *Cf. American Federation of Government Employees* v. *Block*, 655 F.2d 1153, 1157 (D.C. Cir. 1981) ("good cause" existed for issuing interim rules where court order created a sudden need for new regulations to provide necessary guidance to the affected industry and where confusion and economic harm would result from their absence).

OSHA would like to stress, however, that although it believes there is ample "good cause" for implementing these modifications at the time of their publication, OSHA intends to complete its review of the public's comments on these issues as soon as possible. If any further modifications to the HCS are deemed necessary as a result of that review, they will be promulgated in an expeditious manner.

IV. Analyses of Regulatory Impact, Regulatory Flexibility, and Environmental Impact

The U.S. Court of Appeals for the Third Circuit has ordered OSHA to revise the definition of trade secrets in the Hazard Communication Standard (HCS), and to expand access to trade secrets to employees and their designated representatives. The revision of the definition in response to the Court does not change OSHA's interpretation of "trade secret" under the standard, since OSHA has always intended to interpret that term consistent with the factors generally agreed upon under common law in this area. These factors have been described in detail in preceding sections of this preamble. Therefore, OSHA believes that the revision of the definition does not affect the costs of the standard. The following discussion deals solely with a general assessment of the parameters of the regulatory situation resulting from implementing the Court's direction, and the economic impact of the provisions for expanded access to trade secret information. OSHA's analysis indicates that this is not a major rule.

Under the final rule, physicians and nurses are entitled to receive trade secrets from chemical manufactures and importers to provide necessary medical treatment in emergency situations. In non-emergency situations, OSHA's final standard provided access to trade secret chemical identities to health professionals (i.e. physicians, industrial hygienists, toxicologists and epidemiologists) under specific conditions of need and confidentiality. The health professionals could obtain trade secrets when there was an occupational health need for that information (as defined in 29 CFR 1910. 1200(i)(3)(ii)), and when the professional requesting the information demonstrated the means to protect the confidentiality of the trade secret, and was willing to sign an agreement to do so.

Health professionals could refer employer denials of their requests for trade secrets to OSHA for a determination as to whether their requests were improperly denied. The HCS placed on health professionals the burden of demonstrating to OSHA that their procedures were adequate to protect the secrets. Employers claiming trade secrets were required to substantiate those claims if they denied a request from a health professional for the information.

The number of chemical substances and mixtures which manufacturers and importers claim to be trade secrets will obviously affect the impact of this rule. However, the extent of such claims cannot be quantitatively determine. There are a number of factors that should serve to limit the number of such claims under the rule, and thus limit the requests for such information. OSHA believes that producers of commodity chemicals (single substances) will generally have very few claims, since they are marketing these chemicals by specific name and not under some unidenitified proprietary name. Formulators of products are more likely to claim that identities of chemicals in a mixture are trade secrets. It should be noted, however, that for mixtures, the HCS does not require that information be disclosed for hazardous chemicals in trace concentrations of less than one pecent, and one tenth of one percent for carcinogens. The standard also does not require that process information or the percentages of the ingredients in a mixture be disclosed. Many trade secrets involve these types of information, rather than just the specific chemical identity. If an ingredient is not hazardous, disclosure is not required, and if a mixture has been tested as a whole and found not to be hazardous, ingredient disclosure is limited.

The existence of the rule itself should serve to diminish the number of trade secret claims. In the past, employers provided information on chemicals voluntarily, not as a response to regulatory requirements. Thus since there was no requirement to divulge information, some employers frequently identified such data as being proprietary. The requirements of the rule, combined with the increased desire of customers to receive all available information on a product, have caused many employers to reevaluate, and limit, their trade secret claims. Thus all of these factors combined should serve to limit claims overall, and subsequently limit the need for health professionals, employees, or designated representatives to request such information.

Economic impact of the interim final rule

In order to estimate the cost of access to trade secret chemical identities provided by the Court order, OSHA first estimated the costs associated with the access allowed to health professionals under the HCS. Then OSHA estimated the combined costs of access for health professionals and employees and their designated representatives, and subtracted the cost of access for health professionals to find the difference. It is necessary to compute the additional cost of the Court order in this way because the average cost of processing requests is not a constant (see below).

The cost of allowing access to trade secret chemical identities is a function of the number of requests. This costs can be calculated as the product of the number of requests (N) times the average cost of processing a request. OSHA recognizes that the cost of considering and responding to an individual request will depend upon the circumstances surrounding that request and upon the management practices of the company receiving that request. The varying circumstances and management practices will no doubt result in a wide range of costs for processing these requests.

For the initial mid-point of the range of managerial and legal resources associated with considering and responding to a request, OSHA estimated that a request would use an average of 4 hours of management time at $25 per hour and 4 hours of legal counsel at $50 per hour. This yields an initial average cost of resources for processing a request of $300. However,

companies can be expected to handle each subsequent request more efficiently. Therefore, OSHA expects that the average cost of processing a request would decline as the number of requests gets larger, from the initial average of $300 each for a few requests to an average $125 each for 70,000 requests (about two hours of management time and an hour and a half of legal counsel time). Therefore, for the average cost OSHA uses a function which declines as the number of requests increases. The formula is [$100+($200/(N)/1000+10)]. This cost function reflects economies of experience that are obtained as the number of requests increases. Of course, the total cost increases as the number of requests increases.

OSHA has alternative assumptions for the number of requests that would have been made in the absence of the Court order. These provide a high and low estimate of the cost to business of the access afforded to health professionals. OSHA hypothesizes that the number of persons who would make requests for trade secret chemical identities (in the absence of the Court order) is approximately equal to the number of members of the American Industrial Hygiene Association (AIHA), or about 6000. This number is greater than the number of other health professionals working at manufacturing facilities. For example, the American Occupational Medicine Association has about 4900 members, but only a smaller subset of those members work at manufacturing plants (the actual number is not known).

OSHA expects that industrial hygienists will work in concert with physicians on these matters and duplication of requests will be avoided. Therefore, the number of physicians is not added to the estimated 6000 requesters. OSHA further assumes that the requesters would make an average of 1 or 2 requests per year. This number is assumed to be small, because even though access to trade secret chemical identities extends the scope of inquiry for the health professionals, they continue to have their regular responsibilities. This yields from 6,000 to 12,000 requests a year, at a cost of $1.3 million to $2.3 million, based on the average cost of processing requests discussed above.

In response to the Court's decision, and since the other provisions relating to trade secret disclosure were held to be valid, OSHA's interim final rule gives employees and their designated representatives access to trade secret chemical identities under the same conditions as health professionals. Consequently, employees and their representatives will have to submit written requests establishing a need-to-know the information and be willing to sign a confidentiality agreement.

It should be noted that the cost to the requestor of maintaining adequate security for trade secret information will influence the number of requests and, therefore, will affect the cost of access. However, this cost is not a cost of the standard, because it is not a cost to a business that is required to release the information.

The Court order creates a wide pool of people who could conceivably have access to trade secrets, but OSHA has reason to believe that the actual number of requests will be small. Under a related rule, the Access to Employee Exposure and Medical Records regulation (29 CFR 1910.20), employees are permitted access to information about their hazardous exposures upon request. No information need be disclosed by employers automatically. A review of OSHA enforcement data regarding that rule reveals that only approximately 20 citations a year result from complaints received from employees not receiving requested information under the access rule. If requests are infrequent when information is not sent automatically, then they should also be infrequent under the HCS when employees are given extensive information regarding hazards and and precautions for safe use.

OSHA estimates that the number of employees and designated representatives who might request trade secret chemical identities will be determined by industry's use of hazardous chemicals and the related presumption that trade secrets are most commonly found in those industry sectors with high hazardous chemical usage. Industry sectors potentially affected by the Court order were identified and the expectation of trade secret requests was made based upon OSHA's assessment identifying use of hazardous chemicals. Table 1 projects the results of the different request expectations for each industry affected. OSHA estimates the number of requests that will be made by employees and their designated representatives by 2 digit Standard Industrial Classification (SIC) Codes. The estimated total number of these requests is the sum of the products of the number of production workers in each of the affected SIC's times the expected rate of requests per thousand production workers in that SIC. There is a high and a low rate for each SIC. The rates of requests per thousand workers are highest (4 to 8) in chemical and related industries. OSHA estimates that there will be about 11,000 to 21,000 employee requests per year for access to trade secret information.

TABLE 1.—ESTIMATION OF REQUESTS FOR TRADE SECRET CHEMICAL IDENTITIES FROM EMPLOYEES AND THEIR DESIGNATED REPRESENTATIVES

2 digit SIC	Industry description	Production workers[1] (hundreds)	Estimated requests per 1,000 workers	Range of projected requests
22	Textile Mill Products	618	1.0 to 2.0	618 to 1,236.
24	Lumber, Wood Prod.	480	1.0 to 2.0	480 to 960.
25	Furniture, Fixtures	350	1.0 to 3.0	350 to 1,050.
26	Paper, Allied Prod.	459	1.0 to 2.0	459 to 918.
28	Chemicals, Allied Prod	504	4.0 to 8.0	2,016 to 4,032.
29	Petrol, Coal Prod.	99	4.0 to 8.0	396 to 792.
30	Rubber, Misc. Plastics	522	4.0 to 8.0	2,088 to 4,176.
31	Leather, Leather Prod.	172	2.0 to 4.0	344 to 688.
32	Stone, Clay, Glass	408	2.0 to 3.0	816 to 1,224.
33	Primary Metal	639	0.5 to 1.0	320 to 639.
34	Fabricatec Metal Prod.	1,066	0.5 to 1.0	533 to 1,066.
35	Machinery, not electric	1,347	0.5 to 1.0	674 to 1,347.
36	Electric & Electronic	1,201	0.5 to 1.0	601 to 1,201.
37	Transportation Equip.	1,070	0.5 to 1.0	535 to 1,070.
38	Instruments & Related	362	0.5 to 1.0	181 to 362.
39	Misc. Manufacturing	280	1.0 to 2.0	280 to 560.
Totals		9,577	1.1 to 2.2	10,690 to 21,321.

[1] From the 1985 Statistical Abstract of the United States.
Note that four major SIC groups (20, Food and kindred products; 21, Tobacco manufacture; 23, Apparel manufacture; and 27, Printing) are not included. They are not expected to be a signficant source of these requests.

The extension of access to employees and their designated representatives under the Court order increases the number of requests by about 11,000 to 21,000 (the low and high estimates). As stated previously, OSHA's low and high estimates of the number of requests by health professionals are 6,000 and 12,000 respectively. Therefore, the low estimates of requests from health

professionals and employees and their designated representatives add to about 17,000 (6,000 plus 11,000 requests). The high estimates of requests from health professionals and employees and their designated representatives add to about 33,000 (12,000 plus 21,000). Therefore, the combined cost of access for health professionals and employees and their designated representatives will be from $3.0 million to $4.8 million, with the Court order accounting for $1.7 million to $2.5 million. Compared with the total annual cost of the HCS prior to the Court order ($158.78 million), the Court order may add from 1.1% to 1.6% to the cost.

Regulatory flexibility and environmental impact analysis

OSHA cannot perform a regulatory flexibility analysis on the access to trade secrets order by the Court, as OSHA is not in a position to consider alternatives that might reduce the costs of compliance to business. In any event, the costs of the Court order (as determined above) cannot be seen to present any significant economic burden to industry as a whole or to small entities.

The interim final rule has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Compliance regulations (29 CFR Part 11). As a result of this review, the Agency has determined that the interim rule will not significantly affect the environment.

V. Public Participation

Interested persons are invited to submit written data, views, and arguments on this interim rule. These comments must be received on or before January 27, 1986, and be submitted in quadruplicate to the Docket Officer, Docket H-022C, Occupational Safety and Health Administration, Room N3670, 200 Constitution Avenue, NW., Washington, DC 20210; (202) 523-7894. Written submissions must clearly identify the provisions of the interim rule which are addressed, and the position taken on each issue.

All written submissions, as well as other information gathered by the Agency, will be considered in any action taken. The record of this rulemaking, including written comments and materials submitted in response to this notice, will be available for inspection and copying in the Docket Office, Room N3670, at the above address, between the hours of 8:15 a.m. and 4:45 p.m.

VI. Authority, Signature, and Interim Final Rule

This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Pursuant to sections 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), section 4 of the Administrative Procedure Act (5 U.S.C. 553), Secretary of Labor's Order No. 9-83 (48 FR 35736), and 29 CFR 1911.5, 29 CFR 1910.1200 is hereby amended as set forth below.

List of Subjects in 29 CFR Part 1910

Occupational Safety and Health, Hazard Communication.

Signed at Washington, DC this 25th day of November 1985.

Patrick R. Tyson,

Acting Assistant Secretary for Occupational Safety and Health.

PART 1910—[AMENDED]

1. The authority citation for Subpart Z of Part 1910 is amended by adding the following citation:

Authority. Secs. 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

* * * * *

Section 1910.1200 also issued under 5 U.S.C. 553.

* * * * *

2. Section 1910.1200 of Title 29 of the Code of Federal Regulations, is amended by revising the definition of "Trade secret" in paragraph (c), by revising (i)(1)(iv), (i)(3) introductory text, (i)(3)(iii), (i)(3)(v), (i)(6), (i)(7)(i), (i)(8), (i)(9) introductory text, (i)(9)(ii), (i)(9)(iii), and (i)(10)(i), and adding a new Appendix D, to read as follows:

§ 1910.1200 Hazard communication.

* * * * *

(c) * * *

"Trade secret" means any confidential formula, pattern, process, device, information or compilation of information that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it. Appendix D sets out the criteria to be used in evaluating trade secrets.

* * * * *

(i) * * * (1) * * *

(iv) The specific chemical identity is made available to health professionals, employees, and designated representatives, in accordance with the applicable provisions of this paragraph.

* * * * *

(3) In non-emergency situations, a chemical manufacturer, importer, or employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under paragraph (i)(1) of this section, to a health professional (i.e. physician, industrial hygienist, toxicologist, epidemiologist), providing medical or other occupational health services to exposed employee(s), and to employees or designated representatives, if:

* * * * *

(iii) The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information to the health professional, employee, or designated representative, would not satisfy the purposes described in paragraph (i)(3)(ii) of this section:

* * * * *

(v) The health professional, and the employer or contractor of the services of the health professional (i.e. downstream employer, labor organization, or individual employee), employee, or designated representative, agree in a written confidentiality agreement that the health professional, employee, or designated representative, will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other than to OSHA, as provided in paragraph (i)(6) of this section, except as authorized by the terms of the agreement or by the chemical manufacturer, importer, or employer.

* * * * *

(6) If the health professional, employee, or designated representative receiving the trade secret information decides that there is a need to disclose it to OSHA, the chemical manufacturer, importer, or employer who provided the information shall be informed by the health professional, employee, or designated representative prior to, or at the same time as, such disclosure.

(7) * * *

(i) Be provided to the health professional, employee, or designated representative, within thirty days of the request;

* * * * *

(8) The health professional, employee, or designated representative, whose request for information is denied under paragraph (i)(3) of this section may refer the request and the written denial of the request to OSHA for consideration.

(9) When a health professional, employee, or designated representative refers the denial to OSHA under paragraph (i)(8) of this section, OSHA shall consider the evidence to determine if:

* * * * *

(ii) The health professional, employee, or designated representative, has supported the claim that there is a medical or occupational health need for the information; and

(iii) The health professional, employee, or designated representative, has demonstrated adequate means to protect the confidentiality.

(10)(i) If OSHA determines that the specific chemical identity requested under paragraph (i)(3) of this section is not a *bona fide* trade secret, or that it is a trade secret, but the requesting health professional, employee, or designated representative has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the chemical manufacturer, importer, or employer will be subject to citation by OSHA.

* * * * *

Appendix D to § 1910.1200—Definition of "Trade Secret" (Mandatory)

The following is a reprint of the *Restatement of Torts* section 757, comment *b* (1939):.

b. Definition of trade secret. A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business (see § 759 of the *Restatement of Torts* which is not included in this Appendix) in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees, or the security investments made or contemplated, or the date fixed for the announcement of a new policy or for bringing out a new model or the like. A trade secret is a process or device for continuous use in the operations of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

Secrecy. The subject matter of a trade secret must be secret. Matters of public knowledge or of general knowledge in an industry cannot be appropriated by one as his secret. Matters which are completely disclosed by the goods which one markets cannot be his secret. Substantially, a trade secret is known only in the particular business in which it is used. It is not requisite that only the proprietor of the business know it. He may, without losing his protection, communicate it to employees involved in its use. He may likewise communicate it to others pledged to secrecy. Others may also know of it independently, as, for example, when they have discovered the process or formula by independent invention and are keeping it secret. Nevertheless, a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information. An exact definition of a trade secret is not possible. Some factors to be considered in determining whether given information is one's trade secret are: (1) The extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Novelty and prior art. A trade secret may be a device or process which is patentable; but it need not be that. It may be a device or process which is clearly anticipated in the prior art or one which is merely a mechanical improvement that a good mechanic can make. Novelty and invention are not requisite for a trade secret as they are for patentability. These requirements are essential to patentability because a patent protects against unlicensed use of the patented device or process even by one who discovers it properly through independent research. The patent monopoly is a reward to the inventor. But such is not the case with a trade secret. Its protection is not based on a policy of rewarding or otherwise encouraging the development of secret processes or devices. The protection is merely against breach of faith and reprehensible means of learning another's secret. For this limited protection it is not appropriate to require also the kind of novelty and invention which is a requisite of patentability. The nature of the secret is, however, an important factor in determining the kind of relief that is appropriate against one who is subject to liability under the rule stated in this Section. Thus, if the secret consists of a device or process which is a novel invention, one who acquires the secret wrongfully is ordinarily enjoined from further use of it and is required to account for the profits derived from his past use. If, on the other hand, the secret consists of mechanical improvements that a good mechanic can make without resort to the secret, the wrongdoer's liability may be limited to damages, and an injunction against future use of the improvements made with the aid of the secret may be inappropriate.

Information not a trade secret. Although given information is not a trade secret, one who receives the information in a confidential relation or discovers it by improper means may be under some duty not to disclose or use that information. Because of the confidential relation or the impropriety of the means of discovery, he may be compelled to go to other sources for the information. As stated in Comment *a*, even the rule stated in this Section rests not upon a view of trade secrets as physical objects of property but rather upon abuse of confidence or impropriety in learning the secret. Such abuse or impropriety may exist also where the information is not a trade secret and may be equally a basis for liability. The rules relating to the liability for duties arising from confidential relationships generally are not within the scope of the Restatement of this Subject. As to the use of improper means to acquire information, see § 759.

[FR Doc. 85-28355 Filed 11-25-85; 11:17 am]
BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[A-7-FRL-2931-7; EPA Action MO 1699]

Designation of Areas for Air Quality Planning Purposes; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Section 107(d) of the Clean Air Act, as amended, provides for the designation of areas as either attainment, nonattainment, or unclassified with respect to the National Ambient Air Quality Standards (NAAQS). EPA today takes final action to redesignate the New Madrid, Missouri, area from secondary nonattainment to attainment with respect to the NAAQS for total suspended particulates (TSP). This redesignation is based on a request from the Missouri Department of Natural Resources (MDNR).

EFFECTIVE DATE: This designation is effective December 27, 1985.

ADDRESSES: The State submittal is available for inspection during normal business hours at the following locations:

Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101

Missouri Department of Natural Resources, 1101 Rear Southwest Boulevard, Jefferson City, Missouri 65102

FOR FURTHER INFORMATION CONTACT: Deann K. Hecht at (913) 236-2893, FTS 757-2893.

SUPPLEMENTARY INFORMATION: In response to section 107(d) of the Clean Air Act, as amended, EPA and the State of Missouri have designated all areas of the State as attaining the NAAQS, not attaining the NAAQS, or having insufficient data to make a determination. An attainment area is one in which the air quality does not exceed the standards. A nonattainment area is one in which the air quality is worse than the standards. An unclassified area is one for which there are insufficient data to determine whether the area is attainment or nonattainment. At 40 CFR Part 81, Subpart C, the areas of the State which are nonattainment for one or more pollutants are identified.

On December 17, 1984, the MDNR submitted a request to redesignate the New Madrid area from secondary nonattainment to attainment with respect to the NAAQS for TSP. The secondary NAAQS for TSP is a 24-hour value of 150 micrograms per cubic meter, not to be exceeded more than once per year.

EPA reviewed the State's request and determined that it met agency redesignation policy. The current section 107 redesignation policy is summarized in a memorandum from EPA's Office of Air Quality Planning and Standards (OAQPS), dated April 21, 1983. The policy is further clarified in a December 23, 1983, memorandum from the Control Programs Operation Branch of OAQPS.

On March 5, 1985, EPA published a proposal to approve the State's redesignation request (50 FR 8751). The proposal discusses EPA's review of the State's submittal; therefore, that discussion is not repeated in this notice. No public comments were received on the proposal.

Action: EPA takes final action to redesignate the New Madrid area from secondary nonattainment to attainment for TSP.

EPA also takes final action to clarify the applicability of the State's permitting rules to New Madrid. On June 22, 1982 (47 FR 26833), EPA approved a new Missouri Rule 10 CSR 10-6.060, Permits Required, and amendments to Rule 10 CSR 10-6.020, Definitions, involving the review and permitting of new sources of air pollution. Because New Madrid was designated an attainment area under State regulations, so that the less stringent attainment area permitting requirements applied to new and modified sources in the New Madrid area, EPA took no action on these rules insofar as they pertain to the New Madrid TSP nonattainment area. EPA took this action because under the regulations enforceable by EPA, the requirements of 40 CFR Part 51, Appendix S, applied to the New Madrid nonattainment area. EPA is now taking final action to remove the "no action" provision; thus, the New Madrid area becomes subject to these rules as a result of this redesignation.

Action: EPA takes final action to approve Missouri Rules 10 CSR 10-6.060, and 10 CSR 10-6.020 insofar as they pertain to the New Madrid area.

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 within 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (see 307(b)(2)).

List of Subjects

40 CFR Part 52

Air pollution control, Particulate matter, Intergovernmental relations.

40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Dated: November 21, 1985.

Lee M. Thomas,

Administrator.

Parts 52 and 81 of Chapter I, Title 40 of the Code of Federal Regulations, are amended as follows:

1. The authority citation for Parts 52 and 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

PART 52—[AMENDED]

2. Section 52.1320 is amended by revising paragraph (c)(37) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(37) On April 15, 1982, the State of Missouri submitted a new Rule 10 CSR 10-6.060, Permits Required, and Amendments to Rule 10 CSR 10.6020, Definitions, involving the review and permitting of new sources of air pollution. Included in the plan are provisions relating to the attainment area (PSD) new source review. The plan also includes new source review provisions of nonattainment areas in the State.

* * * * *

PART 81—[AMENDED]

§ 81.326 [Amended]

3. Section 81.326 is amended by revising the following entry in the table "Missouri—TSP" to read as follows:

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Missouri-TSP				
* * *	*	*	*	*
Southeastern AQCR (138)			X	
* * *	*	*	*	*

[FR Doc. 85-28313 Filed 11-26-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[A-5-FRL-2930-7]

Designations of Areas for Air Quality Planning Process Attainment Status Designation; Michigan

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This rulemaking revises the total suspended particulate (TSP) designation for Lapeer County, Michigan from nonattainment to attainment. This revision is based on a request from the State of Michigan to redesignate this area and on the supporting data the State submitted. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such change.

DATE: This action is effective January 27, 1986.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

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

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48821.

FOR FURTHER INFORMATION CONTACT: Toni Lesser, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604, (312) 886-6037.

SUPPLEMENTARY INFORMATION: On October 19, 1984, the Michigan Department of Natural Resources (MDNR) submitted a request to USEPA to redesignate the TSP air quality attainment status designation for the primary nonattainment area near Imlay City to attainment. On February 20, 1985, the MDNR submitted additional air quality and meteorological data to support its October 19, 1984, redesignation request. The improvement in ambient TSP levels in the primary nonattainment area located near Imlay City, Lapeer County, Michigan, can be attributed to the permanent shutdown of Almont Manufacturing. USEPA's technical support document (TSD) of February 20, 1985, contains a detailed review of this redesignation.

On May 3, 1985 (50 FR 18890), USEPA published a notice of proposed rulemaking which provided a 30-day comment period. During that comment period, no public comments were received.

The ambient air monitoring data showed no violations of the TSP NAAQ at the Imlay monitor from 1983 to 1984 in Lapeer County, Michigan. Additionally, the MDNR supplied verification of the source shutdown which led to reduced TSP emission levels. Therefore, USEPA is approving the redesignation of the Lapeer County primary nonattainment area to attainment, as requested by the State of Michigan. This designation is defined at 40 CFR 81.323.

Under section 107(d), the Administrator has promulgated the NAAQS attainment status of each area of every State. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised whenever the data warrant.

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 January 27, 1986. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2).).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: November 21, 1985.

Lee M. Thomas,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES—MICHIGAN

Part 81 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

§ 81.323 [Amended]

2. Section 81.323 is amended by revising the following entries under the "Michigan-TSP" table:

Designated area	Do not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
MICHIGAN-TSP				
AQCR 82 (Michigan Portion)				X
AQCR 122—Except subareas defined				X
1. Bay County: RSE, T14N, Sections 14-16-21-23		X		
2. Genesee County: Starting on Industrial Avenue, north to Pierson Road, east to Dort Highway, south to Hitchcock Street, south to Olive Avenue (extended), south to Robert T. Longway Boulevard, west and southwest to Industrial Avenue.		X		
3. Midland County: R2E, T14N, Section 14-16, 21-23, 26-28 and 33-35.		X		
4. Muskegon County: R16W, T9N, Section 5 and 6, R16W, T10N, Sections 21, 22, and 27-34.		X		
5. Saginaw County:				
a. Northeast Section: Starting on Tittabawassee Road, east to I-75, south to Wadsworth Avenue, west to I-675 west and north to.				
b. Southwest Section: T12N-R4E, the eastern half of Section 34 (that which is east of Maple Street) and Section 35.		X		

[FR Doc. 85-28298 Filed 11-26-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42028B; FRL-2931-2]

Propylene Oxide; Testing Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule promulgated under section 4(a) of the Toxic Substances Control Act (TSCA) requires manufacturers and processors of propylene oxide (CAS No. 75-56-9) to test this chemical for developmental toxicity. Test standards and reporting deadlines are being proposed elsewhere in this issue of the **Federal Register.**

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ["daylight" or "standard" as appropriate] time on December 11, 1985. This rule shall become effective on January 10, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room E-543, 401 M Street SW., Washington, DC 20460. Toll Free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator 202-554-1404).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 4, 1984 (49 FR 430), EPA issued a proposed rule under section 4(a) of TSCA to require testing of propylene oxide for teratogenic effects. The Agency is now promulgating a final rule requiring testing of propylene oxide for teratogenic effects or, more appropriately, developmental toxicity.

I. Introduction

This notice is part of the overall implementation of section 4 of the Toxic Substances Control Act (TSCA, Pub. L. 94-469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*), which contains authority for EPA to require development of data relevant to assessing the risks to health and the environment posed by exposure to particular chemical substances or mixtures.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Administrator finds that:

> (A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment.
>
> (ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
>
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or
>
> (B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,
>
> (ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
>
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

For a more complete understanding of the statutory section 4 findings, the reader is directed to the Agency's first proposed testing rule package (chloromethane and chlorinated benzenes, published in the **Federal Register** of July 18, 1980; 45 FR 48510) and to the second package (dichloromethane, nitrobenzene, and 1,1,1-trichloroethane, published in the **Federal Register** of June 5, 1981; 46 FR 30300) for in-depth discussions of the general issues applicable to this action.

II. Background

A. Profile

Propylene oxide (CAS No. 75-56-9) is a volatile colorless liquid that has an ether-like odor and is extremely flammable. It has a boiling point of 34.23 °C (Ref. 1) and a density of 0.859 gram per milliliter (g/ml) at 0 °C (Ref. 1). Its solubility in water is 405,000 parts per million (ppm) at 20 °C (Ref. 1).

In 1980, domestic production of propylene oxide totaled 1.77 billion pounds. Propylene oxide is produced by two firms, Dow and ARCO Chemical Companies, at four sites in the United States. Dow uses the chlorohydrin process at its propylene oxide plants; ARCO uses the peroxidation process. Each process accounts for about 50 percent of total U.S. capacity. Propylene oxide's major use is as a chemical intermediate. It is also used as a stabilizer in dichloromethane. In 1977, there were 32 processors of proplyene oxide (Ref. 2). Estimates indicate that in excess of 40,000 people may be exposed to propylene oxide during its manufacturing, processing, and use (Ref. 2). For a more detailed discussion of the production, uses, and exposure of propylene oxide, see the propylene oxide support document (Ref. 2), which is part of this rulemaking record, and which is available from the TSCA Assistance Office.

B. ITC Recommendations

In the First Report of the Interagency Testing Committee (ITC), published in the **Federal Register** of October 12, 1977 (42 FR 55026), the ITC designated the category of alkyl epoxides for priority consideration for epidemiological studies and testing for carcinogenicity, mutagenicity, teratogenicity, other chronic effects, and environmental fate. Propylene oxide is one member of the alkyl expoxides category.

C. Proposed Rule

EPA issued a proposed rule published in the **Federal Register** on January 4, 1984 (49 FR 430), requiring that testing of propylene oxide be performed for teratogenicity. In the proposal, the EPA based its testing requirements on the authority of section 4(a)(1)(A) and (B) of TSCA.

EPA's testing decision on propylene oxide as discussed in that proposed rule (Ref. 3) and the propylene oxide support document (Ref. 2) are outlined below.

An inhalation teratology study, sponsored by the National Institute for Occupational Safety and Health (NIOSH), conducted at a single concentration of 500 ppm in rats and rabbits was reported to produce no effects in rabbits but some maternal and developmental toxicity in rats (Ref. 4). EPA concluded in the proposed rule that because a no-effect level had not been determined for developmental toxicity in the rat and it could not determine whether the developmental toxicity observed was a result of the maternal toxicity, additional teratogenicity testing in the rat was warranted. These data, together with known substantial worker exposure and substantial production, formed the basis for EPA's proposed test rule under TSCA sections 4(a)(1) (A) and (B) (Ref. 3).

EPA's rationale, as discussed in the proposed rule (Ref. 3) and the propylene oxide support document (Ref. 2), for not proposing other testing for propylene oxide was as follows: The Agency concluded that existing data were sufficient to reasonably predict the environmental fate of propylene oxide and that data from completed and ongoing testing should be sufficient to reasonably determine the reproductive and neurotoxic effects and carcinogenicity of propylene oxide. EPA postponed its decision on additional mutagenicity testing of propylene oxide until the results of a number of mutagencity tests in progress on the closely related chemical, ethylene oxide, were analyzed by the Agency. EPA also postponed proposing an epidemiological study for propylene oxide until after the Agency evaluated the results of three carcinogenicity studies on propylene oxide.

III. Public Comments

The Agency received comments from two sources: A combined industry submission by Dow Chemical Company and ARCO Chemical Company (Ref. 5) and NIOSH (Ref. 6). The comments addressed teratogenicity and mutagenicity testing of propylene oxide. EPA, in the propoosed rule (Ref. 3), also had asked for comments on whether the control of propylene oxide for its established oncogenicity would be sufficient to provide adequate protection against other health effects of concern. However, comments were not received on this issue. No comments were received on EPA's exposure assessment of propylene oxide (Ref. 2) of EPA's economic impact analysis of the NPRM for propylene oxide (Ref. 7)

Comments on teratogenicity testing were made by Dow, ARCO, and NIOSH. Dow and ARCO commented that some significance had been assigned by EPA reviewers to the ratio of resorptions to implantation sites in the NIOSH teratology study (Ref. 3). The two companies stated that a careful examination of these percentages and the standard deviation (controls—5.96±6.27, Group 2—7.88±8.54) make it apparent that there is a very large variation around the mean for both the control and the exposed group (the deviations being larger than the means). Dow and ARCO concluded that such a large variation in response among both control and treated animals does not allow the conclusion that there is any biological or statistical difference between the two groups. The Agency in reviewing the study noted this observation, but found these results to be statistically significant. In addition, other adverse developmental effects were observed.

Dow and ARCO commented that in the NIOSH teratology study (Ref. 4) "there is ample evidence of maternal toxicity with only minor musculoskeletal and sternebral anomalies evident in fetuses." EPA does not consider significant increases in rib dysmorphology, reduction in skeletal ossification, or decreases in fetal body weight and crown-rump length "minor" if observed in the absence of maternal toxicity. EPA does not believe that the present study allows an evaluation of whether such effects occur in the absence of maternal toxicity. Dow and ARCO also commented that all of these effects have been related to maternal toxicity caused by various chemicals. While this is true, they may also be elicited in the absence of maternal toxicity (Ref. 8). In addition, maternal toxicity does not always lead to developmental toxicity as evidenced by the fact that there are numerous compounds that elicit the former but not the latter (Refs. 9 through 12).

The Dow and ARCO comments identified three published reports (Refs. 13 through 15) in which delayed skeletal ossification and dysmorphic ribs are described as changes often occurring with maternal toxicity, and not indicative of significant development toxicity when observed at maternally toxic doses. EPA does not disagree with this interpretation; however, what the comments failed to report is that the study by Murray *et al.* (Ref. 13) based its conclusion on actual data from a three-dose level teratology study. For that compund, development toxicity was only observed in the presence of maternal toxicity. At exposure levels which caused little or no maternal toxicity, there were no effects on embryonal or fetal development. For propylene oxide, EPA does not have the advantage of a study in which maternally toxic and nontoxic doses were tested; therefore, EPA cannot come to the same conclusion as reached in the Murray *et al.* (Ref. 13) study. The Murray *et al.* study (Ref. 13) is also a good example of how maternal toxicity does not always occur concurrently with the same syndrome of adverse developmental effects. That is, while effects of skeletal alteration were observed, there was no effect on fetal body weight or crown-rump length.

Dow and ARCO commented that results of the two-generation reproduction study sponsored by Dow and ARCO (Ref. 16) will provide sufficient information to adequately assess the developmental toxicity potential of propylene oxide. EPA does not agree for several reasons: (1) The endpoints examined in a reproduction study are different from those in a developmental toxicity study; (2) the highest exposure level in the ongoing reproduction study (300 ppm) is 200 ppm below that used in the NIOSH teratology study (Ref. 4) and may be too low for the purposes of a developmental toxicity study, that is, in a developmental toxicity study, exposure occurs at a significant level over a limited period of gestation (10 days) in order to maximize detection of any potential effect, whereas in a reproduction study, animals are exposed for a much longer period, prior to, during, and after mating, at a lower level of exposure; and (3) results of the NIOSH teratology study (Ref. 4) suggest that prolonged exposure resulted in some degree of acclimation in the rats because the fetuses exhibiting the greatest degree of adverse effects were those in which exposure began on day 7 as opposed to those which began on day 1 and those whose mothers began treatment 3 weeks prior to mating.

NIOSH commented that, although it is not clear whether the rib dysmorphology and reduced skeletal ossification observed in the NIOSH study (Ref. 4) were due to maternal toxicity or were manifestations of developmental effects,

they concluded the rib defects to be "suggestive of embryotoxic response under maternally toxic conditions of the exposure." EPA is not convinced of this conclusion since there are no data showing that propylene oxide does not cause developmental effects in the absence of maternal toxicity. Only further testing would resolve this issue.

NIOSH commented that if EPA, after considering the results of the NIOSH teratology study (Ref. 4) and other factors relating to propylene oxide, concludes that additional teratogenicity studies are needed, NIOSH would suggest species other than the rat or rabbit. NIOSH commented that if additional teratogencity studies were done in the rat, a rat strain other than Sprague-Dawley should be used since this species and strain was only marginally sensitive under maternally toxic conditions of exposure. EPA believes that this recommendation of selecting another strain appears appropriate. However, it is not possible to identify a "more sensitive" strain before conducting a study. Although EPA may not be able to identify a more sensitive strain at the present time, a well-conducted study using at least three exposure levels, the highest of which should produce maternal toxicity, should answer the concern as to whether or not developmental toxicity is elicited only at maternally toxic levels. If the alternate strain fails to elicity any developmental toxicity even at maternally toxic levels, this still would provide the answer to the concern as to whether the embryo/fetus is more vulnerable toxic effects than the adult. A search of the Environmental Teratogen Information Center data base which contains over 33,000 files indicated that the most commonly used strains of rats to assess teratogenicity or developmental toxicity include Sprague-Dawley, Wistar, Long-Evans, Charles River CD, and Fisher 344. Selection of one of these strains, other than Sprague-Dawley, to test propylene oxide would be appropriate. The structurally related compounds, ethylene oxide and butylene oxide, have been tested in the Fisher 344 and Wistar strains, respectively.

Comments on mutagenicity testing were made by Dow and ARCO. The producers stated their belief that there are ample mutagenicity data on propylene oxide. Dow and ARCO also stated that there are a number of unresolved scientific issues on the interpretation, extrapolation, and application of mutagenicity data to assess human risk. Since these issues were being addressed separately by EPA, Dow and ARCO believed that any further extensive mutagenicity testing of propylene oxide should await the resolution of these basic scientific issues. The Agency has recently published its position on these mutagenicity issues in its final test rule for the C9 aromatic hydrocarbons (50 FR 20662; May 17, 1985). However, EPA has decided not to propose additional mutagenicity testing of propylene oxide for the reasons outlined in Unit IV.C below.

IV. Testing Decisions

EPA has decided to promulgate a final rule for developmental toxicity testing of propylene oxide (see Unit V below). However, the Agency has decided not to propose carcinogenicity or mutagenicity testing or epidemiological studies on propylene oxide under section 4(a) of TSCA at this time. EPA's rationale for these decisions is discussed below.

A. Developmental Toxicity

The results of a teratogenicity study sponsored by NIOSH have been reported (Ref. 4). Maternal toxicity, reproductive performance, and developmental toxicology were evaluated in Sprague-Dawley rats and New Zealand rabbits following 7 hr/day inhalation exposures to 500 ppm propylene oxide. Rabbits were artificially inseminated and placed on one of the following exposure regimens: (1) Filtered air (control); (2) chemical exposure from days 7 through 10 of gestation (dg); or (3) chemical exposure from 1 through 19 dg. Rat-exposure regimens were as follows: (1) Filtered air (control); (2) chemical exposure from 7 through 16 dg; (3) chemical exposure from 1 through 16 dg; or (4) chemical exposure for 5 days/week for 3 weeks prior to mating and daily from 1 through 16 dg. Unexposed male rats and unexposed male rabbits were used in mating and artificial insemination procedures, respectively. Necropsies were performed on rats at 21 dg and on rabbits at 30 dg. Pregnant animals were examined for toxic changes, including histopathology. Reproductive measures included the determination of number of corpora lutea, implantation sites, resorptions, dead fetuses, and live fetuses. Live fetuses were weighed, measured, and subjected to external visceral and skeletal examination to detect morphologic anomalies.

No evidence of maternal toxicity, embryotoxicity, or teratogenicity was detected in rabbits exposed to 500 ppm of propylene oxide. However, maternal and developmental toxicity were seen in the Sprague-Dawley rat. In all groups of rats exposed to 500-ppm propylene oxide, food consumption decreased, body weights were lower, and changes in tissue weights were observed. The number of corpora lutea and implantation sites per dam and live fetuses per litter decreased in rats that received propylene oxide prior to mating. The percentage of resorbed implantation sites was highest in rats exposed to propylene oxide from 7 through 16 dg. Fetal size was reduced, and the incidence of rib dysmorphology increased in all propylene-oxide-exposed litters.

In a developmental toxicity study, any observed adverse effects on development are worthy of further consideration. According to Wilson (Refs. 17 and 18), there are four mainfestations of developmental toxicity: (1) In utero death; (2) growth retardation; (3) structural malformation; and (4) functional deficits. On the basis of the adverse effects on development observed in the NIOSH teratology study in rats described above, EPA concludes that additional developmental toxicity testing in the rat is necessary because: (1) A no-observed-effect level for developmental toxicity was not determined in the rat, and (2) one cannot determine it the developmental toxicity observed in the rat can be attributed entirely to maternal toxicity.

B. Carcinogenicity

EPA has reviewed the results of three carcinogenicity studies conducted by the European producers of propylene oxide (Ref. 19), the National Toxicology Program (NTP) (Ref. 20) and NIOSH (Ref. 21), and has concluded that the data from these studies are sufficient to reasonably predict or determine the carcinogenicity of propylene oxide. The results of these studies are summarized below.

The European chronic inhalation study (Ref. 19) demonstrated that propylene oxide was oncogenic in the rat as partially manifested by a statistically significant ($p<0.01$) increase in mammary tumors in female rats at 300 ppm of propylene oxide and a statistically significant increase ($p<0.005$) in the mean number of mammary fibroadenomas per mammary fibroadenoma-bearing female rat at all dosage levels (30, 100, and 300 ppm propylene oxide).

The results of the NTP 2-year carcinogenesis studies on propylene oxide in rats and mice as reported in the NTP Technical report (Ref. 20) are as follows: Groups of 50 F344/N rats and 50 $B6C3F_1$ mice of each sex were exposed to air containing propylene oxide at concentrations of 0 (chamber control),

200, or 400 ppm for 6 hours per day, 5 days per week, for 103 weeks.

The survival of rats exposed to propylene oxide was comparable with that of the controls; terminal body weights were lower than those of the controls for high dose males (8 percent weight reduction) and high dose females (6 percent weight reduction). Survival of exposed male and female mice decreased relative to that of the controls (male: control, 42/50; low dose, 34/50; high dose, 29/50; female: 38/50; 29/50; 10/50), but the difference was significant only for animals in the high dose groups. High-dose female mice had a mean terminal body weight 10 percent below that of the controls; high dose male mice had a terminal body weight 22 percent below that of the controls.

The respiratory epithelium of the nasal turbinates was one of the primary tissues affected in male and female rats; exposure-related increases occurred in the incidences of suppurative inflammation, epithelial hyperplasia, and squamous metaplasia. Papillary adenomas, involving the respiratory epithelium and underlying submucosal glands of the nasal turbinates, were observed in three female rats and in two male rats exposed to propylene oxide at 400 ppm. The incidence of adenomas in females was significant by the trend tests.

The proportions of high-dose female rats with C-cell adenomas and with C-cell carcinomas of the thyroid gland were increased, but only the combined incidence of these tumors was significant (2/45; 2/35; 7/37). These tumors were not considered to be related to exposure to propylene oxide because there was no other evidence for C-cells being a target tissue and because there was no increase in C-cell hyperplasia.

The combined incidences of female rats with endometrial stromal polyps and endometrial stromal sarcomas of the uterus were significantly increased in the dosed groups (3/49; 12/50; 10/47). However, the occurrence of these lesions in the dosed groups was similar to the average (306/1,502, 20 percent) seen in untreated controls in NTP carcinogenesis studies, and hence this increase was not regarded as being related to exposure to propylene oxide.

The respiratory epithelium of the nasal turbinates was also one of the primary tissues affected in male and female mice; exposure-related increases occurred in the incidences of inflammation, and squamous metaplasia was observed in one low-dose male and two high-dose female mice. One squamous cell carcinoma and one papilloma occurred in the nasal cavity of different high dose male mice, and two high-dose female mice had adenocarcinomas of the nasal cavity. The endothelial cells of the submucosal vascular plexus in the nasal turbinates also appeared to be a major site affected in high dose male mice. There high dose male and three high-dose female mice had a saccular dilation (classified as angiectasis) of submucosal turbinate vessels. Further, hemangiomas were seen in the nasal cavity of 5/50 high-dose male mice and 3/50 high-dose female mice, and hemangio-sarcomas were found in the nasal cavity of 5/50 high-dose male mice and 2/50 high-dose female mice. The increased incidences of hemangiomas in males and females and of hemangiosarcomas in males were statistically significant. Vascular tumors were not present in the nasal turbinates of any low-dose or control mice.

Under the conditions of these studies, NTP concluded that there was "some evidence of carcinogenicity" for F344/N rats, as indicated by increased incidences of papillary adenomas of the nasal turbinates in male and female rats exposed to propylene oxide at 400 ppm. NTP also concluded that for male and female $B6C3F_1$ mice, there was "clear evidence of carcinogenicity", as indicated by increased incidences of hemaniomas or hemangiosarcomas of the nasal turbinates at 400 ppm. In the respiratory epithelium of the nasal turbinates, propylene oxide also caused suppurative inflamation, hyperplasia, and squamous metaplasia in rats and inflammation in mice.

In the NIOSH study (Ref. 21), the chronic inhalation toxicity and carcinogenicity of propylene oxide were evaluated in a 2-year inhalation bioassay. Three groups of male weanling Fischer 344 rats, 80 per group, were exposed at: (1) 0 ppm (control: filtered air); (2) 100-ppm propylene oxide; and (3) 300-ppm propylene oxide (7 hours per day, 5 days per week) for 104 weeks. Body weights from rats exposed to propylene oxide at both exposure concentrations were significantly reduced compared to controls. A statistically significant increase in mortality was observed in all groups of exposed rats compared to controls. Skeletal muscle atrophy in the absence of any sciatic nerve neuropathology was found in rats exposed at 300-ppm propylene oxide. Among rats exposed to propylene oxide there was a dose-dependent increase in the incidence of complex epithelial hyperplasia in the nasal passages, and two adenomas were detected in the nasal passages of rats exposed at 300 ppm propylene oxide. The only compound-related oncogenic effect was a marked increase in the incidence of adrenal pheochromocytomas in treated animals: 25/78 at 100 ppm and 22/80 at 300 ppm vs. 8/78 at 0 ppm propylene oxide (controls). All rat groups were affected by an outbreak of *Mycoplasma pulmonis* infection which occurred about 16 months into the study. According to NIOSH (Ref. 21), this infection alone and in combination with the epoxide exposures affected the survival of rats in this study and influenced the development of the proliferative lesions in the nasal mucosa of the propylene oxide-exposed rats. No treatment-related changes in any clinical chemistry or urinalysis indices were detected.

C. Mutagenicity

The propylene oxide proposed test rule (Ref. 3) stated that EPA's decision concerning the need for additional mutagenicity testing on propylene oxide would be postponed until the results of a number of mutagenicity tests in progress on ethylene oxide, including the mouse specific-locus test, were analyzed by the Agency. Ethylene oxide is a closely related member of the alkyl epoxides category. For a review of the mutagenicity data on propylene oxide, see the propylene oxide support document (Ref. 2). The proposed rule (Ref. 3) also stated that in making its analysis EPA would take into account available data on other effects that may provide sufficient basis for regulations.

EPA has concluded that additional mutagenicity testing of propylene oxide is not necessary because: (1) Ethylene oxide, which is closely related to propylene oxide, was negative in the mouse specific-locus test; and (2) carcinogenicity and mutagenicity are probably mechanistically related for this alkylating agent, and exposure control on the basis of carcinogenicity should provide substantial protection against mutagenic effects.

D. Epidemiology

The propylene oxide proposed test rule states, "When the Agency has evaluated the results of all the oncogenicity studies on propylene oxide, it will determine whether an epidemiological study is necessary" (Ref. 3). EPA has concluded that an epidemiological study is not feasible for propylene oxide at this time (Ref. 22). There are two groups of workers with potential exposure to propylene oxide who may be considered for epidemiological study. One group, approximaely 2,000 workers, is exposed in either the production (2 companies) or processing (32 companies) of propylene oxide (Refs. 23 and 24). In a 1978 submission to EPA, Dow (one of the

producers) stated that it had approximately 100 workers who routinely worked in propylene oxide production areas (Ref. 25). EPA estimates that a similar number of workers are exposed in the other producers' facilities. The second group, approximately 40,000 workers, is occupationally exposed in the urethane foam industry where propylene oxide is used as a stabilizer in dichloromethane (Ref. 23).

For a retrospective epidemiological study to be feasible, several conditions must be met. First, a sufficient number of workers must be exposed. Second, a sufficient level of exposure must exist, and the exposure must be unique, i.e, not accompanied by exposures to other chemicals that could affect outcome. Third, the exposure must have occurred in the past to allow for disease development. Last, records must exist which allow following the prospective study population for a length of time. A prospective epidemiological study requires that the first two conditions be met.

At least two of the above conditions are lacking for propylene oxide-exposed workers. The answer to the first condition is twofold. Although production workers are the preferred group for study since exposure to other confounding chemicals is, usually, less than that for processing workers, not enough workers exist in production of propylene oxide to do an epidemiological study. Therefore, any cohort study of these workers would have insufficient power to detect small increases in cancer outcomes. On the other hand, a cohort study in the urethane foam industry would, most likely, have the necessary power. However, in the urethane foam industry, if any epidemiological study, it would be impossible to separate exposure to propylene oxide from that to dichloromethane and/or other chemicals that are known or suspected carcinogens. Therefore, condition two has not been met; a unique exposure does not occur.

In light of the unsatisfactory answers to conditions one and two, EPA concludes that an epidemiological study is not feasible for propylene oxide.

E. Reproductive Effects

On July 9, 1985, Dow Chemical Company submitted its final report entitled "Propylene Oxide: Two-Generation Reproduction Study in Fischer 344 Rats" under section 8(d) of TSCA (Ref. 26). EPA is evaluating the results. The submitter concluded that inhalation exposure of male and female Fischer 344 rats to 30, 100, or 300 ppm of propylene oxide for two generations did not adversely affect reproduction even at an exposure concentration that caused a significant reduction in body weight in both sexes.

V. Final Test Rule for Propylene Oxide

A. Findings

EPA is basing the final testing requirements for propylene oxide on the authority of section 4(a)(1)(A) and (B) of TSCA.

The 4(a)(1)(A) findings for developmental toxicity are as follows:

EPA finds that the manufacture, processing, and use of propylene oxide may present an unreasonable risk of injury to human health due to developmental toxicity because (1) available animal studies suggest that propylene oxide has a developmental toxicity potential, and (2) in excess of 40,000 individuals are potentially exposed to propylene oxide as a result of its manufacture, processing, and use.

EPA also finds that there are insufficient animal and human data to reasonably determine or predict the developmental toxicity of propylene oxide. The finding of "may present an unreasonable risk" of developmental toxicity is based on a NIOSH inhalation teratology study (Ref. 4). Rats and rabbits were exposed to a single concentration of 500-ppm propylene oxide. Neither developmental toxicity nor maternal toxicity was observed in rabbits exposed to 500-ppm. However, developmental and maternal toxicity were observed among female rats and their pups exposed to 500-ppm propylene oxide. A no-effect level for developmental toxicity in the rat could not be determined, and one cannot determine whether the developmental toxicity observed in the study can be attributed entirely to maternal toxicity.

EPA finds that additional developmental toxicity testing of propylene oxide is necessary to develop additional data to reasonably evaluate the developmental risks posed by exposure to propylene oxide.

The 4(a)(1)(B) findings for developmental toxicity are as follows:

There are substantial amounts of propylene oxide produced in or imported into the United States each year. The annual U.S. production volume of propylene oxide is estimated to be approximately 1.8 billion pounds, with another 90 million pounds imported into the United States each year.

Estimates indicate that over 40,000 people may be exposed to propylene oxide each year via manufacturing, processing, and use activities.

EPA finds that there are insufficient data from the NIOSH teratology study (Ref. 4) from which to reasonably determine or predict the developmental toxicity from exposure to propylene oxide, and that additional testing of propylene oxide for developmental toxicity is necessary to develop such data.

On the basis of these findings, the Agency is requiring for propylene oxide a developmental toxicity test in rats.

B. Required Testing

The Agency believes that developmental toxicity testing should be performed via inhalation in the rat and that some sign of maternal toxicity should be demonstrated at the highest dose.

EPA is requiring that a developmental toxicity study on propylene oxide be conducted by the inhalation route. The agency believes that the TSCA test guideline which appears at 40 CFR 798.4350 (published in the **Federal Register** of September 27, 1985; 50 FR 39252) is appropriate for determining the developmental hazard of propylene oxide. A copy of this TSCA Guideline is in the public record for this rulemaking, docket number [OPTS-42028B].

EPA intends to propose shortly in a separate **Federal Register** notice, certain revisions to the health and environmental effects and chemical fate TSCA Test Guidelines to provide more explicit guidance on the necessary minimum elements for each study. In addition, these revisions will avoid repetitive chemical-by-chemical changes to the guidelines in their adoption as test standards for chemical-specific test rules. EPA is proposing that these modifications be adopted in the test standards for propylene oxide.

All data must be developed and reported in accordance with the TSCA Good Laboratory Practice Standards in 40 CFR Part 792.

C. Test Substance

EPA is requiring that propylene oxide of at least 99.0 percent purity be used as the test substance. Such a grade is readily available commercially.

D. Persons Required To Test

Section 4(b)(3)(B) specifies that the activities for which the Agency 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, processing, and use of the propylene oxide may give rise to substantial exposure and may present an unreasonable risk of injury to health, persons who manufacture or process, or who intend to manufacture or process, propylene oxide 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 after the submission of the 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 expects that the current manufacturers of propylene oxide 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

Elsewhere in this issue of the Federal Register, the Agency is proposing that a TSCA test guideline be utilized as the test standard for the development of data under this rule for propylene oxide. As discussed in that document and in previous documents (50 FR 20652; May 17, 1985), EPA has reviewed the method for the development of test rules and has decided that for most section 4 rulemakings, the Agency will utilize single-phase rulemaking. In light of this decision, EPA has reevaluated the process for developing test standards for section 4 rulemakings initiated under a two-phase process and has determined that for certain of these two-phase rules, TSCA test guidelines are available for promulgation as relevant test standards. EPA has decided that where TSCA or other appropriate test guidelines are available, the Agency, in most cases will propose the relevant guidelines as the test standards for those rules.

EPA believes that, in line with its commitment to expedite the section 4 rulemaking process, it is appropriate to propose the applicable TSCA test guidelines as test standards at the same time as a Phase I final test rule is issued. With regard to the rulemaking for propylene oxide, a TSCA test guideline is available for the testing requirement included in this Phase I final rule. Thus, in the accompanying document, the Agency is proposing this TSCA test guideline as a test standard.

The public, including the manufacturers and processors subject to the Phase I rule, will have an opportunity to comment on the use of the TSCA test guidelines. The Agency will review the submitted comments and will modify the TSCA guidelines, where appropriate, when the test standards are promulgated.

During the development of a test rule under the two-phase process, persons subject to the Phase I final rule are normally required to submit proposed study plans (see 40 CFR 790.30(a)(2); 50 FR 20652, 20658 (May 17, 1985)). However, because EPA is proposing an applicable TSCA test guideline as the test standard for the study required by this Phase I final rule, persons subject to the rule, i.e., manufacturers and processors of propylene oxide, are not required to submit proposed study plans for the required testing. Persons subject to this rule, however, are still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.25; 50 FR 20652, 20657 (May 17, 1985). Moreover, once the test standard is promulgated, persons who have notified EPA of their intent to test must submit study plans (which adhere to the promulgated test standards) no later than 30 days before the initiation of each required test. (see 40 CFR 790.39(a)(1); 50 FR 20652, 20658 (May 17, 1985)).

Processors of propylene oxide subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent, exemption applications, or study plans (before testing is initiated) 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 test costs on to processors through the pricing of products containing propylene oxide.

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 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.

In the accompanying Federal Register notice, EPA is proposing deadlines for the submission of test data. Such deadlines are required under section 4(b)(1)(C) of TSCA. These proposed data submission deadlines are open for public comment and may be modified, where appropriate, when the final Phase II test rule is promulgated.

The Agency is proposing that the above referenced TSCA Health Effects Test Guideline be considered the test standard for the purposes of the proposed test for propylene oxide. The TSCA guideline for developmental toxicity testing specifies generally accepted minimal conditions for determining developmental toxicity for substances like propylene oxide. The Agency's review of the guidelines, which occurs yearly as described in the Federal Register of September 22, 1982 (47 FR 41857), has found no reason to conclude that this protocol needs to be modified significantly.

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 pursuant to 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. The Agency is proposing these deadlines elsewhere in the issue of the Federal Register.

TSCA section 12(b) requires that persons who export or intend to export to a foreign country any substance subject to testing requirements under TSCA section 4 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 subject to test rules 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 propylene oxide must submit notices to the Agency pursuant to TSCA section 12(b)(1) and 40 CFR Part 707. For additional information, see the **Federal Register** of December 16, 1980 (45 FR 82844).

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 announce the receipt within 15 days 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, 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 propylene oxide. 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 1 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.

VI. 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 propylene oxide subject to this rule. The analysis considered four market characteristics of propylene oxide: (1) The price sensitivity of demand for propylene oxide, (2) producer cost characteristics, (3) industry structure, and (4) market expectations. Costs of conducting the health effects test required in this rule are estimated to range from $30,728 to $92,185, with annualized test costs ranging from $7,963 to $23,891. From these test costs and an analysis of the market characteristics of propylene oxide, the economic evaluation indicates that the potential for a significant adverse economic impact is low. Furthermore, the additional product costs imposed by the required tests would be between 0.0004 and 0.0012 cent per pound, or between 0.008 and 0.003 percent of the current price per pound (47.5 cents). This suggests that the economic impact would be minimal.

For a more complete and thorough discussion of the methodology used to conduct the economic analysis of this test rule see *Economic Impact Analysis for Final Test Rule for Propylene Oxide* (Ref. 27). A copy of this document is available in the public record for this rulemaking, docket number [OPTS–42028B].

VII. 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 tests 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.

VIII. Rulemaking Record

EPA has established a public record for this rulemaking (docket number OPTS–42028B). 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.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this action consisting of:

(a) Notice containing the First ITC Report designating alkyl epoxides to the Priority List (42 FR 55026; October 12, 1977) and comments received in response thereto.

(b) Notice of the proposed test rule on propylene oxide and comments received in response (48 FR 430; January 4, 1984).

(c) Notice announcing the final decision to require testing of propylene oxide.

(d) Notice adding propylene oxide to the list of chemicals subject to the preliminary assessment information rule. (47 FR 26992; June 22, 1982).

(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).

(h) Notice of interim final rule on test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(2) Support documents consisting of:

(a) Propylene oxide technical support document for proposed rule.

(b) Economic impact analysis of NPRM for propylene oxide.

(c) Economic impact analysis of final test rule for propylene oxide.

(3) Communications consisting of:

(a) Written public and intra-agency or interagency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Summaries of meetings.

(4) Reports—published and unpublished factual materials, including contractors' reports.

B. References

(1) Winholtz, M. editor. *The Merck Index*, 9th Ed. Rathway, NJ. Merck and Co. p. 1017. 1976.

(2) USEPA. Propylene Oxide: Support Document. (No date).

(3) USEPA. Propylene Oxide: Proposed Test Rule. 48 FR 430; January 4, 1984.

(4) Hackett P.L., M.G. Brown, R.L. Buschbom, M.L. Clark, R.A. Miller, R.L. Musie, *et al.* "Teratogenic Study of Ethylene and Propylene Oxide and N-Butyl Acetate." Prepared for the National Institute for Occupational Safety and Health, Cincinnati, Ohio, under contract 2311104277 (NIOSH Contract No. 210–80–0013). 1982.

(5) Dow Chemical Company, Midland, Michigan and Arco Chemical Company, Newtown Square, Pennsylvania. Comments on Proposed Propylene Oxide Test Rule. Submitted to: Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. March 2, 1984.

(6) NIOSH. Comments by NIOSH on Proposed Propylene Oxide Test Rule. Submitted to: Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. March 5, 1984.

(7) USEPA. Economic Impact Analysis of NPRM for Propylene Oxide. No date.

(8) Palmer, A. K. Incidence of sporadic malformations, anomalies, and variations in random bred laboratory animals. In: Methods in prenatal toxicology. Evaluation of embryotoxic effects in experimental animals. Neubert D, Merker H–J, Kwasigroh T.E., eds. Stuttgart: George Thieme Publishers, pp. 52–71. 1977.

(9) Khera, K. S. "Maternal Toxicity: A Possible Etiological Factor In Embryo-Fetal Deaths and Fetal Malformation of Rodent-rabbit Species." *Teratology* 31:129–153. 1985.

(10) Chernoff, N., Kavlock, R. J., "An *in vivo* Teratology Screen Utilizing Pregnant Mice." *Journal of Toxicology and Environmental Health* 10:541–550. 1982.

(11) Kavlock, R. J., Chernoff, N., Hanish, R. C., Gray, J., Rogers, E., and Gray, L.E. "Prenatal Toxicity of Endrin in Rodents. II. Fetotoxic Effects of Prenatal Exposure in Rats and Mice." *Toxicology* 21:141–150. 1981.

(12) Kavlock, R. J., Chernoff, N., and Rogers, E. H. "The Effects of Acute Maternal Toxicity on Fetal Development in the Mouse." *Teratogen Carcinogen Mutagen* 5:3–13. 1985.

(13) Murray F. J., K. D. Nitschke, L. W. Rampy and A. B. Schwetz. "Embryotoxicity and Fetotoxicity of Inhaled or Ingested Vinylidene Chloride in Rats and Rabbits." *Toxicology and Applied Pharmacology* 49:189–202. 1979.

(14) Kimmel, S. A. and J. G. Wilson. "Skeletal Deviations in Rats: Malformations or Variations?" *Teratology* 8:309–318. 1973.

(15) Palmer, A.K. In: Handbook of Teratology, Wilson J.G. and F. C. Fraser, eds., Vol. 4, New York, Plenum, pp. 215–253. 1978.

(16) Dow Chemical Co., Midland, Michigan. Letter to Steven Newburg-Rinn, Assessment Division, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. 20460. May 24, 1983.

(17) Wilson, J.G. Environment and Birth Defects. New York: Academic Press, pp. 28–30. 1973.

(18) Wilson, J.G. Current Status of Teratology. General Principles and Mechanisms Derived from Animal Studies *In:* Handbook of Teratology, Vol. 1. Wilson, J.G. and Fraser F. C., eds. New York: Plenum, pp. 57–59. 1977.

(19) USEPA. TSCA section 8(e) submission 8EHQ–0683–0439, followup response. Submitted to EPA by Dow Chemical Company. CAS reference number: D–979. Reuzel P. G. and C. F. Kuper, authors. "Chronic (28-month) Inhalation Toxicity/Carcinogenicity Study of Propylene Oxide in Rats." Netherlands Organization for Applied Scientific Research, Division for Nutrition and Food Research TNO, Netherlands. Submitted to: Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. June 3, 1983.

(20) NTP. "Toxicology and Carcinogenesis Studies of Propylene Oxide (CAS No. 75–56–9) in F344/N Rats and B6C3F$_1$ Mice (Inhalation Studies)." G. Boorman (Chemical Manager). NTP TR 267, NIH Publication No. 85–2527, NTP–83–020. National Toxicology Program, Research Triangle Park, North Carolina. March 1985.

(21) Lynch, D.W., Lewis, T.R., Moorman, W.J., Burg, J.R., and Grath, D.H. *et al.* "Carcinogenic and Toxicologic Effects of Inhaled Ethylene Oxide and Propylene Oxide in F344 Rats." *Toxicology and Applied Pharmacology* 76:69. 1984.

(22) USEPA. Memorandum: "Feasibility of an Epidemiologic Study of Propylene Oxide Workers." Prepared by C. Scott. Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. July 13, 1984.

(23) Dow Chemical Co., Midland, Michigan. Propylene oxide: review of health effects and proposal for voluntary testing. Letter to Steve Newburg-Rinn, Assessment Division, U.S. Environmental Protection Agency, Washington, D.C. June 15, 1982.

(24) SRI International. A study of industrial data on candidate chemicals for testing. Prepared for Office of Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. EPA Contract No. 68–01–4108 (PB 274–264). 1977.

(25) Dow Chemical Co., Midland, Michigan. Response to the recommended toxicological testing for alkyl epoxides by the Interagency Testing Committee. Submitted to: Office of Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. March 10, 1978.

(26) Dow Chemical Company, Midland, Michigan. "Propylene Oxide: Two-Generation Reproduction Study in Fischer 344 Rats." TSCA 8(d) submission 878216062. Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. July 9, 1985.

(27) USEPA. Economic Impact Analysis for Final Test Rule for Propylene Oxide. No date.

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 Street SW., Washington, D.C.

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. 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 all the testing proposed for propylene oxide is $7,963–23,891, or less than $92,185 over the testing and reimbursement period. 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 users' prices (less than 0.008 percent) for this chemical, even if all test costs were passed on. 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 effects 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 propylene oxide.

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 Agency, Environmental Protection, Hazardous substances, Chemicals.

Dated: November 21, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Therefore, Part 799 is amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. New § 799.3450 is added to read as follows:

§ 799.3450 Propylene oxide.

(a) *Identification of test substance.* (1) Propylene oxide (CAS No. 75-56-9) shall be tested in accordance with this section.

(2) Propylene oxide of at least 99.0-percent purity shall be used as the test substance in all tests.

(b) *Person required to submit study plans, conduct tests, and submit data.* (1) All persons who manufacture or process propylene oxide, other than as an inpurity, from January 10, 1986, to the end of the reimbursement period shall submit letters of intent to conduct testing or exemption applications, 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.

(2) Persons subject to this section are not subject to the requirements § 790.30(a) (2), (5), and (6) and (b) and § 790.87(a)(1)(ii) of this chapter.

(3) Persons who notify EPA of their intent to conduct tests in compliance with the requirements of this section must submit plans for those tests no later than 30 days before the initiation of each of those tests.

(4) In addition to the requirements of § 790.87(a) (2) and (3) of this chapter, EPA will conditionally approve exemption applications for this rule if EPA has received a letter of intent to conduct the testing from which exemption is sought and EPA has adopted test standards and schedules in a final Phase II test rule.

(c) *Health effects testing*—(1) Developmental toxicity—(i) *Required testing.* An inhalation developmental toxicity test in the rat shall be conducted with propylene oxide.

(ii) [Reserved].

(Information collection requirements approved by the Office of Management and Budget under control number 2070-0033)

[FR Doc. 85-28300 Filed 11-26-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[Gen. Docket No. 83-989; FCC 85-614]

Transmission of Obscene Materials

AGENCY: Federal Communications Commission.

ACTION: Postponement of Effective Date of Final rule.

SUMMARY: In this action the Commission denies a petition for stay of the November 5, 1985 effective date of 47 CFR 64.201 (the "dial-a-porn" regulation) but, for administrative reasons, postpones the effective date of the Regulation until December 26, 1985. Compliance with the regulation provides a defense to prosecution under 47 U.S.C. 223(b).

EFFECTIVE DATE: December 26, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jacqueline E. Holmes, Common Carrier Bureau, Domestic Services Branch, (202) 634-1860.

List of Subjects in 47 CFR Part 64

Communications Common Carriers.

Memorandum Opinion and Order

In the matter of Enforcement of Prohibitions Against the Use of Common Carriers for the Transmission of Obscene Materials; Gen. Docket 83-989.

Adopted: November 14, 1985. Released: November 21, 1985.

By the Commission.

Introduction

1. Before the Commission is a Petition jointly filed by Carlin Communications, Inc. and Drake Publishers, Inc. (hereinafter "Petitioners") seeking a stay of the effective date of the Commission's "dial-a-porn" regulation [1] pending judicial review of the Commission's decision.[2]

2. In 1983 Congress amended section 223 of the Communications Act of 1934 to effectuate its purpose of restricting access by minors to obscene or indecent telephonic messages. The enabling legislation required the Commission to issue a regulation by June 5, 1984, compliance with which would serve as a defense to parties prosecuted thereunder.[3] Accordingly, on June 5, 1984 the Commission issued a *Report and Order* [4] adopting a regulation which provided a defense to prosecution under section 223 for "dial-a-porn" providers who restrict access by minors to obscene or indecent telephone messages by limiting the operational hours of the services or by requiring prepayment by credit card before transmission of the message begins.[5]

3. However, on November 2, 1984, in *Carlin Communications Inc.* v. *FCC*, 749 F.2d 113 (2d Cir. 1984) (*Carlin*), the United States Court of Appeals for the Second Circuit set aside the Commission's regulation. Without reaching issues concerning the constitutionality of the underlying statute, the court found that the Commission had failed to provide a convincing record adequately demonstrating that its operational hour regulation effectively restricts access by

[1] Second Report and Order, General Docket No. 83-989, FCC 85-554, 50 FR 42699 (October 22, 1985). The "dial-a-porn" regulation, 47 CFR 64.201, will become effective on November 25, 1985.

[2] Carlin Communications, Inc. and Drake Publishers, Inc. v. FCC, Civ. No. 85-4158 (2d Cir., filed October 22, 1985).

[3] Section 8(c) of the Federal Communications Commission Authorization Act of 1983, Pub. L. No. 98-214, effective December 8, 1983.

[4] *See* note 1, *supra.*

[5] Report and Order, General Docket 83-989, FCC 84-253, 49 FR 24996 (June 19, 1984). The order adopting the regulation was released June 5, 1984, and was to become effective on July 19, 1984.

minors to the transmissions without unduly impairing the rights of adults to hear the messages.[6] Accordingly, the Commission issued a *Second Notice of Proposed Rulemaking* (Second Notice)[7] seeking further information to augment the record in the proceeding. Parties were asked to comment regarding screening and blocking techniques implemented at telephone network facilities, those implemented at the premises of information providers, and blocking by use of terminal equipment. Parties were instructed to consider the effectiveness, technical feasibility and economic practicality of the blocking schemes entailed by each approach.

4. After examining the record, the Commission issued a *Second Report and Order* adopting a regulation under which "dial-a-porn" service providers must require an authorized access or identification code, or prepayment by credit card, before transmission of the messages begins. With respect to the authorized access or identification codes, to reduce instances of unauthorized use, the regulation requires "dial-a-porn" providers to issue the code by mail after reasonably ascertaining, through a written application procedure, that the applicant is not under eighteen years of age. Further, "dial-a-porn" providers must establish a procedure whereby codes will be immediately cancelled when providers become aware that such codes are lost, stolen or misused, or no longer desired.[8] In its *Second Report and Order*, the Commission concluded that the operational hour limitation and, with the exception of the access code requirement, the various screening and blocking techniques proposed, were technically infeasible, overinclusive, ineffective, or improperly placed the burden of preventing minors' access on the telephone subscriber. In contrast, the access/identification code regulation requires "dial-a-porn" providers to install access code equipment at their premises or to assume the financial responsibility for equipment installed at telephone company facilities. Of the alternatives available, it was found to be the most effective means of restricting minors from obtaining access to the messages and is the least restrictive of the rights of adults who wish to hear the transmissions. The "dial-a-porn" regulation is to become effective on November 25, 1985.

5. Petitioners argue that their attempted compliance within the time allotted would force them to suffer irreparable injuries. They contend further that implementation of the regulation is technically impossible in the New York (NYNEX) region, and although theoretically possible, so expensive and time-consuming in regions other than NYNEX as to make business operations unprofitable. Petitioners argue that the Commission has adopted the regulation without regard to telephone company comments indicating that access/identification code equipment is presently unavailable at Carlin premises, NYNEX message distribution centers, or other telephone company facilities. Finally, they contend that the Commission's latest "dial-a-porn" regulation is no more effective than the regulation previously adopted and is, in addition, unconstitutionally restrictive of the rights of adults to hear its messages.

Discussion

6. Section 1.429(k) of the Commission's rules, 47 CFR 1.429(k), provides for issuance of a stay "upon good cause shown." In making stay determinations, the Commission has relied upon the four-part test enunciated by the D.C. Circuit Court of Appeals in *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921, 925 (D.C. Cir. 1985), (*Virginia Jobbers*), as modified by *Washington Metropolitan Area Transit Commission v. Holiday Tours*, 559 F.2d 841 (D.C. Cir. 1977) (*Holiday Tours*). This four-part test requires a petitioner seeking a stay of an agency order to demonstrate (1) by a strong showing that it is likely to prevail on the merits of its appeal; (2) that without such relief it will suffer irreparable injuries; (3) whether issuance of the stay would substantially harm other parties interested in the proceeding; and (4) that issuance of the stay would further the public interest.[9] Congress directed the Commission to issue a regulation by June 5, 1984, to restrict access to "dial-a-porn" services by individuals under the age of eighteen. Because issuance of the regulation is intertwined with its enforcement, there has been no enforcement of the statute to date.[10] A stay of the regulation would further postpone the effective date of the Commission's regulation and, in turn, the effective date of the Congressional prohibition. Thus, it is within these constraining circumstances, governed by the four-part test enunciated in *Virginia Jobbers*, that the Commission must consider Petitioners' request for a stay of the regulation.

7. Petitioners argue that they are likely to succeed on the merits of their constitutional arguments. They contend that the regulation is unduly restrictive of the rights of adults to hear the messages yet no more effective in restricting minors from obtaining access to the transmissions than other alternatives considered in this proceeding.[11] Petitioners have not demonstrated that they are likely to succeed on the merits of their appeal. As noted by the Commission in its *Second Report and Order*, the first amendment does not guarantee unrestricted access to obscenity. Moreover, the Supreme Court has acknowledged generally the constitutional validity of the regulation of obscene material and indecent material that is easily accessible to minors.[12] After carefully analyzing an expansive record, the Commission has concluded that the access/identification code regulation is the most effective yet least restrictive alternative available to effectuate Congress' intent to prevent minors from obtaining access to the messages. Petitioners present no reasons which would cause us to alter this conclusion. Of course, any restriction of this kind raises constitutional concerns. However, here we have reviewed Petitioners' concerns and we cannot find that their petition has sufficiently demonstrated that they are likely to succeed on the merits of its constitutional claims.

8. Petitioners contend that without issuance of a stay of the effective date of the regulation irreparable injury will result. Petitioners also contend that implementation of the access code requirement is technically infeasible, and that "there has been no evidence presented to the Commission that such technology even exists".[13] Petitioners'

[6] 749 F.2d at 121.

[7] 50 FR 10510 (March 8, 1985).

[8] Second Report and Order, Appendix A.

[9] In *Holiday Tours*, the court stated that these factors are to be balanced in making stay determinations. Where petitioners demonstrate that three of the four factors strongly support the relief sought, a court "may exercise its discretion to grant a stay if the movant has made a substantial case on the merits. . . ." 559 F.2d at 843.

[10] The Second Circuit explicity stated its presumption that section 223(b) would not be enforced in the absence of a Commission regulation governing the transmissions.

[11] Petitioners state that typically calls to "dial-a-porn" services are made on impulse. They argue that the access code requirement will unduly impede callers who realize that they must first submit an application for a code number and then await its distribution. Petitioners also argue that a minor, intent on hearing the messages, will find ways to obtain and circulate access/identification code numbers, thus circumventing the regulation and congressional intent. Petition at 14–15.

[12] 50 FR at 42708. *See also*, Miller v. California, 413 U.S. 15 (1973); FCC v. Pacifica Foundation, 438 U.S. 726 (1978).

[13] Petition at 11.

contention of irreparable injury is based on an unfounded assertion that implementation of our rule will result in loss of profitability, *i.e.*, they will go out of business. This argument, intertwined with the position of likely success on the merits discussed above, is simply unsupported. There is no showing that an access code approach is unconstitutional, that implementation will cause cessation of business, or that there is unavailability of technology to implement access code recognition in either one-way or two-way "dial-it" service systems.[14] Accordingly, we reiterate our finding that the regulation we adopted reflects nothing more than Congressional intent that service providers bear the burden of implementing the means used to restrict minors' access to the messages they choose to transmit. We find that any impact which may negatively affect these service providers—Petitioners fail to demonstrate will be other than minimal—is outweighed by the fulfillment of our statutory mandate to restrict access by minors to the "dial-a-porn" services.

9. Concerning whether issuance of a stay would substantially harm other parties in the proceeding, Petitioners argue that "in view of the fact that enforcement of the Regulation will destroy Petitioners' business, this irreparable injury clearly outweighs the injury, if any, to any other party to the proceeding if a stay is issued." Thus, Petitioners direct the Commission to "consider the constitutional rights of hundreds of thousands of individuals who voluntarily access Petitioners' service on a daily basis." In asserting this claim, petitioners combine the third and fourth factors to be considered in making stay determinations. However, this argument fails to note key elements in the four-part analysis enunciated in *Virginia Jobbers*. Namely,

> ". . . we must determine whether, despite showings of probable success and irreparable injury on the part of petitioner, the issuance of a stay would have a serious impact effect on other interested persons. Relief saving one claimant from irreparable injury, at the expense of similar harm caused another, might not qualify as the equitable judgment that a stay represents".[15]

Concerning the public interest factor, the court goes on to state:

> "In litigation involving the administration of regulatory statutes designed to promote the public interest, this factor [the public interest factor] necessarily becomes crucial. The interests of private litigants must give way to the realization of public purposes".[16]

10. In this connection, we repeat that Petitioners have not provided specific information concerning the potential financial impact of alternative regulations. Neither do Petitioners make a specific financial demonstration that implementation of the rule will destroy their business. *See* para. 8, *supra*. Moreover, we find the public interest considerations crucial here. Congress has specifically mandated that the Commission adopt regulations which, in effect, restrict access by minors to obscene or indecent telephonic message services. The court has already explicitly found that "protecting minors from salacious material is no doubt [a] quite compelling" government interest. *Carlin*, 749 F.2d at 121 (Citation omitted.) Petitioners make no new factual assertions upon which we may conclude that the access/indentification code requirement is more burdensome and less effective than any other alternative. We therefore find that Petitioners have not made an adequate showing under the standards set forth in *Virginia Jobbers* warranting a grant of a stay of the effective date of the Commission's regulation.

11. *Administrative consideration.* As noted above, n.2, Petitioners have filed for judicial review and stay of the Commission's regulations. It appears, however, that the court will not be able to hear arguments prior to the current effective date of our regulation, November 25. To avoid possible administrative complications arising out of our denial of Petitioner's stay request pending the court's stay hearing, we will postpone the effective date of our regulation until December 26, 1985. Should the court issue its stay decision prior to that date, our postponement will dissolve. (This postponement will also afford Petitioners additional time in which to bring their systems into compliance with our regulation.)

Order

12. Accordingly, it is ordered that Carlin and Drake's Joint Petition for Stay of the November 25, 1985 effective date of 47 CFR § 64.201 is denied.

13. It is further ordered that the Secretary shall cause a copy of this *Order* to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 605 of Regulatory Flexibility Act, 5 U.S.C. 605. The Secretary shall cause a copy of this *Order* to be printed in the **Federal Register.**

14. This action is taken pursuant to Section 8(c) of the *Federal Communications Commission Authorization Act of 1983*, Pub. L. No. 98–214, effective December 8, 1983, and sections 4(i), 303(r), and 223(b) of the Communications Act of 1934, as amended.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–28305 Filed 11–26–85; 8:45 am]

BILLING CODE 7612-01-M

[14] The *Second Report and Order* acknowledges that parties may choose to implement access code recognition schemes in two-way incoming trunks. 50 FR at 42705. Telephone company comments submitted in this proceeding point out generally that where two-way "dial-it" transmissions are involved, calls may be routed directly to "dial-a-porn" providers. These providers may then modify existing equipment to implement a software controlled access code system similar to that utilized by several long distance telephone companies. *See* Comments of Mountain States Telephone, Northwestern Bell and Pacific Northwest Bell at 13 and Pacific Bell Comments at 4. *See generally* Comments of AT&T, BellSouth, and United States Telephone Association. (We note that many OCC subscribers access their services by utilizing a preassigned access code either on their telephones or on an inexpensive external pad.) Petitioners have included no new evidence in the Joint Petition for Stay demonstrating that implementation of a software supported access code recognition system at central distribution centers is infeasible in regions where a one-way dedicated network is utilized (i.e., NYNEX and Ameritech). Even were this the case, the alternate availability of two-way service and the current use of two-way service in so many other locations constitutes adequate assurance that Petitioners' argument of irreparable harm through total loss of business is without substance.

[15] 259 F.2d at 925.

[16] *Id.*

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 83–10; Notice 2]

Federal Motor Vehicle Safety Standards; Windshield Defoggers

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice amends Standard No. 103, *Windshield Defrosting and Defogging Systems*, to require that passenger cars, multipurpose passenger vehicles, trucks, and buses manufactured for sale in the noncontinental United States be equipped with defogging systems. The noncontinental United States includes such areas as Hawaii, Puerto Rico, the Virgin Islands, Guam, and American Samoa. The agency believes that adoption of this amendment will

eliminate the safety hazard caused by fogging of vehicle windshields in vehicles without defogging systems in the damp weather prevalent in these geopraphic areas and having to manually wipe those windshields in order to see properly.

DATES: The effective date for this amendment is September 1, 1987.

ADDRESS: Petitions for reconsideration should refer to the docket and notice numbers set forth above and be submitted not later than December 27, 1985, to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–426–2153).

SUPPLEMENTARY INFORMATION: Standard No. 103, *Windshield Defrosting and Defogging Systems*, currently applies to passenger cars, multipurpose passenger vehicles, trucks, and buses which are manufactured for sale in the continental United States (including Alaska). The standard requires manufacturers to install systems which perform both windshield defrosting and defogging functions in those vehicles.

When the original rule was issued, the agency believed there was no justification for requiring defrosting equipment on vehicles manufactured for sale in the warm, humid regions of the noncontinental United States. Therefore, these vehicles are not required to be equipped with the combined windshield defrosting and defogging systems required under Standard No. 103. The noncontinental United States includes such areas as Hawaii, Puerto Rico, the Virgin Islands, Guam and American Samoa. Standard No. 103 is the only Federal motor vehicle safety standard which exempts vehicles manufactured for sale in the noncontinental United States.

Domestic manufacturers install combined defrosting and defogging systems on all passenger cars, regardless of where they are sold. However, several foreign manufacturers do not include any type of defrosting or defogging equipment on many of their vehicles sold in the noncontinental United States. For the reasons set forth below, this rule amends the standard to require all manufacturers to install, at their option, either a defrosting and defogging system or a defogging system, in all vehicles manufactured for sale in the noncontinental United States.

Safety Problem

On July 14, 1983 (48 FR 32200), NHTSA issued a notice of proposed rulemaking which responded to a petition for rulemaking filed by Sunrise Motors, Inc. The petitioner claimed that windshields in the Virgin Islands fog up very badly in damp weather, creating a serious safety hazard in vehicles which do not have defogging systems. The petitioner therefore requested that manufacturers be required to install defogging systems in passenger cars sold in the Virgin Islands.

The agency reviewed the climatic conditions of the Virgin Islands as well as in the rest of the noncontinental United States and determined that the petitioner's claim that these conditions are conducive to the occurrence of windshield fogging on a regular basis is accurate. The fogging occurs when a cool windshield comes into contact with warm, moist air and the water vapor in the air condenses in the form of a liquid on the windshield. All the geographic areas in question are characterized by high temperatures and high humidity. Windshield fogging is especially likely to occur in the morning hours.

Under these conditions windshield fogging reduces visibility, substantially. Thus, driving a vehicle without defogging equipment that clears the windshield automatically, poses a safety hazard. In addition, in the absence of defogging equipment, drivers try to manually wipe the windshield clean while driving—a process which itself is distracting and creates a safety hazard. The agency therefore believes that a vehicle without defogging equipment creates an unreasonable safety risk. This is true not only for passsenger cars, the specific subject of the petition for rulemaking, but also for multipurpose passenger vehicles, trucks, and buses. Thus, the notice proposed to require windshield defogging systems in passenger cars, multipurpose passenger vehicles, trucks, and buses.

Automobile Importers of America, Inc., supplied information concerning the sales of passenger cars by four foreign manufacturers in the noncontinental United States with and without defrost and defogging equipment. According to these data, more than 76,000 automobiles were shipped to the noncontinental United States in 1980 by these companies. Approximately 40,000 of these cars, representing 52 percent of the total, were not equipped with defrosting and defogging equipment. The total vehicle population without defogging equipment is likely to be larger when other passenger car imports, multipurpose passenger vehicles, trucks, and buses are included; however, the agency does not have specific data on the total vehicle population. Therefore, a significant number of foreign-manufactured vehicles in these areas are being operated without a defogging system to improve visibility. This situation obviously increases the risk of motor vehicle accidents, injuries, or deaths.

Alternative Requirements

Three comments were received on the notice, two from vehicle manufacturers. None of the commenters on the notice of proposed rulemaking opposed this amendment to Standard No. 103.

Amending the standard to require vehicles manufactured for sale in the noncontinental United States to have defogging systems is not simply a matter of extending the applicability of the standard to the additional geographic areas. Standard No. 103 requires vehicles built for sale in the continental United States to have a system which defrosts as well as defogs. The standard does not currently specify separate performance requirements for defogging. Instead, for passenger cars, the defrosting requirements of the standard serve the double purpose of ensuring adequate defrosting and defogging performance. This is possible because the amount of heat necessary for adequate defrosting, i.e., for melting ice that forms on a windshield, also provides adequate defogging performance. For multipurpose passenger vehicles, trucks, and buses, the standard simply requires a windshield defrosting and defogging system and does not specify any performance requirements.

The agency does not consider it appropriate to extend the defrosting requirements of Standard No. 103 to vehicles manufactured for sale in Hawaii, Puerto Rico, the Virgin Islands, Guam, and American Samoa. Since those areas have warm climates, there is no safety need for vehicles to have a defrosting (as opposed to defogging) system.

This rule gives manufacturers the option of complying with the defogging requirement in alternative ways. Combination defrosting and defogging equipment can be installed in the vehicles. As noted earlier, domestic manufacturers currently do so in passenger cars. The agency's rule also permits manufacturers to design a system with only defogging capability for installation in vehicles for sale in the noncontinental United States.

There are two major ways to provide windshield defogging capability, by applying heat to the windshield or by dehumidifying the air inside the vehicle. The first method is the same as that used for defrosting, although less heat may be necessary for defogging. Therefore, a manufacturer may be able to design a defog-only system using heat application which is less expensive than a standard defrosting and defogging system. The second method, dehumidifying the air inside a vehicle, is considerably more expensive than the first method and therefore unlikely to be used for defogging only purposes. Since air conditioners dehumidify the air inside a vehicle in addition to cooling it, all vehicles equipped with air conditioners have defogging capability, whether or not they have a combined defrosting and defogging system. Thus, vehicles with air conditioners would not need an additional defogging system to meet this rule's amendments.

The agency is not requiring a defogging system for side or rear windows of passenger cars, as requested by the petitioner. The primary problem created by fogging involves the windshield. For this reason, there is currently no requirement for side or rear window defogging equipment in vehicles manufactured for sale in the continental United States.

Toyota Motor Corporation suggested that an alternative defogging method be allowed which applies outside ambient air directly to the windshield using a boost ventilator system. The agency believes that the Toyota system would not be able to defog a windshield as quickly as the other alternatives, particularly when very high humidity conditions exist. Moreover, the agency has no data which show that a boost ventilator defogger system would provide equivalent defogging capability in multipurpose passenger vehicles, trucks, or buses. For these reasons, the agency will not permit the use of a boost ventilator defogger system for defog-only purposes under this amendment. As stated earlier, the vehicle manufacturer will have the option of installing a windshield defog-only system which operates either by applying heat to the windshield or by dehumidifying the air inside the passenger compartment of the vehicles. Of course, a combined windshield defrosting and defogging system could be installed instead of a defog-only system.

Defogging Performance Requirements

Transportation Safety Consultants (TSC) stated that the *defrosting* performance requirements of the standard should be amended to include other vehicles as well as passenger cars. In addition, TSC urged the agency to set specific defogging performance requirements for all vehicles.

The changes sought by TSC are beyond the scope of this petition. First, the agency did not propose to amend the *defrosting* requirements of Standard 103. Therefore, extending the current requirements for defrosters to other passenger vehicles is inappropriate as part of this rulemaking. In addition, the agency disagrees with TSC that a vehicle equipped with a combined defrosting and defogging system or an air-conditioning unit may not have adequate defogging capability. The agency also believes it is reasonable to require the installation of defogging equipment only, on vehicles manufactured for sale in the noncontinental United States without specific defogging performance requirements, primarily because defogging equipment provides obvious and important safety benefits by improving visibility in these geographic regions.

Potential Benefits, Costs and Other Effects

The Agency has evaluated the economic and other effects of this final rule and determined that they are neither major as defined by Executive Order 12291 nor significant as defined by the Department's Regulatory Policies and Procedures.

The safety benefits of this rule are difficult to quantify, as they usually are for crash avoidance safety standards. However, the agency believes there is no rationale for exempting vehicles manufactured for sale in the noncontinental United States from the requirement to install defogging equipment. As discussed earlier, there are adverse safety consequences that result from not having a defogger. Vehicles manufactured for sale in those location were only exempted from the defogging requirements because of an oversight. When Standard 103 was first proposed its provisions would have applied to the noncontinental United States. However, since the Standard also includes defrosting (i.e., deicing) requirements, it was recognized that these would be inappropriate for the noncontinental United States. Because of statutory deadlines for issuance of initial safety standards, the agency did not have time to re-propose only the defogging requirements and thus exempted the noncontinental United States from all the requirements of Standard 103. This rule corrects the oversight.

Although the agency cannot quantify the possible reduction in accidents, deaths, and injuries, requiring a defogger will improve safety by providing increased visibility through a vehicle's windshield and by eliminating the need to manually wipe the windshield while driving. The agency's final regulatory evaluation analyzes the potential effects on safety of this action.

The final regulatory evaluation also contains cost information prepared by the agency. NHTSA conducted an independent analysis of a complete Standard No. 103 *defrosting and defogging* system based on tear-down analyses of a Chevrolet Citation and a Plymouth Reliant. These costs are in the $60 to $68 per vehicle range which equates with the lower end of cost figures supplied by foreign manufacturers. As noted above, defog-only systems would cost less, if manufacturers choose to design that type of system, although the exact lower amount is not known. Since domestically produced vehicles already come equipped with defoggers, this rulemaking does not add any cost to manufacturers of those vehicles. The estimated cost of this rule would be $2.4 million to $2.7 million for passenger cars sold by foreign manufacturers in these locales.

The agency believes that the effective date of this rule, September 1, 1987, is reasonable, because this leadtime may be necessary for manufacturers to design defog-only systems if they choose this option for vehicles manufactured for sale in the noncontinental United States.

In accordance with the Regulatory Flexibility Act, the agency has evaluated the effects of this action and I certify that it will not have a significant economic effect on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles, those businesses affected by these amendments, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Small organizations and governmental units in the noncontinental United States, which purchase motor vehicles equipped with these defrosting and/or defogging systems, will not be significantly affected. Since the price increase is relatively small, no significant impact on small entities is anticipated.

Finally, the agency has analyzed the effects of this action under the National Environmental Policy Act. The agency has determined that the final rule will not have a significant effect on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicles safety, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, § 571.103, *Windshield Defrosting and Defogging Systems*, of Title 49 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407 delegations of authority at 49 CFR 1.50.

§ 571.103 [Amended]

2. Paragraph S2 of § 571.103 is revised to read as follows:

S2. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses.

3. Paragraph S4 is revised to read as follows:

S4. *Requirements.* (a) Except as provided in paragraph (b) of this section, each passenger car shall meet the requirements specified in S4.1, S4.2, and S4.3, and each multipurpose passenger vehicle, truck, and bus shall meet the requirements specified in § 4.1.

(b) Each passenger car, multipurpose passenger vehicle, truck, and bus manufactured for sale in the noncontinental United States may, at the option of the manufacturer, have a windshield defogging system which operates either by applying heat to the windshield or by dehumidifying the air inside the passenger compartment of the vehicle, in lieu of meeting the requirements specified by paragraph (a) of this section.

Issued on November 21, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85-28288 Filed 11-26-85; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 50, No. 229
Wednesday, November 27, 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

Agricultural Maketing Service

7 CFR PART 1124

[Docket No. AO-368-A14]

Milk in the Oregon-Washington Marketing Area; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes in the Oregon-Washington milk order that will enable handlers to pool producer milk that is surplus to the fluid (bottling) needs of the market without costly, inefficient and unnecessary handling and hauling of the milk. The recommended changes would reduce the amount of milk that supply plants must deliver to pool distributing plants in order to meet pool performance standards, eliminate some of the deliveries of individual producers' milk that are required to be made to pool plants if the remainder of the producers' milk is to be eligible to be diverted to nonpool plants, and increase the amount of a handler's supply of milk not needed for fluid use that may be moved from producers' farms directly to nonpool plants for manufacturing use.

Other recommended amendments would cause the fluid equivalent of nonfluid milk receipts used in Class II products to be allocated to Class II use isntead of to Class III, and would provide that nonmember producers who are not paid under the Oregon State Quota plan may be paid directly by their handler rather than by the market administrator.

It is not recommended that the Department adopt a proposal to change the percentages by which base pounds are computed for producers who do not have assigned daily bases.

DATE: Comments are due on or before December 17, 1985.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447-7311.

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

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by regulated handlers and would tend to ensure the use of efficient milk marketing practices.

Prior document in this proceeding:

Notice of Hearing: Issued July 3, 1985; published July 9, 1985 (50 FR 27972).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Oregon-Washington marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 20th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Portland, Oregon, on July 24, 1985, pursuant to a notice of hearing issued July 3, 1985 (50 FR 27972).

The material issues on the record of hearing relate to:

1. Pool supply plant performance standards.
2. Producer delivery requirements.
3. Diversion limits.
4. Allocation of nonfluid milk receipts used in Class II products.
5. Payments to producers.
6. Producer base percentage.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Pool supply plant performance standards.*

The percentage of a supply plant's receipts that must be shipped to pool distributing plants in order for the supply plant to be pooled should be decreased to 40 percent in the months of September, October and November, and 30 percent in all other months. Supply plant pooling standards are currently 50 percent in the months of October through December; 40 percent in September, January and February; and 30 percent in the months of March through August.

Oregon Milk Marketing Federation (OMMF), a federation of three cooperative associations that historically have supplied milk to the Oregon-Washington market, proposed that the percentage of producer milk receipts that supply plants must provide to pool distributing plants in order to qualify as pool supply plants be reduced. The association members of the federation are Farmers Cooperative Creamery (Farmers), Oregon Jersey Cooperative (Oregon Jersey), and Tillamook County Creamery Association (Tillamook). Oregon Milk Marketing Federation markets the milk of 347 Grade A producers, or slightly over one-third of the producers pooled under the order at the time of the hearing. Farmers owns and operates a nonpool manufacturing plant at McMinnville, Oregon, which handles reserve supplies for the Federation and for the market. The milk of Farmers' producers, located throughout the marketing area, is pooled on the basis of

direct deliveries to pool distributing plants. The milk of Oregon Jersey members is received primarily at pool distributing plants and at nonpool cheese plants. Tillamook operates a large nonpool cheese manufacturing plant, a small fluid processing operation and, since 1983, a pool supply plant, all at the same location in Tillamook, Oregon.

The manager of the Federation testified that the supply plant operated by Tillamook is one of two supply plants pooled under the Orgaon-Washington order. He stated that during the first five months of 1985, the Tillamook supply plant would not have met the orders's present pooling standards if Tillamook had found it necessary to qualify all of its member producer milk supply for pooling through its supply plant. Tillamook's entire producer milk supply did not have to be pooled through the Tillamook supply plant during that period because a letter requesting that allowable diversions be computed on the basis of the cooperatives' combined producer deliveries had been filed with the market administrator by Tillamook, Farmers and Northwest Diarymen's Association (NDA). The letter was terminated June 1, 1985. In the absence of such a combining request, the witness stated, Tillamook would not be able to pool its entire supply of producer milk through it supply plant by shipping milk to distributing plants in Portland unless the percentages of milk required by the pool plant definition to be moved to pool distributing plants are reduced. The witness introduced data indicating that the percentage required to be delivered to pool distributing plants would have had to be approximately 10 percentage points lower in January and February of 1985 if Tillamook's entire milk supply were to be eligible for pooling on the basis of its supply plant operations. He testified that Tillamook could operate within the present percentages only by moving milk received at the supply plant to Portland-area distributing plants, unloading it into the distributing plants, then reloading the milk back into the same trucks and hauling it back to the Tillamook nonpool cheese manufacturing plant. Such an operation was described by the witness as unecessarily burdensome and expensive, and potentially harmful to the quality of the milk handled.

The OMMF witness described the three cooperatives comprising the Federation as playing a historically important role in suppying the fluid needs of the market and in providing outlets for the reserve supplies of many of the market's handlers. He explained that the recent trends of production accelerating more rapidly than fluid demand, nationally as well as in the Northwest U.S., and the growth of nonmember numbers and production in the Oregon-Washington market have resulted in the displacement of OMMF producer milk from distributing plants at which the cooperatives' milk required in past years. The witness stated that because of these trends, the percentage of OMMF milk required by fluid handlers is declining at a rate greater than the decline in the marketwide percentage of producer milk used in Class I.

Statistics introduced by the witness shows production increases of OMMF members of nine percent for the first six months of 1985 over the same period in 1984. While OMMF production and Oregon-Washington production in general have been increasing, production by nonmember producers has increased at the still-higher rate of 11.1 percent from January–June 1984 to January–June 1985. The witness testified that as a rule nonmember milk in the Oregon-Washington market is used primarily in fluid milk, supplemented when necessary by reserve supplies from cooperative sources. Consequently, he stated, increases in nonmember supplies cause lesser amounts of cooperative member milk to be required by distributing plants, especially during times of flush production and low fluid consumption. According to the witness, OMMF's problem in continuing to secure a large enough percentage of the market's fluid sales to assure that all of its members' milk will be able to participate in the marketwide pool is further exacerbated by the fact that NDA, another large cooperative association operating in the marketing area, owns and operates three Darigold pool distributing plants that together account for a larger volume of Class I sales than any other distributing plant operator in the market. NDA production has increased at a rate similar to the production increases in the market as a whole, a trend that has resulted in less of OMMF's suply of milk to be required by the Darigold plants. The milk produced by OMMF cooperative members, therefore, currently is being displaced from its historical fluid outlets by increased nonmember production and from the NDA-owned Darigold plants by NDA production, which also is rising significantly.

The increasing difficulty involved in finding sufficient fluid outlets for OMMF milk to assure its pool status is the principal problem confronting Tillamook in qualifying its supply plant for pooling. It is clear from the testimony and exhibits presented that in some months Tillamook is not able to qualify all of its producer milk for pooling through its supply plant under the order's present supply plant shipping standards, and that increasing milk production in the market by both OMMF members, nonmember producers and NDA members will make the cooperative less able to qualify its supply plant for pooling. Therefore, it is appropriate at this time to reduce the delivery requirement for supply plants to reflect more nearly the prevailing market conditions. The precentage should be reduced to the levels requested by OMMF, as those are the standards within which the Tillamook plant is expected to be able to operate. A requirement that 40 percent of a supply plant's receipts be delivered to pool distributing plants during September, October and November, the months during which Class I utilization is at its peak, and 30 percent in other months, will assure that the plant will continue to have a close association with the fluid market without requiring the cooperative to engage in inefficient and uneconomic hauling practices solely for the purpose of pooling its milk. Retention of the provision currently in the order that allows automatic pooling status for a supply plant during the months of March through August if it has qualified as a pool supply plant during the previous September through Februar period will help to ensure that unnecessary hauling costs will not be incurred during the market's months of high production relative to demand solely to keep the cooperative's member milk pooled.

2. *Producer delivery requirements.* The present order requirements that a new producer's milk be delivered to a pool plant at least once during each of the two months following the original shipment and that every producer's milk be delivered at least once to a pool during each month of September, October and November in order for the producer's milk to be eligible for unlimited diversion to nonpool plants during the remainder of the year should be eliminated. In addition, the requirement that for a producer's milk to be pooled, its first Grde A delivery must be received at a pool plant should be changed to require only that at least one delivery during the producer's first month on the market is received at a pool plant.

Oregon Milk Marketing Federation proposed that the yearly "touch-base" requirement during the months of September through November be

eliminated. Darigold, on behalf of Northwest Dairymen's Association, concurred with the OMMF proposal and extended it to include the two months following a producer's initial shipment to a pool plant.

The OMMF manager and the assistant manager of Tillamook testified in favor of their proposal to eliminate the annual requirement that each producer's milk be received at a pool plant at least once during each of the months of September, October, and November. The OMMF manager explained that the provision has proven to be greatly inefficient and a sometimes costly problem for members producers and cooperatives in the market, and probably for some nonmember producers and proprietary handlers as well. The witness described the impact of the requirement on members of all three of the cooperatives comprising OMMF as causing shipments of milk to be made from areas of production near nonpool plants to pool plants 100 or more miles away solely to meet the order requirement. He stated that such shipment to pool plants displace the normal sources of milk for those plants, requiring the handlers to move their regular milk supplies to other outlets. Thus, he claimed, the provision requires unnecessary and uneconomic movements of milk and disrupts local procurement routes to assure that each producer's milk is delvered to a pool plant.

The witness stated that the annual "touch-base" requirement is the source of numerous audit billings to handlers from the market administrator to reimburse the pool for milk disqualified for pooling because of failure to get some producers' milk into pool plants during each of the three consecutive months. Such failure, he said, most often results from clerical or hauler errors in dealing with degraded milk and producers shifting between routes. He also explained that ins some cases failure to qualify producers in each of the three months has resulted in those producers failing to earn a daily Federal order base and thus not participating equitably in the marketwide base milk pool for a year.

The witness expressed the belief that producers established on the market should not have to qualify annually thereafter, and that the percentage limits on a handler's allowable diversions assure that the handler's milk supply is meeting the pooling standards on a collective basis. He stated that if the cooperative meets its overall performance standards for supplying milk to the market, it should make no significant difference which individual producer's milk is actually delivered to pool plants as long as the milk of each producer participating in the marketwide pool qualifies for Grade A status and is available to the market if and when needed.

The witness stated further that he could see no potential problem for distributing plants in obtaining needed milk supplies as a result of elimination of the annual "touch-base" requirement. He testified that retaining the requirement that each new producer's milk be received at pool plants at least once during each of its first three months on the market would give producers an awareness of their obligation to the Class I market. Under cross-examination, however, he indicated that individual dairy farmers very likely do not understand the order's qualification requirements for pooling. The witness also testified that he had no disagreement with elimination of the requirement that a new producer's first Grade A delivery be to a pool plant as long as at least one delivery in the producer's first month of Grade A production is to a pool plant.

The Tillamook representative testified that elimination of the annual "touch-base" requirement would simplify the procedure of qualifying producers for pooling and for unlimited diversion to nonpool plants, and significantly reduce the costs of extra hauling for the purpose of assuring that each producer's milk is delivered to a pool plant during each month of September, October and November. The witness stated that to date no Tillamook producers had failed to meet the individual producer delivery requirements, but that such a lapse would be inevitable at some point through oversight or error in the hauling or accounting procedures. The Tillamook witness also testified to the need for elimination of the requirement that a producer's first Grade A delivery must be to a pool plant if any of the producer's milk is to be eligible for pooling in that month.

A witness for Darigold testified in favor of eliminating not only the annual "touch-base" requirement, but the requirement that a producer's milk be received at a pool plant at least once in each of the two months immediately following the month in which it is first pooled. He also urged that a new producer be required to deliver milk to a pool plant during his first month of association with the market rather than on his first day of such association. The witness stated that at the time the order was promulgated, there may have been a need to ensure that the milk of each producer in the market be received regularly at pool plants so that their milk would be available when needed. He pointed out that since the early 1970's, however, the Class I utilization percentage of the market has declined from over 70 percent to less than 50 percent at the present time. In view of the fact that current production increases are significantly greater than the growth in Class I sales, the witness predicted that the Class I use percentage will continue to decline. Over the same period of time, he observed, the number of bottling plants has decreased greatly and the number of organizations controlling the milk supply has declined. Because of the combination of a centralization of control and a decrease in the percentage of Class I sales, the witness stated, there have been no problems in securing an adequate amount of milk for Class I needs, and the "touch-base" requirements are no longer necessary. He testified that the milk of producers located close to manufacturing plants should be allowed to be delivered to those plants, and be moved to Class I outlets only when it is really needed there. He stated that it is more efficient and economical to deliver producer milk to nearby plants, and that there are adequate milk supplies to fill fluid needs located close-in to fluid processing plants. Therefore, the witness concluded, it is neither desirable nor economical to move milk from areas close to nonpool manufacturing plants to bottling plants in the city markets when that milk is not needed in those plants.

In regard to eliminating the delivery requirement for the two months immediately following a producer's first delivery, the Darigold witness pointed out that those months may fall during the flush months of production when milk supplies are most surplus to the needs of the market. He stated that one delivery to a pool plant during a producer's first month on the market should be sufficient to demonstrate that the producer's milk is available for fluid use when and if needed. The witness testified that it should not be necessary to reroute a truck to a distant pool plant on the day a new producer enters the market, or during the two months immediately following the producer's entry. For the purpose of delivering milk in the most efficient manner possible and at the least expense to dairy farmers, the witness expressed Darigold's belief that a new produer's initial delivery to a pool plant should be some time within the first month in which the producer becomes associated with the market, so that the handler has some flexibility in scheduling the

delivery of the milk. He testified that milk delivered by a handler from a dairy farm to a nonpool plant after issuance of a farm health permit but before any delivery to a pool plant should be considered producer milk during the month.

As a conforming change to relaxation of the "touch-base" provisions of the order, the Darigold witness also suggested that the "Dairy farmer for other markets" provision should be changed to allow Grade A milk delivered to nonpool plants before any of the producer's production is received at a pool plant to be considered a diversion of pooled producer milk. He stated that the current language of the provision would require the producer's milk for the whole month to be considered nonpool, with the portion received at a pool plant considered a receipt from a "dairy farmer for other markets."

The office manager for Northwest Dairymen's Association testified about the specific administrative problems and hauling inefficiencies caused by the present order provisions. He stated that during the qualifying months of September, October and November, NDA must move 30 to 35 loads of milk on special trips to pool plants to "touch base" for the producers involved. After the milk arrives at pool plants, the witness said, it then must be reloaded and shipped to nonpool plants where it can be used. He specified the cost of such special hauling arrangements as over $10,000 per month, costs which are in turn distributed back to the cooperative's member producers.

In addition to the annual delivery requirements, the witness stated that the deliveries to pool plants required during each new producer's second and third months of production on the market also cause handlers to incur additional hauling costs and inefficiencies. He described the difficulties of assuring that all producer milk is picked up and processed, especially during the months of flush production when processing plants are filled to capacity, and trying to reroute tankers to qualify new producers at the same time.

The NDA representative described the present order requirement that a producer's first delivery of Grade A milk be to a pool plant as very difficult to administer and offered several illustrations. He explained that the consequence of failing to meet the requirement is that none of the producer's milk would be eligible for pooling for the producer's entire first month of Grade A production, a status that would continue until the producer's first delivery for a month is received at a pool plant. He stated that problems of coordination with the Oregon State Department of Agriculture, which issues Grade A permits, can cause the cooperative to miss delivering a producer's first Grade A production to a pool plant when the permit is backdated by the health authority, or to arrange for a producer's milk to be delivered to a pool plant where it then fails to meet the State's Grade A standards. The witness described the complexity of scheduling milk into pool plants solely for qualifying it for diversion while trying to coordinate the pick-up and delivery of producer milk to pool and nonpool plants by Darigold's fleet of trucks and a number of contract haulers. He explained that some producers' first deliveries must be made on weekends when some pool plants are not receiving milk. In that case, he said, the milk must be delivered to alternative plants, displacing their usual supplies of producer milk to still other plants. The extra milk movements involved in such coordination were described by the witness as costly and inefficient.

In view of the expensive, inefficient and unnecessary movements of milk undertaken by handlers to assure that the milk of all of their producers will be eligible to be included in the marketwide pool, the provisions of the order that require each producer's milk to be received at least once at a pool plant during each of the months of September, October and November and during the producer's second and third months on the market should be eliminated. The requirement that a producer's first Grade A delivery must be received at a pool plant in order for any of the producer's milk to be pooled in that month also should be removed. To the extent the "Dairy farmer for other markets" definition does not allow Grade A milk diverted to nonpool plants to be considered producer milk before a producer's milk is delivered to a pool plant, that provision should be changed. However, all of a producer's Grade A production for a given month should be pooled under this or another Federal order if any of it is to be pooled.

Elimination of the second- and third-month and annual "touch-base" requirements should have no effect on the ability of fluid milk outlets to attract the supplies of milk necessary to satisfy consumer demand. In combination with the increasing volume of Grade A production compared with the amount needed for Class I use in the Oregon-Washington market, the milk of nonmembers that is regularly received at pool distributing plants and the supply of NDA milk that is associated with the Darigold plants, the order's diversion limits and supply plant shipping standards should assure that pool distributing plants will experience no difficulty in obtain adequate supplies of milk.

Also, requiring handlers to cause a producer's first Grade A delivery to be received at a pool plant if any of such producer's Grade A production for the month is to be pooled is an unnecessary standard in this market. Before any of a producer's milk is pooled, it should be demonstrated that the handler of the milk has the ability and is willing to deliver the milk to a pool plant. However, the pooling process takes place after the end of the month in which milk is produced and delivered. Therefore, the order should provide that a producer's qualifying delivery to a pool plant may be made at any time during the producer's first month on the market.

3. *Diversion limits.*

The limit on the percentage of a handler's total milk supply that may be diverted to nonpool plants should be relaxed as proposed by the Oregon Milk Marketing Federation. The change would increase the present 60-percent diversion limit in all months to a limit of 70 percent in the months of September through November, January and February; and 80 percent in the months of December, March and April. No diversion limit should apply during the months of May through August. A proposal by Darigold to increase diversion limits to 80 percent during the months of September through April with no limits in other months should not be adopted.

The OMMF manager testified about the difficulties of assuring that all of the milk of OMFF members would be able to continue participation in the marketwide pool while operating within the order's present diversion limits. He explained that the demand by pool distributing plants for milk from the OMMF cooperatives has declined as milk production in the market has increased. He attributed the loss of the OMMF cooperatives' fluid market to the disproportionate growth in the number of nonmember producers and their production and the role played by NDA's producers in supplying their Darigold plants. The witness stated that as milk production increases seasonally, more of the market's Class I use is absorbed by nonmember producers whose milk is shipped to proprietary distributing plants, and by NDA members supplying Darigold plants. Consequently, less of the OMFF milk is needed for use at fluid processing plants

when milk production is at its peak. If handled most economically, milk produced in excess of fluid needs must be diverted to manufacturing uses. Milk surplus to the needs of the fluid market could be received first at pool plants, the witness said, then reloaded and shipped to nonpool plants where it could be used. Such extra handling and hauling would enable a cooperative to qualify all of its milk supply for pooling within the order's diversion limits. However, he characterized such movements as costly and uneconomical, and detrimental to milk quality.

The witness stressed the importance of assuring that all of the OMFF milk continue to be subject to the order's marketwide pooling and pricing provisions. He stated that a large volume of Grade A milk, eligible and available for fluid use but eliminated from the pool by failure to meet diversion limits, would create a very disruptive influence in the marketing area. Such a situation, he predicted, would result in the unpooled producers searching competitively for a fluid outlet for their milk to regain pool status and be able to share in the pool. He referred to the sort of potentially disruptive situation that might result from depooling large amounts of producer milk as one of the factors that necessitated the creation of Federal milk marketing orders.

The OMFF manager also emphasized the importance of retaining OMFF milk supplies in the pool as a necessary reserve for serving the supplemental needs of the market. He described the needs of distributing plants for milk supplies as fluctuating according to the day of the week, with less milk being required on weekend days, and greater volumes on weekdays. He explained that because of the supplemental function served by OMFF's milk supplies, the effect of distributing plants' daily fluctuation in demand has a disproportionate effect on the daily volume of OMFF milk required by distributing plants.

The witness submitted an exhibit that showed the daily variability of OMFF movements of milk to pool plants during the months of January and June 1985. January is generally a month of seasonally low production and relatively high Class I use. In June, Class I use is generally at its lowest level in relation to milk production, which is at or near its seasonal peak. The exhibit showed that in January 1985, OMFF's largest daily volume of sales to pool plants was more than three times the amount of OMFF milk required at pool plants on the lowest-volume weekend day. The amount of milk delivered to fluid processing plants on the highest-volume day in January represented approximately 60 percent of OMFF's average daily production for the month. During the month of January in total, however, only 43 percent of OMFF's milk was received at pool plants, with the remaining 57 percent diverted to nonpool plants.

For the month of June 1985, the largest volume of OMFF milk moved to pool plants on any day was more than twice the smallest daily volume, and was approximately 40 percent of the average daily supply of OMFF milk during June. However, during the whole month of June, only 27 percent of OMMF's milk supplies were delivered to pool plants, with 73 percent diverted to nonpool plants. It is apparent from these statistics that OMFF producers play a significant role in handling the necessary reserve milk supplies of the market. At the same time, it is also evident that OMFF cannot handle its entire milk supply in the most efficient and economic manner without an increase in the order's present diversion limits.

A witness representing Darigold, Inc., testified in favor of Darigold's proposal to increase the Oregon-Washington order's diversion limits from 60 percent in each month to 80 percent during the months of September through April, with no limit effective for the months of May through August. The witness characterized the current limits as too restrictive in view of the large volume of milk in the market relative to the use of milk in Class I products, and the absence of alternative markets. He stated that Northwest Dairymen's Association has experienced no difficulty in meeting the current 60-percent limit on diversions, and had assisted other cooperatives in qualifying their milk supplies by joining them in requesting that the deliveries of NDA's and the other cooperatives' milk be combined for the purpose of determining allowable diversions. The Darigold witness predicted that other cooperatives in the market might experience difficulties within the near future in meeting the 60-percent diversion limit, since milk production is over the level of the previous year. He stated that even Darigold may have trouble operating within the present diversion limit without engaging in artificial and uneconomic interplant movements of milk if milk production continues to increase at present rates.

The Darigold representative recommended that the diversion limits be increased to 80 percent for the months of September through April with no limit during the May through August period on the basis that such diversion limits would be similar to provisions of the neighboring Puget Sound-Inland order which, he said, permit the efficient handling and routing of producer milk. He stated that there have been no problems in that market in securing adequate supplies of milk for Class I use, despite the higher diversion limits there.

The Darigold witness presented no statistical evidence that would indicate that diversion limits should be increased by 20 percentage points. His testimony that NDA has had no difficulty in operating within the present 60-percent limit and, indeed, has been able through combination of deliveries to assist other cooperatives in assuring that their milk supplies will be eligible for pooling indicates that the limits adopted herein would be adequate to assure that NDA will continue to be able to pool its member producer milk supply on the Oregon-Washington market without resorting to inefficient and uneconomical movements of milk. The assertion that diversion percentages in the Oregon-Washington milk order should be the same as those in Puget Sound-Inland is not persuasive. The two markets historically have different Class I use percentages, with the Oregon-Washington Class I percentage approximately 10 points higher than the same statistic for Puget Sound-Inland. A diversion limit that allows 80 percent of the producer milk supply for the Puget Sound-Inland market to be diverted to nonpool manufacturing plants may therefore be too high to assure that pool plants in the Oregon-Washington market receive enough producer milk to satisfy their Class I needs.

It is apparent from analysis of the data supplied by the Oregon Milk Marketing Federation that during some months the organization currently finds it impossible to limit its diversions of producer milk to 60 percent of its production without engaging in unnecesary and inefficient movements of milk to pool plants. The 70-percent limit proposed by OMFF for the months of September through April, with no limit on diversions during May through August, should allow the Federation to assure the continued pooling of the milk of all of its members. Projections of production and OMFF deliveries to pool plants, based on the statistics in the hearing record and current rates of increase in production, indicate that the 70-percent limit should accommodate OMFF activities for at least the next year. There is no reason to base

diversion limits on the assumption that production will continue to increase indefinitely at the same rate as it had for the last few months of statistics in the hearing record. Therefore, a 70-percent diversion limit, which is adequately supported by the hearing record, would appear to be more appropriate for the Oregon-Washington market at the present time than an 80-percent limit, for which there is no basis beyond conjecture.

4. *Allocation of nonfluid milk receipts used in Class II products.*

The allocation provisions of the order should be changed to begin deducting the fluid milk equivalent of nonfluid milk receipts used to produce Class II products first from Class II used instead of from Class III, as proposed by Umpqua Dairy Products Company (Umpqua).

Umpqua urged that the portion of the classification provisions common to most milk orders that allocates to Class II use nonfluid milk receipts used in Class II products be incorporated in the Oregon-Washington milk order. The witness testified that Umpqua has Class III use in the form of diversions of producer milk to a nonpool cheese plant, butter churned at the dairy and shrinkage (milk lost or unaccounted for in hauling and processing). He stated, however, that in only 5 of the 17 months preceding the hearing was any producer milk at Umpqua allocated to Class III except as shrinkage. All of the producer milk diverted to the cheese plant or churned into butter during 12 of the preceding 17 months was allocated to Class II and billed to Umpqua at the Class II price because under the order nonfluid receipts used in Class II products are deducted first from Class III use. This reduced the Class III use available for allocation purposes to the extent that producer milk receipts had to be allocated to Class II use. The witness explained that although Umpqua is obligated to the pool at the Class II price for milk use in Class III products but allocated to Class II, the handler is unable to recover more than the Class III price from the cheese plant operator or from sales of butter. He introduced an exhibit showing that the present treatment of nonfluid milk receipts in the allocation sequence costs Umpqua an average of $440 per month more than if the nonfluid receipts were allocated the the class in which they are used. In addition to the cost of the present allocation sequence, the witness explained that determining the cost of butter production in advance is impossible given the unknown factor of the class to which the skim milk and butterfat used to produce butter will be allocated.

The Umpqua representative included in his testimony data computed by the market administrator's office for the first five months of 1985 that show the impact the proposed change would have on the Oregon-Washington pool. The total pool values for the five months would have declined by an average of $6,830 per month, resulting in an average reduction in the weighted average price to producers of .4 cents per hundredweight. For none of the five months would the effect on producer prices have been as much as a whole cent.

Under cross-examination, the witness stated that the solids in nonfluid milk products are necessary ingredients in the manufacture of ice cream, and are not merely lower-cost substitutes for producer milk. Use of such receipts does not, therefore, displace producer milk from Class II use to Class III. Under further questioning, the witness determined that, in fact, if the solids in producer milk receipts were easily extractable, producer milk would be a lower-cost source of solids than nonfluid milk products.

A spokesman for a proprietary handler operating two distributing plants regulated under the Oregon-Washington Federal milk order and two under the Puget Sound-Inland order testified in support of Umpqua's proposal. He stated that allocation of nonfluid milk receipts used in Class II products under the Puget Sound-Inland order is done as proposed by Umpqua, and that the allocation provisions of the Oregon-Washington order should be amended to be the same as those in the Puget Sound-Inland order. He pointed out that the difference between the Class II and III prices in Oregon-Washington was a constant 25 cents per hundredweight for a number of years. However, he said, with the recent advent of advance Class II pricing, the price difference between the two classes varies by month, and has been as much as 60 cents. The witness stated that the potentially greater price difference between the two classes makes it more important that the nonfluid receipts used in Class II products be allocated to Class II.

The Darigold witness testified in favor of adoption of Umpqua's proposal to amend the allocation provisions. He stated that the classification provisions in the neighboring Puget Sound-Inland order and Oregon-Washington order should be the same so that handlers in the two markets who compete with each other for Class I and Class II sales would all be operating under the same rules and procedures.

The Oregon Milk Marketing Federation manager testified in favor of amending the order's allocation procedure as proposed by Umpqua. In addition, the brief filed by OMMF on the basis of the hearing record stated that the present allocation provision has the effect of upgrading the allocation of producer milk from Class III to Class II by assigning it to a use category in which it could not have been used. Curly's Dairy, a proprietary handler regulated under the order, filed a letter supporting the proposal. There was no opposition to the proposed amendment.

There is ample testimony and data in the record to support adoption of the proposal to allocate nonfluid milk receipts used in Class II products to Class II use. It is evident that nonfluid milk products are needed in the production of Class II products and cannot be used interchangeably with producer milk for those purposes. Allocation to Class II use of the nonfluid milk receipts used in Class II products therefore could not have the effect of displacing producer milk from Class II use to the lower-valued Class III use.

It is also apparent that the present allocation sequence for nonfluid milk receipts creates accounting problems and unjustified extra costs for pool plant operators producing ice cream and other Class II products which require the use of nonfluid milk ingredients. These additional costs have the potential of making Oregon-Washington pool handlers unable to compete, not just with pool handlers in neighboring orders, but also with nonpool handlers manufacturing the same products.

5. *Payments to producers.*

The order should be changed to allow handlers to make direct final payments to their nonmember producers who are not paid on the basis of the State of Oregon Quota payment plan. At the present time, producers paid on the basis of their Federal order base and who are not members of a cooperative association must receive their final payments for each month's production from the market administrator. An amendment proposed by Umpqua Dairy Products Company would allow the handlers of such producers' milk to make direct payment for their milk rather than channeling payments through the market administrator.

The proposal was presented by Umpqua Dairy's secretary-treasurer and office manager. He explained that an Umpqua nonmember producer previously paid under the Oregon quota system recently decided to drop his

quota and be paid on his Federal order base. The witness expressed his surprise and dismay at the fact that final payment to the producer could no longer be made by Umpqua, but would have to be made by the market administrator. The witness stated that handlers are entrusted with the responsibility of paying assigned bills out of the amounts due to producers and making deductions for their insurance, and should be able to have the personal connection with the producer of issuing the check for final payment.

A witness representing Carnation Company testified in favor of the proposal. He stated that the handler does all the accounting involved in paying producers and issues final payments to all of its other nonmember producers, so that adoption of such a procedure would not require an additional burden for handlers. The witness pointed out that allowing handlers to pay their own producers would save the market administrator the time and effort of doing so, and might reduce the cost of administering the order.

Witnesses for both Darigold and OMMF testified that the cooperative associations favored the proposal as contributing to the efficiency of the operation of the market administrator's office. There was no opposition to adoption of the proposal, either in testimony at the hearing or in post-hearing briefs.

Handlers ought to be able to make direct payments to the milk producers who represent their regular source of supply. The proposal made by Umpqua Dairy would enable them to do so, and should be adopted. Under the order's present provisions, the handler of the milk of a nonmember producer paid under the Federal base plan may pay various obligations on behalf of the producer and must make an advance payment for milk shipped by the producer during the first 15 days of the month, but may not issue the producer's final payment check for the month. The market administrator must issue the final payment to such producers, but does not make any payments directly to producers who are members of cooperative associations or who are paid under the Oregon State Quota system. Adoption of the proposal should remove the extra procedures required in both the handlers' and market administrator's payment process to accomplish the payment of nonmember Federal base producers, and thereby allow their operations to run more efficiently.

According to the language of the proposed amendment, a handler's failure to make any payments due under the order to producers or to the market administrator would cause payment responsibility to revert to the market administrator until the handler's obligations are kept current for a three-month period.

A new § 1124.33 entitled "Reports of payments to producers" should be added to the order to assure that the market administrator receives a copy of the final payment statement to each nonmember producer paid under the Federal base plan. The completed payroll should show the pounds of base, excess and total milk for which the producer is being paid, its butterfat content, the respective prices and total values of the milk, any adjustments and deductions, and the net amount paid to the producer. The check number and date of payment should also be reported.

6. *Producer base percentages.*

A proposal by Darigold to increase the percentage by which base pounds are computed for a producer who has not earned a daily base should not be adopted. Under the provisions of the order, producers are paid a higher, or "base", price for the portion of their production which does not exceed the daily average of their production during the market's base-building The base-building period is the market's four low months of production, usually January, February, November and December. Bases are computed and issued each February 1 on the basis of the previous year's four low months. A producer who has not earned a daily base by producing milk for at least 90 days during the previous year's base-building period will have base pounds computed as a percentage of each month's production instead of using a daily average production history as a base. The percentage used for each month is specified in the order, and varies by month from 45 to 70 percent.

The witness representing Darigold testified that the base portion of the production of a producer who has not earned a daily base should be calculated by multiplying each month's production by 80 percent rather than by the present percentages specified in the order. He based the proposal on his contention that the present rates are not reflective of the current seasonality of production of dairy farmers in the area, and that they are unduly restrictive for producers who might wish to enter the Oregon-Washington market. The Darigold representative stated that a producer entering the market after February 1 in a given year would not earn a daily base until February two years later. As a result, the producer would be paid on the present variable base percentages for nearly two years. He further stated that the percentage of base pounds of producers on the market averages approximately 87 percent of their total production, and that the base pounds of producers entering the market without an earned base average only 61.3 percent of their total production.

The Darigold witness testified that the monthly base percentages in the Oregon-Washington order have not changed since the order was promulgated in 1970, on the basis of a 1968 hearing. He asserted that the seasonal pattern of production in the market has changed considerably since then, while the percentages by which base pounds are computed for producers without earned base have not been adjusted to reflect the market's changed seasonality. The witness described at length the history of the calculation of base percentages in the Puget Sound market in the 1950's, and stated that the base percentages in the Oregon-Washington order were derived from those percentages. He advocated updating the base percentages in the Oregon-Washington order by use of the same method used to adjust the Puget Sound percentages annually. By comparing monthly production in the current year with the average production for the four low production months of the previous year, the witness showed that seasonal variation of production in the Oregon-Washington market in 1984 was markedly less than that in Puget Sound in 1953, and somewhat less than in the Oregon-Washington market in 1971. He concluded that because seasonality of production has declined in the Northwest since 1953, base percentages should be constant throughout the year. He also concluded that because use of the formula used under the Puget Sound order in the 1950's to determine base percentages yields an average percentage of 84.9 for Oregon-Washington for 1984, the appropriate updated base percentage of Oregon-Washington would be 80 percent.

The proponent witness testified that base percentages in the Puget Sound order were adjusted downward from an initial range of 55 to 85 percent to a range of 45 to 70 percent, and indicated that the adjustment was needed because producers were relinquishing their daily bases to be paid on percentage bases while their production was increasing. As a corollary to the Darigold proposal, the witness proposed that the producers' option of relinquishing their earned daily bases be eliminated from the Oregon-Washington order so that

producers would be prevented from choosing to be paid on percentage bases in order to increase their monetary returns while increasing production. He also proposed that any producer who transfers his earned daily base to another producer but continues to produce milk should not be able to use the monthly percentages provided by the order to be paid the base price for some of his production. Although neither of the additional two proposals was included in the hearing notice, the witness expressed his belief that both proposals are directly related to the question of percentage bases, and are important to the proper use and function of the order as proposed to be amended.

Under cross-examination, the witness indicated that if the base percentage were increased to 80 percent, he expected that some producers presently pooled under the Puget Sound-Inland order would attempt to pool their milk on the Oregon-Washington weighted average price, which is generally about 20 cents per hundredweight higher than the blend price in the Puget Sound-Inland market. He further testified that as producers changed from the Puget Sound-Inland market to the Oregon-Washington market, the Class I utilization percentage and prices paid to producers in the Puget Sound-Inland market would increase, while the Class I utilization percentage and producer prices in the Oregon-Washington market would decline. Although the witness stated that there probably would not be enough producer movement between the two markets to cause any significant change in the utilization percentage or prices paid to producers in either market, he also said that there are a lot of dairy farmers located in areas from which they could supply milk to either market. He indicated that the current base percentages are very likely the factor that has restrained producer movement from the Puget Sound-Inland market to the Oregon-Washington market. The witness stated that the purpose of a base plan is to even out seasonal variations in production, and that production in the Oregon-Washington market has become very level.

A representative of Carnation Company opposed the proposal on the basis that its adoption would lead to economic hardship for Carnation's nonmember producers whose milk is pooled under the Oregon-Washington order. He agreed that the lower producer price received by producers paid on percentage bases helps to keep producers from shifting from the Puget Sound-Inland market to the Oregon-Washington market. However, the witness expressed his company's concern that an increase in the returns to producers paid on percentage bases would cause Carnation producers in the Chehalis area to change Federal order markets, leaving Carnation with a shortage of milk to supply its Seattle plant. He testified that Carnation currently pays a premium to its producers who are pooled on the Puget Sound-Inland market, and that any change in the present equilibrium between the two markets that would encourage producers to change markets would create an unstable marketing condition.

The Carnation witness calculated that a new producer on the Oregon-Washington market who was paid on an 80-percent base would have received a price of $12.11 for his milk in June 1985, compared to the Oregon-Washington weighted average price of $12.10 for the same month. He stated that such a price available to a producer who has no established relationship with the market would have the effect of attracting a flood of milk to the Oregon-Washington market from the Puget Sound-Inland market until the producer prices of the two markets are equal. He asserted that the result of lowering Oregon-Washington producer prices to the level of Puget Sound-Inland prices would be unfair to Oregon dairymen who have worked hard to produce at the amount of their base and keep their price advantage. The witness estimated that there are approximately 30 to 40 Puget Sound-Inland producers in the Chehalis and Yakima Valley areas that may find it advantageous to change to the Oregon-Washington market if they could obtain a higher price for their milk. He indicated that the 80-percent base proposal, if adopted, would increase the prices avilable to those producers enough to cause them to change markets and flood the Oregon-Washington market with unneeded supplies of milk that would serve only to depress producer prices. The witness credited the Federal order base plan and the Oregon State Quota system with discouraging uncontrolled production increases and thereby keeping surplus supplies in check. He expressed concern that an 80-percent base provision would have the opposite effect. Under cross-examination, the witness also made the point that relaxing supply plant pooling standards, diversion limits and "touch-base" requirements will make it much easier for the milk of producers with no real on-going association with the Oregon-Washington market to be pooled, and that the 80-percent base provision would allow such producers to enjoy a share of the pool equivalent to that accruing to producers with a long-standing role as suppliers of the fluid needs of the market.

An Oregon-Washington producer testified against adoption of the proposal. He stated that increasing the percentage base to 80 percent would have the effect of blending down the base price to producers already supplying the market while paying higher prices to new producers on the market than they are currently receiving. He questioned paying new producers a larger share of the base pool than producers who currently supply the Oregon-Washington market but produce less than 80 percent base milk. The witness testified that giving new producers a larger market share than the percentage they currently receive would only encourage additional milk production at a time when there are already excessive surplus supplies on the market which may result in additional government support price reductions.

A producer board member of Portland Independent Milk Producers, a cooperative association representing 35 to 40 producers pooled under the Oregon-Washington order, testified in opposition to the proposal. He stated that the proposal would allow an advantage to new producers wishing to ship to the Oregon-Washington market, and encourage unneeded additional production. The witness testified that in view of the present surplus of milk production, there is no injustice in requiring a new producer to ship milk at a slight disadvantage to established producers while earning a base within the system.

The Oregon Milk Marketing Federation manager testified that the Federation does not find it necessary to amend the order's base plan in any way. He quoted the promulgation decision (34 FR 17701) as justifying the order's present base percentages as "adjusted seasonally to reflect the supply situation in the market. The lower rates in the flush production months should not encourage new producers to come on the market at a time when their production is not needed for Class I use. Neither are the stated percentages low enough to discourage entry into the market of a producer who intends to become permanently associated with the market." The witness testified that the base plan has not served as a barrier to the entry of new producers to the market, and introduced an exhibit that showed steadily increasing milk supplies in the market from 1971 through

1984 at an average annual rate of 4 percent. Over the same period, Class I use in the market increased at an average annual rate of only 2.4 percent. On the basis of that data, the witness concluded that adjustment of the base plan cannot be supported on the basis that it has brought about any milk shortage in the market. Instead, he stated, the declining relationship between Class I sales and production should not be reinforced by encouraging new producers to enter the market. The witness testified that the present percentage base provisions have discouraged seasonal dumping of surplus supplies from other markets on the Oregon-Washington market, and have helped to discourage wide seasonal fluctuations in the production of Oregon-Washington producers. He pointed out that if the present base plan has had the effect of excluding producers from the market, base would have developed a market value of its own. The fact that Federal order base never has developed any significant value, he testified, is an indication that it does not serve to exclude the milk of new producers.

The OMMF witness testified that OMMF does not expect the Oregon-Washington base plan to prevent the shifting of producers between markets. In view of the present price difference between the Oregon-Washington and Puget Sound-Inland markets, he conceded, such a shift is inevitable. He stated that OMMF would prefer to see a shift that is gradual and orderly, rather than one which would lead to the development of excess manufacturing capacity that would in turn provide an incentive to continue levels of surplus production in order to operate manufacturing plants at an efficient level. Under cross-examination, the witness indicated that during peak periods of milk production, there is not enough manufacturing capacity in the Oregon-Washington market to provide outlets for the surplus production of producers already on the Oregon-Washington market.

A base plan is incorporated in an order for the purpose of smoothing out seasonal fluctuations of production. Such fluctuations tend to occur in opposite directions as fluctuations in demand for fluid milk. In the fall and winter months, when consumption of fluid milk is highest, milk production is generally at its lowest level of the year. Handlers needing milk for bottling purposes take a larger proportion of the market's supplies during the fall and winter months. In the spring and early summer, however, milk production peaks at the same time consumer demand for fluid milk products has declined. Plants that operate for the purpose of manufacturing storable dairy products out of surplus milk may find it difficult to handle all of the milk that is produced in excess of fluid consumption during the market's flush production period.

The variable base percentages were included in the Oregon-Washington base plan as part of an attempt to level out production fluctuations through the year. According to proponent's testimony, the present base plan appears to have had the desired effect on seasonal fluctuations. However, although seasonal variation of production in the Oregon-Washington market has leveled out since promulgation of the order in 1970, seasonality is still a feature of milk production in this market. The month of highest average daily production in both 1982 and 1983 exceeded the month of lowest average daily production by over 12 percent. For 1984, the seasonal fluctuation declined to 10 percent but increased to over 19 percent in 1985. The years of 1984 and 1985 are unreliable for use in analysis of any milk production trends, however, because of the existence of the paid diversion program which was in effect from January 1984 through March 1985 for the purpose of encouraging dairy farmers to reduce production. Because of increasingly higher levels of milk production, seasonal peaks in production place at least as much burden on the capacity of the market to handle large surplus milk supplies as they did when seasonal variations in production were greater and the general level of production was lower. For this reason, it would be at least as undesirable to encourage new producers to enter the market during the months of high production at the present time as it was in 1970 when the order was promulgated and the present base percentages were included. It is apparent that the provisions of the present base plan have been effective in evening out seasonal fluctuations of production in the Oregon-Washington market. Adoption of a constant base percentage could very well reverse this trend and result in increased seasonal variations. Therefore, a constant base percentage throughout the year should not be adopted.

Federal milk orders cannot contain provisions that serve as barriers to the entry of any new producers or handlers who otherwise would have an opportunity to supply the needs of the market. In relation to the proposal to adopt a year-round percentage base of 80 percent, however, it cannot be found that the present variable base percentages accomplish such a barrier. There is testimony in the hearing record that producers convert freely from Grade B to Grade A status, and that new producers enter the market and established producers leave it, just as in any market without such a base plan. Given the average percentage that base pounds are of total producer milk, however, there may be some basis for increasing the variable percentages used to compute base pounds. Unfortunately, optimal percentages are not easily discernible from the hearing record. Until there is some indication that the present base percentages are causing disorderly marketing conditions, or that other base percentages would improve milk marketing conditions under the order, there is no basis upon which to change them.

With respect to producers wishing to change from the Puget Sound-Inland market to the Oregon-Washington market, such producers would be able to change markets with only a small decrease in price below what they have been receiving under the Puget Sound-Inland market. After being associated with the Oregon-Washington market for one base-earning period, the producer would be issued an earned daily base. Of course, a producer who changes markets as a result of a plant gaining pool status under the Oregon-Washington market would be eligible for a full producer base on the basis of milk deliveries to that plant. It is apparent from studying the pool statistics for the Puget Sound-Inland and Oregon-Washington markets for the months of July and August 1985 [1] that the present Oregon-Washington base plan provisions present no barrier to the entry of producers previously pooled under the Puget Sound-Inland market. The number of producers pooled under the Puget Sound-Inland order declined by 92 from July to August, while the number of producers pooled under the Oregon-Washington order increased by 88. At the same time, the difference between the Puget Sound-Inland and Oregon-Washington weighted average prices declined from 20 cents to 8 cents. Any price advantage enjoyed by Oregon-Washington producers appears to be rather vulnerable, and evidently not at all well-protected by the variable base percentages in the Oregon-Washington base plan.

[1] Official notice is taken of the Market Administrator's Report for Federal Order Nos. 124, 125 and 135 for the months of August and September 1985, Vol. 10, Nos. 8 and 9.

If the proposal to change the base percentage to a constant 80 percent were adopted, it would not be possible to include the Darigold representative's suggested corollary to the proposal to eliminate the option of a producer to relinquish his earned base in favor of being paid on a percentage base. That part of the proposal is one on which producers would probably want an opportunity to comment. Failure to give adequate notice in the notice of hearing that such an amendment would be considered would constitute unfair treatment of such producers, and could not be justified. The witness had indicated that elimination of the base relinquishment option was important to the 80-percent base amendment. However, it would be inequitable to allow new producers to enter the market with a guarantee that 80 percent of their production would be base while depriving established producers of the same assurance.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Oregon-Washington order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended regulating the handling of milk in the Oregon-Washington marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1124

Milk marketing orders, Milk, Dairy products.

PART 1124—MILK IN THE OREGON-WASHINGTON MARKETING AREA

1. The authority citation for 7 CFR Part 1124 continues to read as follows:

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

2. Section 1124.2 is revised to read as follows:

§ 1124.2 Dairy farmer for other markets.

"Dairy farmer for other markets" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority and from whose farm milk previously has been received at a pool plant, if during the month milk from the same farm that was produced in compliance with the inspection requirements of a duly constituted health authority is received at a nonpool plant (except an other order plant) as other than a diversion from a pool plant.

3. In § 1124.9, paragraph (b) the text preceding paragraph (b)(1) is revised to read as follows:

§ 1124.9 Pool plant.

* * * * *

(b) a supply plant from which not less than 40 percent in any month of September through November and not less than 30 percent in any other month, of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.11 (excluding milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (except as filled milk) to a pool distributing plant or is a route disposition in the marketing area of fluid milk products (except filled milk) processed and packaged at such plant; *Provided,* That:

* * * * *

4. In § 1124.11, paragraphs (a) and (b) are revised to read as follows:

§ 1124.11 Producer.

* * * * *

(a) A cooperative association may divert for its account to a nonpool plant the milk of any producer whose milk has been received previously at a pool plant or is received subsequently at a pool plant in the same month. The aggregate quantity diverted may not exceed 70 percent in the months of September, October, November, January and February and 80 percent in the months of December, March and April. No diversion limit shall apply during the months of May through August. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers if each association has filled such a request in writing with the market administrator on or before the first day of the month such agreement is effective. This request shall specify the basis for assigning any over-diverted milk to the producer members of each cooperative association according to a method approved by the market administrator.

(b) A handler in its capacity as the operator of a pool plant may divert for his account to a nonpool plant the milk of any producer whose milk has been received previously at a pool plant or is subsequently received at a pool plant in the same month, and who is not a member of a cooperative association which is diverting milk pursuant to paragraph (a) of this section during the month. The aggregate quantity diverted may not exceed 70 percent in the months of September, October, November, January and February, and 80 percent in the months of December, March and April, of the producer milk received at or diverted from such handler's pool plant(s) and for which the operator of such plant(s) is the handler

during the month. No diversion limit shall apply during the months of May through August.

* * * * *

5. A new § 1124.33 is added to read as follows:

§ 1124.33 Reports of payments to producers.

On or before the 25th day after the end of the month, each handler paying producers who have not authorized a cooperative association to receive payment for their milk, and whose milk is not subject to the Oregon Base Plan pursuant to § 1124.68, shall report to the market administrator in detail and on forms prescribed by the market administrator as follows for each such producer:

(a) The producer's name, address and days of delivery;

(b) The total pounds of milk received from such producer, the average butterfat test thereof, and the pounds of butterfat contained in the producer's milk;

(c) The pounds of base and excess milk for each producer;

(d) The value of each producer's milk at the base and excess prices for the month;

(e) The nature and amount of any adjustments to and deductions from the payments due each producer; and

(f) The net amount of the payment made to each such producer for milk delivered during the month.

6. In § 124.46, paragraphs (a)(4) and (a)(5)(i) are revised to read as follows:

§ 1124.46 Allocation of skim milk and butterfat classified.

* * * * *

(a) * * *

(4)(i) With respect to a plant that was fully regulated in the preceding month under this or any other Federal milk order providing for a similar allocation of beginning inventories of packaged fluid milk products:

(*a*) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month; and

(*b*) Subtract from the pounds of skim milk in Class II the pounds of skim milk in packaged cream in inventory at the beginning of the month;

(ii) Subtract from the pounds of skim milk in Class II, the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or cream) that is used to produce, or added to, any product specified in § 1124.41(b), but not in excess of the pounds of skim milk remaining in Class II;

(5) * * *

(i) Other source milk in a form other than that of a fluid milk product or cream that was not subtracted pursuant to paragraph (a)(4)(ii) of this section;

* * * * *

7. In § 1124.82, paragraphs (c) (1) and (2) are revised and a new paragraph (c)(3) is added to read as follows:

§ 1124.82 Payments from the producer-settlement fund.

* * * * *

(c) * * *

(1) To each cooperative association authorized to receive payments due producers who market their milk through such cooperative association, and which is not subject to the Oregon Base Plan pursuant to § 1124.68, an amount equal to the aggregate of the payments calculated pursuant to paragraph (a) of this section for all producers certified to the market administrator by such cooperative association as having authorized such cooperative association to receive such payments;

(2) To the Director, Milk Audit and Stabilization Division, Oregon State Department of Agriculture, for each producer and cooperative association for milk subject to the Oregon Base Plan pursuant to § 1124.68, the aggregate of the payments otherwise due such individual producers and cooperative associations pursuant to paragraph (b) and paragraph (c)(1) of this section; and

(3) To each handler who so requests, for milk received by the handler from producers who have not authorized a cooperative association to receive payment for their milk and whose milk is not subject to the Oregon Base Plan pursuant to § 1124.68, an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraph (a) of this section subject to the provisions of § 1124.86. The handler then shall pay the individual producers the amounts due them on or before the date specified in paragraph (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to participate in this payment arrangement until the handler has met all prescribed payment obligations for three consecutive months.

Signed at Washington, DC, on November 20, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-28297 Filed 11-26-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 27, and 29

[Docket No. 24848; Notice No. 85-13]

Helicopter Minimum Flightcrew

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM), invitation for interested persons to submit comments.

SUMMARY: This advance notice proposes to establish a minimum flightcrew of at least two pilots for helicopters where power controls (throttles) are not incorporated as a part of the pilot's collective control. During engine emergency conditions, the pilot needs to keep his hands on the primary controls (collective and cyclic) to maintain the aircraft within authorized flight limits. Unless the power control is a part of the collective control, exceptional pilot skill may be required to control a helicopter and take the necessary corrective actions relating to an engine emergency. This action results from previous public comments identifying power control location as a significant safety concern.

DATES: Comments must be received on or before May 25, 1986.

ADDRESSES: Comments on the advance notice may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24848, 800 Independence Avenue, SW., Washington, DC 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue, Washington, DC 20591. Comments delivered must be marked Docket No. 24848. Comments may be inspected in Room 916 between 8:30 a.m. and 5 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. J. S. Honaker, Regulations Program Management (ASW-111), Rotorcraft Standards Staff, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101, telephone (817) 877-2552 or FTS 734-2552.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting

the proposals contained in this notice are invited. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received, and a subsequent notice will be issued if the FAA decides to proceed further.

This advance notice is published as a method for consideration of this issue by all segments of the rotorcraft community. By publishing this notice, the FAA is not committing to continuation, abolishment, or revision of this proposed rule. The future of this project will be largely dependent upon the comments received.

All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with the rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24848." The postcard will be date/time stamped and returned to the commenter.

Availability of ANPRM

Any person may obtain a copy of the ANPRM by submitting a request to the FAA, Office of Public Affairs, Attn: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of the ANPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On May 9, 1983, the FAA Rotorcraft Certification Directorate sent letters to approximately 75 persons and organizations associated with the worldwide rotorcraft community requesting their opinion of the five most important safety issues that could be addressed through changes to the certification requirements. Results of that poll were published on May 7, 1984 (49 FR 19309). A U.S. helicopter operator responded and listed as first priority the requirement for the power control to be located on the collective control for certification as a single-pilot helicopter. The Directorate is also aware that there have been various informal discussions within the FAA on this subject in recent years.

Discussion

For simplicity, the following discussion generally addresses a single-engine helicopter. For the topic under discussion, a multiengine helicopter will have the same basic characteristics as a single-engine helicopter, but the multiple engines complicate the effects of power control manipulation on the helicopter. The proposed rulemaking is intended to apply equally to single-engine and multiengine helicopters.

The power control of a helicopter, especially a turbine-engine helicopter, is not quite comparable to a "throttle," and because of the various cockpit configurations, a single, adequate descriptive term for this device has not been adopted by the helicopter community. Examples of the various names used for this device have been throttle, speed control (rotor or engine), engine condition lever, emergency throttle, twist-grip, power control, thrust control, and engine lever.

The following is a very simplified discussion of the functions of the power control. Normally, the power control is a twist grip on the collective control or a fore- and aft-moving, throttle-like lever on the lower or upper center cockpit console. Basically, the power control has at least three positions: fuel cutoff, engine idle, and flight. A separate power control is required for each engine. The fuel cutoff and engine idle speed positions are self-explanatory. In the flight position, the power control sets the engine/main rotor speed governors at a speed within the allowable range for flight. The flight position may be one position or a range of positions used to select main rotor speed. If only one position is used, another device may permit adjustment of main rotor speed, or there may be no other adjustment of main rotor speed. Once the power control is positioned, the increasing or decreasing engine power demands are initiated by the pilot pulling up or pushing down the collective control. The engine and main rotor governors control engine fuel flow to maintain the desired main rotor speed (within engine and governor operating characteristics and limits) and to match the power demanded by collective control movement. For a few helicopters, the engine-governor system characteristics and a narrow range of authorized main rotor speeds require that the power lever be adjusted with almost any collective control input to maintain the correct main rotor speed.

Some helicopters incorporate a manual or emergency fuel control system. With the emergency fuel control system activated, the power control becomes a direct control of engine fuel flow; i.e., changes in engine power required by collective control inputs do not cause appropriate changes in engine power output. If an increased collective control input is made, the main rotor will slow down, but the engine will remain at the initial power output. The power lever must be advanced to increase the engine fuel flow and engine power output to return the main rotor speed back to the desired speed and at the new power level. In this emergency or manual mode, engine speed, temperature limits, and main rotor speed limits can be easily exceeded unless there is careful coordination of the collective and power controls. If the power control is not located on the collective control, exceptional piloting skill is required when in the manual or emergency control mode to complete an approach and landing by one pilot.

Engine failure in a single-engine helicopter results in rapid slowing of the main rotor speed, and reducing collective control is required to keep the speed within limits. Main rotor speed characteristics and control input requirements after an engine failure on a multiengine helicopter depend mostly on the characteristics and capabilities of the remaining engines. With any abnormality, the first responsibility of the pilot is to fly the aircraft safely; i.e., correct attitude, airspeed, rotor speed, etc. Only after assuring continued safe flight should the pilot take action to correct the abnormality. Even when the power control is no more than a three-position switch located on the center console, an engine problem can require the single pilot to remove his hand from the primary control when power control movement is needed. While it is FAA policy that an engine failure should not require immediate corrective action, the policy has also been that collective control input need not be delayed more than 1 second.

Some engine/rotor control systems have "beep" switches located on the collective control that permit limited governor/speed control settings. Where frequent governor/speed adjustments are required during normal operations, the "beep" switches appear to be preferred over making adjustments with the power control levers. However, these "beep" switches normally do not have sufficient control authority for use during an emergency. (The "beep" switches *do* permit rapid adjustment of "good" engine control settings to assure

that full power is available on the remaining engine after an engine failure on a multiengine helicopter.) While this proposal and use of these "beep" swiches are related, "beep" switches are not a significant consideration where power control locations are concerned.

While an engine failure is generally considered to be a relatively rapid stopping of the engine, there are numerous other failure modes that must be considered for this proposal. Examples of other failure modes are failure to maximum power, fire while otherwise running normal, and overtemperature.

Other system failures may also demand immediate and coordinated collective and engine/rotor control actions. The primary "other" system failure is the antitorque rotor failure in a single main rotor helicoper. Again, the tail rotor failure may be a control failure, a drive failure, a rotor blade failure, or various other failures where separate collective and engine control inputs are needed.

Although accident investigation reports have neither included the detail necessary to identify specific instances when the location of the power control influenced the accident outcome, nor included information related to increase engine damage due to delays in engine shutdown or miscoordination of power and collective controls, many scenarios can be envisioned where the proper or required power control movement as a result of an engine problem could vary from no movement required, to movement from flight to shutoff as rapidly as possible.

Scope of the Advance Notice

The scope of this advance notice is limited to the normal and transport category helicopter airworthiness requirements of Parts 27 and 29 of the Federal Aviation Regulations (FAR). A definition of power control for helicopters is included in Part 1 of the FAR. This advance notice does not apply to the broader classification of rotorcraft because designs other than helicopters may have significantly different systems and operational requirements.

Economic Impact and Benefits

Public comments concerning the economic impact and benefits are sought in addition to comments on the technical aspect of airworthiness standards to implement a change to the minimum crew requirements when the helicopter power control(s) is not located on the collective control.

This advance notice proposes changes to increase the safety of helicopter operations by requiring a crew of two pilots when the power control and collective are separated. Preliminary evaluation indicates that the ANPRM is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Indications are that future designs of only three U.S. helicopter manufacturers would need to be evaluated for any economic impact if this proposal is implemented. A regulatory evaluation will be prepared with the assistance of comments received as a result of this notice.

Specifically, the FAA requests the following economic information and supporting data.

1. What are the cost comparisons of providing the power control on and off the collective control? Costs should be full life cycle costs including those relating to research and development, documentation, equipment and assembly, maintenance and those associated with any weight increases.

2. What are the potential benefits of the proposal? Information is desired on any accidents where location of the power control was a contribution factor or where the location of the power control may have contributed to engine damage.

3. Is the proposed rule likely to have a financial impact on small businesses? If so, what are the types and sizes of the entities impacted and the magnitude of the impact?

4. Is the proposal likely to place American manufacturers of helicopters at a competitive disadvantage relative to foreign manufacturers? If so, what are the estimate of lost sales and the nature of the disadvantage?

List of Subjects

14 CFR Part 1

Airmen, Flights, Aircraft pilots, Pilots, Air safety, Safety, Air transportation, Air carriers, Aircraft, Helicopters, Rotorcraft.

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

The Proposed Amendments

PART 1—DEFINITIONS AND ABBREVIATIONS

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 1 of the FAR (14 CFR Part 1) as follows:

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

Authority: 49 U.S.C. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By amending § 1.1 by adding the definition of "power control for helicopters" between the present definitions for "positive control" and "precision approach procedure" to read as follows:

§ 1.1. General definitions.

* * * * *

"Power control for helicopters" means the device used by the pilot to control the engine, including a fuel cutoff feature, and may include idle and flight position(s). The collective control is not a power control but may have a power control such as a twist grip incorporated as a part of the collective control.

* * * * *

PART 27—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 27 of the FAR (14 CFR Part 27) as follows:

3. The authority citation for Part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

4. By revising § 27.1523 to read as follows:

§ 27.1523 Minimum flightcrew.

(a) For helicopters that do not incorporate power control(s) on the pilot's collective control, the minimum flightcrew is two pilots.

(b) For helicopters that incorporate power control(s) on the pilot's collective control, and for other rotorcraft, the minimum flightcrew must be established so that it is sufficient for safe operation, considering—

(1) The workload on individual crewmembers;

(2) The accessibility and ease of operation of necessary controls by the appropriate crewmember; and

(3) The kinds of operation authorized under § 27.1525.

PART 29—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 29 of the FAR (14 CFR Part 29) as follows:

5. The authority citation for Part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

6. By revising § 29.1523 to read as follows:

§ 29.1523 Minimum flightcrew.

(a) For helicopters that do not incorporate power control(s) on the pilot's collective, control, the minimum flightcrew is two pilots.

(b) For helicopters that incorporate power control(s) on the pilot's collective control, and for other rotorcraft, the minimum flightcrew must be established so that it is sufficient for safe operation, considering—

(1) The workload on individual crewmembers;

(2) The accessibility and ease of operation of necessary controls by the appropriate crewmember; and

(3) The kinds of operation authorized under § 29.1525.

Issued in Fort Worth, Texas, on November 21, 1985.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 85-28231 Filed 11-26-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 832 3051]

John William Costello Associates, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require two Washington, DC-based employment counseling services and four corporate officers, among other things, to cease misrepresenting: (1) The basis on which clients are accepted; (2) the number of clients who have obtained interviews, job offers, or jobs through respondents' services; and (3) the chances that the clients' fees would be refunded because the employer would likely pay the respondents a finder's fee. Additionally, respondents would be required to have a reasonable basis for any placement claims they make, and whenever such placement claims are made, to maintain records of their placements and make a composite of these records available to clients on request. Further, respondents would be prohibited from accepting a fee until a client has obtained employment through respondents' services.

DATE: Comments must be received on or before January 27, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Charles Lane, FTC/H-272, Washington, DC 20580. (202) 523-3937.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Employment counseling services, Trade practices.

Before Federal Trade Commission

[File No. 832 3051]

Agreement Containing Consent Order to Cease and Desist

In the matter of John William Costello Associates, Inc., a corporation, National Executive Search, Inc., a corporation, John William Costello, Sr., individually and as an officer of said corporations, John William Costello, Jr., individually and as an officer of said corporations, James H. Sellors, individually and as an officer of said corporations, and William S. Spector, individually and as an officer of said corporations.

The Federal Trade Commission having initiated an investigation of certain acts and practices of John William Costello Associates, Inc., a corporation, National Executive Search, Inc., a corporation, John William Costello, Sr., John William Costello, Jr., James H. Sellors, and William S. Spector, individually and as officers of said corporations, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between John William Costello Associates, Inc., a corporation, National Executive Search, Inc., a corporation, John William Costello, Sr., John William Costello, Jr., James H. Sellors, and William S. Spector, individually and as officers of said corporations, and a duly authorized officer of said corporations, and Douglas L. Lashley, Attorney for James H. Sellors, and counsel for the Federal Trade Commission that:

1. Proposed respondents John William Costello Associates, Inc. (JWCA) and National Executive Search, Inc. (NESI) are corporations organized, existing and formerly doing business under and by virtue of the laws of the District of Columbia, all of the above corporate respondents with their principal offices and places of business previously at 1612 K Street, NW., Washington, D.C. 20006. The present address of JWCA and NESI is c/o John William Costello, Sr., 5601 River Road, Bethesda, Maryland 20816.

Proposed respondents John William Costello, Sr., John William Costello, Jr., James H. Sellors, and William S. Spector are or were officers of both of the proposed corporate respondents named herein. They directed, formulated, and controlled the acts and practices of the said proposed corporate respondents, including the acts and practices herein set forth.

John William Costello, Sr.'s address is 5601 River Road, Bethesda, Maryland 20816.

John William Costello, Jr.'s address is 7866 Archbold Terrace, Cabin John, Maryland 20818.

James H. Sellors' address is 12900 Old Frederick Road, Sykesville, Maryland 21784.

William S. Spector's address is 41 Orchard Way South, Rockville, Maryland 20854.

2. Proposed respondents admit all of the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents:

(a) Waive any further procedural steps;

(b) Waive the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) Waive all rights to seek judicial review or otherwise to settle or contest

the validity of the order entered pursuant to this agreement; and

(d) Waive any claim under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby and related material pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement or so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that facts, other than the jurisdictional facts, alleged in the complaint are correct or that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Based upon proposed respondents' representations as to their financial status contained in financial statements and other financial information which the proposed respondents provided to the Commission in conjunction with the settlement of this matter, the Commission waives its right, if this agreement is accepted by the Commission, to seek consumer redress under Section 19 of the Federal Trade Commission Act.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondents John William Costello Associates, Inc., a corporation, and National Executive Search, Inc., a corporation, their successors and assigns, and their officers, and respondents John William Costello, Sr., John William Costello, Jr., James H. Sellors, and William S. Spector, individually and as officers of said corporations, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale or sale of any employment counseling service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication,

1. The basis upon which clients are accepted;

2. The number of interviews or job offers which clients typically receive as a result of respondents' services;

3. The number or percentage of clients who obtained interviews or job offers as a result of respondents' services;

4. The number or percentage of clients who obtained jobs as a result of respondents' services; and

5. The likelihood that clients' fees will be refunded.

B. Making any representation, directly or by implication, concerning the benefits received by former clients, or the benefits a client is likely to receive, including but not limited to, job interviews, job offers, jobs, or the return of clients' fees, unless at the time of making such representation respondents possess and reply upon evidence constituting a reasonable basis for such representation.

C. 1. Failing whenever respondents make any job placement representative, including representations concerning matters covered by subparagraphs 1–5 of Paragraph A., to:

(a) maintain accurate records for every client who has contracted for such employment services, noting who has been placed in a new job as a result of respondents' services; (b) compile a composite of such records, including at a minimum, the placement history for the eight calendar quarters immediately preceding the quarter in which the claim is made and a calculation on a quarterly and annual basis of the actual percentage of placements as a ratio of all clients who were placed to all clients who contracted for services but who did not cancel within any applicable cooling-off period; and (c) advise each prospective client orally and in writing, that a composite of placement records is available on request.

2. Failing to include in every contract for such job placement services and in any advertisement or promotional material that contains any express or implied job placement claim, a clear and conspicuous statement that a composite of placement records for the previous two (2) years is available for inspection and copying upon request.

D. Accepting any fee from a client or obligating a client to pay any fee before that client has obtained employment through the efforts of respondents; provided, however, that this prohibition shall not apply if respondents:

1. Provide only couseling or resume writing services;

2. Do not make any representations, express or implied concerning (a) respondents' job placement rates with former clients; or (b) respondents' ability to locate prospective employer or their ability to obtain interviews for clients or place clients in jobs; and

3. Disclose to the client orally and clearly and conspicuously in a written contract, that (a) respondents' services only include employment counseling and/or resume writing; and (b) respondents have not contracted to obtain interviews for the client or to place him or her in a job.

E. Failing to maintain for three years from the date that the representations are last made or disseminated all materials relied upon by respondents in making any representation covered by this order and upon request make them available to the FTC for inspection and copying such materials

II

It is further ordered that respondents distribute a copy of this order to all operating divisions of said corporations and to present or future personnel, agents or representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order and that respondents secure from each such person a signed statement acknowledging receipt of said order.

III

It is further ordered that respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order.

It is further ordered that the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliations with new businesses or employment. In addition, for a period of five (5) years from the date of service of this order, each respondent shall promptly notify the Commission of each affiliation of a new business or employment. Each such notice shall include each respondents' new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as description of respondents' duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph will not affect any other obligation arising under this order.

It is further ordered that the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Orders to Aid Public Comment

The Federal Trade Commission has accepted agreements to proposed consent orders from John William Costello Associates, Inc., National Executive Search, Inc., John William Costello, Sr., John William Costello, Jr., James H. Sellors, William S. Spector, and Roy B. Kelly.

The proposed consent orders have been placed on the public record for sixty (60) days to allow interested persons to comment. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The complaints charge that respondents misrepresented the basis on which clients were accepted, the number of clients who obtained job interviews, job offers, and jobs through respondents' services, that clients' fees would likely be refunded, and that such acts and practices are unfair and deceptive under section 5 of the Federal Trade Commission Act.

Paragraph I(A) of each order prohibits respondents from misrepresenting the basis on which clients are accepted, the number of clients who have obtained interviews, job offers, or jobs through respondents' services, and the chances that the clients' fees would be refunded because the employer would likely pay the respondents a finder's fee.

Paragraph I(B) requires respondents to have a reasonable basis for any placement claims they make.

Paragraph I(C) requires respondents whenever they make any placement claim in advertising, in written contracts, or orally, to maintain records of their placements, and to notify clients that a composite of these records is available on request.

Paragraph I(D) prohibits respondents from accepting a fee until a client has obtained employment through respondents' services when respondents are engaged in the business of job placement or if the respondents make any representation concerning their ability to obtain job interviews, job offers, or jobs for their clients.

Paragraph I(E) requires respondents to maintain records relied on when making any representations covered by the order.

Paragraph II of each order requires respondents to distribute a copy of the order to, and secure a signed statement acknowledging receipt of the order from, present or future employees having sales or policy responsibilities with respect to the subject matter of each order.

Paragraph III requires that respondents notify the Commission of any changes in corporate status or in the employment of the individual respondents.

The proposed consent orders also require respondents to file a compliance report within 60 days.

The orders do not provide for consumer redress. The financial information furnished to the Commission by respondents indicates that they do not have assets to pay refunds to their former clients. The class action suit (*Slattery, et. al. v. Costello et. al.*, Civil Action No. 83-0982) now pending in the D.C. District Court is closely looking at the assets of the respondents and if successful, can distribute to consumers any assets that might be subsequently discovered. Further investigation by the Commission of the financial status of respondents is unwarranted, since it would largely duplicate the efforts of the class action suit.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-28332 Filed 11-26-85; 8:45 am]

BILLING CODE 6750-01-M

---

16 CFR Part 13

[File No. 832 3051]

Roy B. Kelly; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a former corporate officer of a Washington, DC-based employment counseling service, among other things, to cease misrepresenting: (1) The basis on which clients are accepted; (2) the number of clients who have obtained interviews, job offers, or jobs through respondent's services; and (3) the chances that the clients' fees would be refunded because the employer would likely pay the respondent a finder's fee. Additionally, respondent would be required to have a reasonable basis for any placement claims he makes, and whenever such placement claims are made, to maintain records of his placements and make a composite of these records available to clients on request. Further, respondent would be prohibited from accepting a fee until a client has obtained employment through respondent's services.

DATE: Comments must be received on or before January 27, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Charles Lane, FTC/H-272, Washington, DC 20580. (202) 523-3937.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Employment counseling services, Trade practices.

Before Federal Trade Commission

[File No. 832 3051]

Agreement Containing Consent Order to Cease and Desist

In the matter of Roy B. Kelly, individually and of John William Costello Associates, Inc.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Roy B. Kelly, individually and as a former officer of John William Costello Associates, Inc., and it now appearing that Roy B. Kelly, individually and as a former officer of John William Costello Associates, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Roy B. Kelly, individually and as a former officer of John William Costello Associates, Inc., and Thomas R. Dyson, Attorney for Roy B. Kelly, and counsel for the Federal Trade Commission that:

1. Proposed respondent Roy B. Kelly was an officer of John William Costello Associates, Inc., a corporation organized, existing and formerly doing business under and by virtue of the laws of the District of Columbia. Its place of business was previously at 1612 K Street, NW., Washington, DC 20006. The present address of Roy B. Kelly is 4701 Woodward Avenue, #331, Chevy Chase, Maryland 20854.

2. Proposed respondent admits all of the jurisdictional facts set forth in the draft of the complaint here attached.

3. Proposed respondent:

(a) Waives any further procedural steps;

(b) Waives the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) Waives all rights to seek judicial review or otherwise to settle or contest the validity of the order entered pursuant to this agreement; and

(d) Waives any claim under the Equal Acces to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby and related material pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement or so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This Agreement if for settlement purposes only and does not constitute an admission by proposed respondent that facts, other than the jurisdictional facts, alleged in the complaint are correct or that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right he may have to any other manner of service. The complaint may be used construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Based upon proposed respondent's representations as to his financial status contained in financial statements and other financial information which the proposed respondent provides to the Commission in conjuction with the settlement of this matter, the Commission waives its right, if this agreement is accepted by the Commission, to seek consumer redress under Section 19 of the Federal Trade Commission Act.

8. Proposed respondent has read the proposed complaint and order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing that he has fully complied with the order. Proposed respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It is ordered that respondent Roy B. Kelly, individually and as a former officer of John William Costello Associates, Inc., directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale or sales of any employment counseling services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication,

1. The basis upon which clients are accepted;

2. The number of interviews or job offers which clients typically receive as a result of respondent's services;

3. The number or percentage of clients who obtained interviews or job offers as a result of respondent's services;

4. The number or percentage of clients who obtained jobs as a result of respondent's services; and

5. The likelihood that clients' fees will be refunded.

B. Making any representation, directly or by implication, concerning the benefits received by former clients, or the benefits a client is likely to receive, including but not limited to, job interviews, job offers, jobs, or the return of clients' fees, unless at the time of making such representation respondent posseses and relies upon evidence constituting a reasonable basis for such representation.

C. 1. Failing whenever respondent makes any job placement representation, including representations concerning matters covered by subparagraphs 1–5 of Paragraph A., to:

(a) maintain accurate records for every client who has contracted for such employment services, noting who has been placed in a new job as a result of respondent's services; (b) compile a composite of such records, including at a minimum, the placement history for the eight calendar quarters immediately preceding the quarter in which the claim is made and a calculation on a quarterly and annual basis of the actual percentage of placements as a ratio of all clients who were placed to all clients who contracted for services but who did not cancel within any applicable cooling-off period; and (c) advise each prospective client orally and in writing, that a composite of placement records is available on request.

2. Failing to include in every contract for such job placement services and in any advertisement or promotional material that contains any express or implied job placement claim, a clear and conspicuous statement that a composite of placement records for the previous two (2) years is available for inspection and copying upon request.

D. Accepting any fee from a client or obligating a client to pay any fee before that client has obtained employment through the efforts of respondent; provided, however, that this prohibition shall not apply if respondent:

1. Provides only counseling or résumé writing services;

2. Does not make any representations, express or implied, concerning (a) respondent's job placement rates with former clients; or (b) respondent's ability to locate prospective employers or his ability to obtain interviews for clients or place clients in jobs; and

3. Discloses to the client orally and clearly and conspicuously in a written contract, that (a) respondent's services only include employment counseling and/or résumé writing; and (b) respondent has not contracted to obtain interviews for the client or to place him or her in a job.

E. Failing to maintain for three years from the date that the representations are last made or disseminated all materials relied upon by respondent in making any representation covered by this order and upon request make them available to the FTC for inspection and copying such materials.

II

It is further ordered that respondent distribute a copy of this order to all present or future personnel, agents or representatives having sales, advertising or policy responsibilities with respect to the subject matter of this order and that respondent secure from each such person a signed statement acknowledging receipt of said order.

III

It is further ordered that the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five (5) years from the date of service of this order, respondent shall promptly notify the Commission of each affiliation of a new business or employment. Each such notice shall include respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph will not affect any other obligation arising under this order.

It is further ordered that the respondent herein shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

Analysis of Proposed Consent Orders to Aid Public Comment

The Federal Trade Commission has accepted agreements to proposed consent orders from John William Costello Associates, Inc., National Executive Search, Inc., John Williams Costello, Sr., John William Costello, Jr., James H. Sellors, William S. Spector, and Roy B. Kelly.

The proposed consent orders have been placed on the public record for sixty (60) days to allow interested persons to comment. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The complaints charge that respondents misrepresented the basis on which clients were accepted, the number of clients who obtained job interviews, job offers, and jobs through respondents' services, that clients' fee would likely be refunded, and that such acts and practices are unfair and deceptive under Section 5 of the Federal Trade Commission Act.

Paragraph I(A) of each order prohibits respondents from misrepresenting the basis on which clients are accepted, the number of clients who have obtained interviews, job offers, or jobs through respondents' services, and the chances that the clients' fees would be refunded because the employer would likely pay the respondents a finder's fee.

Paragraph I(B) requires respondents to have a reasonable basis for any placement claims they make.

Paragraph I(C) requires respondents whenever they make any placement claim in advertising, in written contracts, or orally, to maintain records of their placements, and to notify clients that a composite of these records is available on request.

Paragraph I(D) prohibits respondents from accepting a fee until a client has obtained employment through respondents' services when respondents are engaged in the business of job placement or if the respondents make any representation concerning their ability to obtain job interviews, job offers, or jobs for their clients.

Paragraph I(E) requires respondents to maintain records relied on when making any representations covered by the order.

Paragraph II of each order requires respondents to distribute a copy of the order to, and secure a signed statement acknowledging receipt of the order from, present or future employees having sales or policy responsibilities with respect to the subject matter of each order.

Paragraph III requires that respondents notify the Commission of any changes in corporate status or in the employment of the individual respondents.

The proposed consent orders also require respondents to file a compliance report within 60 days.

The orders do not provide for consumer redress. The financial information furnished to the Commission by respondents indicates that they do not have assets to pay refunds to their former clients. The class action suit (*Slattery, et. al.* v. *Costello et. al.*, Civil Action No. 83–0982) now

pending in the D.C. District Court is closely looking at the assets of the respondents and if successful, can distribute to consumers any assets that might be subsequently discovered. Further investigation by the Commission of the financial status of respondents is unwarranted, since it would largely duplicate the efforts of the class action suit.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-28333 Filed 11-26-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. H-22D]

Hazard Communication; Advance Notice of Proposed Rulemaking

AGENCY: Occuptional Safety and Health Administration (OSHA); Labor.

ACTION: Advance Notice of Proposed Rulemaking (ANPR).

SUMMARY: OSHA is hereby requesting comments and information on expanding the scope of industries covered by its Hazard Communication Standard (HCS) (29 CFR 1910.1200), which currently covers the manufacturing division, to other industries where employees are exposed to hazardous chemicals. In addition, the Agency is also considering re-opening the rule to clarify several specific issues relating to its scope, and is hereby requesting further information regarding these items.

DATE: Comments must be received on or before February 25, 1986.

ADDRESS: Written comments must be submitted, in quadruplicate, to the Docket Officer, Docket No. H-022D, Room N3670, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523-7394. Written comments received, as well as all other information in Docket H-022, will be available for inspection and copying at this address, Monday through Friday, 8:15 a.m. to 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, Occuptational Safety and Health Administration, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523-8148.

SUPPLEMENTARY INFORMATION: On November 25, 1983, OSHA published a final rule in the **Federal Register** entitled "Hazard Communication" (29 CFR 1910.1200; 43 FR 53230). The standard requires chemical manufacturers and importers to assess the hazards of chemicals which they produce or import, and to transmit information on such hazards to employees and employers in the manufacturing sector, Standard Industrial Classification (SIC) Codes 20 through 39, by means of container labels and material safety data sheets. Employers in the manufacturing sector are required to provide information concerning hazardous chemicals to their employees by means of hazard communication programs. These programs are to include container labels, material safety data sheets, training, and access to written records.

The underlying purpose of the rule is to reduce the incidence of chemical source illnesses and injuries through increased availability of information about the hazards of the chemicals. If employers have move information about the hazards, they will be able to design and implement better protective measures for their employees. If employees have such information, they will be better able to protect themselves, and to support and participate in their employer's protective programs.

Although employees in many industries are exposed to hazardous chemicals, OSHA determined that the need for hazard communication programs to alleviate the risks of such exposures was greatest in the manufacturing sector. (For a detailed discussion of this determination, please see the preamble to the final rule, 48 FR 53284-86, November 25, 1983). Although manufacturing constitutes about 30% of total employment, its employees account for more than 50% of the chemical source illnesses and injuries that are reported each year. Thus there appears to be a disporportionate need for having information about hazards in the manufacturing sector.

In addition, since the chemicals are developed and produced in the manufacturing sector, the hazard information has to be generated there first, regardless of which other industries are covered. The producers of the chemicals are in the best position to ascertain the hazards, and to pass that information on to their customers using the materials. OSHA believes that much of this hazard information will soon be available in the industrial sectors outside of manufacturing just by virtue of the fact that it will have to be generated by manufacturers to comply with the requirements of the current rule. In addition, the HCS requires labels to be placed on containers of hazardous chemicals regardless of where the container is being shipped. Thus the label information is already mandated throughout all industrial sectors. The Agency anticipated that once the rule goes into effect, the situation in the non-manufacturing industries could be assessed to verify whether the information is actually becoming available, or whether additional rulemaking would be required to ensure that it is transmitted.

The Agency's determination of the appropriate scope of industries to be covered was challenged in the United States Court of Appeals for the Third Circuit (*United Steelworkers of America* v. *Auchter*, 763 F.2d 728 (3d Cir. 1985)). The petititoners argued that other employees should be explicitly covered by the rule, and that OSHA had inappropriately drawn a distinction in terms of protection offered to employees in the various non-manufacturing industries where employees are exposed to hazardous chemicals.

The Third Circuit issued its opinion on May 24, 1985. The Court essentially agreed with OSHA's analysis that, based upon the rate of chemical source illnesses and injuries, the need for hazard communication programs may be greatest in manufacturing, but the Court did not concur that this determination should be used to support not explicitly covering the other industries. The Court was also unpersuaded by OSHA's arguments that information will become available in the non-manufacturing sector when the current rates is in place, an that the particular circumstances justified a differentiation between industries in terms of coverage under the priority-setting discretion given to the Secretary of Labor by section 6(g) of the Occupational Safety and Health Act, 29 U.S.C. 655(g). Although the Court acknowledged that "Section 6(g) clearly permits the Secretary to set priorities for the use of the Agency's resources, and to promulgate standards sequentially," the Court found that OSHA "failed" to explain "why coverage of workers outside the manufacturing sector would have seriously impeded the rulemaking process" or "why it is not feasible for the same standard to be applied in other sectors where workers are exposed to similar hazards." 763 F. 2d at 738. Therefore, in light of the Court's

decision OSHA is reconsidering the application of the HCS to employees in non-manufacturing sectors.

The reconsideration of this issue had already been initiated by OSHA prior to the issuance of the Court's opinion. On March 4, 1985, the Assistant Secretary of Labor for OSHA asked the National Advisory Committee on Occupational Safety and Health (NACOSH) to give OSHA its recommendation on the need and feasibility of expanding the scope of coverage of the Hazard Communication Standard. On June 21, 1985 NACOSH adopted the following recommendation:

[NACOSH] strongly endorses the OSHA effort to promulgate a Hazard Communication Standard and selection of the manufacturing sector for its initial scope of coverage. It is the consensus recommendation of the Committee that the scope of the current Hazard Communication Standard should be expanded to cover all employees in all industries at as early a time as possible. Complete implemenation may require phasing in gradually. The BLS incidence rates of occupational illnesses, and other appropriate factors, should be primary considerations in expanding the coverage. The Committee further recommends that OSHA establish a task force to address these issues.

A review of the rulemaking record developed for Hazard Communication (Docket H-022) reveals that while there is considerable information concerning worker exposure to hazardous chemicals in industries other than manufacturing, there is very little information concerning current practices of employers in those industries, or the applicability of the provisions as presently drawn when considering the diverse types of workplaces that may be encountered.

The purpose of this notice is to re-open the record to collect specific information in these areas so that the Agency can respond to the Court's direction. In order not to unnecessarily delay the regulatory process, the comment period established is relatively short (60 days), and the questions are specific to those areas where information is lacking. OSHA requests that respondents address these questions, keying each response to the number of the question it applies to, and provide as much substantive data as possible. Although all information is welcome, an extensive record already exists, and all information in that record will be used. It should also be noted that the need for the standard has already been demonstrated, and the information required at this point is to establish the current status of hazard communication within the industries outside manufacturing, and the appropriateness of covering those industries in a manner similar to the coverage of manufacturing in the current rule. Duplicate submissions of information previously placed in the record are not necessary. The questions are as follows:

1. Please indicate the industry or industries to which the information supplied applies (by SIC Code if possible).

2. What is the current industry practice regarding hazard communication? Do employers generally have written hazard communication programs? Are containers labeled? Are material safety data sheets available for the hazardous chemicals? Are employees trained regarding the hazards and appropriate precautionary measures?

3. What are the costs associated with the aspects of hazard communication that are currently implemented in the industry? Please indicate by specific activity if possible, i.e. costs for training, labels, etc. Based on the present provisions of the Hazard Communication Standard, what additional costs are estimated to be incurred if the standard were extended to your industry?

4. If OSHA extended the provisions of the Hazard Communication Standard to this industry as written, what problems might arise in obtaining or transmitting hazard information? (For example, are there special problems associated with the agricultural industry or small businesses?) What solutions to these problems can you suggest that would still result in employees getting the information they need?

5. Does this industry have fixed work sites? If not, is there some central point where information could be made accessible?

6. Does this industry have transient workers? What current practices are used to ensure such workers are apprised of the hazards they may encounter on the site? Is there training or information specific to the types of jobs performed?

7. To what extent are hazardous chemicals purchased from retail distributors? How is information obtained about these chemicals when purchased from these types of establishments? Do the retail distributors provide hazard information? Are manufacturers contacted directly for the information? If so, has this been a successful approach? Are employees exposed to the chemical involved without receiving information about the specific hazards? How is a determination made regarding the appropriate protective measures to be implemented in this situation?

8. Are "consumer products" used in this industry in a manner that results in different exposure levels than would be encountered in consumer usage? What types of products are these? How is hazard information obtained for these products?

9. Is this industry subject to state-initiated "right-to-know" laws? What has been the industry's experience under such state laws? Are there particular provisions that have been difficult to implement in this industry? If so, what alternative provisions are suggested to ensure employees receive the necessary information? To what extent is the industry complying with the state laws?

In addition to these questions regarding extending the scope to cover other industries, there are several areas in the current standard where a number of questions have been raised concerning interpretations and clarifications. OSHA is considering re-opening the rule on these issues, and is hereby inviting comment on the appropriateness of doing that, as well as the specific way in which the problems may be addressed.

10. The standard includes an exemption for "articles". There have been many questions regarding this exemption, and apparent confusion about the application of the provision as written. Does the "article" definition and exemption in the current rule apply to products produced or used in your industry? If so, has it been difficult to apply the definition to these products? What suggestions do you have for modifying or clarifying the definition and exemption to address these difficulties?

11. The Hazard Communication Standard exempts wood and wood products, such as lumber and paper, from coverage. Although these products may be flammable or combustible, this potential hazard is considered to be unmistakable, and provision of information for this type of hazard was thought to be unnecessary. OSHA did not intend that this exemption include "wood dust", a substance for which the American Conference of Governmental Industrial Hygienists has established exposure limits, but some have interpreted it that way. Would it be appropriate to clarify that the "wood and wood products" exemption does not

apply to "wood dust"? What problems might result from this clarification, i.e., is there any situation where coverage of wood dust would not be appropriate?

12. The rule includes a "floor" of hazard chemicals, that is, it incorporates by reference several lists of chemicals and states that the substances on these lists are to be considered hazardous in all situations. Nuisance dust appears on these lists. Since any dust can be considered a nuisance dust in some situations, OSHA futher clarified this coverage in its compliance directive on the rule (CPL 2-2.38) by stating that only those dusts listed by the American Conference of Governmental Industrial Hygienists in the nuisance particulate appendix of its annual Threshold Limit Value publication would be covered by the Hazard Communication Standard. Would it be appropriate to remove nuisance dust from the chemicals covered by the standard as a health hazard? Are there situations where labels, material safety data sheets, and training would be useful to employees exposed to these chemicals?

Public Participation

All written comments in response to this notice must be received on or before February 25, 1986, in quadruplicate, addressed to the Docket Officer, Docket No. H-022D, Room N3670, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523-7894. All written submissions, as well as other information gathered by the Agency, will be considered in any action taken. Written comments and materials submitted in response to this notice will be available for inspection and copying in the Docket Office, Room N3670, at the above address, between the hours of 8:15 a.m. and 4:45 p.m.

Authority and Signature

This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 6(b) and 8(g) of the Occupational Safety and Health Act (29 U.S.C. 655, 657).

Signed at Washington, DC, this 22nd day of November, 1985.

Patrick R. Tyson,

Acting Assistant Secretary for Occupational Safety and Health.

[FR Doc. 85-28354 Filed 11-25-85; 11:17 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2927-1]

Approval and Promulgation of Implementation Plans: Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to approve certain emissions limitations and compliance techniques contained in operating permits for three coke oven batteries located at Citizens Gas and Coke Utility in Indianapolis (Marion County), Indiana, but to disapprove two limits for Coke Battery No. 1. Citizens Gas and Coke is located in a portion of Marion County which is designated as a primary nonattainment area for particulates (40 CFR 81.315). Indiana submitted these limits as a revision to the Indiana State Implementation Plan for Marion County.

DATE: Comments on this action are due by January 27, 1986.

ADDRESSES: Copies of this proposed revision are available for inspection at the following addresses:

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

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

Written comments should be sent to: Gary Culezian, Chief, Regulatory Analysis Section (5AR-26), Air and Radiation Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Robert B. Miller Regulatory Analysis Section (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On January 18, 1984, the State of Indiana (State) submitted as a revision to the Indiana State Implementation Plan (SIP) for total suspended particulates (TSP) certain operating conditions and limits. These were contained in Certification of Operation (operating permits) Nos. 06895, 06896, and 06897 and are applicable to three coke batteries at Citizens Gas and Coke Utilities, the only coke batteries in Marion County, Indiana.[1] These operating permits were issued by the City of Indianapolis Air Pollution Control Division, were subsequently adopted by the State, and contain emission limitations and compliance techniques for coke oven doors and pushing and quenching operations. Citizens Gas and Coke is located in Marion County's Center Township, which is designated as a primary nonattainment area for TSP (40 CFR 81.315).

The requirements for an approvable SIP are described in a "General Preamble" for Part D rulemakings published at 44 FR 20372 (April 4, 1979) 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979). For a TSP SIP revision to be acceptable in meeting the applicable requirements of Part D, unless a completely approvable modeled attainment demonstration is submitted, all emission points at industrial sources must be governed by approvable reasonably available control technology (RACT) emission limitations, and all other applicable Section 110 requirements must be met, e.g., test methods, inspection procedures, compliance schedules. Additionally, present emission limits in these areas cannot be relaxed without an attainment demonstration.

Specifically, for the coke batteries at Citizens Gas and Coke Utility, two of the three units at the Utility (Batteries H and E) are currently Federally regulated by SIP regulations only. However, the third unit at the Utility, Coke Battery No. 1, is additionally regulated by construction permits issued by the State and the City of Indianapolis in 1978. The requirements in these construction permits are also Federal enforceable. In 1983, the City of Indianapolis issued the operating permits referenced above, which added certain, idential emission limitations and operating conditions at all three units for doors, pushing operations, and quenching operations. The limits in the operating permits and

[1] Operating permits in Indiana are issued for a limited period of time. These three Citizens Gas and Coke operating permits expired in June 1984. On October 29, 1984, the City of Indianapolis issued new operating permits to Citizens Gas and Coke which contain similar requirements for Batteries E and H to those on which USEPA is proposing rulemaking today. For Battery 1, the new operating permits does not reflect the State's SIP submittal, but the underlying construction permit. These new, enforceable permits must be submitted to USEPA, before will go to final rulemaking on the actions in today's proposal. If similar requirements for Batteries E and H are not submitted, USEPA will disapprove all items in today's proposal, because they do not meet the State (local) enforcability requirements of 40 CFR 51.22.

the other Marion County TSP requirements are discussed in the two sections below.

I. Operating Permits

The operating permits submitted by the State on January 18, 1984, contain identical emission limitations for all three batteries for coke oven doors, pushing operations, and quenching operations. The emission limitation for coke oven doors is that no visible emissions shall be permitted from more than 10 percent of the total coke oven doors on operating ovens, plus four door, on any coke oven battery. The emission limitation for pushing operations is that uncaptured visible emissions from the pushing operation shall not exceed 20 percent opacity as observed above the surface of the coke oven battery. Opacity is to be determined by averaging the highest six consecutive observations in any four consecutive pushes and then averaging these four numbers. For quench makeup water, the emission limitation is that the total dissolved solids content of the quench makeup water shall not exceed 1500 milligrams per liter (mg/l). The compliance technique is that, as long as city water is used for makeup purposes, one sample of the quench makeup water shall be analyzed quarterly. If the source of the makeup water is changed, a 5-day composite sample will be analyzed weekly in accordance with ASTM D 1888, Method A.

Regarding the sampling methodology of coke quench makeup water for all three batteries, these provisions are being proposed for approval for all batteries with the understanding from the City of Indianapolis that the one sample to be quarterly will be a 5-day composite sample comprised of daily grab samples for five consecutive days and that the Indianapolis Air Pollution Control Board will in fact request that one such sample of the quench make up water be analyzed quarterly.

USEPA has determined that the remainiing limitations for doors, pushing operations, and quenching operations are reflective of RACT and is proposing approval of all of these permit limitations for Batteries H and E. For Coke Battery No. 1, USEPA is proposing to approve all limits except two.

Coke Battery No. 1 at Citizens Gas and Coke is a new source which was built subject to 1978 State and City construction permits issued under the new source permitting requirements of both Part D (nonattainment areas) and Part C (Prevention of Significant Deterioration—PSD). Under either of these Parts, all emission limits and requirements in the construction permits become federally enforceable. Under Part C, these limits and requirements in the construction permit (and in any operating permit subsequently issued to implement the construction permit) cannot be relaxed except under extremely limited circumstances. Under Part D, controls required by permits for new sources in nonattainment areas cannot be relaxed under any circumstances to levels which are less stringent than Lowest Achievable Emission Rate (LAER).

Two of the emission limits in the operating permit issued by the City of Indianapolis for Coke Battery No. 1 would relax the comparable limits in that unit's construction permits, which were issued under Parts C and D. One limit in the operating permit is the requirement that no more than 10 percent of the operating doors plus four may leak. This battery's construction permits were based on the Act's section 173(2) requirement in Part D that all new sources in nonattainment areas must control emissions to a level comparable to LAER. Using this criterion, the construction permits for Battery No. 1 allow only 5 percent of the doors to leak. The other is the requirement that quench makeup water shall not exceed 1500 mg/l of total dissolved solids. The construction permits allow only 1000 mg/1.

Neither the State nor Indianapolis have justified that emissions for this unit, if limited by the 1983 operating permit, would meet the requirements of LAER. USEPA is proposing to disapprove these two requirements for Coke Battery No. 1 because they impermissibly relax the limits contained in the construction permits to levels less stringent than LAER. All other requirements submitted by the State on January 18, 1984, for this battery are not inconsistent with the underlying construction permits and USEPA is proposing to approve them. The emission limitations and requirements which USEPA is proposing to approve today will remain in effect until such time as (1) the State adopts and submits as a revision to the SIP superseding limitations and requirements and (2) the USEPA approves them. Additionaly, all construction permit emission limits and requirements for Battery No. 1 remain in effect and will be enforced by the USEPA.

II. Additional TSP Regulations Appliable in Marion County

A. Rule 325 IAC 11-3

Rule 325 IAC 11-3 controls particulate matter emissions from coke batteries located in the State of Indiana. This rule contains emission limitations for such operations as charging and offtake piping and also contains inspection procedures, test methods, compliance schedules, etc. On December 6, 1983 (48 FR 54599), USEPA took final action on Rule 11-3. USEPA's action consisted of approval and disapproval of certain sections of the rule. As it applies to the primary nonattainment area of Marion County, Rule 11-3 was approved except for oven doors, pushing and quenching emissions.[2] The requirements in today's proposal were designed to fill this regulatory gap.

B. Opacity Regulations

In 1974, Indiana adopted a revised opacity regulation. EPA approved this regulation (SIP 1974 APC 3) in general but disapproved a 15-minute exemption within the regulation (October 28, 1975, 40 FR 50032). SIP 1974 APC 3, as approved, required all sources to meet a 40 percent opacity limit. On August 22, 1984, the Court of Appeals for the Seventh Circuit held SIP 1974 APC 3 invalid as it applies to non-combustion sources (*Bethlehem Steel Corporation v. Gorsuch*, No. 82-2884). USEPA is currently considering the effect of the *Bethlehem* ruling as it relates to Indiana's SIP and will address this issue in the other **Federal Register** notices.

C. On July 16, 1982 (47 FR 30972), the Marion County Part D TSP SIP was conditionally approved with the exception of the regulations for coke batteries. This approval, however, was based on SIP 1974 APC 3 being applicable to all sources in Marion County, not just combustion sources. As stated above, USEPA is considering the effect of the Court's determination as it affects Indiana's Part D plan. Additionally, USEPA's July 16, 1982, approval was based on the condition that the State submit its industrial fugitive dust regulations to USEPA by July 31, 1982. The State submitted its industrial fugitive dust regulations, and notice proposing action on them was published on October 11, 1984 (49 FR 39869).

D. As discussed earlier, Coke Battery No. 1 at Citizens Gas and Coke, was constructed subject to construction permits issued in 1978. All construction

[2] Rule 11-3 applies specific visible emission limits to certain emission points. For all other coke battery sources, including coke oven combustion stacks and pushing control (i.e., gas cleaning) devices, it refers to Indiana's general opacity rule 325 IAC 5-1. USEPA is currently rulemaking on 325 IAC 5-1. Regardless to USEPA's final action on 325 IAC 5-1, USEPA will always enforce on these other sources the general SIP opacity limit which is then approved at the time of the enforcement action.

permit requirements for Battery No. 1 remain in effect and will be enforced by the USEPA.

Today's Proposed Action as it Relates to the Rest of the Marion County Part D TSP SIP

As stated above in today's notice, USEPA is proposing to approve all except two [3] of the emission limitations and compliance techniques in the Citizens Gas and Coke operating permits. If USEPA ultimately approves these limitations and techniques as proposed, the Marion County TSP SIP will still have the two remaining deficiencies discussed below that must be cured before the plan can be approved as meeting the requirements of Part D of the Clean Air Act.

USEPA's July 16, 1982 (47 FR 30972), action on the Part D TSP SIP for Marion County was conditioned on the State submittal of approvable industrial fugitive dust regulations to USEPA. Indiana did sumbit industrial fugitive dust regulations, but USEPA determined that they were not approvable. A notice proposing disapproval of these regulations was published on October 11, 1984 (49 FR 39869).

The currently approved Indiana opacity plan does not meet the RACT requirement of Part D for certain sources. On November 16, 1984 (49 FR 45178), USEPA proposed to approve Indiana's newest opacity regulation, 325 IAC 5-1 as a substitute for the existing plan. However, USEPA noted in this proposal that 325 IAC 5-1 still does not constitute RACT for certain sources. Therefore, Indiana does not currently have in place a RACT opacity regulation for certain sources in Marion County, nor is there any immediate prospect of having such a regulation.

The section 110(a)(2)(I) growth restrictions are lifted in an area when USEPA approves a Part D plan for that area. If USEPA ultimately rulemakes on the Citizens Gas and Coke limits as proposed, in order to meet the remaining requirements of Part D USEPA must still approve a RACT level Marion County industrial fugitive dust plan and a RACT opacity plan for Marion County. Upon USEPA's approval of these elements of the Marion County TSP plan, the growth restrictions will be lifted.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709). The protion of this regulation which EPA is proposing to disapprove also will not affect a substantial number of small entities because (1) it applies to only one source, Citizens Gas and Coke and (2) USEPA's disapproval adds no new requirement to this source.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401-7642.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: November 7, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85-28270 Filed 11-26-85; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[A-9-FRL-2930-6]

Approval and Promulgation of Implementation Plans; Two Districts in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The State of California submitted several volatile organic compound (VOC) rules, and one total suspended particulate (TSP) rule concerning the South Coast Air Quality Management District and the Ventura County Air Pollution Control District. EPA has evaluated the rules and has found them to be consistent with the requirements of the Clean Air Act and 40 CFR Part 51. Today's notice proposes to approve the rules and incorporate them into the State Implementation Plan.

DATES: Comments may be submitted on or before December 27, 1985.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air Management Division, State Implementation Plan Section (A-2-3), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of the proposed revisions are available for public inspection during normal business hours at the EPA Region 9 office and at the following locations:

California Air Resources Board, 1102 "Q" Street, P.O. Box 2815, Sacramento, CA 95812

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731

Ventura County Air Pollution Control District, 800 South Victoria Avenue, Ventura, CA 93009

FOR FURTHER INFORMATION CONTACT: James C. Breitlow, Chief, State Implementation Plan Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7641 FTS: 454-7641.

SUPPLEMENTARY INFORMATION:

Background

Part D of the Clean Air Act has mandated that ozone nonattainment areas shall attain the ozone National Ambient Air Quality Standard by adopting a strategy for the control of VOC. The EPA has published Control Techniques Guidelines (CTG) to assist the States in developing regulations for stationary sources. This notice addresses three VOC rules covered by CTG's; it also addresses one non-CTG VOC rule and one total suspended particulate rule.

The State of California submitted the regulations to EPA concerning the South Coast Air Quality Management District (AQMD) and the Ventura County Air Pollution Control District (APCD) on the dates indicated:

South Coast AQMD

December 2, 1983

Rule 466—Pumps and Compressors.

March 14, 1984

Rule 1158—Storage, Handling & Transport of Petroleum Coke.

October 19, 1984

Rule 463—Storage of Organic Liquids.

Rule 1141.2—Surfactant Manufacturing.

Ventura County APCD

August 1, 1984

Rule 74.7—Fugitive Emissions of ROC at Petroleum Refineries and Chemical Plants.

Evaluation

South Coast AQMD Rule 466 has been revised to satisfy a condition of plan approval which EPA imposed on July 8, 1982 [47 FR 29668]. The rule is now consistent with CTG requirements.

South Coast AQMD Rule 463 has been revised to extend coverage of the rule to small tanks with a capacity greater than or equal to 470 barrels, and fluids with vapor pressure greater than or equal to

[3] The two limits which USEPA is proposing to disapprove would, if approved, replace elements in the SIP which are currently in place and which meet all USEPA requirements. Therefore, notwithstanding USEPA's ultimate action on these limits, these portions of the SIP are also approvable.

0.5 psi. The rule is consistent with applicable CTG requirements.

Ventura County APCD Rule 74.7 has been revised to extend coverage to pumps and compressors at refineries. The rule is now consistent with applicable CTG requirements.

South Coast AQMD Rule 1141.2 is a new rule which requires 95% control of VOC emissions from surfactant manufacturing operations. The rule strengthens the SIP.

South Coast AQMD Rule 1158 is a new rule which controls particulate emissions from petroleum coke operations. The rule strengthens the SIP by reducing particulate emissions.

A copy of EPA's detailed evaluation is available for inspection at the EPA Region 9 office in San Francisco.

Proposed Action

Under Part D and section 110 of the Clean Air Act, EPA proposes to approve the VOC rules listed above since they are consistent with the Clean Air Act, EPA policy and 40 CFR Part 51. Under section 110 of the Clean Air Act, EPA proposes to approve the TSP rule listed above since it is consistent with that section, EPA policy, and 40 CFR Part 51.

Regulatory Process

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

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

The Administrator's decision to approve or disapprove the plan revisions will be based on whether they meet the requirements of sections 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Particulate matter, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.]

Dated: August 27, 1985.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 85–26269 Filed 11–26–85; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 180

[OPP–300141; FRL–2931–5]

Tolerance for Ethylene Dibromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for residues of ethylene dibromide (EDB) *per se* of .03 ppm (30 ppb) in the edible pulp of mangoes that have been fumigated after harvest with the insecticide ethylene dibromide (EDB) in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture, effective until September 30, 1986, with the possibility of extension for an additional year. The comment period on this action has been expedited pursuant to Article 2.6.1, related to notification of urgent problems of health, safety, and environmental protection, under the Agreement on Technical Barriers to Trade (Standards Code).

DATE: Comments, identified by the document control number [OPP–300141], must be received on or before December 27, 1985.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460

In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Linda K. Vlier, Registration Division (TS–767C), Office of Pesticide Program, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460

Office location and telephone number: Rm. 711, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7451).

SUPPLEMENTARY INFORMATION: EPA issued a rule, published in the Federal Register of January 17, 1985 (50 FR 2547), which established tolerance of 30 ppb (.03 ppm) in 40 CFR 180.397 for residues of the insecticide ethylene dibromide (EDB) in the edible pulp of the raw agricultural commodity mangoes resulting from fumigation of this commodity after harvest in accordance with the Mediterranean Fruit Fly Control Program of the U.S. Department of Agriculture. That tolerance rule expired on September 1, 1985.

In establishing this interim tolerance for EDB *per se* on mangoes, the Agency carefully considered all available risk and benefit information, including all comments received on the proposed rule published in the Federal Register of August 10, 1984 (49 FR 32068), and concluded that establishing a tolerance for a limited time period, i.e., until September 1, 1985, would protect the public health, while allowing time for the development of alternative treatment methods. At the time the interim tolerance rule was issued, the Agency expected that satisfactory alternatives were likely to be developed by the time the tolerance rule expired. The Agency also recognized that there might be short-term localized economic disruptions if there were a delay in developing alternatives to EDB treatment; however, there was not data available to indicate that any resulting disruptions would be of national concern or of lasting economic significance.

Since the expiration of the interim tolerance rule for EDB *per se* on mangoes on September 1, 1985, it has come to the Agency's attention that the absence of a tolerance rule for EDB on mangoes is likely to result in a severe economic impact on certain Caribbean basin countries, as well as on other mango producing countries, because alternatives have not yet been developed to replace the use of EDB. It is the Agency's understanding that the U.S. Department of Agriculture (USDA) is taking an active role in the development of a suitable alternative for EDB use for control of fruit flies on mangoes, and that the USDA has stated that alternative fruit fly disinfestation techniques for mangoes should be available by late 1987.

Consequently, the Agency is proposing the reestablishment of an interim tolerance of residues of EDB *per se* on the raw agricultural commodity mangoes resulting from the fumigation of this commodity after harvest in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture. This

tolerance is proposed to expire September 30, 1986, with the possibility of renewal for no more than one additional year. The Agency will consider renewing this rule for an additional 1-year period if, by September 1986, the USDA and the exporting countries have substantially moved toward completion of the basic research required to establish alternative fruit fly disinfestation protocols, and data indicate that implementation of non-EDB fruit fly disinfestation techniques by the 1987/1988 harvest season is probable.

The Agency has evaluated the risks resulting from the establishment of this tolerance rule, and has concluded that the risk is acceptable for the short-term period. This conclusion is based on the fact that residues of EDB dissipate fairly rapidly from the treated fruit. Therefore, the actual residues at the retail level are likely to be considerably lower than the tolerance limit of 30 ppb which applies to the fruit at the time of entry into the United States. For the fruit to be accepted into the United States, the EDB residue must be at 30 ppb or less. EDB further dissipates from the fruit during the time between entry into the country and marketing at the retail level.

Based on the considerations set forth above, the Agency is hereby proposing the establishment of a tolerance in 40 CFR 180.397 of .03 ppm (30 ppb) for residues of ethylene dibromide *per se* in the edible pulp of mangoes resulting from postharvest fumigation with EDB in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture. The Agency is also proposing that this tolerance for managoes expire September 30, 1986, with the possibility of renewal for no more than one additional year.

The nature of the residues is adequately understood. An adequate analytical method, using a gas chromatograph equipped with an electron detector capable of measuring residue levels of EDB *per se*, is available for enforcment purposes.

As discussed in the previous **Federal Register** notices cited above, in 1983 the Agency issued a Notice of Intent to Cancel the registrations of EDB products (48 FR 46234; October 11, 1983) registered for the post-harvest quarantine treatment of mangoes and other commodities. Those registrations were subsequently cancelled by operation of law. An extensive risk-benefit analysis of the use of EDB as a post-harvest quarantine fumigant was provided in the EDB Position Document (PD 4) supporting the decision announced in the **Federal Register** of October 11, 1983. Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.397 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains EDB may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal to establish a tolerance for EDB *per se* in the edible pulp of mangoes be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act. Requests must bear the notation indicating the document control number and must be submitted to the mailing address provided above.

Interested persons are invited to submit written comments on the proposed regulation to establish tolerances for EDB *per se* in the edible pulp of mangoes. Comments must bear a notation indicating the document control number. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in the Program Management and Support Division at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980. 44 U.S.C. 3501 *et seq.* (Sec. 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e))).

List of Subjects in 40 CFR Part 180

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

Dated: November 21, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 180—[AMENDED]

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

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

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

§ 180.397 [Amended]

2. Section 180.397(c) is revised to read as follows:

§ 180.397 Ethylene dibromide; tolerances for residues.

* * * * *

(c) Tolerances are established for residues of ethylene dibromide *per se* in or on the following raw agricultural commodities resulting from use of ethylene dibromide as a fumigant after harvest in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture.

Commodities	Parts per million	Expiration date
Mangoes	.03	Sept. 30, 1986

[FR Doc. 85-28301 Filed 11-26-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SWH-FRL-2931-8]

Mining Waste Exclusion; Extension of Public Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The purpose of this notice is to extend the public comment period on the reinterpretation of the mining waste exclusion proposed in the **Federal Register** on October 2, 1985.

The comment period is extended because the documents were not available until November 1, 1985 in the public docket.

The end of the public comment period is changed from December 2, 1985, to January 2, 1986.

DATES: The deadline for submitting written public comments is extended to January 2, 1986.

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-565A), U.S. Environmental

Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline at 800–424–9348 or (202) 382–3000, or Dr. Dexter Hinckley, (202) 382–2791.

SUPPLEMENTARY INFORMATION: On October 2, 1985, (50 FR 40292), the Environmental Protection Agency (EPA) proposed to reinterpret the scope of the mining waste exclusion, eliminating from the exclusion many wastes from processing ores and minerals (other than large volume processing wastes). EPA also proposed to relist six wastes as hazardous. EPA asked that written public comments be submitted by December 2, 1985. However, three reports related to the proposed reinterpretation were not available in the public docket until November 1, 1985. One of the reports was in final report on solid waste from the aluminum industry and the other two reports dealt with the economic impact of the proposed reinterpretation. EPA has determined that additional time should be allowed for all interested parties to submit comments. Therefore, EPA is extending the public comment period to January 2, 1986.

EPA held a public hearing on the proposed reinterpretation in Washington, DC on November 14, 1985, and commentors presented many major points of view at the hearing. In view of the court order requiring EPA to take final action on this proposal by September 30, 1986, the Agency requests that, to the extent possible, major comments and issues be submitted by the original deadline December 2, 1985, and that supplementary comments and data (especially on the reports not available until November 1, 1985) be submitted by the new deadline, January 2, 1986.

Dated: November 22, 1985

Marcia Williams,

Director, Office of Solid Waste.

[FR Doc. 85–28316 Filed 11–26–85; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 271

[SW–5–FRL–2931–4]

Wisconsin; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Application of Wisconsin for Final Authorization, Public Hearing, and Public Comment Period.

SUMMARY: Wisconsin has applied for Final authorization under the Resource Conservation and Recovery Act (RCRA). The United States Environmental Protection Agency (U.S. EPA) had reviewed Wisconsin's application and has made the tentative decision that contingent upon specified improvements in its enforcement provisions Wisconsin's hazardous waste management program will satisfy all of the requirements necessary to qualify for RCRA final authorization. Thus, U.S. EPA intends to grant final authorization to the State to operate its program in lieu of the Federal program, subject to the contingencies described herein and the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (HSWA). Wisconsin's application for final authorization is available for public review and comment. A public hearing will be held to solicit comments on the application if sufficient public interest is expressed.

DATES: A public hearing is scheduled for 1:00 p.m., December 26, 1985. US. EPA reserves the right to cancel the public hearing if sufficient public interest in holding a hearing is not communicated to U.S. EPA by telephone or in writing by December 18, 1985. U.S. EPA will determine by December 20, 1985, whether there is sufficient interest to hold the public hearing. All written comments on this tentative determination and the Wisconsin final authorization application must be received by close of business December 26, 1985.

ADDRESSES: Copies of Wisconsin's final authorization application are available from 8:00 a.m. to 4:30 p.m. at the following addresses for inspection and copying.

Southern District Headquarters, 3911 Fish Hatchery Road, Fitchburg, WI 53711

Southeast District Headquarters, 2300 N. Dr. Martin Luther King, Jr., Drive, Milwaukee, WI 53212

Lake Michigan District Headquarters, 1125 N. Military Avenue, Green Bay, WI 54307

West Central District Headquarters, 1300 Clairemont Avenue, Eau Claire, WI 54702

North Central District Headquarters, 107 Sutliff Avenue, Rhinelander, WI 54501

Northwest District Headquarters, Highway 70, West, Spooner, WI 54801

Bureau of Solid Waste Management, Department of Natural Resources, 101 S. Webster Street, Madison, WI 53707

United States Environmental Protection Agency, Waste Management Division, Solid Waste Branch, 230 South Dearborn Street, 5HS–JCK–13, Chicago, IL 60604, Contact: Charles Wilk (312) 886–4177

United States Environmental Protection Agency, Headquarters Library, PM–211A, 401 M Street, S.W., Washington, D.C. 20460 (202) 382–5926

Written comments on the tentative determination and the application, and written or telephone communication of interest in holding a public hearing on the Wisconsin application must be sent to Charles Wilk, Wisconsin Regulatory Specialist, Solid Waste Branch, Waste Management Division, U.S. EPA 230 S. Dearborn St., 5HS–JCK–13, Chicago, IL, 60604, (312) 886–4177.

If sufficient public interest is expressed, U.S. EPA will hold a public hearing on Wisconsin's application for final authorization on December 26, 1985, at 1:00 p.m., at the GEF III State Office Building, Room 11, 125 S. Webster Street, Madison, Wisconsin.

If you wish to find out whether or not U.S. EPA will hold a public hearing on the tentative determination and the Wisconsin application, based on U.S. EPA's decision that there was sufficient interest in such a hearing, write or telephone the U.S. EPA contact person listed below after December 20, 1985.

FOR FURTHER INFORMATION CONTACT: Charles Wilk, Wisconsin Regulatory Specialist, Solid Waste Branch, Waste Management Division, U.S. EPA, 230 S. Dearborn Street, 5HS–JCK–13, Chicago, IL, 60604, (312) 886–4177.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows U.S. EPA to authorize a State hazardous waste program to operate in the State in lieu of the federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization" is a temporary authorization which is granted if U.S. EPA determines that the State program is "substantially equivalent" to the federal program (Section 3006(c), 42 U.S.C. 6926(c)). U.S. EPA's implementing regulations at 40 CFR 271.121–137 establish a phased approach to interim authorization. Phase I covers U.S. EPA's regulations in 40 CFR Parts 260–263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities). Phase II covers U.S. EPA's regulations in 40 CFR Parts 124, 264, and 270 (procedures and

standards for permitting hazardous waste management facilities.)

Phase II, in turn, has three components. Phase IIA covers general permitting procedures and technical standards for containers and tanks. Phase IIB covers permitting of incinerator facilities, and Phase IIC addresses the permitting of landfills, surface impoundements, waste piles, and land treatment facilities. By statute, all interim authorizations expire on January 31, 1986. Responsibility for the hazardous waste program returns (reverts) to U.S. EPA on that date if a State with interim authorization has not received final authorization, as described below. Wisconsin was granted Phase I Interim Authorization on January 15, 1982.

The second type of authorization is a "final" (permanent) authorization that is granted by U.S. EPA if the Agency finds that among other things, a State's program: (1) Is "equivalent" to the federal program, (2) is consistent with the Federal program, and other State programs, (3) is no less "stringent" than the Federal program, and (4) provides for adequate enforcement and public participation in the permitting process (Section 3006 (b); 42 U.S.C. 6926 (b)). States need not have obtained interim authorization in order to qualify for final authorization. U.S. EPA's regulations for final authorization appear at 40 cFR 271.1–271.23.

B. Wisconsin

On May 17, 1985, Wisconsin submitted a draft application for final authorization. The complete application for final authorization was submitted on July 26, 1985. Prior to submission of the application to U.S. EPA, Wisconsin solicited public comments from May 28, 1985, through July 3, 1985, and held a public hearing on July 3, 1985.

Notice of the submission of the application and the public hearing were published in eight newspapers across the State. No members of the public appeared at the hearing and no written comments were received as of the hearing date. Wisconsin received no telephone request for copies of the State's application or additional information.

U.S. EPA transmitted to Wisconsin consolidated comments on the State's complete application for final authorization. These comments requested further clarifications in the following areas: 1. The Memorandum of Agreement provisions regarding Information Sharing, State Licensing and Joint Permitting Procedures; 2. The State Attorney General's Statement provisions public participation in the enforcement process. The Wisconsin Department of Natural Resources (DNR) is reviewing these comments and will formally respond to U.S. EPA's comments during the comment period. U.S. EPA has reviewed the State's draft response (which is in the public record) and concluded its concerns will be resolved.

U.S. EPA evaluated the Wisconsin Department of Natural Resources (DNR) to determine its capability to administer a quality hazardous waste management program. U.S. EPA believes the State will be capable of administering a quality RCRA program. In particular, Wisconsin has made great process during the past two years in establishing the framework and policies, and developing the resources and management needed for an effective hazardous waste management program.

However, U.S. EPA is concerned about the State's need to improve its timeliness of enforcement, coordination of priorities through district offices and reporting systems. Region V and Wisconsin DNR have negotiated a Letter of Intent that describes the specific measures the State will take to improve its program during the coming months. The timely escalation of enforcement actions, timely return of facilities to compliance and verification of the return to compliance will be improved by the State's following the specific enforcement provisions described in the Letter of Intent. The State has agreed to specific schedules for the resolution of its 1984 and 1985 Fiscal Year enforcement backlogs. The State did not inspect all major handlers committed to in its 1984 Fiscal Year grant and has in the past given notice to facilities too far in advance of compliance inspections. The State has agreed to conduct inspections at an agreed upon rate and set a 48 hour time limit on advance notice of compliance inspections in the Letter of Intent. Improved coordination of priorities between Central and District Offices and co-development of a reporting system with Region V have been agreed to in the Letter of Intent. A more detailed discussion of these areas may be found in the Wisconsin Capability Assessment for Final Authorization.

U.S. EPA has reviewed Wisconsin's application and has tentatively determined that contingent upon implementation of the improvements required by the Letter of Intent the State's program will meet all the requirements necessary to qualify for final authorization. If the State fails to make satisfactory progress in addressing the issues discussed above, it is possible that U.S. EPA will not grant final authorization to Wisconsin.

It should be noted that prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization would have administered its hazardous waste program entirely in lieu of U.S. EPA. U.S. EPA's regulations no longer applied in the authorized State, and U.S. EPA could not issue permits for any facilities the State was authorized to permit. Now, however, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. U.S. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial Federal permits, until the State is granted authorization to do so. While the States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Wisconsin. To the extent the authorized State program is unaffected by the HSWA, the State program is authorized to operate in lieu of the Federal program. Where HSWA-related requirements apply, however, EPA will administer and enforce them in Wisconsin until the State receives authorization to do so. Any State requirement that is more stringent than an HSWA provision also remains in effect; thus, the universe of the more stringent provisions in the HSWA and the approved State program define the applicable Subtitle C requirements in Wisconsin.

Wisconsin is not being authorized now for any requirement implementing HSWA. Once the State is authorized to implement an HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal program. Until that time the State will assist U.S. EPA's implementation of the HSWA under a Cooperative Agreement.

U.S. EPA has published **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The

authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating some duplication of Federal requirements for handlers of hazardous wastes in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

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

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), and EPA Delegation 8-7.

Dated: October 31, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85-28425 Filed 11-25-85; 2:37 pm]

BILLING CODE 6560-50-m

---

40 CFR Part 799

[OPTS-42028C; FRL-2931-3]

Propylene Oxide; Proposed Testing Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Elsewhere in this issue of the **Federal Register**, EPA is issuing a final test rule establishing testing requirements under section 4(a) of the Toxic Substances Control Act (TSCA) for manufacturers and processors of propylene oxide (CAS No. 75-56-9). In this document, EPA is proposing that a TSCA test guideline be utilized as the test standard for the required study and that test data be submitted within a specified time.

DATES: Submit written comment on or before January 13, 1986. If persons request time for oral comment by December 27, 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 VI of this preamble. ADDRESS: Submit written comments, identified by the document control number (OPTS-42028C) 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, DC 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 through Friday, except legal holidays.

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: (544-1404), outside the U.S.A.: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, EPA is issuing a final test rule under section 4(a) of TSCA to require testing of propylene oxide for inhalation developmental toxicity. The Agency is now proposing test standards to be used and deadlines for submission of required test data.

I. Background

Elsewhere in this issue of the **Federal Register**, EPA is issuing a Phase I final rule pursuant to TSCA section 4 that establishes testing requirements for manufacturers and processors of propylene oxide. This Phase I rule specifies the following testing requirement for prpylene oxide: inhalation developmental toxicity in the rat.

Once this Phase I test rule becomes effective, manufacturers and processors of propylene oxide would normally be required (under the two-phase process) to submit proposed study plans for each of these required studies and proposed schedules for both the initiation of testing and the submission of study data (see 40 CFR 790.30; 50 FR 20652, 20658-20659 (May 17, 1985)). EPA would review the submitted study plans and schedules and would thereafter issue them (with any necessary modifications) in a Phase II test rule proposal. This proposal would request public comment on the ability of the proposed study plans to ensure that the resulting data would be reliable and adequate. After evaluating and responding to public comment, EPA would adopt the study plans, including the reporting schedules, in a Phase II final rule as the required test standards and data submission deadlines (see 40 CFR 790.32; 50 FR 20652, 20659 (May 17, 1985)).

However, in the case of the ropylene oxide test rule, which was initiated under the two-phase process, EPA has decided to propose a relevant TSCA test guideline as the test standard (see Unit III below). In addition, EPA is proposing that the data from the required study be submitted within certain time periods. These time periods will serve as the data submission deadlines required by TSCA section 4(b)(1) (see Unit IV below). The reasons for this change in the test rule process for propylene oxide are discussed below.

II. Change in the Test Rule Development Process

A. Test Standards and Data Submission Deadlines

TSCA 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 a two-phase process utilized by EPA since 1982 (47 FR 13012; March 26, 1982) and formally adopted in the fall of 1984 (49 FR 39774; Oct. 10, 1984), test standards and data submission deadlines were to be adopted during the second phase of the rulemaking process. Upon issuance of the Phase I final rule, which established the effects and characteristics for which a given chemical substance must be tested, persons subject to the rule 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. Such study plans were to include proposed schedules for the initiation and completion of testing and submission of test data (see 40 CFR 790.30 (a) and (c); 49 FR 39774, 39785-39786 (Oct. 10, 1984)). In the second phase, after consideration of public comment, the Agency would promulgate the Phase II final rule adopting the study plans (with any necessary modifications) as the test standards for the development of test data and deadlines for submission of test data.

In December 1983, the Natural Resources Defense Council and the Industrial Union Department of the American Federation of Labor-Congress of Industrial Organizations 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. *NRDC* v. *EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984).

After that Opinion, the Agency decided to expedite test rules by using a single-phase rulemaking process for most test rules. In the document announcing this decision (50 FR 20652, 20653; May 17, 1985), EPA stated that the single-phase approach offers a number of advantages over the two-phase process. In the single-phase approach, the Agency proposes (in one document) not only the effects for which testing will be required but also proposes pertinent TSCA or other appropriate guidelines as the test standards and deadlines for the submission of test data. After receiving and evaluating public comment on the proposed testing requirements, test guidelines, and data submission deadlines, EPA promulgates a final test rule.

This single-phase approach shortens the rulemaking period and expedites the initiation of required testing that would usually result from use of the two-phase rulemaking process. The single-phase process also eliminates the requirements under the two-phase approach for industry to submit test protocols for approval. Moreover, by allowing the submission of alternative testing methodologies, the single-phase approach preserves the flexibility of the two-phase process.

These same advantages, i.e., expediting testing and eliminating study plan submission requirements for persons subject to a Phase I rule, are factors considered by EPA in deciding to modify the rulemaking process for propylene oxide. By proposing both pertinent TSCA test guidelines as the test standards and data submission deadlines at the time of issuance of the Phase I final rule, EPA expects that the Phase II final rule will be issued six months sooner than would occur if the usual two-phase process were followed. Thus, required testing will be initiated sooner. In addition, for the required test for propylene oxide, an appropriate TSCA test guideline is available (see Unit III below). Thus, EPA believes that there is no need for manufacturers and processors of propylene oxide to develop a study plan independent of this TSCA guideline.

B. Modifications to Requirements Under a Phase I Final Rule for Propylene Oxide

As indicated above, persons subject to the propylene oxide Phase I final rule and who have notified EPA of their intent to test would normally be required to submit study plans and proposed data submission deadlines within a specified time of the final rule's effective date. (see 40 CFR 790.30 (a) and (c); 50 FR 20652, 20658–59 (May 12, 1985)). However, because EPA is proposing certain TSCA guidelines as the test standards and data submission deadlines, persons subject to the Phase I final rule are not required to submit study plans for the required testing or proposed dates for the initiation and completion of that testing. Manufacturers and processors of propylene oxide are invited to comment on the proposed data submission deadlines. The Agency will consider these comments in issuing Phase II final rule.

However, persons subject to the Phase I final rule for propylene oxide are still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.25 (50 FR 20652, 20657; May 17, 1985). Moreover, once the test standard is promulgated in the Phase II final rule, those persons who have notified EPA of their intent to test must submit study plans (which adhere to the promulgated test standards) no later than 30 days before the initiation of each required test (see 40 CFR 790.30(a)(1); 50 FR 20652, 20658 (May 17, 1985)).

III. Proposed Test Standards

The Phase I rule specifies that propylene oxide be tested for inhalation development toxicity. The Agency is now proposing that this testing of propylene oxide be conducted using the TSCA test guideline for developmental toxicity that appears at 40 CFR 798.4350 (published in the **Federal Register** of September 27, 1985; 50 FR 39252) as the test standard.

EPA believes that the TSCA Health Effects Test Guideline cited above, if properly followed, should produce adequate and reliable data. This guideline describes methods for performing testing of chemical substances under TSCA. The methods include the state of the art for evaluating the effects of chemical substances. The Agency has not reviewed any new data since the last revision of the Health Effects Test Guidelines in 1984 (49 FR 39911; October 11, 1984) which could justify a major revision of any guideline cited herein. EPA reviews its TSCA test guidelines annually (see 47 FR 41857; Sept. 22, 1982), and currently has found no reason to indicate that this guideline would need significant modification.

EPA intends to propose shortly in a sparate **Federal Register** notice, certain revisions to the health and environmental effects and chemical fate TSCA Test Guidelines to provide more explicit guidance on the necessary minimum elements for each study. In addition, these revisions will avoid repetitive chemical-by-chemical changes to the guidelines in their adoption as test standards for chemical-specific test rules. EPA is proposing that these modifications be adopted in the test standards for propylene oxide.

The Agency believes the TSCA developmental toxicity guideline will provide detailed information on the developmental toxicity of propylene oxide.

IV. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards which appear at 40 CFR Part 792.

EPA is required by section 4(b)(1)(c) of TSCA 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:

The development toxicity test shall be completed and the final results submitted to the Agency within 12 months of the effective date of the final test rule. Interim progress reports shall be provided quarterly.

As required by TSCA section 4(d), the Agency plans to publish in the **Federal Register** a notice of the receipt of any test data submitted under this test rule within 15 days of receipt of that data. Except as otherwise provided in TSCA section 14, such data will be made available for examination by any persons.

V. Issues for Comment

EPA invites comment on the use of the proposed TSCA test guidelines as the test standard for the required testing of propylene oxide. EPA also invites comment on the proposed schedule for the required testing.

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.: (544–1404); Outside the U.S.A.: (Operator–202–554–1404), by December 27, 1985. A meeting will not be held if

members of the public do not indicate that they wish to make oral presentations. 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. Public Record

EPA has established a record for this rulemaking, [docket number (OPTS-42028C)]. 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:

(1) **Federal Register** notices pertaining to this proposed test standard consisting of:

Final Phase I rule on propylene oxide.

(2) TSCA Health Effects Test Guideline for Developmental Toxicity.

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, DC 20460.

VIII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirements 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. The economic analysis of the testing of propylene oxide is discussed in the Phase I test rule which appears elsewhere in this issue of the **Federal Register**.

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 for the following reasons:

(1) There are not a significant number of small businesses manufacturing propylene oxide.

(2) Small processors will not perform testing themselves, or participate in the organization of the testing effort.

(3) Small processors will experience only very minor costs if any in securing exemption from testing requirements.

(4) Small processors are unlikely to be affected by reimbursement requirements, and any testing costs passed on to small processors through price increases will be small.

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 Part 799

Testing, Environmental protection, Hazardous substances, Chemicals.

Dated: November 21, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Therefore, it is proposed that Part 799 be amended as follows:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

(b) By amending § 799.3450 by adding new paragraphs (c)(1)(ii) and (iii), to read as follows:

§ 799.3450 Propylene oxide.

* * * * *

(c) * * *

(1) * * *

(ii) *Test standard.* (A) Inhalation developmental toxicity testing shall be conducted with propylene oxide in accordance with § 798.4350 of this chapter and the modification specified in paragraph (c)(1)(ii)(B) of this section.

(B) Test standard modification. The requirement under § 798.4350 (e)(1)(i) is modified so that the rat is the required species.

(iii) *Reporting requirements.* (A) The developmental toxicity testing shall be completed and the final results submitted to the Agency within 12 months of the effective date of the final test rule.

(B) Interim progress reports shall be provided quarterly.

* * * * *

(Approved by the Office of Management and Budget under control number 2070-0033)

[FR Doc. 85-28299 Filed 11-26-85; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR PART 799

[OPTS-47002E; FRL-2930-9]

Chlorinated Benzenes; Applicability of TSCA Guidelines to Proposed Test Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Application of TSCA Guidelines.

SUMMARY: EPA issued a proposed rule for the chlorinated benzenes, published in the **Federal Register** of July 18, 1980 (45 FR 48524). The Agency is revising its proposed rule by updating certain health effects testing requirements to reflect the current TSCA test guidelines issued by EPA's Office of Toxic Substances. These guidelines are to be used as test standards for the proposed oncogenicity testing of 1,2,4-trichlorobenzene; oncogenicity, reproductive effects and teratogenicity testing of 1,2,4,5-tetrachlorobenzene; and reproductive effects testing of monochlorobenzene, *ortho*- and *para*-dichlorobenzenes.

DATE: Submit written comments in triplicate identified by the document control number [OPTS-47002E] on or before January 13, 1986.

ADDRESS: Submit written comments in triplicate identified by the document control number (OPTS-47002E) to: TSCA Public Information Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (T9-799), Rm. E-543, 401 M Street, SW., Washington, DC 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is revising its proposed rule for the health effects testing of the chlorobenzenes by updating certain of the testing requirements to reflect the current TSCA

(Toxic Substances Control Act) Health Effects Testing Guidelines.

I. Background

EPA issued a proposed health effects test rule for various chlorinated benzenes published in the **Federal Register** of July 18, 1980 (45 FR 48524) in 40 CFR 773.100. (Part 773 has been recodified as Part 799 (October 10, 1984; 49 FR 39810)). In the July 18, 1980 notice, EPA proposed that the required testing follow the study methodologies described in the proposed health effects test standards issued in the **Federal Register** on May 9, 1979 (44 FR 27334), and July 26, 1979 (44 FR 44054). Since the July 18, 1980 publication, EPA has issued revisions to the original proposed rule that withdrew various proposed testing requirements for the chlorinated benzenes (**Federal Register** of December 7, 1983 (48 FR 54836), and December 28, 1984 (49 FR 50408)). EPA also has issued a change in its test standards policy (March 26, 1982; 47 FR 13012) that eliminates the use of rigid generic testing requirements or standards, as proposed on July 18, 1980. On September 22, 1982 (47 FR 41857), EPA announced the availability of guidelines for health effects, environmental effects and chemical fate testing that were published by EPA's Office of Toxic Substances.

II. Proposed Requirements

EPA is revising its proposed rule for the chlorinated benzenes by updating its testing methodology requirements to reflect current Agency policy. Since proposing that the TSCA generic test standards be utilized in testing the chlorinated benzenes, the Agency decided to convert the standards into test guidelines; and because each of the guidelines has been subject to annual reviews, the original proposed test standards have been modified to a point where the Agency believes resulting test data will reflect state-of-the-art toxicological procedures. Therefore, the remaining health effects tests for the chlorinated benzenes are to be performed in accordance with the methodologies cited in the TSCA Health Effects Test Guidelines in 40 CFR Part 798, published in the **Federal Register** on September 27, 1985 (50 FR 39252). By doing so, the testing requirements for the chlorinated benzenes will follow current Agency policy and ensure current and generally accepted minimal conditions for determining the health effects of test substances like the chlorinated benzenes.

EPA is proposing that the guidelines for oncogenicity as specified in § 798.3300, reproduction/fertility effects as specified in § 798.4700 and teratogenicity (developmental toxicity) as specified in § 798.4350, be considered the test standards for the remaining proposed testing requirements for the chlorinated benzenes not withdrawn in the December 28, 1984, **Federal Register** (49 FR 50408).

The Agency reviews its TSCA test guidelines once a year according to the process described in the **Federal Register** of September 22, 1982 (47 FR 41857). EPA intends to propose shortly in a separate **Federal Register** notice certain revisions to these TSCA test guidelines to provide more explicit guidance on the necessary minimum elements for each study. In addition, these revisions will avoid repetitive chemical-by-chemical changes to the guidelines in their adoption as test standards for chemical-specific test rules. These modifications are to be adopted in the test standards for the chlorinated benzenes health effects testing.

No additional modifications to these guidelines are being proposed for the chlorinated benzenes health effects testing. However, as proposed in its July 18, 1980 rule, the test substance(s): 1,2,4-trichlorobenzene and 1,2,4,5-tetrachlorobenzene shall be administered in the feed for oncogenicity and reproductive effects testing; 1,2,4,5-tetrachlorobenzene shall be administered by oral gavage for teratogenicity testing; and, monochlorobenzene, and *ortho*- and *para*-dichlorobenzenes shall be administered by inhalation for reproductive effects testing. Also, EPA is continuing to require that one of the test mammals for the oncogenicity testing of 1,2,4-tri- and 1,2,4,5-tetrachlorobenzene shall be the Sprague-Dawley rat.

EPA will consider comments received in response to this proposal on the applicability of the TSCA test guidelines for the proposed testing in addition to the comments received on the July 18, 1980 proposal, in arriving at its final decision concerning the health effects testing of the chlorinated benzenes.

III. Issues

This notice identifies various TSCA test guidelines as test standards for health effects testing of specific chlorinated benzenes. The Agency is soliciting comments on the appropriateness of the guidelines for the proposed testing.

IV. Public Record

EPA has established a record for this rulemaking, [docket number (OPTS-47002)]. 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 the following additional information.

(1) **Federal Register** notice containing TSCA test guidelines cited as test standards for this rule.

(2) **Federal Register** notice containing proposed revisions to the TSCA test guidelines.

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, DC from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals.

Dated: November 20, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-28302 Filed 11-26-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-790; RM-4801]

TV Broadcast Station in Morehead City, NC; Change in Table of Assignment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein extends the time for filing replies to oppositions to the petition for reconsideration of the *Report and Order* assigning Channel 8 to Morehead City, North Carolina, at the request of WITN-TV, Inc.

DATE: Replies must be filed on or before November 15, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Order Extending Time for Filing Replies to Oppositions to Petition for Reconsideration

In the matter of amendment of § 73.606(b), table of assignments, TV broadcast stations. (Morehead City, North Carolina) MM Docket No. 84-790, RM-4801.

Adopted: November 18, 1985.
Released: November 20, 1985.
By the Chief, Policy and Rules Division.

1. The Commission has before it the Petition for Reconsideration filed by WITN-TY, Inc. ("WITN") of the *Report and Order*, 50 FR 33546, published August 20, 1985, which assigned VHF TV Channel 8 to Morehead City, North Carolina. Oppositions to the petition for reconsideration have been filed by Contemporary Communications, Inc, and HG Broadcasting.

2. On October 29, 1985, counsel for WITN filed a request for an extension of time in which to file its reply to the opposition of HG Broadcasting from the present November 4 deadline to and including November 15, 1985. Counsel states that the additional time is required since the principal counsel representing WITN has been called away from the office due to a sudden death in the family and the additional time would enable counsel to prepare a complete response.

3. Section 1.46 of the Commission's rules states that extensions of time shall not be routinely granted. However, we find that good cause has been provided to warrant grant of the requested extension of time. We believe the public interest would be served as it could enable the Commission to have a complete record before it when reaching a decision in the proceeding. Accordingly, it is ordered That the time for filing replies to the oppositions to the petition for reconsideration is extended to and including November 15, 1985.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-2834 Filed 11-26-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-340; RM-5066]

FM Broadcast Station in Rockledge, FL; Change in Table of Allotments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot Channel 274A to Rockledge, Florida, in response to a petition filed by George Hochman and Jacqueline Thompson d/b/a Rockledge Community Broadcasters.

DATES: Comments must be filed on or before January 14, 1986, and reply comments on or before January 29, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, 202-634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Rockledge, Florida); MM Docket No. 85-340, RM-5066.

Adopted: November 4, 1985.
Released: November 21, 1985.
By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for rule making filed by George Hochman and Jacqueline Thompson d/b/a Rockledge Community Broadcasters, requesting the allotment of Channel 274A to Rockledge, Florida, as its first FM channel. Petitioners stated their intention to apply for the channel.

2. We believe that the petitioners' proposal warrants consideration. Channel 274A can be allotted to Rockledge in compliance with the minimum distance separation requirements.

3. In view of the foregoing, the Commission seeks comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Rules, with regard to the community listed below:

City	Channel No.	
	Present	Proposed
Rockledge, FL		274A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before January 14, 1986, and reply comments on or before January 29, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Richard J. Hayes, Jr., 1359 Black Meadow Road, Spotsylvania, Virginia 22553 (Counsel for the petitioners).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the Comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-28306 Filed 11-26-85; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 85-337; RM-5048]

FM Broadcast Station in Ketchum, ID; Change in Table of Allotments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of Channel 279 to Ketchum, Idaho, as its first FM service, in response to a petition filed by Wood River Broadcasting, Inc.

DATES: Comments must be filed on or before January 14, 1986, and reply comments on or before January 29, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Ketchum, Idaho); MM Docket No. 85-337, RM-5048.

Adopted: November 4, 1985.

Released: November 21, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed by Wood River Broadcasting, Inc. ("petitioner") requesting the allotment of Channel 279 to Ketchum, Idaho, as its first FM allocation. Petitioner stated its intention to apply for the channel. Channel 279 can be allotted to Ketchum in compliance with the minimum distance separation requirements.

2. In view of the fact that Ketchum could receive its first local FM service, the Commission finds it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Rules, as follow:

City	Channel No.	
	Present	Proposed
Ketchum, ID		279

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before January 14, 1986, and reply comments on or before January 29, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner(s) or their counsel or consultant, as follows: John H. Midlen, Jr., 1050 Wisconsin Avenue, NW., Washington, DC 20007 (Counsel for petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules.

See. *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11539, published February 9, 1981.

6. For further information concerning this proceeding, contact Montrose H. Tyree; Mass Media Bureau, (202) 534–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expeted to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the reques..

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-28307 Filed 11-26-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS-86; Notice 1]

Transportation of Gas or Hazardous Liquids by Pipeline; Updating Steel Line Pipe Specifications

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA proposes to update the existing incorporation by reference of the American Petroleum Institute (API) specifications for line pipe, API 5L, 5LS, and 5LX, by adopting the 1985 edition of API Specification 5L for gas and hazardous liquid pipelines. API 5L, 5LS, and 5LX have been consolidated into one specification by the API. Editions prior to the 1985 edition are out of print.

DATE: Interested persons are invited to submit written comments on this proposal. All comments must be filed before January 27, 1986, although late filed comments will be considered as far as is practicable. Persons should submit as a part of their written comments all material that is considered relevant to any statement of fact or argument made.

ADDRESS: Comments should be sent to the Dockets Branch, Room 8426, RSPA, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and identify the docket and notice numbers. All comments and other docket material are available in Room 8426 for inspection and copying between the hours of 8:30 a.m. and 5:00 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: William A. Gloe, (202) 426–2082, regarding the content of this proposal, or the Dockets Branch, (202) 426–3148, regarding copies of the proposal or other information in the docket.

SUPPLEMENTARY INFORMATION:

Parts 192 and 195 incorporate by reference the 1980 editions of API Specifications 5L (Line Pipe), 5LS (Spiral-Weld Line Pipe), and 5LX (High-Test Line Pipe). In Part 192 each specification is included among "listed specifications" one of which must be followed in pipe manufacture to qualify steel pipe for use in gas pipelines. In Part 195, the specifications serve to denote allowable design factors for steel pipe. Under both parts the specifications are used for determining yield strength when specified minimum yield strength is unknown.

These API specifications have been the most predominantly used specifications for steel line pipe in the industry and have been maintained separately to identify different grades and types of pipe as they were originally developed. In 1983, the three specifications were consolidated into one by the API, using the identification, API Specification 5L, and the title, "API Specification for Line Pipe." All grades and types of steel line pipe are now combined in the one specification. Since 1983, API 5L has been revised to incorporate editorial changes in the 1984 edition, and recently in the 1985 edition, to provide requirements for a higher strength X80 grade (80,000 psi specified minimum yield strength).

So that the Federal hazardous liquid pipeline safety standards will be in accord with the latest developments in materials and pipeline technology, RSPA is proposing to incorporate by reference into Parts 192 and 195 the 1985 edition of API 5L.

Besides the inclusion of the X80 grade, other changes in the 1985 edition are (1) an increase in the maximum yield/tensile ratio from .90 for X70 or .93 for X80, and (2) allowing supplementary fracture toughness requirements to replace the yield/tensile ratio by agreement between the purchaser and the manufacturer for any grade of pipe. Interested persons having experience and background qualifications in this area are invited to comment on the safety impact of these changes if any is perceived. RSPA is particularly interested in receiving comments on the .93 yield/tensile ratio for X80 steel line pipe because it represents a reduction, although small, of the margin between the maximum operating stress level (72 percent of the specified minimum yield strength) and the ultimate tensile strength.

If comments or other information convincingly demonstrate that the yield/tensile ratio should be limited to .90 for cold expanded steel line pipe, RSPA will consider taking such action in the final rule. Before taking such action, RSPA will seek advice from the Technical Pipeline Safety Standards Committee for gas pipelines. This proposal was reviewed by the Technical Hazardous Liquid Pipeline Safety Standards Committee in a meeting in Washington, D.C., on September 18, 1985, and found to be technically feasible, reasonable, and practical, with no limitation on yield/tensile ratio other than that provided by the API specification.

Copies of the 1985 edition of API Specification 5L are available from the Director, American Petroleum Institute, Production Department, 211 North Ervay, Suite 1700, Dallas, Texas 75201.

Under Part 195, the use of API specifications is not mandatory for manufacture of line pipe. Instead, the requirements governing the use of new or used steel pipe are stated in performance language by § 195.112. Revision of Part 195 is proposed because the 1985 editions of the API Specifications 5L, 5LS, and 5LX are listed in § 195.3 and incorporated by reference in § 195.106 to identify the design factor to use for steel pipe that is manufactured to one of the specifications. The reference to API Standard 5L would be changed to "API Specification 5L" and the existing references to 5LS and 5LX would be deleted.

Petitions for adoption of the 1984 edition of API 5L had previously been received from the Bethlehem Steel Corporation (Petition No. P-26), and from the American Society of Mechanical Engineers (Petition No. P-28) as part of a petition for general update of specifications incorporated by reference. The 1985 edition is believed to be equally acceptable to the petitioners. RSPA had considered adopting the 1984 edition as petitioned, and had made inquiries of the API to determine availability of that edition. **Federal Register** rules for incorporation of documents by reference require that the documents meet the requirements of 1 CFR Part 51, which states in § 51.7(a)(4) that the material must be reasonably available to the persons affected by it. The inquiries have established that the 1984 edition is out of print and not easily available other than by copying or by prior possession, thus not eligible for incorporation by reference.

Classification

This proposal is considered to be nonmajor under Executive Order 12291 and nonsignificant under the DOT Regulatory Policies and Procedures (44 FR 11034; Febuary 26, 1979). The economic impact of this proposal is so minimal that further evaluation is unnecessary. The change proposed is merely an updating of specifications incorporated by reference and even if the yield/tensile ratio of .90 is adopted, nothing more than a minor impact is foreseen due to the adaptability of manufacturing techniques.

Regulatory Flexibility Act

The agency certifies that this proposal will not have a significant economic impact on a substantial number of small entities. By updating API line pipe specifications for steel line pipe and retaining provisions of the regulations permitting the use of previously listed editions, steel pipe procurement is optimized for all operators, including those who may be classed as small entities.

List of Subjects in 49 CFR Parts 192 and 195

Pipeline safety, Incorporation by reference, Line pipe.

In view of the foregoing, RSPA proposes to amend 49 CFR Parts 192 and 195 as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 1672; 49 U.S.C. 1804; 49 CFR 1.53 and Appendix A of Part 1.

2. By revising § 192.55(e) to read:

§ 192.55 Steel pipe.

* * * * *

(e) New steel pipe that has been cold expanded must comply with the mandatory provisions of API Specification 5L.

§ 192.113 [Amended]

3. By amending § 192.113 to remove reference to API 5LX and API 5LS and related entries from the table of longitudinal joint factors.

Appendix A [Amended]

4. By amending Appendix A to Part 192 to remove and reserve subdivisions II.A.(5) and II.A.(6) and by amending II.A.(4) by changing "(1980)" to "(1985)".

Appendix B [Amended]

5. By amending subdivision I of Appendix B to Part 192 to remove "API 5LS-Steel pipe (1980)" and "API 5LX-Steel pipe (1980)" from the listed pipe specifications, and by removing the date "(1980)" following "API 5L-Steel pipe" and adding in its place "(1985)."

6. By revising introductory text of subdivision II.D. of Appendix B to Part 192 to read:

Appendix B—Qualification of Pipe

* * * * *

II. * * *

D. *Tensile Properties.* If the tensile properties of the pipe are not known, the minimum yield strength may be taken as 24,000 p.s.i. or less, or the tensile properties may be established by performing tensile tests as set forth in API Specification 5L. All test specimens shall be selected at random and the following number of tests must be performed:

* * * * *

PART 195—[AMENDED]

7. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 2002; 49 CFR 1.53 and Appendix A of Part 1.

§ 195.3 [Amended]

8. By amending § 195.3 to remove paragraphs (c)(1)(iv) and (c)(1)(v) and by amending paragraph (c)(1)(iii) by changing "(1980)" to "(1985)."

9. By revising the introduction text of § 195.106(b) to read:

§ 195.106 Internal Design pressure.

* * * * *

(b) The yield strength to be used in determining internal design pressure under paragraph (a) of this section is the specified minimum yield strength. If the specified minimum yield strength is not known, the yield strength is detemined by performing all of the tensile tests of API Specification 5L on randomly selected test specimens with the following number of tests:

* * * * *

10. By amending § 195.106(e) to remove reference to API 5LX and API 5LS and related entries from the table of seam joint factors.

Issued in Washington, DC, on November 22, 1985 under authority delegated by 49 CFR Part 106, Appendix A.

Robert L. Paullin,

Director, Office of Pipeline Safety.

[FR Doc. 85-28286 Filed 11-26-85; 8:45 am]

BILLING CODE 4910-60-M

---

49 CFR Part 195

[Docket No. PS-85, Notice No. 1]

Transportation of Hazardous Liquids; Gathering Lines in Rural Areas

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal hazardous liquid pipeline safety standards do not apply to gathering lines in rural areas. The lack of specificity in this exception became apparent when these standards were proposed to be extended to intrastate pipelines, which include a large number of rural gathering lines. This notice proposes new definitions for the terms "production facility", "gathering line" and "rural area" to clearly identify the gathering lines that are not subject to the standards.

DATE: Interested persons are invited to submit written comments on this proposal by January 27, 1986. Late filed comments will be considered as far as practicable.

ADDRESS: Comments should identify the docket and notice numbers and be submitted in triplicate to the Dockets Branch, Research and Special Programs Administration, Department of Transportation, 400 7th Street SW., Washington, DC 20590. All comments and other docket material are available in Room 8426 for inspection and copying between the hours of 8:30 a.m. and 5:00 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 426-2392, regarding the content of this proposal, or the Dockets Branch (202) 426-3148, regarding copies of this proposal or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

Gathering lines in rural locations are expected from regulation by the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) (49 U.S.C. 2001 *et seq.*), the statute under which Part 195 is issued. In Part 195 the exception for rural gathering lines is provided by §195.1(b)(4), which states that Part 195 does not apply to "[t]ransportation of a hazardous liquid in those parts of an onshore pipeline system that are located in rural areas between a production facility and an operator trunkline reception point."

In a notice of proposed rulemaking published March 26, 1984 (49 FR 11226, Docket No. PS-80) concerning the extension of Part 195 to intrastate hazardous liquid pipelines, RSPA discussed the need to make § 195.1(b)(4) easier to apply. The problem of distinguishing a gathering line from a trunkline and rural from nonrural was recognized. Comments on this issue by the public and by members of the Technical Hazardous Liquid Pipeline Safety Standards Committee led in the final rule (Amendment 195-33; 50 FR 15895, April 23, 1985) to inclusion of flow lines as part of onshore production facilities, which are also exempt from Part 195 and the HLPSA. However, because of the diversity of views expressed by commenters and the Committee, it became clear that further rulemaking would be needed to clarify § 195.1(b)(4).

Thirty-four persons commented on the gathering line issue raised by the March 26, 1984 notice: The Railroad Commission of Texas, the Iowa State Commerce Commission, the American Petroleum Institute (API), the Pennsylvania Oil and Gas Association, the Rocky Mountain Oil and Gas Association, the Texas Mid-Continent Oil and Gas Association, the North Texas Oil and Gas Association, the West Central Texas Oil and Gas Association, and 26 pipeline operators. The most salient comments concerning definitions for gathering line and rural or nonrural areas were as follows:

Gathering Line

The Railroad Commission of Texas (RRC) and the West Central Texas Oil and Gas Association proposed definitions of gathering line, production facility, and trunkline reception point as follows:

"Gathering line" means a pipeline that transport a hazardous liquid, as defined by the Pipeline Safety Act of 1979, from a current production facility to a trunkline reception point, a storage facility, or a terminal. "Production facility" means any equipment used by a producer in the production, extraction, recovery, lifting, stabilization, separation, treating, storage, or measurement of a hazardous liquid subject to this part. Wellhead assemblies, along with flow lines from them to a lease storage facility (or to the next inline production facility if there is no lease storage), are part of production facilities and are not considered to be gathering lines. "Trunkline reception point" means the point at which liquids subject to this part are received either (1) directly from a production facility, (2) from a gathering line or lines, or (3) by any other means, and at which they are injected into a cross-country common carrier or private trunkline for transportation to a more distant location. Characteristics of a trunkline may include, but are not limited to, larger diameter pipe, higher operating pressure, higher stress pipe, pump station(s) and greater pipe strength.

The API suggested the following definitions:

"Production facility" means any equipment used by a producer in the production, extraction, recovery, lifting, stabilization, separation, treating, storage, or measurement of a hazardous liquid including flow lines from wellhead assemblies to the next in-line production facility. "Production facilities" also include equipment used in sweetening and processing natural gas, pressure maintenance and secondary or tertiary recovery operations.

"Trunkline reception point" means the point or facility where hazardous liquids subject to this Part are received either from:

(1) a gathering line system

(2) a production, refining, or manufacturing facility, or

(3) any other source for the continued transportation in a cross-country pipeline system.

"Gathering line" means a pipeline system used to collect hazardous liquids from production facilities and transport them to a trunkline reception point.

The Pennsylvania Oil and Gas Association focused on treatment and commingling to define a gathering line as "those pipelines that transport the oil from the point where the last treatment under the control of the producer occurs,

to the point in the pipeline where no further oil is added to the stream and no further commingling of oil takes place."

The Texas Mid-Continent Oil and Gas Association and the Rocky Mountain Oil and Gas Association defined production facility and trunkline reception point in a manner similar to the RRC but defined gathering lines in the following manner:

"Gathering Lines"—Gathering lines are pipelines used to collect hazardous liquids from production facilities and transport them to a central point or facility. Wellhead assemblies and flow lines from them to a lease storage facility or to the next inline production facility if there is a no lease storage are part of production facilities and are not considered to be gathering lines. Gathering lines may be used by producers to collect liquids from several leases and transport them to other production facilities, gas processing plants, stabilizers, etc. Gathering lines may also collect liquids from several production facilities or truck unloading facilities and transport them to a central point or facility, designated a trunkline reception point.

One industry commenter recommended that gathering lines be defined as "a system of lines, sometimes called flow lines, to transport hydrocarbon liquids from individual wells to appropriate equipment throughout the production facility and finally to a reception point on a trunk line." In a similar manner, another industry commenter recommended that a gathering line be defined ad "those pipelines between the wellhead and lease storage, lease storage and trunkline reception point."

The RSPA believes that the concept of a gathering line expressed by the Railroad Commission of Texas, the West Central Texas Oil and Gas, the Pennsylvania Oil and Gas Association, the Texas Oil Mid-Continental Oil and Gas Association, the American Petroleum Institute and others as well as various members of the Technical Hazardous Liquid Pipeline Safety Standards Committee generally represents the usage of the term by RSPA in administering §195.1(b)(4). However, the recommended language does not adequately distinguish the downstream end of a gathering line at its junction with trunkline, since the comomenters' proposed definitions of "gathering line" and "trunkline" each reference the other. RSPA does not believe that defining "gathering line" necessarily requires use of the term "trunkline". Therefore, the RSPA proposes to include in Part 195 a definition of "gathering line" that does not refer to trunkline. A "production facility" would mark one end of a gathering line and the point where a line joins a line exceeding 8 inches in nominal diameter would mark the other end, under the following proposed definition:

"Gathering line" means a pipeline 8 inches or less in nominal diameter that transports petroleum from a production facility.

The RSPA is proposing this definition after considering all of the comments and the various possible means to denote a gathering line including pressure. Commingling, flow rate, size, function, and various combinations of these means. The proposed definition incorporates size (8 inches or less) and function (transports petroleum from a production facility).

Size was selected in the belief that petroleum pipelines 8 inches or less in nominal diameter are generally considered by the industry to be gathering lines rather than trunklines. Petroleum pipelines of this size are generally those to which RSPA has applied the §195.1(b)(4) exclusion. Further, size has the considerable advantage of being simple and easily identified.

The function (transports petroleum from a production facility) was selected to be consistent with the current language of § 195.1(b)(4) as well as to capture the generally understood concept of a gathering line.

The proposed gathering line definition requires that the term "production facility" be defined. The RSPA proposes the following definition:

"Production facility" means piping or equipment used in the extraction, recovery, lifting, stabilization, separation or treating of petroleum or associated storage or measurement.

This definition is based on the concept that "production" is the process of extracting petroleum from the ground and preparing it for transportation by pipeline. Hence, production facilities are those facilities necessary to perform those tasks of extracting (extraction, lifting, recovery) and preparing the petroleum for transportation by pipeline (stabilization, separation, treating, storage, measurement).

It should be noted that only those facilities associated with extracting petroleum from the ground and preparing it for transportation by pipeline are "production facilities". For example, storage and measurement facilities in use at the lease site are "production facilities", but storage and measurement facilities in use in a pipeline system are not production facilities. Further, the term "production facilities" applies only to petroleum production and cannot be extended to include refinery or manufacturing facilities.

Interested persons should recognize that under the proposed gathering line definition, and proposed amendment to § 195.1(b)(4), pipelines 8 inches or less in diameter located in rural areas transporting petroleum from a production facility to for example, a refinery, would be excepted from Part 195.

Section 195.401(c)(2) would be amended to incorporate the term "gathering line" instead of "pipeline located between a production facility and an operator's trunkline reception point". No substantive change would be made to this section, which sets the date after which interstate offshore gathering lines must meet the Part 195 design and construction rules.

Rural/Nonrural

The Railroad Commission of Texas proposed that "non-rural" be defined as "an area extending 110 yards on either side of the centerline of any continuous one-mile length of pipeline which contains (1) ten (10) or more buildings used for residences; or (2) any building or outside area used for commercial or industrial purposes or for schools, churches, or other public assembly and which is occupied by twenty (20) or more people during normal use." And "rural" would encompass all areas that are not included within the "non-rural" definition.

The Pennsylvania Oil and Gas Association recommended a definition of a rural area as "those areas that have less than 46 buildings occupied by humans on a regular basis within the area that extends 220 yards on either side of the centerline of any continuous one mile length of pipeline." The Pennsylvania Oil and Gas Association argued that the recommended definition, borrowed from the Part 192 regulations for gas pipelines, fairly represents a concept of a rural area and is a standard that can be readily ascertained. On the other hand, according to this commenter, a standard which employs incorpoarated areas, subdivisions, etc., would include most of the state of Pennsylvania because virtually all of the state falls within the boundaries of some local government unit.

The Rocky Mountain Oil and Gas Association recommended a definition of rural area as follows: "A rural area is any area extending 110 yards on both sides of the centerline of any continuous one-mile length of pipeline which contains less than 25 buildings occupied by human beings for residential, commercial or industrial purposes, regularly used for schools, churches, or other public assemblies." This definition

is similar in population density to that offered by the Pennsylvania Oil and Gas Association but the distance from the centerline is 50 percent less.

The West Central Oil and Gas Association and the North Texas Oil and Gas Association both recommended that a non-rural area be defined as "an area where a pipeline passes within 100 feet of an inhabited building."

Some of the industry commenters recommended using the Part 192 class location criteria to define a rural area. Most poplular among the industry comments, however, was that the language of § 192.1(b)(2)(i) and (ii) be used to define a non-rural area as follows: "An area within the limits of any incorporated or unincorporated city, town, or village [and] any designated residential or commerical area such as a subdivision, business or shopping center, or community development."

The RSPA believes this last recommendation, the adoption of the language in § 192.1(b)(2)(i) and (ii) to define a non-rural area, is preferable to the other recommendations because: (1) it has worked well since its adoption in the gas regulations, and (2) it is consistent with section 2(3) of the Natural Gas Pipeline Safety Act of 1968, which outlines a nonrural area. Although Part 192 language is used, a definition for "rural area" rather than "non-rural area" is proposed because the exception under § 195.1(b)(4) uses the term "rural areas."

Advisory Committee

A draft version of this notice of proposed rulemaking was presented to the Technical Hazardous Liquids Pipeline Safety Standards Committee for consideration at a meeting in Washington, DC on September 18, 1985. The Committee agreed with the notion of basing the proposed gathering line definition on size and funciton and agreed with the proposed definitions of "production facility" and "rural area". The Committee recommended, however, that the limiting size of a gathering line be "8 inches in nominal diameter," rather than "less than 8 inches" as RSPA had suggested. This recommendation was made after the industry members said that an 8-inch limit would more closely conform the proposed definition to what the industry commonly views as gathering in contrast to trunkline. RSPA agrees and has incorporated the Committee's recommended language in the proposed gathering line definition.

The Committee was concerned about the proposed gathering line definition's effect on the few pipelines larger than 8 inches that some operators may be treating as gathering lines. The Committee recommended that in these few cases, the waiver process be used for specific reflief when warranted. Under Section 203(h) the HLPSA (49 U.S.C. 2002(h)), any operator may petition PSPA or a relevant State agency for waiver of compliance with any safety standard issued under the HLPSA. RSPA is disposed to grant waivers or concur with State waivers only upon an adequate showing that compliance with the standard to be waived is not appropriate under the circumstances and safety is otherwise provided. To seek a waiver from the proposed gathering line definition, should it become final, or any related standard, an operator should submit information consistent with this policy. Merely indicating that the pipline concerned has been treated as a gathering line would not be sufficient.

Classification. These proposed regulations are considered to be nonmajor under Exceutive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979) because the proposed definitions are consistent with the manner in which RSPA now applies Part 195 to interstate and intrastate gathering lines. Further, because small entitites do not own or operate interstate pipelines or intrastate piplines that would be affected by this proposal, the agency certifies that this proposal will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 195

Interstate pipeline, intrastate pipeline, pipeline saftey, gathering line, rural area, production facility.

PART 195—[AMENDED]

In view of the above, the RSPA proposes to amend 49 CFR Part 195 in the following manner:

1. The authority citation for Part 195 continues to read as set forth below.

Authority: 49 U.S.C. 2002; Subpart B and § § 195.266, 195.310, and 195.409 also issued under 49 U.S.C. 2010(b); 49 CFR 1.03 and Appendix A of Part 1.

2. Section 195.1(b)(4) would be revised to read as follows:

§ 195.1 Applicability.

* * * * *

(b) * * *

(4) Transportation of petroleum in onshore gathering lines in rural areas.

* * * * *

3. Section 195.2 would be amended by adding three definitions in alphabetical order as follows:

§ 195.2 Definitions.

* * * * *

"Gathering line" means a pipeline 8 inches or less in nominal diameter that transports petroleum from a production facility.

* * * * *

"Production facility means piping or equipment used in the production, extraction, recovery, lifting, stabilization, separation or treating of petroleum or associated storage or measurement.

"Rural area" means outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, or community development.

* * * * *

4. Section 195.401(c)(2) would be revised as follows:

§ 195.401 General requirements.

* * * * *

(c) * * *

(2) An interstate offshore gathering line on which construction was begun after July 31, 1977.

* * * * *

Issued in Washington, DC on November 22, 1985, under authority delegated by 49 CFR Part 106, Appendix A.

Robert L. Paullin,

Director, Office of Pipeline Safety.

[FR Doc. 85-28285 Filed 11-26-85; 8:45 am]

BILLING CODE 4910-60-M

Notices

Federal Register
Vol. 50, No. 229
Wednesday, November 27, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 22, 1985

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Food and Nutrition Service

ATP Reconciliation Report
FNS 46
Monthly
State or local governments; 5,820 responses; 47,072 hours; not applicable under 3504(h)
Paul Jones (202) 756-3427

Reinstatement

Farmers Home Administration

7 CFR 1924-A, Planning and Performing Construction and Other Development
FmHA 1924-1, -2, -3, -5, -6, -7, -9, -10, -11, -12, -13, -18, -19, CC-257
Recordkeeping, On occasion
Individuals or households; Farms; Businesses or other for-profit; Non-profit institutions; Small Businesses or organizations; 759,078 responses; 262,629 hours; not applicable under 3504(h)
Keith Suerdick (202) 382-9651

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 85-28296 Filed 11-26-85; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Stablization and Conservation Service

National Marketing Quotas for Fire-Cured (Type 21), Fire-Cured (Types 22-23), Dark Air-Cured (Types 35-36), Virginia Sun-Cured (Type 37), Cigar-Binder (Types 51-52), and Cigar-Filler and Cigar-Binder (Types 42-44; 53-55) Tobaccos

AGENCY: Agricultural Stablization and Conservation Service, USDA.

ACTION: Notice of Proposed Determinations.

SUMMARY: The Secretary of Agriculture is required by the Agricultural Adjustment Act of 1938, as amended, to proclaim by February 1, 1986, national marketing quotas for cigar-binder (types 51 and 52), an sun cured tobaccos for the 1986-87, 1987-88, and 1988-89 marketing years and to determine and announce the amounts of the national marketing quotas for fire-cured (type 21), fire-cured (types 22-23), dark air-cured (types 35-36), Virginia sun-cured (type 37), cigar-binder (types 51-52), and cigar-filler and cigar-binder (types 42-44; 53-55) kinds of tobacco for the 1986-87 marketing year. The public is invited to submit written comments, views and recommendations concerning the determination of the national marketing quotas for such kinds of tobacco, the conduct of the referendum, and other related matters which are discussed in this notice.

DATE: Comments must be received on or before December 31, 1985 in order to be assured of consideration.

ADDRESSES: Send comments to the Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to the notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 3741-South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-5187. The Preliminary Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major". It has been determined that the implementation of these proposed determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs for consumers, individual industries, Federal, State and local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and

Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

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

The Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), requires that, with respect to cigar-binder (types 51 & 52) and sun-cured tobaccos, the Secretary of Agriculture must proclaim by February 1, 1986, the respective national marketing quotas for the 1986–87, 1987–88, and 1988–89 marketing years. In addition, the Secretary is required to conduct, within 30 days after proclamation of such national marketing quotas, referenda of farmers engaged in the 1985 production of these kinds of tobacco to determine whether they favor or oppose marketing quotas for such years. Since cigar-binder tobacco farmers voting in a referendum in February 1985, disapproved quotas for the 3 marketing years beginning October 1, 1985 (50 FR 19765), and since such disapproval was not the third consecutive disapproval of quotas for cigar-binder tobacco, the Act requires proclamation of marketing quotas for cigar-binder tobacco for the 3 marketing years beginning October 1, 1986. With respect to sun-cured tobacco, the 1985–86 marketing year is the last year of the three consecutive marketing years for which marketing quotas previously proclaimed will be the effect for these kinds of tobacco.

The Secretary is also required: (1) To determine and announce the amounts of the national marketing quotas with respect to fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured, cigar-binder (types 51–52), and cigar-filler and cigar-binder (types 42–44, 53–55) tobaccos for the 1986–87 marketing year; (2) to convert such marketing quotas into acreage allotments and announce the allotments; (3) to apportion such allotments, less reserves of not to exceed 1 percent of each kind of tobacco respectively, through county ASCS committees among old farms; and (4) to apportion the reserves for use in (a) establishing acreage allotments for new farms and (b) making corrections and adjusting inequities in old farm allotments. The six kinds of tobacco discussed in this notice account for approximately 5 percent of total U.S. tobacco production.

Section 312(a) of the Act (7 U.S.C. 1312(a)) provide that the Secretary shall proclaim, not later than February 1 of any marketing year with respect to these kinds of tobacco, a national marketing quota for each of the next three succeeding marketing years whenever the Secretary determines with respect to such kinds of tobacco—

(1) That a national marketing quota has not previously been proclaimed and the total supply as of the beginning of such marketing year exceeds the reserve supply level therefor;

(2) That such marketing year is the last year of three consecutive years of which marketing quotas previously proclaimed will be in effect;

(3) That amendments have been made in provisions for establishing farm acreage allotments which will cause material revision of such allotments before the end of the period for which quotas are in effect; or

(4) That a marketing quota previously proclaimed for such marketing year is not in effect because of disapproval by producers in a referendum. However, if such producers have disapproved national marketing quotas for three successive years subsequent to 1952, thereafter a national marketing quota shall not again be proclaimed in accordance with section 312(a) of the Act which would be in effect for any marketing year within the three-year period for which national marketing quotas previously proclaimed were disapproved by producers unless, prior to November 10 of the marketing year, one-fourth or more of the farmers engaged in the production of the crop of tobacco harvested in the calendar year in which such marketing year begins petition the Secretary, in accordance with such regulations as the Secretary may prescribe, to proclaim a national marketing quota for each of the next three succeeding marketing years.

Quotas were previously proclaimed, referenda conducted, and quotas approved by growers as follows: fire-cured (type 21), fire-cured (types 22–23), and dark air-cured (types 35–36) tobaccos for the 1985–86, 1986–87, and 1987–88 marketing years (50 FR 19765); Virginia sun-cured tobacco for the 1983–84, 1984–85, and 1985–86 marketing years (48 FR 28303); and cigar-filler and binder tobacco (types 42–44; 53–55) for the 1984–85, 1985–86, 1986–87 marketing years (49 FR 20529). Producers of such kinds of tobacco will be eligible to participate in the tobacco price support program.

Section 301(b)(15) of the Act (7 U.S.C. 1301(b)(15)) defines "tobacco" as each one of the kinds of tobacco listed below comprising the types specified as classified in Service and Regulatory Announcement Number 118 (7 CFR Part 30) of the former Bureau of Agricultural Economics of the Department:

Flue-cured tobacco, comprising types 11, 12, 13 & 14;
Fire-cured tobacco, comprising type 21;
Fire-cured tobacco, comprising types 22, 23, & 24;
Dark air-cured tobacco, comprising types 35 & 36;
Virginia sun-cured tobacco, comprising type 37;
Burley tobacco, comprising type 31;
Maryland tobacco, comprising type 32;
Cigar-filler and cigar-binder tobacco, comprising types 42, 43, 44, 45, 46, 51, 52, 53, 54, & 55; and
Cigar-filler tobacco, comprising type 41.

Section 301(b)(15) of the Act also provides that any one or more of the types comprising any such kind of tobacco shall be treated as a "kind of tobacco" for the purposes of the Act if the Secretary finds that there is a difference in supply and demand conditions among such types of tobacco which results in a difference in the adjustments needed in the marketings thereof in order to maintain supplies in line with demand. Pursuant to this authority, the Secretary has issued a determination (15 FR 8214) that type 46 tobacco shall be treated as a separate kind of tobacco for purposes of marketing quotas and price support. Also pursuant to such authority, the Secretary has issued a determination (22 FR 367) that beginning with the 1957–58 marketing year, cigar-binder (types 51–52) shall be treated as a separate kind of tobacco for purposes of marketing quotas and price support. Type 45 tobacco is no longer grown. No further determinations under section 301(b)(15) are contemplated at this time.

Section 312(b) of the Act (7 U.S.C. 1312(b)) provides that the Secretary shall determine and announce, not later than the first day of February 1986, with respect to kinds of tobacco specified in this notice of proposed determination, the amount of the national marketing quota which will be in effect for the 1986–87 marketing year in terms of the total quantity of tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Section 312(b) provides further that the amount of such 1986–87 national marketing quota may, not later than March 1, 1986, be

increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The aggregate reserve supply level for the 1985–86 marketing year for the 6 kinds of tobacco discussed in this notice was determined to be 255 million pounds (50 FR 24258). The proposed reserve supply level for the 1986–87 marketing year will range between 230 million and 280 million pounds. The aggregate total supply for the 1985–86 marketing year is 275 million pounds based on carryover of 201 million and production of 74 million pounds.

Section 312(c) of the Act (7 U.S.C. 1312(c)) provides that, within 30 days after a national marketing quota is proclaimed in accordance with section 312(a) of the Act for a kind of tobacco, the Secretary shall conduct a referendum of farmers engaged in the production of the crop of such kinds of tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quotas for the next three succeeding marketing years. If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quotas, such results shall be proclaimed by the Secretary and the national marketing quotas so proclaimed shall not be in effect, but the results shall in no way affect or limit the subsequent proclamation and submission to a referendum of a national marketing quota as otherwise authorized in section 312.

Section 313(g) of the Act (7 U.S.C. 1313(g)) authorizes the Secretary to convert the national marketing quota into a national acreage allotment by dividing the national marketing quota by the national average yield for the five years immediately preceding the year in which the national marketing quota is proclaimed. In addition, the Secretary is authorized to apportion through county committees the national acreage allotment to tobacco producing farms (less a reserve not to exceed 1 percent thereof for new farms, and for making corrections and adjusting inequities in old farm allotments) among old farms.

Proposed Determinations

Accordingly, comments are requested on the following proposed determinations for the kinds of tobacco listed for the 1986–87 marketing year:

1. With respect to fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured, cigar-binder (types 51 & 52), and cigar-filler and binder (types 42–44; 53–55) tobaccos:

a. The amount of the reserve supply level, within the aggregate range of 230 and 280 million pounds;

b. The amount of the national marketing quota for each kind of tobacco for the 1986–87 marketing year, within an aggregate range of 75 million-105 million pounds; and

c. The amounts of the national acreage allotments to be reserved for new farms, and for making corrections and adjusting inequities in old farm allotments, within the aggregate range of 100 and 500 acres.

2. With respect to cigar-binder (types 51 & 52) and sun-cured tobaccos:

a. The date(s) or period(s) of the referenda for determining whether quotas will be in effect for the 1986–87, 1987–88, and 1988–89 marketing years for such kinds of tobacco; and

b. Whether the referenda should be conducted at polling places rather than by mail ballot (See 7 CFR Part 717).

Signed at Washington, DC on November 22, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85–28293 Filed 11–26–85; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Access to Golden Bear Claims in the Frank Church-River of No Return Wilderness, Payette National Forest, Valley County, ID; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to permit the maintenance of a 10-mile section of the Big Creek mining road and the construction of 1.5 mile section for the purpose of vehicular access to the Golden Bear claims within the Frank Church-River of No Return Wilderness. These claims are currently under application for patent in which case they could become private land.

A range of alternatives for this site will be considered. One of these will be nonmotorized or nonmechanical access to the claim. Other alternatives will consider various combinations of motorized or mechanical access to the claim, level of maintenance activity on the Big Creek road, and construction options.

Federal, state, and local agencies; potential developers; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat.

The Forest Supervisor will hold public meetings in his office at the Payette National Forest, McCall, Idaho, at 7 p.m., Tuesday, December 3, 1985.

Regional Forester J.S. Tixier, Intermountain Region, Ogden, Utah, is the responsible official.

The analysis is expected to take about 5 months. The draft environmental impact statement should be available for public review by May 1986. The final environmental impact statement is scheduled to be completed by August 1986.

Written comments and suggestions concerning the analysis should be sent to Earl Kimball, District Ranger, Krassel Ranger District, P.O. Box 1026, McCall, Idaho 83638 by January 3, 1986.

Questions about the proposed action and environmental impact statement should be directed to Joe Tague, Environmental Coordinator, Krassel Ranger District, phone 208–634–8151.

Dated: November 26, 1985.

T.A. Roederer,

Deputy Regional Forester, Resources.

[FR Doc. 85–28625 Filed 11–26–85; 8:45 am]

BILLING CODE 3410–11–M

Interchange of Administrative Jurisdiction of Department of the Air Force Lands and National Forest Lands; Chattahoochee-Oconee National Forest, GA, et al.

AGENCY: Forest Service, USDA.

ACTION: Notice of Joint Interchange of Lands.

SUMMARY: On June 28 and August 29 the Secretary of the Air Force and the Secretary of Agriculture respectively signed a joint interchange order agreeing to the transfer of administrative jurisdiction of 9,340.38 acres of land within the boundaries of the Lakeland Flatwoods Land Utilization Project, a unit of the National Forest System, administered by the Forest Supervisor of the Chattahoochee-Oconee National Forests, Georgia, from the Department of Agriculture to the Department of the Air Force. The Secretaries also agreed to the

transfer of administrative jurisdiction of 789.16 acres of lands within the Kisatchie National Forest, Louisiana, from the Department of the Air Force to the Department of Agriculture. The order as signed appears at the end of this notice.

EFFECTIVE DATE: The order is effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: James M. Dear, Lands Staff, Room 1010–RPE, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, Telephone: (202) 235–2493.

Dated: November 19, 1985.

R. Max Peterson,

Chief.

Department of the Air Force

Department of Agriculture

Joint Order Interchanging Administrative Jurisdiction of Department of the Air Force Lands and National Forest System Lands Louisiana and Georgia

By virtue of the authority vested in the Secretary of the Air Force and the Secretary of Agriculture by the Act of July 26, 1956 (70 Stat. 656; 16 USC 505a, 505b), it is ordered as follows:

(1) The lands described in Exhibit A, attached hereto and made a part hereof, which lie within the boundaries of the Kisatchie National Forest, Louisiana, are hereby transferred from the jurisdiction of the Secretary of the Air Force to the jurisdiction of the Secretary of Agriculture.

(2) The lands described in Exhibit B, attached hereto and made a part hereof, which lie within the boundaries of the Lakeland Flatwoods Land Utilization Project (GA–LU–21) Georgia, a unit of the National Forest System administered by the Forest Supervisor of the Chattahoochee-Oconee National Forests, are hereby transferred from the jurisdiction of the Secretary of Agriculture to the jurisdiction of the Secretary of the Air Force.

(3) Pursuant to Section 2 of the aforesaid Act of July 26, 1956, the National Forest System lands transferred to the Secretary of the Air Force by this order, are hereafter subject only to the laws applicable to Department of the Air Force lands comprising Moody Air Force Base. The Department of the Air Force lands transferred to the Secretary of Agriculture are hereafter subject to the laws applicable to lands acquired under the Act of March 1, 1911 (36 Stat. 961), as amended.

This order will be effective as of date of publication in the **Federal Register.**

Dated: June 28, 1985.

Verne Orr,

Secretary of the Air Force.

Dated: August 29, 1985.

John R. Block,

Secretary of Agriculture.

Lands Transferred From the Secretary of the Air Force to the Secretary of Agriculture

LOUISIANA MERIDIAN

(Parish of Rapides, State of Louisiana)

T.2N., R.2W.,
Sec. 23, SE–¼ NW–¼, NE–¼ SW–¼.
T.2N., R.3W.,
Sec. 1, a strip of land 600 feet wide off the north side of the N–½ NW–¼ SW–¼ containing 18.27 acres, and being the same land described as an exception in the deed from Roy O. Martin Lumber Company, Inc. to the United States of America, dated July 15, 1970, and recorded in Book 759, Page 457, Rapides Parish;
Sec. 10, S–½ SE–¼;
Sec. 15, N–½ NE–¼.
T.3N., R.2W.,
Sec. 31, E–½ NE–¼ NE–¼, E–½ E–½ NW–¼ NE–¼.
T.3N., R.3W.,
Sec. 20, S–½ NE–¼, 1.00 acre square in the northest corner of the SE–¼ NW–¼, being the same land described as an exception in the deed from Long-Bell Lumber Sales Corporation, et al to the United States of America, dated May 22, 1935, and recorded in Book 205, page 157, Rapides Parish, N–½ NW–¼ SW–¼, 5.28 acres located in the northeast corner of the SE–¼ SW–¼, being that part located northest of Forest Service Road No. 272 and described as an exception in the deed from Lloyd G. Teekell to the United States of America, dated June 3, 1969, and recorded in Book 737, page 755, Rapides Parish, 2.00 acres in a square in the northest corner of that part of the S–½ NW–¼ SW–¼ remaining after the east 5.00 acres has been excepted, being the same land described as an exception in the deed from J. Denny McFarland to the United States of America, dated April 14, 1969, and recorded in Book 734, page 476, Rapides Parish, N–½ SE–¼;
Sec. 21, W–½ SW–¼, the west 10.00 acres of the SE–¼ SW–¼, being the same lands described as an exception in the deed from Long Bell Lumber Sales Corporation, et al, to the United States of American, dated May 22, 1935, and recorded in Book 205, page 157, Rapides Parish;
Sec. 28, SE–¼ NE–¼, NE–¼ SE–¼;
Sec. 29, NW–¼ SE–¼;
Sec. 33, NE–¼ NW–¼, N–½ SE–¼ NW–¼;
Sec. 34, SE–¼ SW–¼.

The total GLO acreage of the lands described is approximately 789.16 acres.

These are the same lands identified in Air Force records as Tracts No. 100, 101, 108, 111, 112, 117–125, 127–135, 138, 140–2, 142, 145, 146 and 149–154.

Lands Transferred From the Secretary of Agriculture to the Secretary of the Air Force

All those lands acquired by the United States of America for the Lakeland Flatwoods Land Utilization Project (GA–LU–21), lying all or partly in Lots 180, 181, 188–190, 226, 227, 234–237, 270–273, 275, 276, 278–283 and 318 of the 11th Land District and consisting of 6,763.38 acres in Lanier County, Georgia, and 2,577.00 acres in Lowndes County, Georgia, being the same lands conveyed to the United States of America in the following described instruments:

Tract #1—3/15/40—John B. Odum—239.72 acres—Lowndes County—book 4y, page 428;
Tract #2—12/18/40—Mrs. Elizabeth H. Davis, et al—2,146.00 acres—Lowndes County and 3,151.89 acres—Lanier County—Civil Action #42, Middle District of Georgia, Valdosta Division, U.S. District Court;
Tract #3—11/6/40—Mrs. Elizabeth H. Davis, et al—494.16 acres—Lanier County—Civil Action #27, Middle District of Georgia, Valdosta Division, U.S. District Court;
Tract #3a—3/15/40—Mrs. Elizabeth H. Davis—1,475.50 acres—Lanier County—book 7, page 208;
Tract #5—3/18/40—Miss Minnie L. Carter—496.51 acres—Lanier County—book 7, page 210;
Tract #6—5/12/42—Robert Simpson, et al—608.33 acres—Lanier County—Civil Action #72, Middle District of Georgia, Valdosta Division, U.S. District Court;
Tract #9—1/17/41—David H. Harrell, et al—728.27 acres—Lanier County—book 7, page 347, it having been determined subsequently that 536.99 acres lie in Lanier County and that 191.28 acres lie in Lowndes County.

A total of 9,340.38 acres.

[FR Doc. 85–28295, Filed 11–26–85; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Environmental Impact; Little Contentnea Creek Watershed, NC

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: 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); and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared

for the Little Contentnea Creek Watershed, Edgecombe, Greene, Pitt, and Wilson Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Coy A. Garrett, State Conservationist, Soil Conservation Service, Room 535, Federal Building, 310 New Bern Avenue, Raleigh, North Carolina, 27601, telephone 919-856-4210.

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

Little Contentnea Creek Watershed, North Carolina, Notice of a Finding of No Significant Impact

The project concerns a plan for flood control and watershed protection. The planned works of improvement include 18.35 miles of channel clearing and snagging, 10 miles of channel excavation, and 3.9 miles of pilot channel excavation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and 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 above address. Basis data developed during the environmental assessment are on file and may be reviewed by contacting Coy A. Garrett.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: November 1, 1985.

Richard A. Gallo,

Assistant State Conservationist.

[FR Doc. 85-28286 Filed 11-26-85; 8:45 am]

BILLING CODE 3410-16-M

Little Contentnea Creek Watershed, Pitt, Greene, Wilson, and Edgecombe Counties, NC; Finding of No Significant Impact

Introduction

The Little Contentnea Creek Watershed is a federally assisted action authorized for planning under Pub. L. 83-566, the Watershed Protection and Flood Prevention Act. An environmental evaluation was undertaken in conjunction with the development of the watershed plan. This evaluation was conducted in consultation with local, state, and federal agencies, as well as with interested individuals and organizations. Data developed during the evaluation are available for public review at the following location: U.S. Department of Agriculture, Soil Conservation Service, 310 New Bern Avenue, Room 535, Federal Building, Raleigh, North Carolina 27601.

Recommended Action

It is proposed that the orignally planned system of 207.1 miles of stream channel improvement, 46,125 acres of land treatment, two warm-water impoundments, and 270 acres of wetland for mitigation of damages to fish and wildlife habitat be changed to 18.35 miles of channel clearing and snagging, 10 miles of channel excavation, and 3.9 miles of pilot channel excavation to minimize environmental impacts. Land treatment is being done by the on-going soil and water conservation district programs. All channel work will be done to minimize disturbance to stream environments. These stream channel improvements will reduce flood damages and associated soil wetness problems in the watershed area.

Effects of Recommended Action

The proposed stream channel work will benefit about 5,040 acres of wet cropland in the watershed. In addition, flooding to public roads, streets, recreational facilities, sewer systems, businesses and homes will be reduced with project implementation.

Planned works of improvement will reduce, by about 75 percent, flood damages to crops and pasture caused by overflow of stream channels and ponding of surface water from heavy rains. It is expected that overbank flooding will continue to occur from the larger, less frequent storms; however, the duration of flooding will be materially reduced. Since some of the major crops are sensitive to duration of flooding, reduction of duration will reduce the amount of damages from these larger rainfall events.

There will be 1.5 acres of Type 1 and 7 wetlands (Circular 39, USFWS) converted to open water areas, due to pilot channel excavation. The functional values of approximately 500 acres of wetlands currently blocked from the stream by existing continuous spoil piles will be increased by the construction of "spoil breaks" which will allow interchange between wetlands and stream flow.

Impacts to fishery resources, water quality, wildlife resources, riparian ecosystems, and other areas of concern will be minimized by the proposed channel improvement construction techniques.

No identified threatened and endangered species or cultural resource will be adversely impacted by project implementation.

Prime farmland will be enhanced by project measures. Land use in the watershed is not expected to change significantly upon project installation. The project is expected to have a positive impact on related socio-economic conditions in the watershed.

Visual resource values will not be significantly impacted by project implementation.

Alternatives

The planned alternative was selected by the local sponsors to avoid adverse environmental considerations associated with other alternatives. Installation of this alternative is the most cost-effective means of providing the protection needed. It will result in no significant adverse impacts in the project area.

Conclusion

The environmental assessment indicates that the federally assisted action will not cause significant local, regional, or national adverse impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement in the Little Contentnea Creek Watershed project is not required.

Datd: November 1, 1985.

Richard A. Gallo,

Assistant State Conservationist.

[FR Doc. 85-28287 Filed 11-26-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 316]

Approval for Expansion of Foreign-Trade Subzone No. 41E at a Site in Manitowoc, WI

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18,

1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Foreign-Trade Zone of Wisconsin, Ltd. (FTZW), Grantee of Foreign-Trade Zone NO. 41 in Milwaukee and of Foreign-Trade Zone Subzone 41E at the shipyard of Bay Shipbuilding Corporation in Sturgeon Bay, Wisconsin, has applied to the Board for authority to expand Subzone 41E to include a materials storage site in Manitowoc, Wisconsin, within the Manitowoc Customs port of entry;

Whereas, the application was accepted for filing on June 20, 1985, and notice inviting public comment was given in the Federal Register on July 3, 1985 (Docket No. 21–85, 50 FR 27473);

Whereas, the expansion will facilitate the company's operations in a way that will help it achieve the public benefits cited in the original subzone application;

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zone Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand Subzone 41E in accordance with the application filed June 20, 1985. The Grantee shall notify the Executive Secretary of the Board of approval prior to the commencement of any manufacturing operations at the Manitowoc site. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, D.C., this 13th day of November 1985.

William T. Archey,

Acting Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 85–28239 Filed 11–26–85; 8:45 am]

BILLING CODE 3510–25–M

International Trade Administration

Joint Meeting of the Automated Manufacturing Equipment Technical Advisory Committee, Computer Systems Technical Advisory Committee, and the Electronic Instrumentation Technical Advisory Committee; Change in Meeting

The Joint Meeting of the Automated Manufacturing Equipment Technical Advisory Committee, the Electronic Instrumentation Technical Advisory Committee, and the Computer Systems Technical Advisory Committee as published in the **Federal Register** (50 FR 47242) on Friday, November 15, 1985 will now be a Joint Meeting of the Electronic Instrumentation and Computer Systems Technical Advisory Committees. The meeting will be held December 3 and 4, 1985. The Automated Manufacturing Equipment Technical Advisory Committee will not be participating in this meeting. The Automated Manufacturing Equipment Technical Advisory Committee will meet December 4, 1985, at 9:30 a.m., Herbert C. Hoover Building, Room 6029, 14th Street and Constitution Avenue NW., Washington, DC.

Agenda

1. Welcoming remarks by the Chairman.
2. Opening remarks by the Chairman.
3. Presentation of papers or comments by the public.
4. Programmable controllers.
5. Automatically Controlled Industrial Systems (ACIS).
6. Numerically controlled machines and components.
7. Robots and sensory systems.
8. Inspection equipment.
9. Presses, mills, and special purpose machines.
10. Annual report.

Executive Session

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: (202) 377–4217. For further information or copies of the minutes contact Margaret A. Cornejo (202) 377–2583.

Dated: November 20, 1985.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 85–28244 Filed 11–26–85; 8:45 am]

BILLING CODE 3510–DT–M

[C–333–502]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Deformed Steel Concrete Reinforcing Bar From Peru

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute boundaries or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Peru of deformed steel concrete reinforcing bar (rebar). The estimated net bounty or grant is 1.82 percent *ad valorem* during the review period, 1984. However, we have verified that after the review period and before the preliminary determination, the company under investigation received export rebate certificates (CERTEC) based on exports to the Untied States in August, 1985. Therefore, we are adjusting the cash deposit rate to reflect the receipt of benefits under this program. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of rebar from Peru that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit on

such entries of rebar in the amount equal to 29.98 percent *ad valorem*.

EFFECTIVE DATE: November 27, 1985.

FOR FURTHER INFORMATION CONTACT: Laura Winfrey, David Levine, or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0160, 377-0186, or 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination and Order

Based on our investigation, we determine that certain benefits, which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Peru of rebar. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Certificate of Tax Rebate System (CERTEX).
- Equity Infusions into SIDERPERU.
- Capitalization of Debt and Tax Liability.
- Regional Incentives under the 1982 Industrial Law.

We determine the estimated net bounty or grant to be 29.98 percent *ad valorem* for rebar.

Case History

On June 13, 1985, we received a petition from Florida Steel Corporation of Tampa, Florida and Chaparral Steel Company of Midlothian, Texas, on behalf of the U.S. industry producing rebar. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Peru of rebar receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on July 3, 1985, we initiated the investigation (50 FR 28230). We stated that we expected to issue our preliminary determination by September 6.

Since Peru is not a "country under the Agreement" within the meaning of section 701(b) of the Act (and the merchandise being investigated is dutiable), petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product materially injure, or threaten material injury to, a U.S. industry (19 U.S.C. 1303(a)(1) (b)).

We presented detailed government and company questionnaires to the government of Peru on July 12, 1985. Partial responses were received on August 23, 1985, from the government of Peru, Empresa Siderurgica del Peru (SIDERPERU), and Aceros Arequipa II, S.A. (AREQUIPA) Laminadora del Pacifico, S.A. responded that it does not produce rebar and Aceros Arequipa responded that it does not export rebar.

On September 6, 1985, we preliminarily determined that benefits constituting bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Peru of rebar (50 FR 37586). We based this preliminary determination on best information available as required under § 355.39 of our regulations (19 CFR 355.39) because we had not yet received complete responses to our questionnaire.

We received partially translated financial statements of SIDERPERU on September 13. On September 30, complete responses from SIDERPERU and the government of Peru were submitted. Verification was conducted with the government of Peru and SIDERPERU from October 14 through October 20 in Lima, Peru.

A hearing was requested and took place on October 31, 1985. We received briefs from the parties to the proceeding on October 25, and November 8, and comments on the verification reports on November 12.

In their pre-hearing brief, at the hearing, and in their post-hearing brief respondents argued that petitioners lack standing in this countervailing duty case because of a failure to show that their petition was filed on behalf of an industry. On November 4, petitioners submitted a letter from The Steel Bar Mills Association. The letter stated that the Association's members account for three quarters of rebar production in the United States and that they strongly support the petition. We have received no indication of any domestic producer's opposition to this investigation. For further discussion of this argument see "DOC Position" on "Respondents' Comment 1".

Scope of Investigation

For purposes of this investigation the term deformed steel concrete reinforcing bar covers hot-rolled steel bars, of solid cross section, having deformation of various patterns on their surfaces which are currently classifiable in the *Tariff Schedules of the United States, Annotated*, (TSUSA) under item numbers 606.7900 and 606.8100.

Deformed steel concrete reinforcing bars are hot-rolled bar products, consisting of special deformed sections used to resist tension, compression, temperature and/or shear stresses for reinforcing concrete. The category includes all deformed concrete reinforcing bars rolled from new billet steel, rail steel, or axle steel including straight lengths and coils.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of this investigation. These principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, which was published in the April 26, 1984, issue of the Federal Register (49 FR 18006).

The response provided by Arequipa indicated that Arequipa is not exporting rebar to the United States and has not exported rebar to the United States in the past. The only known producer and exporter of rebar to the United States is SIDERPERU.

For purposes of this final determination, the period for which we are measuring bounties or grants (the review period) is calendar year 1984.

Petitioners alleged that SIDERPERU has been both unequityworthy and uncreditworthy since 1979. We have consistently held that government provision of equity does not *per se* confer a bounty or grant. Government equity purchases bestow countervailable bounties or grants only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether equity purchases in the company are reasonable commercial investments. SIDERPERU's shares are not publicly traded and there are no market-determined prices for its shares. Therefore, we needed to determine whether SIDERPERU was "equityworthy" for the period 1979 through 1984.

To make this determination, we reviewed and assessed financial statements from 1976 to 1984. In analyzing the financial statements, we considered the impact of the accounting practices used by the company on its overall financial results. In this review, we analyzed the results and evaluated the information from the viewpoint of an

investor. This review included analysis of the following ratios:

- Rate of return on sales and equity.
- Gross margin to sales.
- Financial expenses to sales.
- Cash flow to debt service payments.
- Current ratio.
- Debt to equity.

Based on our review of the financial statements, company and government responses, and verification, we determine that the government's equity infusions into SIDERPERU were on terms inconsistent with commercial considerations from 1981 through 1984.

We did not assess whether SIDERPERU is uncreditworthy because we have determined that no countervailable long-term loans or loan guarantees are being provided to SIDERPERU.

Based upon our analysis of the petition, the responses submitted by the government of Peru and SIDERPERU to our questionnaries, veridication, and briefs submitted by both petitioners and respondents, we determine the following.

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Peru of rebar under the following programs.

A. Certificate of Tax Rebate System (CERTEX)

Under this program, qualifying exporters are eligible to apply for certificates issued by the government in amounts equal to a percentage of the f.o.b. invoice price of export shipments. The applicable CERTEX percentage is determined according to whether the exports are classified as being of low, medium, or high value added and whether they are produced outside of the Province of Lima and/or the Constitutional Province of Callao. Once the gross amount of the rebate certificate is determined, two percent of this amount is issued to the Fund for the Provision of Nontraditional Exports (FOPEX), and 10 percent is issued to the Provisional Municipal Town Council of the municipality from which the product originated. The exporter then receivers the balance, 88 percent of the gross amount. The value of the certificate is expressed in soles as determined by the official exchange rate on the day of shipment. CERTEX certificates may be applied against taxes owed the Peruvian government or they may be negotiated as commerical paper.

The CERTEX program is specifically export oriented; the amount of benefits available under the program is based solely on export performance. We have considered and rejected, based on all information submitted, the respondents' contention that CERTEX is a *bona fide* rebate of indirect taxes and import duties. See "DOC Position" on "Respondents' Comment 2".

SIDERPERU did not participate in this program during the review period. However, we verified that after the review period and prior to our preliminary determination, SIDERPERU received CERTEX rebate certificates based on exports of rebar to the United States in August, 1985. Since receipt of these rebate certificates constitutes usage of the program by SIDERPERU with regard to rebar exports to the United States, and since we are able to quantity the countervailable benefits of this program, we are adjusting the cash deposit rate accordingly.

To calculate the benefit derived from this program we multiplied the CERTEX rate approved for rebar (32 percent) by the percentage of the gross rate actually received (88 percent). On this basis, we determine that the cash deposit rate should be adjusted to reflect receipt of an estimated net bounty or grant conferred by this program of 28.16 percent *ad valorem*.

B. Equity Infusions Into SIDERPERU

Petitioners alleged that SIDERPERU, the government-owned producer of rebar, has received substantial infusions of capital from the Peruvian government beginning in 1979 and that these equity infusions are on terms inconsistent with commercial considerations.

For purposes of the preliminary, using best information available, we determined that SIDERPERU had been unequityworthy since 1979 and that government equity infusions between 1979 and 1984 conferred a bounty or grant because they were made on terms inconsistent with commercial considerations. Our preliminary calculation was based on the yearly increased in capital as reported on SIDERPERU's financial statements.

At verification we found that part of each year's capital increase is comprised of a "revaluation surplus", which involves a revaluation of the company's assets to take into account the effects of inflation. Decree Law No. 21694 establishes the revaluation process and the annual revaluation rate applied to all Peruvian companies. We verified that D.L. 21694 applies equally to all companies in Peru.

Because D.L. 21694 does not provide a benefit to a specific enterprise or industry, or group of enterprises or industries we determine that the portion of SIDERPERU's yearly increases in equity comprised of "revaluation surplus" does not confer a bounty or grant.

However, the government did make actual equity infusions in SIDERPERU between 1979 and 1984. As stated in the "Analysis of Programs" section of this notice, we determine that from 1981 through 1984 SIDERPERU was unequityworthy. Therefore, the government's equity infusions were on terms inconsistent with commercial considerations for 1981 through 1984, and, as such, confer a bounty or grant.

To calculate the benefit, we followed the rate of return shortfall methodology outlined in the Subsidies Appendix. We used the rate of return on U.S. investment in Peru (published in the *Survey of Current Business*) as the best information available for a national average rate of return on equity. We subtracted SIDERPERU's rate of return on equity during the review period from this national rate of return. We then multiplied the difference by the amount of all equity infusions made from 1981 through 1984 and divided this product by total 1984 sales. On this basis, the estimated net bounty or grant is 0.94 percent *ad valorem*.

C. Capitalization of Debt and Tax Liability

Petitioners alleged that the government of Peru has permitted the forgiveness of debt and capitalization of debt. At verification we found no evidence of forgiveness of SIDERPERU's debt. However, under Supreme Decrees Nos. 575–83–EFC and 574–83–EFC ("S.D. 575" and "S.D. 574") of December 16, 1983, the government of Peru authorized the capitalization by SIDERPERU of certain of its tax obligations, interest due and loan principal. The entire tax obligation and interest due were captialized and, of the authorized amount of loan principal that could be capitalized, only a portion was actually assumed by the government and capitalized by SIDERPERU. Both the S.D. 575 and S.D. 574 capitalizations were reflected in SIDERPERU's 1984 balance sheets and financial statements.

We treat the capitalization of debt as an equity infusion by the government. Accordingly, the benefit from the capitalization is included in the *ad valorem* rate specified for equity infusions in the section on "Equity Infusions into SIDERPERU" above.

D. Regional Incentives Under the 1982 Industrial Law

Petitioners alleged that under the 1982 Industrial Law, Peruvian firms are provided with tax incentives for

investment outside the Department of Lima or the Province of Callao.

At verification we found that SIDERPERU took a 15 percent deduction for decentralization as listed in the annex tax return filed in 1984. Because this tax deduction is limited to companies located in specific regions, we determine that it is countervailable. To calculate the benefit arising from this program, we allocated the amount of the deduction claimed on the tax return filed in 1984 over SIDERPERU's total sales for 1984. On this basis, we calculate an estimated net bounty or grant of 0.88 percent *ad valorem*.

II. Programs Determined Not To Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Peru of rebar under the following programs:

A. Long-Term Loans From COFIDE

Petitioners alleged that SIDERPERU received preferential loans from the Peruvian government through Banco Industrial Del Peru and COFIDE. At verification we found that SIDERPERU had no loans outstanding from Banco Industrial del Peru. We also learned that SIDERPERU is required by law to work with the Banco de la Nacion for short-term lending. For a discussion of short-term loans, see the section on "Short-term Loans" below.

With respect to long-term financing, we found that COFIDE is the only long-term lending agency in Peru. We verified that a number of firms, both public and private, in a wide variety of industries such a mining, paper, glass, transportation and hotels received long-term loans from COFIDE and that the interest rates charged did not vary by industry. Therefore, we determine that long-term loans from COFIDE are not limited to a specific enterprise or industry or group of enterprises or industries, and thus do not confer a bounty or grant.

B. Loan Guarantees From COFIDE

Petitioners alleged that SIDERPERU received preferential loan guarantees from the Peruvian government through COFIDE.

We found that verification that the charge on guarantees is one of the ways COFIDE makes money and that public and private companies pay comparable rates for these guarantees.

At verification we also looked at actual loan guarantee contracts for a variety of public enterprises, including SIDERPERU, two private textile companies and one private steel company. The rates charged to all these companies for COFIDE guarantees were all within the same range.

Therefore, we determine that COFIDE guarantees are not limited to a specific enterprise or industry or group of enterprises or industries and that COFIDE loan guarantees do not confer a bounty or grant.

C. Short-term Loans

We investigated the receipt by SIDERPERU of short-term financing. At verification we found that, to acquire short-term loans, SIDERPERU is required by law to work with the Banco de la Nacion (BLN). SIDERPERU receives a credit line from the BLN to pay for imports. The rates paid to BLN for short-term financing we found to be on commercial terms.

Therefore, we determine that the BLN's lending terms are not inconsistent with commercial considerations and that short-term loans from the BLN do not confer a bounty or grant.

III. Programs Determined Not To Be Used

We determine that the following programs, listed in the notice of "Initiation of Countervailing Duty Investigation", were not used by the manufacturers, producers, or exporters in Peru of rebar.

A. Nontraditional Export Fund (FENT)

Petitioners alleged that the Peruvian government provides, through FENT, short-term preferential financing such as pre-shipment credit or post-shipment credit, to exporters of nontraditional goods. We verified that during our review period SIDERPERU did not receive any financing from FENT. In addition, we found no evidence that SIDERPERU received FENT loans on the shipments of rebar to the United States that occurred subsequent to our review period.

B. Law for the Promotion of Nontraditional Goods (the Export Law, Articles 8, 9, 10, 11, 12, 13, 14, 16, 23 and 31)

Petitioners alleged that the Export Law provides various incentives to enterprises that export a certain percentage of their annual production.

During our review period SIDERPERU did not export any products and was therefore not eligible to receive benefits under the Export Law. We verified that SIDERPERU did not use any articles of the Export Law during our review period. We also verified that SIDERPERU was not eligible to receive benefits from the Export Law during 1983.

C. Export Promotion Fund (FOPEX)

Petitioners alleged that FOPEX, a government agency, maintains its own programs of direct support to exporters in the form of loans and loan guarantees at preferential rates.

We verified that FOPEX is an agency that organizes export promotional activities such as advertising, marketing and trade fairs for any company in Peru, and that it has no lending capacity. We verified that SIDERPERU did not receive loans or loan guarantees from FOPEX at preferential rates. We also verified that SIDERPERU did not receive any advertising or marketing assistance from FOPEX.

D. Peruvian Export Credit Insurance Company S.A. (SECREX)

Petitioners alleged that SECREX provides insurance to exporters on terms inadequate to cover long-term operating costs and losses. We verified that SIDERPERU did not use the services of SECREX during the review period.

E. Exemption of Import Duties on Raw Material Inputs

Petitioners alleged that key industries in Peru, including rebar producers, are exempted from paying tariffs on imported raw materials which are unavailable in Peru. Petitioners further alleged that import duties on high temperature silicon bricks used in blast furnaces may have been selectively lowered by the government.

We verified the SIDERPERU did, in fact, pay import duties on imported raw materials during the review period. We also verified that the import duty on silicon bricks had not been lowered by the government during our review period.

F. Reimbursement of Duties

Petitioners alleged that SIDERPERU plans to reimburse the U.S. importers for any countervailing duties assessed by the Department of Commerce.

At verification we found that, in the original letter of credit between SIDERPERU and the U.S. importer, the importer had included a sentence stating that in the event a countervailing duty is levied by the U.S. Government, the seller agrees to absorb the duties. We also found a modification to the original letter of credit deleting the entire clause concerning countervailing duties, and nothing found subsequent to this modification indicated that such an agreement exists.

Therefore, we determine that neither SIDERPERU nor the government of Peru intends to reimburse the importer for

any countervailing duties. However, this issue will be examined in any administrative review of this order that may occur, under section 751 of the Act.

Comments By Petitioners

Comment 1: Petitioners argue that the review period should include all of 1984 and those months in 1985 that encompass the most current and verifiable information available on all of the alleged bounties and grants.

DOC Position: Although our review period is calendar year 1984, we have included the two shipments of rebar to the United States in August, 1985, and the benefits received under the CERTEX program on those shipments, to determine our cash deposit rate.

Comment 2: Petitioners argue that the Department should use the same methodology used in the preliminary determinatin to calculate the CERTEX benefits received by SIDERPERU. Petitioners also argue that CERTEX is not a *bona fide* rebate or drawback of indirect taxes.

DOC Position: For the preliminary determination, our methodology was based on "best information available". At verification we were able to determine the exact percentage of the CERTEX rebates applied for and received by SIDERPERU. We have used these actual rates in calculating the estimated net bounty or grant. For a discussion of whether CERTEX operates as a *bona fide* rebate of indirect taxes, see "DOC Position" on "Respondents' Comment 2".

Comment 3: Petitioners argue that SIDERPERU did use the FENT financing program and urge the Department to re-examine the possibility that SIDERPERU used FENT in conjunction with recent shipments to the United States.

DOC Position: At verification it was established to the Department's satisfaction that SIDERPERU did not use the FENT financing program during the review period or in conjunction with recent shipments to the United States.

Comment 4: Petitioners contend that SIDERPERU has received substantial and countervailable infusions of capital and other forms of direct bounties or grants from the government of Peru and other sources. Petitioners also argue that SIDERPERU is unequityworthy.

DOC Position: For the Department's position, see the section of the notice on "Equity Infusions into SIDERPERU".

Comment 5: Petitioners argue that SIDERPERU received loans, loan guarantees and other benefits on a preferential basis and on preferential terms from the Peruvian government through the Banco Industrial del Peru and COFIDE, and that SIDERPERU was uncreditworthy when it received these loans.

DOC Position: Our determination on loans and loan guarantees is addressed in the sections of the notice on "Long-Term Loans from COFIDE" and "Loan Guarantees from COFIDE".

Comment 6: Petitioners contend that the Department should treat forgiven or capitalized debt as an equity infusion rather than a government loan.

DOC Position: We agree. See the section of the notice entitled "Capitalization of Debt and Tax Liability".

Comment 7: Petitioners argue that under the 1982 Industrial Law, Peruvian firms are provided with generous tax incentives for investing outside the Department of Lima or the Province of Callao. Petitioners contend that these benefits should be countervailed accordingly.

DOC Position: We agree. See the section on "Regional Incentives under the 1982 Industrial Law".

Comment 8: Petitioners argue that the government of Peru and/or SIDERPERU agreed to absorb or reimburse importers for the costs of any countervailing duties applied against rebar shipped under their purchase order, and that we should countervail such an agreement.

DOC Position: Based on verification, we are satisfied that neither the government of Peru nor SIDERPERU has agreed to reimburse any countervailing duties assessed on rebar exports to the United States. However, we will re-examine this issue in any administrative review that may occur, under section 751 of the Act.

Comment 9: Petitioners argue that the Department has been prejudicial to them in the administration of this investigation.

DOC Position: We received complete responses from the government of Peru and SIDERPERU and these responses were verified fully. We received and thoroughly considered pre-hearing and post-hearing briefs and comments on the verification reports from petitioners and respondents. Thus, we have not been prejudicial in the administration of this case.

Comments by Respondents

Comment 1: Respondents argue that the investigation should be rescinded by the Department because petitioners lack standing and that petitioners must bear the bruden of showing proper standing.

DOC Position: In their petition, filed on June 13, 1985, petitioners asserted that they filed this case on behalf of the United States rebar industry. On November 4 petitioners submitted a letter from The Steel Bar Mills Association supporting the petition. According to the letter, The Steel Bar Mills Association is the principal Association of the steel mini-mill industry in the United States and represents 25 U.S. producers of rebar. No member of the industry has come forward opposing the petition.

In this case, petitioners have shown industry support for the petition, and we have not received any statements in opposition to the petition from the rebar industry. Thus, we determine that there is insufficient evidence to warrant a conclusion that petitioners have not filed "on behalf of the industry".

Comment 2: Respondents argue that, in the case of rebar, CERTEX operates as a *bona fide* rebate or drawback of indirect taxes and import duties and that the Department should thus not countervail the CERTEX rebates received.

DOC Position: As stated in the notice on *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Apparel from Thailand* (50 *FR* 9818), we apply a three-prong test in determining whether a program is a *bona fide* rebate of indirect taxes and drawback of import duties. First, the program must be intended to operate as a rebate or drawback system. Next, the government must properly ascertain the level of any fixed drawback. Finally, the drawback schedules must be set and revised periodically to reflect the amount of duty and indirect taxes actually paid.

The information submitted by respondents on November 4 and 8 supporting their contention that CERTEX is a *bona fide* rebate of indirect taxes and import duties does not meet our test.

There is no indication that the government of Peru has an established system for setting and maintaining CERTEX rates based on accurate studies *and* reflecting actual amounts of duties and indirect taxes paid.

In addition, respondents' information was submitted too late to allow for verification.

Comment 3: Respondents argue that the Department was correct in deducting contributions to the two municipal townships and FOPEX from the CERTEX rate in the preliminary determination.

DOC Position: We agree. See section on "Certificate of Tax Rebate System (CERTEX)".

Comment 4: Respondents claim that SIDERPERU has not used the FENT program.

DOC Position: We agree. See the section on "Non-Traditional Export Fund (FENT)".

Comment 5: Respondents contend that SIDERPERU is not eligible for and has not used Articles 8, 9, 12, 13, 14, 16, 23 and 31 of the Export Law.

DOC Position: We agree. See the section on "Law for the Promotion of Non-Traditional Goods (the Export Law)".

Comment 6: Respondents argue that regional incentives, tied to location and not to exports, should be measured against total sales.

DOC Position: We agree. See the section on "Regional Incentives under the 1982 Industrial Law".

Comment 7: Respondents argue that the Department should exclude from its computation of government equity infusions in SIDERPERU equity increases due solely to mandatory annual revaluation of fixed assets.

DOC Position: We agree. See the section on "Equity Infusions into SIDERPERU".

Comment 8: Respondents contend that SIDERPERU has been equityworthy throughout 1979–1984.

DOC Position: Based on a review of the financial statements of SIDERPERU for the years 1976–1984, we have determined that SIDERPERU was equityworthy in 1979 and 1980, but was not equityworthy from 1981 through 1984. See the section on "Equity Infusions into SIDERPERU".

Comment 9: Respondents argue that the Department should not use short-term soles loan rates as a substitute for the national average rate of return on equity in Peru in calculating its rate of return shortfall.

DOC Position: Short-term soles loan rates were used in the preliminary determination as the substitute for the national average rate of return on equity because these rates were the only rates we had available at that time. We have since found that the *Survey of Current Business* publishes information on the rate of return on U.S. investment in Peru. We believe this is a more appropriate indication of the national rate of return on equity and have therefore used this rate for our final determination.

Comment 10: Respondents argue that the government's conversion of debt to equity in SIDERPERU was not inconsistent with commercial considerations.

DOC Position: We treat conversions of debt to equity as an equity infusion because the result is comparable to the government providing new equity funds which are used to retire debt. To the extent that we find equity infusions to be inconsistent with commercial considerations, the conversion of debt to equity is similarly inconsistent with commercial considerations and the benefit to the recipient firm is the same as from an equity infusion.

Comment 11: Respondents argue that long-term loans to SIDERPERU from COFIDE are not countervailable because COFIDE lends to all industrial sectors in Peru.

DOC Position: We agree that long-term COFIDE loans are not countervailable. See the section on "Long-term loans from COFIDE".

Comment 12: Respondents claim that SIDERPERU was creditworthy when the long-term liabilities on its books as of December 31, 1984 were originally incurred.

DOC Position: We have determined that the long-term loans to SIDERPERU are not countervailable; therefore, the issue of creditworthiness is moot.

Comment 13: Respondents argue that short-term soles loan rates for 1984 are an inappropriate benchmark for long-term loans entered into by SIDERPERU in prior periods.

DOC Position: Since we have determined that long-term loans provided to SIDERPERU are not limited to an enterprise or industry or group of enterprises or industries, and thus not countervailable, the issue of which benchmark rate to use is moot.

Comment 14: Respondents claim that COFIDE loan guarantees are generally available in Peru and are made on commercial terms.

DOC Position: We agree. See the section on "Loan Guarantees from COFIDE".

Comment 15: Respondents argue that petitioners' contention regarding the reimbursement of duties agreement is baseless.

DOC Position: Based on our verification, we have determined that neither the government of Peru nor SIDERPERU intends to reimburse countervailing duties on shipments of rebar to the United States. However, we intend to reexamine this issue in any administrative review of the order which may occur under section 751 of the Act.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During this verification, we followed normal procedures, including inspection of documents, discussions with government officials and on-site inspection of SIDERPERU's records.

Administrative Procedures

The Department has afforded interested parties an opportunity to present oral views in accordance with its regulations (19 CFR 355.35). A public hearing was held on October 31, 1984. In accordance with the Department's regulations (19 CFR 355.34(a)), all written views have been received and considered. The suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall remain in effect until further notice. The estimated net bounty or grant for duty deposit purposes is 29.98 percent *ad valorem*. We are directing the United States Customs service to require a cash deposit in the amount indicated above for each entry of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

This notice is published in accordance with sections 303 and 706 of the Act (19 U.S.C. 1303, 1671e).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

November 20, 1985.

[FR Doc. 85–28280 Filed 11–26–85; 8:45 am]

BILLING CODE 3510-DS-M

Notice of Petitions by Producing Firms for Determinations of Eligibility to Apply for Trade Adjustment Assistance

Petitions have been accepted for filing on the dates indicated from the following firms: (1) Bixby International Corporation, 53 Warren Street, Newburyport, Massachusetts 01950, producer of footwear components and fabric sheet materials (October 22, 1985); (2) Continental Plastics & Chemicals, Inc., 10 Production Way, Avenel, New Jersey 07001, producer of vinyl sheeting (October 28, 1985); (3) Whirlwind, Inc., 4302 Shilling Way, Dallas, Texas 75237, producer of woodworking machinery (October 28, 1985); (4) Electro-Catheter Corporation, 2100 Felver Court, Rahway, New Jersey 07065, producer of catheters and other cardiovascular devices (October 30, 1985); (5) Turbo Manufacturing Corporation, P.O. Box 1205, Jamestown, New York 14701, producer of coin banks (October 30, 1985); (6) General Film Products, Inc., 107 Trumbull Street, Elizabeth, New Jersey 07206, producer of plastic bags and dropcloths (October 31, 1985); (7) Jorita Manufacturing Company, Inc., 40 Brown Avenue, Springfield, New Jersey 07081, producer of computer parts, other

metal stampings, and electrical motor parts (October 31, 1985); (8) Harvey's Skin Diving Supply, Inc., 2505 South 252nd Street, Kent, Washington 98032, producer of wet suits and accessories (October 31, 1985); (9) Tobin-Hamilton Company, Inc., P.O. Box 227, Mansfield, Missouri 65704, producer of children's footwear (November 1, 1985); (10) Cuba Specialty Manufacturing Company, Inc., P.O. 195, Fillmore, New York 14735, producer of crab and minnow traps and eel pots (November 1, 1985); (11) Ridgeline Industries, Inc., P.O. Box 329, Clayton, New Jersey 13624, producer of tents (November 1, 1985); (12) Frontier, Inc., P.O. Box 1001, Wahpeton, North Dakota 58075, producer of truck bodies, agricultural equipment and tricycles (November 1, 1985); (13) Hoyt & Worthen Tanning Corporation, 60 Railroad Street, Haverhill, Massachusetts 01830, processor of leather (November 4, 1985); (14) May Jewelry Company, Inc., 830 Dyer Avenue, Cranston, Rhode Island 02920, producer of jewelry (November 4, 1985); (15) Devar, Inc., 706 Bostwick Avenue, Bridgeport, Connecticut 06605, producer of computer components and process control instruments (November 5, 1985); (16) Craft, Inc., P.O. Box 47, South Attleboro, Massachusetts 02703, producer of spring clips, jewelry findings, hinges and other hardware (November 6, 1985); (17) Great Circle Products, Inc., 1421 North State Street, Bellingham, Washington 98225, producer of oak household and office furniture (November 7, 1985); (18) Standard Optical Manufacturing Company, 42 Okner Parkway, Livingston, New Jersey 07039, producer of eyeglass frame parts (November 7, 1985); (19) John Roth & Sons, 5424 South 43rd Street, Omaha, Nebraska 68107, producer of meat and cattle hides (November 7, 1985); (20) Cases, Inc., 13102 Stone North, Seattle, Washington 98133, producer of instrument and equipment cases (November 7, 1985); (21) Don J. Wickham, Inc., Route 414, Hector, New York 14841, producer of grapes and wine (November 7, 1985); (22) Elliott Metal Works, P.O. Box 8675, Greenville, South Carolina 29604, producer of textile machinery and parts (November 8, 1985); (23) Holo Holo Apparel, Inc., 1505 Dillingham Boulevard, Room 302, Honolulu, Hawaii 96817, producer of men's shirts and women's dresses and blouses (November 8, 1985); (24) Puritan Industries, Inc., P.O. Box 172, Collinsville, Connecticut 06022, producer of industrial sewing machines and parts (November 12, 1985); (25) Cape Dory Yachts, Inc., 160 Middleboro Avenue, East Taunton, Massachusetts 02718, producer of sailboats (November 12, 1985); (26) A. C. Lawrence Leather Company, Inc., Danvers Industrial Park, Danvers, Massachusetts 01923, processor of leather (November 13, 1985); (27) The ASCO Wire & Cable Company, 412 Housatonic Avenue, Bridgeport, Connecticut 06608, producer of wire (November 13, 1985); (28) Life Manufacturing Company, Inc., 20 Meridian Street, East Boston, Massachusetts 02128, producer of baby harnesses (November 13, 1985); (29) Early American Fence Company, P.O. Box 166, Powers, Michigan 49874, producer of fencing (November 13, 1985); (30) Seitz Manufacturing Company, Inc., 3645 West Elm Street, Milwaukee, Wisconsin 53209, producer of steel hydraulic cylinders (November 13, 1985); (31) Vulcan Fabricating Company, Inc., 864 West Street, Watertown, Wisconsin 53094, producer of stoves, furnaces, fireplaces inserts and satellite dish antennae (November 13, 1985); (32) Wolverine Knitting Mills, Inc., 1400 South Lincoln Street, Bay City, Michigan 48708, producer of women's robes, gowns and pajamas (November 13, 1985); (33) Kenergy Corporation, 3647 All American Boulevard, Orlando, Florida 32810–4768, producer of skylights (November 14, 1985); (34) Susan Sandhaus, Inc., 3380 Livonia Avenue, Los Angeles, California 90034, producer of women's sweaters, other tops, slacks and skirts (November 14, 1985); (35) Haywood Male, Inc., P.O. Box 23617, Nashville, Tennessee 37202–3617, producer of jeans and jackets for men, women and children (November 18, 1985); (36) Keystone Camera Corporation, 468 Getty Avenue, Clifton, New Jersey 07015, producer of cameras (November 19, 1985); (37) Thomas C. Wilson, Inc., 21–11 44th Avenue, Long Island City, New York 11101, producer of pneumatic tools, tube expanders and tube cleaners (November 19, 1985); and (38) King Manufacturing Company, Inc., 7402 Prince Drive, Huntington Beach, California 92647, producer of transformers (November 19, 1985).

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93–618). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Certification Division, Office of Trade Adjustment Assistance, Room 4015A, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the rquirements of Office of Managemnent and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

Charles L. Smith,

Acting Chief, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 85–28238 Filed 11–26–85; 8:45 am]

BILLING CODE 3510-DR-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received timely requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings, and suspended investigations. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: November 27, 1985.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely

requests, in accordance with §§353.53a(a)(5) and 355.10(a)(2) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspended investigations.

Initiation of Reviews

In accordance with §§353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspended investigations. We intend to issue the final results of these reviews not later than November 30, 1986.

Antidumping duty proceeding and firms	Periods to be reviewed
Pressure sensitive plastic tape from Italy:	
Manuli Autoadesivi	02/18/77-10/20/79 10/01/80-09/30/84
Syrom	06/01/82-09/30/84
Boston	10/01/80-08/31/83
N.A.R.	07/01/79-09/30/84
Comet S.A.R.A.	10/01/80-09/30/83
Irplastriastri	01/16/84-06/15/84
Sicad	10/01/80-09/30/83
Autoadesivitalia	10/01/80-10/05/82
Cyanuric acid from Japan: Shikoku chemicals	09/84-03/85
Dichloro isocyanuric Acid from Japan:	
Shikoku Chemicals	09/84-03/85
Nissan Chemical Industries	09/84-03/85
Trichloro isocyanuric acid from Japan:	
Shikoku Chemicals	09/84-03/85
Nissan Chemical Industries	09/84-03/85
Industrial nitrocellulose from France: Societe National des Poudres et Explosifs (SNPE)	01/83-07/84
Circular welded pipes and tubes from Taiwan:	
Far East Machinery	10/83-04/84
Tai Feng Industries	10/83-04/84
Yieh Hsing Enterprise	10/83-04/84
Sodium nitrate from Chile: SQM	03/83-02/84
Televisions from Japan:	
Funai Electric Trading Co	04/01/81-03/31/83
General Corp. of Japan	04/01/81-03/31/83
Hitachi, Ltd	04/01/81-03/31/83
Matsushita Industrial Co	04/25/73-06/13/74 04/01/81-03/31/83
Mitsubishi Electric Corp	04/01/81-03/31/83
Nippon Electric Co	04/01/81-03/31/83
Orion Electric Co./Otake Trading Co	04/01/82-03/31/83
Sanyo Electric	04/01/81-03/31/83
Sharp Corp	04/01/80-03/31/83
Toei Electronics Co	04/01/81-03/31/83
Toshiba Corp	04/01/81-03/31/83
Victor Co. of Japan	04/01/81-03/31/83
Elemental sulphur from Canada:	
Allied Corp	12/82-11/83
B.P. Resources Canada	12/81-11/83
Cities Service Oil and Gas Corp	12/82-11/83
Drummond Oil & Gas	12/82-11/83
Imperial Oil	12/82-11/83
Koch Sulphur Products Co	12/81-11/83
Petrogas Processing	12/82-11/83
Suncor	12/82-11/83
Texaco Canada	12/82-11/83
Structural bars and shapes from Canada: Western Canada Steel	09/83-08/85
Large power transformers from Japan:	
Fuji Electric Co	09/75-05/85
Hitachi	07/75-05/85
Toshiba Corp	07/80-05/81
Stainless steel sheet strip from W. Germany:	
Krupp Stahl	12/82-05/84
Thyssen	12/82-05/84
VDM	12/82-05/84
Tool steel from W. Germany:	
ARBED Saarstahl	07/83-06/85
Thyssen	01/83-06/85
Montan Wax from E. Germany: VEB Braunkohlenwerk "Gustav Sobottka"	09/83-04/84
Carbon steel Wire rod from Brazil:	
Belgo-Mineira	05/84-09/84
Cosigua	05/84-09/84
Fi-el	10/83-04/84
Hot-rolled carbon steel plate in coil from Brazil:	
COSIPA	06/83-09/84
USIMINAS	06/83-09/84
CSN	06/83-09/84
Hot-rolled carbon steel plate cut to length from Brazil:	
COSIPA	06/83-09/84
USIMINAS	06/83-09/84
CSN	06/83-09/84
Hot-rolled carbon steel sheet from Brazil:	
COSIPA	04/84-09/84
USIMINAS	04/84-09/84
High powered amplifiers from Japan: NEC	07/83-06/84
Stainless stell sheet and strip from France:	
Ugine Gueugnon	12/82-05/84
Usinor	12/82-05/84
Portable electric typewriters from Japan:	
Brother Industries	05/21/81-05/20/82
Silver Seiko	04/01/81-03/31/82
Nakajima All	05/01/81-04/30/82
Tokyo Juki	05/01/81-04/30/82
Sorbitol from France: Roquette Freres	06/82-03/85
Bicycle tires and tubes from Taiwan:	
Kenda Rubber	06/83-5/85
Li Hsin Rubber	06/83-05/85
Color Television from Taiwan:	
RCA Taiwan	10/19/83-03/31/85
Sampo Corp	04/01/84-03/31/85
Replacement parts for self-propelled paving equipment from Canada:	
Anvil Mfg	09/81-08/83
Barber-Greene (Canada)	09/81-08/83
Fortress Allatt	09/81-08/83
General Construction Equipment Mfg	09/81-08/83
National Paver Parts	09/81-08/83
Parker Hannifin	09/81-08/83
SF Tubing	09/81-08/83

Countervailing duty proceeding	Periods to be reviewed
Non-rubber footwear from Argentina	01/83-12/83
Carbon steel-wire rod from Argentina	09/82-12/84
Certain castor oil products from Brazil	01/84-12/84
Certain carbon steel products from Brazil	02/84-09/84
Certain stainless steel products from Brazil	02/83-12/84
Tool steel products from Brazil	03/83-12/84
Roses and other cut flowers from Colombia	01/83-06/83
Leather wearing apparel from Colombia	07/83-06/84
Industrial nitrocellulose from France	03/83-12/83
Fresh cut roses for israel	10/81-09/84
Bricks from Mexico	02/84-06/84
Carbon black from Mexico	04/83-09/83
Portland hydraulic cement and cement clinker from Mexico	01/84-12/84
Ceramic tile from Mexico	07/83-06/84
Unprocessed float glass from Mexico	02/84-12/84
Leather wearing apparel from Mexico	07/83-06/84
Litharge, red lead, and lead stabilizers from Mexico	01/82-12/83
Toy balloons (including punchballs) and playballs from Mexico	04/83-12/83
Cotton sheeting and sateen from Peru	01/83-12/83
Cotton yarn from Peru	01/83-12/83
Carbon steel wire rod from South Africa	01/83-09/84
Carbon steel rod from Spain	02/84-09/84
Viscose rayon staple fiber from Sweden	10/82-09/83
Stainless steel plate from the United Kingdom	02/83-03/84
Leather wearing apparel and parts and pieces thereof from Uruguay	04/82-12/83

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675 (a)) and §§ 353.53a(c) and 355.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c)).

Dated: November 20, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary.

[FR Doc. 85-28284 Filed 11-26-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-503, C-351-504]

Postponement of Final Antidumping Duty Determination: Certain Iron Construction Castings From Brazil; and Extension of Final Countervailing Duty Determination; Certain Heavy Iron Construction Castings From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On October 25 and October 29, 1985, we received requests from respondents in the antidumping duty investigation that the final determination be postponed as provided for in section 735(a)(2(A) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (19 U.S.C. 1673(a)(2)(A)) (the Act). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of certain iron construction castings from Brazil have been made at less than fair value until not later than March 12, 1986.

On August 8, 1985, we received a letter from counsel for petitioners requesting that we extend the final countervailing duty determination on certain heavy iron construction castings from Brazil to coincide with the final antidumping duty determination on certain iron construction castings from Brazil, pursuant to section 705(a)(1) of the Act. On August 30, 1985, we published a notice in the **Federal Register** extending the deadline for the final countervailing duty determination on certain heavy iron construction castings from Brazil to correspond to the date of the final determination in the antidumping investigation of certain iron construction castings (50 FR 35280). Pursuant to petitioner's August 8 request, we are also extending the date of the final countervailing duty determination on certain heavy iron construction castings until not later than March 12, 1986, to correspond to the date of the final antidumping duty determination.

SUPPLEMENTARY INFORMATION:

On June 7, 1985, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act

(19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of certain iron construction castings were being, or were likely to be, sold at less than fair value (50 FR 24008). On June 10, 1985, we published a notice in the **Federal Register** that we were initiating, under section 702(c) of the Act, a countervailing duty investigation to determine whether certain benefits which constitute subsidies within the meaning of the countervailing duty law were being provided to manufacturers, producers or exporters in Brazil of certain iron construction castings (50 FR 24269). On June 27, 1985, the U.S. International Trade Commission (ITC) determined that there is a reasonable indication that industries in the United States are materially injured by reason of imports from Brazil of certain heavy and light iron construction castings which are alleged to be sold in the United States at less than fair value (LTFV). The ITC also determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of certain heavy iron construction castings which are alleged to be subsidized by the government of Brazil (50 FR 27498).

On August 12, 1985, we published a preliminary determination that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters in brazil of certain heavy iron construction castings (50 FR 32462). The notice stated that if the investigation proceeded normally, we would make our final determination by October 21, 1985. On October 28, 1985, we published a preliminary determination of sales at less than fair value with respect to certain iron construction castings from Brazil (50 FR 43591). This notice stated that if the investigation proceeded normally, we would make our final determination by January 6, 1986.

On August 8, 1985, counsel for petitioner requested that we extend the date of the final countervailing duty determination on certain heavy iron construction castings from Brazil to coincide with the date of the final antidumping duty determination on certain iron construction castings from Brazil pursuant to section 705(a)(1) of the Act. On August 30, 1985, we published a notice in the **Federal Register** extending the deadline for the final countervailing duty determination on certain heavy iron construction castings from Brazil to January 6, 1986, to coincide with the date of the final antidumping duty determination of certain iron construction castings from Brazil (50 FR 35280).

On October 25 and October 29, 1985, counsel for Jundicao Aldebara Ltda. (Aldebara), Industria Viana Ltda., and Sociedade de Metalurgia e Processos Leda. (SOMEP), respondents in the antidumping duty investigation, requested that we extend the period for the final determining in the antidumping investigation until not later than March 12, 1986, which is 60 days from the present final determination date. Collectively, these respondents account for a significant proportion of the exports to the United States of certain iron construction castings. Pursuant to section 735(a)(2)(A) of the Act, if exporters who account for a significant proportion of the merchandise which is the subject of the investigation properly request an extension of the final determination following a preliminary affirmative determination, we are required, absent compelling reasons to the contrary, to grant this request. Petitioners have objected to the request for a postponement of the final determination, stating that there is no basis upon which to grant an extension of time. The Department, after taking petitioners' objection into consideration, has found no compelling reason to deny the extension. Accordingly, the Department has extended the date for a final antidumping duty determination on certain iron construction castings to not later than March 12, 1986. Based on petitioners' August 8 request to extend the final countervailing duty determination to coincide with the final antidumping determination, we are also extending the date for the final countervailing duty determination on certain heavy iron construction castings to not later than March 12, 1986, to correspond to the revised final antidumping duty determination.

Public Comment

The antidumping duty hearing, originally scheduled for November 26, 1985, has been postponed. If requested, a hearing will be held on February 10, 1986, at 1 p.m., in room 3708, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. The countervailing duty hearing has also been postponed and, if requested, will be held on February 10, 1986, at 9:30 a.m., at the same location. All written views should be filed in accordance with 19 CFR 353.46, at the above address and in at least 10 copies, not later than February 3, 1986.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

November 21, 1985.

[FR Doc. 85-28282 Filed 11-26-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-307-502 and C-307-501]

Termination of Antidumping and Countervailing Duty Investigations; Certain Circular Welded Carbon Steel Line Pipe from Venezuela

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In a letter dated November 13, 1985, the line pipe subcommittee of the Committee on Pipe and Tube Imports (CPTI) and the individual member companies of the subcomittee, withdrew their antidumping and countervailing duty petitions filed on February 28, 1985, with respect to certain circular welded carbon steel line pipe (line pipe) from Venezuela. Based on the withdrawal, we are terminating our investigations.

EFFECTIVE DATE: November 27, 1985.

FOR FUTHER INFORMATION CONTACT: Barbara Tillman or Ray Busen of the Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2438 or 377-2830.

SUPPLEMENTARY INFORMATION:

Case Histories

On February 28, 1985, we received antidumping and countervailing duty petitions filed with respect to certain circular welded carbon steel line pipe from Venequela. By amendment letters dated March 12 and 14, 1985, counsel for petitioners clarified that the petition was being filed on behalf of the line pipe subcommittee of the Committee on Pipe and Tube Imports (CPTI) and by the individual manufacturers of line pipe. In compliance with the filing requirements of § 353.36 of our antidumping duty regulations (19 CFR 353.36), the antidumping duty petition alleges that imports of line pipe from Venezuela are being, or are likely to be, sold at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. In compliance with the filing requirements

of § 355.26 of our countervailing duty regulations (19 CFR 355.26), the countervailing duty petition alleges that manufacturers, producers or exporters in Venezuela of line pipe, directly or indirectly, receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

After reviewing the petitions, we determined that they contained sufficient grounds upon which to initiate antidumping and countervailing duty investigations. We notified the U.S. International Trade Commission (ITC) of our actions and initiated the investigations on March 20, 1985 (50 FR 12067 and 50 FR 12063). On April 15, 1985, the ITC determined that there is reasonable indication that imports of line pipe from Venezuela materially injure, or threaten material injury to, a U.S. industry (50 FR 16167).

On August 13, 1985, we published an affirmative preliminary antidumping duty determinination of sales at less than fair value with respect to line pipe (50 FR 32607). The notice stated that if the investigation proceeded normally, we would make our final antidumping duty determination by October 21, 1985.

On September 26, 1985, pursuant to section 735(a)(2)(A) of the Act, respondent in the antidumping duty investigation requested an extension of the final determination date until not later than 135 days after the date of publication of the preliminary antidumping determination. On October 11, 1985, we granted the request and postponed our final determination until not later than December 26, 1985.

On November 5, 1985, we issued a preliminary affirmative countervailing duty determination with respect to line pipe (50 FR 46801). The notice stated that if the investigation proceeded normally, we would make our final countervailing duty determination by January 21, 1986.

Scope of Investigations

The product covered by these investigations is circular welded carbon steel line pipe with an outside diameter of .375 inch or more but not over 16 inches, and with a wall thickness of not less than .065 inch, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3208 and 610.3209. This product is produced to various API specifications for line pipe, most notably API-5L or API-5LX.

Withdrawal of Petitions

On November 13, 1985, we received a letter from the line pipe subcommittee of the CPTI and the individual member companies of the subcommittee, withdrawing their antidumping and countervailing duty petitions with respect to line pipe. Under sections 734(a) and 704(a) of the Act, upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation and after assessing the public interest as required by the Act. We have taken into account the public interest factors set out in sections 734(a)(2) and 704(a)(2) of the Act and consulted with potentially affected producers, workers, consuming industries, and with the ITC. On the basis of our assessment of the public interest factors and our consultations, we have determined that termination is in the public interest.

We have notified all parties to the investigations and the ITC of petitioners' withdrawal of the antidumping and countervailing duty petitions and our intention to terminate. For these reasons, we are terminating our antidumping countervailing duty investigations of certain circular welded carbon steel line pipe from Venezuela.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

November 21, 1985.

[FR Doc. 85-28283, Filed 11-26-85; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Notice of Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Questel, Inc., having a place of business in Washington, DC, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Use of Context to Simplify Two-Dimensional Computer Input," U.S. Patent 4,476,462. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.9. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, Va 22151 to the attention of George Kudravetz.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-28236 Filed 11-26-85; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Textile Consultations With Korea To Review Trade in Category 310/318

November 21, 1985.

On October 22, 1985, the Government of the United States requested consultations with the Government of the Republic of Korea with respect to cotton yarn-dyed fabrics in Category 310/318. This request was made on the basis of the agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise the public that if no solution is agreed upon in consultations with Korea, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in Category 310/318, produced or manufactured in Korea and exported to the United States during the 12-month period which began on January 1, 1985 and extends through December 31, 1985.

Anyone wishing to comment or provide data or information regarding the treatment of this category is invited to submit such comments or information in 10 copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Since the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW.,

Washington, DC, and may be obtained upon written request.

Further Cmmittee may be invited regarding particular comments or information received from the public which the Commission for the Implementation of Textile Agreements considers appropriate for further consideration.

The solictiation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to mattters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-28245 Filed 11-26-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Equal Opportunity Management Institute Board of Visitors; Advisory Committee Meeting

The Defense Equal Opportunity Management Institute (DEOMI) Board of Visitors will meet at Partick Air Force Base, Florida, 5–6 December 1985.

The purpose of the meeting will be to report on the status and progress of the Occupational Task Analysis Survey.

The meeting will convene at 8:30 a.m. on 5 December 1985 and adjourn on 6 December 1985 at 11:30 a.m. The meeting is open to the public. For further information, contact the DEOMI Public Affairs Office at (305) 494–6096/6017.

Dated: November 22, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-28273 Filed 11-26-85; 8:45 am]

BILLING CODE 3810-01-M

President's Blue Ribbon Commission on Defense Management; Meeting

ACTION: Notice of meeting open in part to the public.

SUMMARY: The President's Blue Ribbon Commission on Defense Management announces a forthcoming meeting beginning at 8:30 a.m. on December 10, 1985, and continuing at 8:30 a.m. on December 11 and 12, 1985.

From 8:30 a.m. until 12:00 Noon on December 11 and 12, 1985, the Commission will receive public testimony concerning the adequacy of the defense acquisition process, including the adequacy of the defense industrial base, current law governing Federal and Department of Defense procurement activities, departmental directives and management procedures, and the execution of acquisition responsibilities within the Military Departments. These portions of the Commission's meeting, which will be open to the public, are scheduled to be held at the Department of the Interior Auditorium, C Street Between 18th and 19th Streets NW., Washington, DC 20240. All interested persons are invited to attend the open portion of the meeting and to file written statements on the subjects to be considered by the Commission. Written statements may be mailed to the Commission, 736 Jackson Place NW., Washington, DC 20503, attention: Paul S. Stevens (General Counsel).

The rest of the Commission's meeting is scheduled to be held on December 10 and on the afternoons of December 11 and 12, at 736 Jackson Place NW., Washington, DC 20503. These portions of the meeting will include discussions of classified matters of national security and other matters which cannot be addressed in open forum throughout. Such discussions cannot reasonably be segregated for separate open and closed sessions without defeating the effectiveness and purpose of the overall meeting. Accordingly, consistent with seciton 10(d) of Pub. L. 92–463, the "Federal Advisory Committee Act," and seciton 552b(c)(1), (c)(4), and (c)(9)(B) of Title 5, United States Code, these portions of the Commission's meeting will be closed to the public.

Agenda

The Commission will meet in open sesions for public testimony and in closed task force, planning, and executive sessions to consider issues of defense management policy and procedure, including issues relating to strategy and resource planning, acquisition execution, personnel management and development, and personal conduct and accountability.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert E. Hetu (Public Affairs), 1201 Pennylvania Avenue NW., Suite 700A, Washington, DC 20004. Telephone: (202) 638–0799 or (202) 395–3198.

Dated: November 22, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-28274 Filed 11-26-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Proposed Subsequent Arrangement; Canada

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S–CA–383, to the Department of Environment, Burlington, Ontario, Canada, 41.186 grams of natural uranium and 0.653 grams of thorium, for use as standard reference materials.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: November 21, 1985.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-28255 Filed 11-26-85; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements: Proposed Subsequent Arrangement; International Atomic Energy Egency

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency (IAEA) concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S–IA–141, to the IAEA Safeguards Analytical Laboratory, Vienna, Austria, 0.023 grams of uranium, containing 0.007 grams of uranium-235 and 6 parts per million of

uranium-233m for use as standard reference material.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days afer the date of publication of this notice. For the Department of Energy.

Dated: November 22, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-28257 Filed 11-26-85; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the retransfer: RTD/SD(EU)-48, from EURATOM Supply Agency (for KFK, Karlsruhe, FRG), CEN, Mol, Belgium to EIR, Wuerenlingen, Switzerland, fuel pins containing 700 grams of uranium (which includes 200 grams of U-235 and 70 grams of Pu), for post irradiation tests.

In accordance with Section 131 of the Atomic Energy Act, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: November 22, 1985.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-28256 Filed 11-26-85; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the destructive post irradiation testing of two fuel pins at the Swiss Institute for Reactor Research (EIR), Wuerenlingern Switzerland. This subsequent arrangement records the joint determination by the Government of the United States of America and the Government of Switzerland that safeguards may be effectively applied to the post irradiation testing at the EIR facility in Switzerland for the said fuel pins, type MOLiK5.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: November 22, 1985.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-28258 Filed 11-26-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180682; FRL-2927-7]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests in the six States listed below. Also listed are two crisis exemptions initiated by the Oklahoma Department of Agriculture and the North Dakota Department of Agriculture. These exemptions, issued during the months of September and October, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific exemption for the name of the contact person. The following information applies to all contact people: By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of sodium chlorate on mung beans as a desiccant; September 20, 1985 to December 31, 1985. (Jim Tompkins)

2. Florida Department of Agriculture and Consumer Services for the use of permethrin on watercress to control diamondback moths; September 10, 1985 to January 1, 1986. (Jim Tompkins)

3. Georgia Department of Agriculture for the use of sodium chlorate on southern peas as a desiccant; September 20, 1985 to October 31, 1985. (Jim Tompkins)

4. Nebraska Department of Agriculture for the use of sodium chlorate on edible dry beans as a desiccant; September 11, 1985 to October 31, 1985. (Jim Tompkins)

5. Oregon Department of Agriculture for the use of metalaxyl on red reaspberries to control root rot; September 13, 1985 to November 30, 1985. (Libby Pemberton)

6. Texas Department of Agriculture for the use of metalaxyl on peanuts to control pythium pod rot; September 10, 1985 to October 15, 1985. (Stan Austin)

Crisis exemptions were initiated by the:

1. North Dakota Department of Agriculture on September 11, 1985, for the use of sodium chlorate on edible dry beans as a desiccant. Since it was anticipated that this program would be needed for more than 15 days, North Dakota requested a specific exemption to continue it. The need for this program is expected to last until October 31, 1985. (Jim Tompkins)

2. Oklahoma Department of Agriculture on September 9, 1985, for the use of sodium chlorate on dry beans as a desiccant. The need for this program has ended. (Jim Tompkins)

Authority: 7 U.S.C. 136.

Dated: November 5, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-27785 Filed 11-26-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50647; FRL-2927-6]

Issuance of Experimental Use Permits; American Cyanamid Co. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Divsiion (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits.

241-EUP-108. Renewal. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08540. This experimental use permit allows the use of 48 pounds of the herbicide imazaquin on soybeans to evaluate the control of various broadleaf weeds. A total of 496 acres are involved; the program is authorized only in the States of Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Missouri, Nebraska, Ohio, and Wisconsin. The experimental use permit is effective from September 18, 1985 to September 18, 1986. A temporary tolerance for residues of the active ingredient in or on soybeans has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

279-EUP-103. Issuance. FMC Corporation, Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 1,594 pounds of the insecticide cyclopropanecarboxylic acid, 3-[2-chloro-3,3,3-trifluoro-1-propenyl]-2,2-dimethyl-, (2-methyl-[1,1'-bi-phenyl]-3-yl) methyl ester on cottonseed to evaluate the control of various insect pests. A total of 3,985 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The experimental use permit is effective from August 9, 1985 to August 9, 1986. A temporary tolerance for residues of the active ingredient in or on cottonseed has been established. (George LaRocca, PM 15, Rm. 204, CM#2, (703-557-2400))

279-EUP-104. Issuance. FMC Corporation, Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 742.5 pounds of the insecticide cyclopropanecarboxylic acid, 3-[2-chloro-3,3,3-trifluoro-1-propenyl]-2,2-dimethyl-,[2-methyl-[1,1'-bi-phenyl]-3-yl] methyl ester on apples to evaluate the control of various insect pests. A total of 990 acres are involved; the program is authorized only in the States of Arkansas, California, Colorado, Georgia, Idaho, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from August 2, 1985 to August 2, 1986. A temporary tolerance for residues of the active ingredient in or on apples has been established. (George LaRocca, PM 15, Rm. 204, CM#2, (703-557-2400))

279-EUP-107. Issuance. FMC Corporation, Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 178.3 pounds of the insecticide cyclopropanecarboxylic acid, 3-[2-chloro-3,3,3-trifluoro-1-propenyl]-2,2-dimethyl-,[2-methyl-[1,1'-bi-phenyl]-3-yl] methyl ester on orchard crops to evaluate the control of various insect pests. A total of 203.5 acres are involved; the program is authorized in the States of Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from August 9, 1985 to August 9, 1986. (George LaRocca, PM 15, Rm 204, CM#2, (703-557-2400))

45639-EUP-29. Issuance. Nor-Am Chemical Company, 3509 Silverside Road, P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 80 pounds of the miticide 3,6-bis (2-chlorophenyl)-1,2,4,5-tetrazine on strawberries to evaluate the control of various insects. A total of 100 acres are involved; the program is authorized only in the State of California. The experimental use permit is effective from October 1, 1985 to October 1, 1986. A temporary tolerance for residues of the active ingredient in or on strawberries has been established. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703-557-2386))

707-EUP-108. Extension. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 1,225 pounds of the herbicide oxyfluorfen on broccoli, cabbage, and cauliflower to evaluate the control of weeds. A total of 2,450 acres are involved; the program is authorized only in the States of California, Connecticut, Delaware, Georgia, Hawaii, Florida, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and Wisconsin. The experimental use permit is effective from October 10, 1985 to December 31, 1986. A temporary tolerance for residues of the active ingredient in or on broccoli, cabbage, and cauliflower has been established. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703-557-1830))

707-EUP-109. Issuance. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 350 pounds of the herbicide oxyfluorfen on cotton to evaluate its effectiveness as a harvest aid. A total of 1,400 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, Missouri, South Carolina, and Texas. The experimental use permit is effective from August 29, 1985 to August 29, 1986. A permanent food additive tolerance for residues of the active ingredient in or on cottonseed oil has been established (21 CFR 193.325). A permanent tolerance for residues of the active ingredient in or on cottonseed has been established (40 CFR 180.381). (Richard Mountfort, PM 23, Rm. 237, CM#2, (703-557-1830))

707-EUP-110. Issuance. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 325 pounds of the herbicide oxyfluorfen on alfalfa to evaluate the control of weeds. A total of 650 acres are involved; the program is authorized only in the States of Arizona, California,

Idaho, Oregon, and Washington. The experimental use permit is effective from October 16, 1985 to October 31, 1986. A temporary tolerance for residues of the active ingredient in or on alfalfa has been established. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703-557-1830))

707-EUP-112. Issuance. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 200 pounds of the herbicide oxyfluorfen on tomatoes to evaluate the control of weeds. A total of 200 acres are involved; the program is authorized only in the States of Florida and South Carolina. The experimental use permit is effective from October 16, 1985 to October 16, 1986. A temporary tolerance for residues of the active ingredient in or on alfalfa has been established. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703-557-1830))

476-EUP-109. Issuance. Stauffer Chemical Company, 1200 South 47th St., Richmond, CA 94804. This experimental use permit allows the use of 50 pounds of the herbicide 1-(m-trifluoromethylphenyl)-3-chloro-4-chloromethyl-2-pyrrolidone on to evaluate the control of broadleaf weeds. A total of 100 acres are involved; the program is authorized only in the States of Idaho, Montana, Oregon, and Washington. The experimental use permit is effective from October 3, 1985 to October 3, 1986. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

476-EUP-110. Issuance. Stauffer Chemical Company, 1200 South 47th St., Richmond, CA 94804. This experimental use permit allows the use of 136 pounds of the herbicide 1-(m-trifluoromethylphenyl)-3-chloro-4-chloromethyl-2-pyrrolidone on sunflowers to evaluate the control of broadleaf weeds. A total of 250 acres are involved; the program is authorized only in the States of Minnesota, North Dakota, and South Dakota. The experimental use permit is effective from October 3, 1985 to October 3, 1986. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Robert Taylor, PM 23, Rm. 245, CM#2, (703-557-1800))

1927-EUP-1. Issuance. Terminix International, inc., Box 17167, Memphis, TN 38187. This experimental use permit allows the use of 226.8 pounds of the herbicide dieldrin in 10 homes to evaluate the control of subterranean termites and dieldrin air concentrations. The program is authorized only in the States of Florida and Maryland. The experimental use permit is effective from August 13, 1985 to August 13, 1986. (George LaRocca, PM 15, Rm. 204, CM#2, (703-557-2400))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: November 13, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-27787 Filed 11-26-85; 8:45 am]

BILLING CODE 6560-50-M

[PF-427; FRL-2927-8]

Pesticide Tolerance Petitions; Shell Oil Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the amendment of tolerances for certain pesticide chemicals in or on certain commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-427] and the petition number, attention Product Manager (PM-15), at the following address: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information mot marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca (PM-15), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-2400).

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP), from the Shell Oil Co., Suite #200, 1025 Connecticut Ave., NW., Washington, DC 20036, relating to the amendment of tolerances for residues of the insecticide cyano(3-phenoxyphenyl)-methyl-4-chloro-alpha-(1-methylethyl) benzenacetate in or on certain agricultural commodities.

Amended Petitions

1. *PP 2F2647.* EPA issued a notice, published in the **Federal Register** of December 5, 1984 (49 FR 47550), which announced that Shell Oil Co., had submitted PP 2F2647 to the Agency proposing to amend 40 CFR 180.379 by establishing tolerances for residues of the above insecticide in or on the commodities succulent beans at 2.0 parts per million (ppm), bean vines at 30.0 ppm, and bean vine hay at 100.0 ppm.

Shell has amended the petition by adding smap beans at 2.0 ppm.

The proposed analytical method for determining residues is gas chromatography.

2. *PP 4F3027.* EPA issued a notice, published in the **Federal Register** of August 14, 1985 (50 FR 32767) which announced that Shell Oil Co., had submitted PP 4F3027 to the Agency proposing to amend 40 CFR 180.379 by establishing a tolerance for residues of the above insecticide in or on the commodities as follows:

Commodities	Parts per million (ppm)
Almond hulls	15.0
Apricots	10.0
Cherries	10.0
Plumbs	10.0
Prunes (dried)	10.0
Prunes plums	10.0
Nectarines	10.0
Nut meats	0.2

Shell Oil has amended the petition by removing prunes (dried) at 10.0 ppm.

The proposed analytical method for determining residues is gas chromatography.

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

Dated: November 13, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-27785 Filed 11-26-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100034 PH-FRL 2930-5]

Disclosure of Reviews of Pesticide Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is notifying interested persons of the issuance of a class determination concerning the disclosure of certain EPA-prepared review of data submitted under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The class determination concludes that certain of those reviews are not entitled to confidential treatment. EPA also is notifying interested persons that EPA will disclose such reviews to the extent permitted by the class determination. The class determination is reproduced in this notice. In brief, it states that if a review (or portion thereof) (1) was prepared by EPA or its contractor, (2) concerns data or information pertaining to a test or experiment on a registered or previously registered pesticide or any of its ingredients, impurities, or degradation products, (3) contains no other business information, (4) contains no information which is described by FIFRA section 10(d)(1) (A), (B), or (C) or section 10(d)(2), and (5) does not contain a complete or essentially complete unpublished report, it may be disclosed to any member of the public, without regard to FIFRA section 10(g). 85P-2192.

DATE: EPA will commence making the reviews available to the public on January 13, 1986 unless the EPA Office of General Counsel has first been notified on the commencement by an affected business of an action in Federal court to obtain judicial review of the determination or to obtain a declaratory judgment under section 10(c) of FIFRA and to obtain preliminary injunctive relief against disclosure.

ADDRESS: A notice of commencement of litigation should be submitted in writing to: Jane Roemer, Office of General Counsel (LE-132G), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 (202-382-5460).

FOR FURTHER INFORMATION CONTACT:

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

Office location and telephone number: Room 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2613).

SUPPLEMENTARY INFORMATION: On September 24, 1985, EPA's Office of General Counsel issued the following class determination:

Disclosure of Reviews of Pesticide Test Data Submitted by Applicants and Registrants

[Class Determination 3-85]

Background

A. Data

EPA's Office of Pesticide Programs (OPP), other EPA offices, and EPA contractors prepare reviews of data received under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. This class determination, made under 40 CFR 2.207, concerns the extent to which certain of these reviews may be disclosed publicly by EPA and the procedures that EPA may use to make disclosures.

Businesses which are applying for registration of pesticide products or for experimental use permits or emergency exemptions, or which hold registrations, submit test data to OPP for the purpose of satisfying requirements of FIFRA. (Some such data are submitted for the additional purpose of satisfying requirements imposed under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 et seq.; EPA's regulations, 40 CFR 2.307(b), require such data to be treated as data submitted under FIFRA.)

EPA may not withhold information from disclosure for reasons of business confidentiality if a statute specifically requires disclosure of the information. To the extent information submitted under FIFRA concerns any test or experiment on a registered (or previously registered) pesticide or any or its ingredients FIFRA sections 10(d) and 10(g) largely govern the extent to which the information may be disclosed to members of the public. FIFRA section 10(d)(1) [7 U.S.C. 136h(d)(1)] states:

> All information concerning the objectives, methodology, results, or significance of any test or experiment performed on or with a registered or previously registered pesticide or its separate ingredients, impurities, or degradation products, and any information concerning the effects of such pesticide in the environment, including, but not limited to, data on safety to fish and wildlife, humans and other mammals, plants, animals, and soil, and studies on persistence, translocation and fate in the environment, and metabolism, shall be available for disclosure to the public: Provided, That the use of such data for any registration purpose shall be governed by section 3 of this act [7 U.S.C. 136a]: Provided further, That this paragraph does not authorize the disclosure of any information that—
>
> (A) discloses manufacturing or quality control processes,
>
> (B) discloses the details of any methods for testing, detecting, or measuring the quality of any deliberately added inert ingredient of a pesticide, or
>
> (C) discloses the identity or percentage quantity of any deliberately added inert ingredient of a pesticide, unless the Administrator has first determined that disclosure is necessary to protect against an unreasonable risk of injury to health or the environment.

Section 10(d)(2) provides that information concerning the production, distribution, sale, or inventories of a pesticide may be entitled to confidential treatment.

Therefore, if the data in question concern tests or experiments on a registered or previously registered pesticide product or any ingredient, impurity, or degradation product of a registered or previously registered pesticide product, FIFRA section 10(d) and 40 CFR 2.208 provide that those data are disclosable to most members of the public subject to section 10(g). However, those portions of the data described by paragraph (A), (B), or (C) of section 10(d)(1), or described by section 10(d)(2), may be entitled to protection from disclosure as confidential business information.

Despite the provisions of section 10(d), FIFRA section 10(g) limits EPA's right to disclose to some persons data which are otherwise disclosable under section 10(d). Section 10(g) [7 U.S.C. 136h(g)] states in pertinent part:

"The Administrator shall not knowingly disclose information submitted by an applicant or registrant under this Act to any employee or agent of any business or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in addition to the United States or to any other person who intends to deliver such data to such foreign or multinational business or entity unless the applicant or registrant has consented to such disclosure."

B. Reviews of Data

EPA employees and EPA contractors prepare reviews of the data described in paragraph A for use by EPA in making or explaining various decisions under FIFRA. In some cases, the review

concerns a particular study. In other cases, data from a number of studies (which may have been submitted by different businesses) are reviewed, and conclusions are drawn from the combined data.

EPA receives many requests for disclosure of these reviews of data. EPA also desires to clarify the extent to which it may disclose such reviews for its own purposes. In a memorandum to the Office of General Counsel dated May 28, 1985, OPP stated:

"We have an imperative need to freely disclose our evaluations of registrant-submitted data and present our conclusions and the reasons for our decisions. We wish to explain our decisions by sharing data reviews freely with all interested parties."

OPP recommended that these reviews of pesticide data be treated as disclosable to any person, without regard to section 10(g), if the reviews (1) concern data that would be disclosable under FIFRA section 19(d) (1), and (2) have been carefully scrutinized by OPP to ensure that they contain no data entitled to confidential treatment under FIFRA section 10(d)(1) (A), (B), or (C). OPP further suggested that it would be proper to disclose such reviews without case-by-case prior notification to the submitter(s) of the item(s) of data which are the subject of the reviews, if a one-time notice were provided. Finally, OPP requested that the Office of General Counsel consider issuing a class determination concerning these matters.

Findings

Under 40 CFR 2.207 I have authority to issue class determinations concerning entitlement of business information to confidential treatment. In the case of pesticide data reviews, I find that:

(1) EPA possesses (and will continue to generate) a large number of reviews, prepared by EPA employees or by EPA contractors, of data submitted under FIFRA by registrants applicants for registration, applicants for experimental use permits, and applicants for emergency exemptions.

(2) To the extent that the reviews concern submissions (or portions thereof) which are themselves disclosable under FIFRA section 10(d), then disclosure of the reviews is mandatory. Reviews are disclosable without regard to FIFRA section 10(g), provided that the reviews do not set forth essentially complete reports of the data or information submitted to the Agency. Reviews of data concerning submissions which are themselves disclosable under FIFRA section 10(d) therefore may properly be treated as a class.

(3) A class determination will serve the useful purpose of establishing the procedures and restrictions that will apply to the disclosure of pesticide data reviews, thereby allowing OPP to better conduct its future activities.

The Office of General Counsel has not been asked to decide, and these findings do not address, whether the underlying data on which the reviews are based may be the subject of a class determination. The conclusions reached in this determination with respect to disclosure of pesticide data reviews therefore do not control the disclosability of the underlying data.

Determinations

I have determined that pesticide data reviews will be treated as follows:

I. The *information covered by this class determination* consists of each review, whether now existing or prepared at a future data:

(A) which was prepared by EPA personnel or prepared under an EPA-funded contract; *and*

(B) which, to the extent it contains or refers to any unpublished "business information" (as defined in 40 CFR 2.201(c)), contains or refers only to data or information concerning the objectives, methodology, results, or significance of any test or experiment performed on or with a registered or previously registered pesticide product or any of its separate ingredients, impurities, or degradation products, or concerning the effects of any such substance on any organism or the behavior of any substance in the environment; and

(C) which does not contain (or from which has been deleted) any information the disclosure of which would disclose:

(1) manufacturing or quality control processes; or

(2) the details of any methods for testing, detecting, or measuring the quantity of any deliberately added inert ingredient of a pesticide product; or

(3) the identity or percentage quantity of any deliberately added inert ingredient of a pesticide product; or

(4) unpublished information concerning the production, distribution, sale, or inventories of a pesticide (such information might appear in reviews which discuss the amount of a pesticide sold or used in a given time, and thus might concern the "significance" of data from a test or experiment); and

(D) which does not contain or consist of any complete unpublished report submitted to EPA by an "affected business" (see definition at 40 CFR 2.201(d)); and

(E) which does not contain or consist of excerpts or restatements of any such report which reveal the full methodology and complete results of the study, test, or experiment, and all explanatory information necessary to understand the methodology or interpret the results.

II. The information covered by this determination is not entitled to confidential treatment, because it consists entirely of information required by statute (FIFRA section 10(d)) to be disclosed.

III. The information covered by this determination is not subject to FIFRA section 10(g), and thus may be disclosed to any person. Section 10(g) is intended to prevent a person from obtaining, under FIFRA, data generated at another person's expense and then using the data to obtain the approval of another country's government to manufacture, sell, or use pesticides in that country. See, e.g., Congressional Record, October 31, 1977, page H 11864 (daily ed.) (remarks of Congressman Fithian): '[Under new section 10(g)], foreign competitors or multinational corporations could not legally obtain research data, paid for by others, and utilize it for registration abroad—where compensation would not have to be paid.' Disclosure of EPA reviews of data (provided that they are truly reviews, and not essentially complete reports) will not be useful in obtaining approvals by governments of other countries. To the extent that such a country requires data to evaluate the request, it is unlikely to be satisfied with a review of data conducted by EPA; to the extent that such a country is willing to accept an EPA review in lieu of data, it is just as likely to accept other readily available information indicating EPA's position, such as evidence that EPA has registered the product. It should also be noted that EPA has for years published many quite comprehensive reviews of information submitted under FIFRA in various formats (e.g., registration standard science chapters, proposed and final regulations setting tolerances for pesticide residues on food, special review notices) without objection from data submitters that such publication violates FIFRA section 10(g).

IV. If OPP concludes that a review clearly is covered by this determination, OPP need not follow the procedures set forth in 40 CFR 2.204(c), (d)(1), and (e) which provide affected businesses an opportunity to assert and attempt to substantiate a business confidentiality claim prior to EPA's final confidentiality determination). In most cases, OPP will

be able to determine readily whether a review is described by paragraphs I. (A) and (B) above. With regard to paragraphs I. (C), (D), and (E) above, in most cases it also should be apparent from the face of the review whether its disclosure would reveal information described by FIFRA section 10(d)(1) (A), (B), or (C) or 10(d)(2), and if so, what pre-disclosure deletions would be necessary. However, in any case where OPP has doubt on either score, the procedure set forth in 40 CFR 2.204(d)(1) and (e) must be followed.

V. The pre-disclosure notice requirements in FIFRA section 10(c) and 40 CFR 2.204(d)(2), 2.205 (f), and 2.307 (d) and (e) may be satisfied, insofar as information covered by this determination is concerned, by:

(A) Furnishing to each current registrant of a pesticide product, each current applicant for registration, and each other data submitter whose identity is now known to EPA a copy of this determination and a notice of the Agency's intent to disclose and and all information covered by this determination, in the form required by §§ 2.205(f) and 2.307, by certified mail, return receipt requested, or by personal delivery;

(B) Publishing a copy of this determination and a copy of a notice of intent to disclose the information covered by this determination in the **Federal Register**, and

(C) Continuing the current practice of requiring each person (other than a government agency) who applies for an experimental use permit or a registration to first obtain a company number, and furnishing to each person who applies for assignment of a company number:

(1) A copy of this determination; and

(2) A notice stating that disclosure of any review which EPA may prepare of any data submitted by the person under FIFRA will be governed by this determination, and that EPA will furnish no further notice prior to disclosure of such information.

The Class Determination was signed by Lee A. DeHihns, III, Associate General Counsel, Grants, Contracts, and General Law Division.

Final Determination and Notice That Information Will Be Disclosed

In view of Class Determination 85–3, the information covered by that class determination clearly is not entitled to confidential treatment, within the meaning of 40 CFR 2.204(d)(2). Accordingly, I am hereby notifying all affected businesses that:

(1) For the reasons stated in Class Determination 85–3, EPA will disclose to any member of the public any and all reviews covered by the class determination without further notice to affected businesses.

(2) Disclosure of reviews covered by Class Determination 85–3 and concerning data or information submitted by an affected business may commence on January 13, 1986, unless before that date the EPA Office of General Counsel has been notified by that affected business of the business's commencement of any action in a Federal court to obtain judicial review of the determination or to obtain a declaratory judgment under section 10(c) of FIFRA and to obtain preliminary injunctive relief against disclosure (see 40 CFR 2.205(f) and 2.307(e)).

(3) If such litigation is timely commenced by the affected business, EPA may nonetheless make the information available to the public (in the absence of an order by the court to the contrary), once the court has denied a motion for a preliminary injunction in the action or has otherwise upheld the EPA determination, or whenever it appears to the EPA Office of General Counsel, after reasonable notice to the business, that the business is not taking appropriate measures to obtain a speedy resolution of the action (see 40 CFR 2.205(f) and 2.307(e)).

This notice constitutes final agency action concerning any and all business confidentiality claims that may have been or could have been made, or that may be made in the future, with regard to any information covered by Class Determination 85–3. This final agency action may be subject to judical review under Chapter 7 of Title 5, United States Code, under FIFRA section 10(c), or other law.

Dated November 16, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs

[FR Doc. 85–38157 Filed 11–26–85; 8:45 am]

BILLING CODE 6560–50–M

Clean Air Scientific Advisory Committee, Science Advisory Board, Subcommittee on Particulate Matter; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a meeting of the Clean Air Scientific Advisory Committee's (CASAC) Subcommittee on Particulate Matter will be held December 16–17, 1985 starting at 9:30 a.m. in the Main Auditorium, Environmental Research Center, Environmental Protection Agency Route 54 and Alexander Drive, Research Triangle Park, North Carolina.

The purpose of the meeting is to allow the Committee to review and provide its advice to the Agency on: 1) The March 20, 1984 (49 FR 10408) proposed revisions to the National Ambient Air Quality Standards (NAAQS) for Particulate Matter; and 2) pertinent new studies conducted since the panel last reviwed this issue in 1981. For further information concerning the proposed revisions to the NAAQS, please contact Mr. John Haines, U.S. EPA, Office of Air Quality Planning and Standards (MD–12), Research Triangle Park, North Carolina 27711 (919) 541–5531 or (FTS) 629–5531. For further information concerning new studies, please contact Ms. Diane Ray, U.S. EPA, Environmental Criteria and Assessment Office (MD–52), Research Triangle Park, North Carolina 27711 (919) 541–3637 or (FTS) 629–3637.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Mr. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee (CASAC), Science Advisory Board (A–101F), U.S. EPA, Washington, DC 20460 (202) 382–2552, prior to the meeting. Persons wishing to make statements at the meeting must contact Mr. Flaak no later than close of business on December 10, 1985.

Dated: November 21, 1985.

Kathleen Conway,

Acting Director, Science Advisory Board.

[FR Doc. 85–28314 Filed 11–26–85; 8:45 am]

BILLING CODE 6560–50–M

[Docket No. OPP–180684 FRL–2930–8]

Montana and Wyoming; Issuance of Specific Exemptions for Use of Strychnine To Control Rabid Skunks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions to the Montana Department of Livestock and the Wyoming Department of Agriculture (hereafter referred to individually by state name or collectively as "Applicants") for use of stychnine in eggs to control rabid skunks. These specific exemptions are issued pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA). As a part of its decision to approve these exemptions, EPA has determined that the Applicant's requests proposed to use strychnine in a way that had previously been cancelled and therefore that the requests were subject to EPA's Subpart D rules, 40 CFR 164.130—164.133. As required by these rules, the Agency first determined that substantial

new evidence had been submitted which warranted a reconsideration of the prior cancellation order and that an emergency waiver of the hearing required under Subpart D was justfied. EPA has also determined that emergency conditions exist in accordance with the regulations governing section 18 of FIFRA, 40 CFR Part 166.

DATES: The specific exemptions are effective from November 6, 1985 through November 6, 1986.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 716, Crystal Mall Buidling #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7889).

SUPPLEMENTARY INFORMATION: .

I. Background

In February and March of 1985, Montana and Wyoming requested that EPA allow the use of strychine in eggs to control rabid skunks. (Montana also requested the use of strychnine in lard baits, but later limited the request to egg baits.) Because strychnine is not registered for this use, the Applicants applied under FIFRA section 18 for a specific exemption from the provisions of FIFRA requiring that every pesticide distributed or sold in commerce must be registered. The Applicants have both applied, under section 3 of FIFRA, for registration of strychnine in egg baits to control rabid skunks.

In 1972, EPA cancelled the registrations of strychnine products used for predator control, including the use of strychnine to control skunks (see the **Federal Register** to March 18, 1972 (37 FR 5718)). Therefore, the specific exemption requests are subject to EPA's Subpart D regulations, 40 CFR 164.130—164.133, in addition to the regulations governing the the issuance of exemptions under section 18, 40 CFR Part 166. Subpart D provides that any application for a registration or an emergency exemption for a pesticide use that has been cancelled shall be considered a petition for reconsideration of the prior cancellation order. The Administration will determine that reconsideration is warranted if he finds that:

(1) The applicant has presented substantial new evidence which may materially affect the prior cancellation or suspension order and which was not available to the Adminsitrator at the time he made his final cancellation or suspension determination; and

(2) Such evidence could not, through the exercise of due dillgence, have been discovered by the parties to the cancellation or suspension proceeding prior to the issuance of the final order.

[40 CFR 164.131(a)].

Ordinarily, if the Administrator finds that the substantial new evidence test in § 164.131 is met, the Subpart D rules require a formal hearing to determine whether a modification of the cancellation order is justified (40 CFR 164.131(c)). However, § 164.133 of Subpart D allows the Administrator to dispense with the requirement for a hearing, where otherwise required, in any case in which he determines:

(1) That the application presents a situation involving need to use the pesticide to prevent an unacceptable risk: (a) To human health, or (b) to fish or wildlife populations when such use would not pose a human health hazard; and

(2) That there is no other feasible solution to such risk; and

(3) That 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) That the public interest requires the granting of the requested use as soon as possible.

To summarize, before emergency exemptions for the use of strychnine could be granted, the Agency had to find that:

1. "Substantial new evidence" in accordance with the Suppart D regulations (40 CFR 164.130) has been submitted to warrant a reconsideration of the prior cancellation order;

2. An emergency condition as defined in the regulations governing section 18 (40 CFR Part 166) exists; and

3. An emergency waiver of the Subpart D hearing is warranted (40 CFR 164.133).

The Agency, as a result of its review of the Applicants' emergency exemption requests earlier this spring, found that no information had been submitted which could be considered as "substantial new evidence." Accordingly, the Agency published notice in the **Federal Register** of May 17, 1985 (50 FR 20600) announcing its intention to deny the exemption requests. Interested persons were invited to comment on the intended action and to submit any information which could be considered to constitute "substantial new evidence." Eleven comments were received in response to the notice: 10 opposed the Agency's intended denial action, and one was in favor.

II. Subpart D and Section 18 Determinations

A. Substantial New Evidence

In recent months, the Applicants have submitted additional information which the Agency has determined constitutes substantial new evidence may warrant reconsideration of the 1972 cancellation order. The evidence submitted by Montana and Wyoming is largely based on the use of strychnine under emergency exemptions which have been granted for the past 11 years. The pattern of use currently proposed by the Applicants is substantially similar to that under past exemptions.

The Applicants have submitted evidence indicating the following:

1. Strychnine egg baits appear to be effective in controlling the spread of rabies by skunks. Specifically, the recurrence of rabies in the vicinity of treated areas is significantly reduced after treatment, and in some cases there has been no recurrence in 11 years following use, as shown by records maintained by Montana and Wyoming.

2. Hazards to nontarget species resulting from the pattern of use proposed by the Applicants are likely to be smaller than hazards resulting from the use pattern cancelled in 1972.

According to EPA's cancellation decision, "unattended" strychnine baits commonly were "spread over vast areas of open prairie" before 1972. And although use instructions directed that baits were to be covered "to avoid ingestion by non-target animals," EPA indicated that such directions were generally ignored. The use patterns proposed by Montana and Wyoming differs in important respects from the pre-1972 use of strychnine baits. Among other things, the Applicants proposed that baits would be placed only by certified applicators, individuals who have been trained and have demonstrated their competency in the safe and proper use of pesticides. EPA did not gain statutory authority to restrict the use of pesticides to certified applicators until after the 1972 cancellation. The Agency believes that certified applicators are more apt to follow label directions and to abide by restrictions on pesticide use than noncertified individuals. The Applicants' proposals contain a number of use restrictions which, if followed, are likely to reduce exposure to nontarget animals (see unit III of this notice), when compared with the indiscriminate baiting cited in the 1972 cancellation decision. As a result, EPA expects the overall risk to nontarget wildlife will be lower than in 1972. Finally, the

Applicants claim that egg baits are more selective for skunks than are lard baits (allowed prior to the 1972 cancellation), thereby providing greater selectivity.

3. Alternative methods of controlling skunks are considerably more costly and/or less restrictive than strychnine egg baits. There are no pesticides registered for this use. Other available control methods such as trapping, shooting, quarantine, and vaccination are unduly costly and inefficient in situations where strychnine-treated egg baits could be used.

The Agency has determined that when compared with the 1972 data base, the information rrepresents substantial new evidence which warrants reconsideration of the 1972 order cancelling the use of strychnine for the control of skunks. Furthermore, the Agency has concluded that since the majority of the evidence is derived from the use of strychnine under emergency exemptions since 1973, this evidence was not available prior to the cancellation order. In view of these findings, EPA would normally issue a notice announcing an adjudicatory hearing to detemine whether to modify the 1972 cancellation order (see 40 CFR 164.131(c)). The requirement for a hearing can, however, be waived in certain emergency circumstances (se 40 CFR 164.133). As discussed in unit II.C. of this notice, EPA has concluded that a waiver of the Subpart D hearing requirement was justified for the Applicants' emergency exemption requests.

Although EPA has decided to waive the requirement for a hearing before issuing the Montana and Wyoming exemptions, EPA recognizes that the hearing requirement cannot be waived for the pending applications for registration. Accordingly, notice will be published in the **Federal Register** in the near future announcing the start of a hearing under Subpart D to consider modification of the strychnine cancellation order to permit use of strychnine egg baits for control of rabies in skunks.

B. Emergency Conditions

The Applicants requested the use of strychnine for the purpose of suppressing local populations of skunks, the main carrier of rabies, thereby reducing the opportunity for exposure of humans, domestic animals, and susceptible wild species to rabies. Both Applicants consider the incidence of rabies to be at a level which poses an unacceptable threat to the public health.

Under FIFRA section 18 and EPA's implementing regulations, 40 CFR Part 166, an emergency is deemed to exist when:

1. A pest outbreak has [occurred] or is about to occur, and no pesticide registered for the particular use, or alternative method of control, is available to eradicate or control the pest;

2. Significant economic or health problems will occur without the use of the pesticide; and

3. The time available from discovery or prediction of the pest outbreak is insufficient for a pesticide to be registered for the particular use. (40 CFR 166.1).

Information submitted by each of the Applicants indicates that the incidence of rabies had increased sharply in various counties in Montana and Wyoming. The Applicants believe that an emergency condition exists owing to the unacceptable risk to the public health posed by rabies.

Montana identified rabies in 41 of its 56 counties. Montana authorities have confirmed 200 cases of rabies in skunks during the 12-month period ending September 30, 1985. In the 3-month period of August through October, there were 48 confirmed cases of rabies in 1985 versus 23 confirmed cases for the same period in 1984. Persons who have been required to undergo medical treatment for exposure to rabid animals already number 131 this year, versus 62 for all of 1984.

Wyoming cited the positive identification of rabies in 14 skunks in Johnson County since January 2, 1985; in 11 skunks in Sheridan County since January 11, 1985; and in four skunks in Campbell County since May 17, 1985, as evidence of the increased incidence of rabies. At least six cases of human exposure requiring post-rabies exposure treatment were noted.

In view of the fact that Montana has been authorized emergency exemptions for this use for the past 11 years, it appeared to EPA last spring that the situation represented a chronic problem (see 50 FR 20600; May 17, 1985). However, the incidence of rabies has increased dramatically this year, creating a problem much worse than normally experienced. Wyoming, on the other hand, has not been authorized the use of strychnine since 1981, when it experienced its last outbreak of rabies.

Based on the information in the Applicants' requests and additional information submitted in their support, the Agency has found that the Applicants have met each of the criteria for determining the existence of an emergency (40 CFR 166.1). Montana and Wyoming are currently experiencing an outbreak of rabid skunks which could cause increased health problems as the result of additional human exposure, and possibly could cause significant economic problems through infection of domestic livestock and pets. There is no pesticide registered to control skunks, and alternative methods have proven ineffective. Moreover, EPA concludes that there would not be sufficient time available to register this use before these problems occurred.

C. Emergency Waiver of Subpart D Hearing

The Agency has additionally determined that the standards set forth in 40 CFR 164.133 for waiving the hearing ordinarily required under Subpart D have been met. In arriving at this conclusion, the Agency has determined the following:

1. The proposed use of strychnine is necessary to prevent an unacceptable risk to people and domestic animals. With the strict controls provided for in the Applicants' requests, the use is not expected to pose a human health hazard.

2. There is no other feasible solution to the risk. Shooting and trapping have not been successful in the past, and quarantine and vaccination are both unreasonably expensive and impractical.

3. The time available is insufficient to permit convening a hearing. The time required to conclude formal adjudicatory hearings is, at a minimum, several months. The public health hazard requires prompt action.

III. Granting of Emergency Exemptions

Specific exemptions allowing the use of strychnine in eggs to control rabid skunks in Montana and Wyoming were granted on November 6, 1985.

Under EPA's regulations, issuance of a specific exemption shall be subjected to such restrictions as the Agency may prescribe (40 CFR 166.2(a)). In granting an exemption, EPA has established specific requirements for use of strychnine baits that are expected to protect humans and nontarget wildlife. Similar restrictions have been imposed on the use of strychnine baits in previous rabies control programs, and no unreasonable adverse effects on either humans or nontarget wildlife populations have been attributed to such use.

The most important restrictions on the use of strychnine egg baits are the following:

1. Each strychnine-treated bait will contain approximately 35 milligrams of strychnine alkaloid.

2. Placement of strychnine-treated egg baits is limited to the counties of Chouteau, Hill, Liberty, Cascade, Toole, Yellowstone, Treasure, Bighorn, Rosebud, Custer, Powder River, Carter, Fallon, Wibaux, Prairie, Dawson, Richland, McCone, Roosevelt, Sheridan, Daniels, Valley, Garfield, Phillips, Blaine, Fergus, Petroleum, Musselshell, Wheatland, Judith Basin, Beaverhead, Flathead, Carbon, Gallatin, Glacier, Lake, Lewis and Clark, Sanders, Stillwater, Teton, and Pondera in Montana and the counties of Johnson, Campbell, and Sheridan in Wyoming.

3. Placement or removal of egg baits must be made only by or under the direct supervision of certified commercial applicators of restricted-use pesticides.

4. All eggs will be stamped with the word "POISON" in three locations and will contain green food coloring to warn people of their toxic nature.

5. The areas to be treated are limited to the land within circles 5 miles in radius around the point where a confirmed rabid skunk has been found.

6. A maximum of two strychnine eggs per site will be placed in the following skunk habitats: Entrances to skunk dens, garbage dumps, road culverts, junk piles, unoccupied buildings, haystacks, rock piles, and any other location which shows evidence of skunk habitation. No baits may be placed in the open.

7. Strychnine egg baits will be placed at appropriate locations starting in the immediate area where the laboratory-confirmed rabid animal was collected. Egg placement will continue at appropriate locations in the area surrounding the location of the confirmed case extending outward as needed, but no farther than 5 miles from the site where the laboratory-confirmed skunk was found, to reduce the local population. Normally, the treatment area will not exceed 3 miles from the site of the confirmed rabid animal. The number of strychnine egg baits may not exceed 1,200 in any treatment area. No more than 150 strychnine egg baits may be used in any 1 square mile area.

8. Egg baits may not be left in a treatment area for more than 30 days after the discovery of a confirmed rabid skunk.

9. No strychnine-treated egg baits will be permitted within a 10-mile radius of Township 58 North, Range 83 West, in Sheridan County, Wyoming, and Bighorn County, Wyoming, and Bighorn County, Montana.

10. Strychnine baits may not be placed within 1 mile of a prairie dog town, unless a precontrol survey conducted in accordance with approved techniques of the Office of Endangered Species, USDI, indicates that black-footed ferrets are not present. Strychnine baits may also not be placed within 1 mile of any site where the presence of a black-footed ferret has been confirmed within the last 12 months.

11. Strychnine baits will be placed only on those lands where written permission has been obtained from the landowner, lessee, or other person in charge and responsible for the use of the land.

12. Warning signs will be posted at all points commonly used for access to the treated area, as well as in other locations near where treated baits have been placed. Signs shall be placed in a manner that makes them easily visible.

13. All locations where strychnine-treated egg baits are placed must be marked with appropriate flagging to ensure that the placement site is not overlooked during monitoring and to ensure recovery of unconsumed baits.

14. The Montana Department of Livestock and the Wyoming Department of Agriculture must follow any more stringent requirements imposed by State law or regulation.

15. Each bait will be checked as frequently as necessary; however, all baiting sties shall be monitored a minimum of once per week.

16. All retrieved or excess strychnine baits will be disposed of by burial at least 18 inches deep in an approved sanitary landfill or burned in an incinerator. Containers to be disposed of will be handled in a similar manner.

17. Animals poisoned in the control program will be submitted for laboratory analysis for presence of rabies virus, if possible. Otherwise, animal carcasses shall be burned or buried in a remote location.

18. The use of these eggs is prohibited in areas of Montana that may result in the exposure of an endangered species to strychnine. Prior to use, the user must notify the U.S. Fish and Wildlife Service [Endangered Species Specialist (406–449–5225)]. If the U.S. Fish and Wildlife Service or the user determines that the use of strychnine may adversely impact an endangered species in the specific area requested, strychnine may not be used in this area. (This condition is not part of the Wyoming approval, as the endangered species of concern do not inhabit the counties authorized for treatment.)

19. The public shall be notified through the news media prior to placement of strychnine-treated egg baits when baits are placed within close proximity to urban or suburban areas or other human residences.

20. The Montana Department of Livestock and the Wyoming Department of Agriculture are responsible for reporting on a monthly basis to this Agency through EPA's Region VIII office the names, addresses, and telephone numbers of the individuals performing applications and the number of baits placed, retrieved, consumed, or missing. Fatalities located, including nontarget species, must be reported. Any adverse effects in connection with the use of strychnine under this exemption must be reported immediately.

21. A final report summarizing the results of this program must be submitted within 3 months following the expiration of these specific exemptions.

22. These specific exemptions expire November 6, 1986. (7 U.S.C. 136).

Dated: November 20, 1985.

John A Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85–28315 Filed 11–26–85; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

Organization

AGENCY: Farm Credit Administration.

ACTION: Notice; Proposed Chartering of Districtwide Production Credit Association in the Fourth Farm Credit District.

SUMMARY: The Farm Credit Association (FCA) has under consideration a proposal for the consolidation of certain production credit associations (PCSs) in the Fourth Farm Credit District that would involve the issuance of a charter to the consolidated PCA to serve the entire territory of the Fourth Farm Credit District, which encompasses the States of Kentucky, Ohio, Indiana and portions of Tennessee. If shareholders approve the consolidation at their special meetings on December 12, 1985, and required regulatory approvals are given, the proposed consolidation will be effective on December 31, 1985.

The issuance of PCA charters is a discretionary act pursuant to section 5.18 of the Farm Credit Act of 1971, as amended, that does not require notice and comment. However, since the proposed consolidated association may serve some areas that may also be served by other associations, the FCA believes is appropriate to consider all comments of the public on the designation of the territory to be served. All interested parties are invited to submit written comments, addressed as specified below.

DATE: All comments must be received by December 16, 1985.

ADDRESS: All comments should be submitted in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Copies of all written communications received will be available for inspection by interested parties in the Office of the Director, Congressional and Public Affairs Division, Office of Administration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Thomas Holland, Funding and Operations Division, Office of Examination and Supervision, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4452.

Donald E. Wilkinson,

Governor.

[FR Doc. 85–28393 Filed 11–26–85; 8:45 am]

BILLING CODE 6705–01–M

Organization

AGENCY: Farm Credit Administration.

ACTION: Notice; Proposed Chartering of Districtwide Federal Land Bank Association in the Fourth Farm Credit District.

SUMMARY: The Farm Credit Administration (FCA) has under consideration a proposal for the consolidation of certain Federal land bank associations (FLBAs) in the Fourth Farm Credit District that would involve the issuance of a charter to the consolidated FLBA to serve the entire territory of the Fourth Farm Credit District, which encompasses the States of Kentucky, Ohio, Tennessee and Indiana. If shareholders approve the consolidation at their special meetings on December 12, 1985, and required regulatory approvals are given, the proposed consolidation will be effective on December 31, 1985.

The issuance of FLBA charters is a discretionary act pursuant to section 5.18 of the Farm Credit Act of 1971, as amended, that does not require notice and comment. However, since the proposed consolidated association may serve some areas that may also be served by other associations, the FCA believes it appropriate to consider all comments of the public on the designation of the territory to be served. All interested parties are invited to submit written comments, addressed as specified below.

DATE: All comments must be received by December 16, 1985.

ADDRESS: All comments should be submitted in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Copies of all written communications received will be available for inspection by interested parties in the Office of the Director, Congressional and Public Affairs Division, Office of Administration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Thomas Holland, Funding and Operations Division, Office of Examination and Supervision, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4452.

Donald E. Wilkinson,

Governor.

[FR Doc. 85–28394 Filed 11–26–85; 8:45 am]

BILLING CODE 6705–01–M

FEDERAL COMMUNICATIONS COMMISSION

November 19, 1985.

Public Information Collection Requirement Submitted to Office of Management and Budget for Review.

The Federal Communication 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 Doris Benz, FCC, (202) 632–7513. Comments should be sent to David Reed, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503 (202) 385–7231.

OMB: 3060–0095
Form No.: FCC 395–A
Title: Annual Employment Report—Cable Television
Action: Revision
Estimated Annual Burden: 6,879 Responses; 6,260 Hours

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–28292 Filed 11–26–85; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010853
Title: Oakland Terminal Agreement
Parties: Port of Oakland (Port) Hong Kong Islands Line America S.A. (HKIL)

Synopsis: This agreement provides that HKIL shall have the non-exclusive right to assigned premises at the Port's Outer Harbor Terminal, Berth No. 6 for the handling of its vessels and related operations in its transpacific service with certain rights and obligations under the agreement to other of the Port's public container terminals. HKIL agrees that the assigned premises shall be the published regularly scheduled Northern California port of call for its vessel operations. The current authority to manage the premises for the Port is vested in the Stevedoring Services of America, under Agreement No. T–4067. The term of the agreement commences upon the first of the month following its effective date and terminates on August 31, 1991. Effective upon the date of commencement of the term of the Agreement No. 224–010853, Agreement No. T–4067 shall terminate.

By Order of the Federal Maritime Commission.

Dated: November 22, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–28289 Filed 11–26–85; 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; Notice of Issuance of Certificate [Casualty]

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 pusuant 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 540):

Marinvest Funds S.A. d/b/a,
Dominican Ferries,
c/o Dominican Ferries, Miramar Plaza Center, Ave. Ponce de Leon 954, Santurce, Puerto Rico 00907

Dated: November 22, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-28290 Filed 11-26-85; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

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):

Marinvest Funds S.A. d/b/a Dominican Ferries c/o Dominican Ferries, Miramar Plaza Centers, Ave. Ponce De Leon 954, Santurce, Puerto Rico 00907

Dated: November 22, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-28291 Filed 11-26-85; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. 122-003193-002]

Agreement Between Puerto Rico Maritime Shipping Co. and Sea-Land Service, Inc.; Erratum

The **Federal Register** Notice published November 14, 1985, Vol. 50, No. 220, Pg. 47113, incorrectly indicated that the agreement number was 222-003193-002 whereas it should have been 122-003193-002. The agreement was filed with the Commission pursuant to section 15, Shipping Act, 1916, (46 U.S.C. 814), and not pursuant to section 5, Shipping Act of 1984 (46 U.S.C. app. 1704).

Dated: November 22, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-28240 Filed 11-26-85; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-85-1567]

Fleetwood Enterprises, Inc. and Fleetwood Homes of Texas, Inc.; Hearing

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

ACTION: Notice of Hearing In the Matter of Fleetwood Enterprises, Inc. and Fleetwood Homes of Texas, Inc; HUDALJ 1-84-MH.

SUMMARY: A hearing pursuant to 24 CFR 3282.152(g) will commence at 10:00 a.m. on March 3, 1986 in Room 2155, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410 on the Department of Housing and Urban Development's preliminary determination that certain homes manufactured by Fleetwood Enterprises, Inc. and Fleetwood Homes of Texas, Inc. fail to comply with the Federal manufactured home construction and safety standards.

FOR FURTHER INFORMATION CONTACT: Honorable Alan W. Heifetz, Administrative Law Judge, U.S. Department of Housing and Urban Development, Room 2156, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 755-0312.

SUPPLEMENTARY INFORMATION: The Secretary administers the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.* (the Act) and its regulations. Based on information available to him through the Office of Manufactured Housing and Regulatory Functions, he has made a preliminary determination that noncompliances with the Federal manufactured home construction and safety standards exist in certain manufactured homes produced by Fleetwood Enterprises, Inc. and Fleetwood Homes of Texas, Inc. (Fleetwood). The noncompliances arise from Fleetwood's failure to comply with various sections of 24 CFR Part 2180.

The Secretary has preliminarily determined the following matters: That since January 1, 1980, Fleetwood has manufactured homes with shearwall and anchorage designs which are incapable of sustaining the design load requirements of the Federal manufactured home construction and safety standards (Standards) and are incapable of transmitting those loads to stabilizing devices without exceeding allowable loads, stresses or deflections. The strength and rigidity of the shearwall and anchorage systems and parts were not designed by any method which simulate actual loads and conditions that occur. The fasteners were not designed or installed so as to resist wind overturning and sliding as imposed by the design loads of the standards. As a result, overstresses exist in various components.

The Secretary has further preliminarily determined that since January 1, 1980 Fleetwood has manufactured homes in which the ridge beam (post) uplift straps are inadequate to carry the design loads.

The Secretary has further preliminarily determined that since November 2, 1980, Fleetwood has manufactured homes containing floors with structural framing members which deflect in excess of the amount permitted by the standards.

Based upon these preliminary determinations, the Secretary has preliminarily determined that Fleetwood has constructed homes which fail to comply with the Standards at 24 CFR 3280.303, 3280.304, 3280.305 and 3280.401 and that by manufacturing and selling such homes Fleetwood has violated 42 U.S.C. 5409(a)(1).

As a result of these preliminary determinations, a hearing will be held under the authority of the Act and 24 CFR Part 3282 Subpart D. The parties to this proceeding are the Secretary and Fleetwood. The purposes of this proceeding are to determine whether homes manufactured by Fleetwood fail to comply with the indicated standards and were produced and sold in violation of the Act.

This hearing will be held in accordance with the provisions of 24 CFR 3282.152(g). Administrative Law Judge Alan W. Heifetz is hereby designated as the presiding officer for the proceedings. All inquiries concerning these proceedings should be directed to Judge Heifetz. The hearing will commence at 10:00 a.m. on March 3, 1986 in room 2155, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

In determining that the requirements of 24 CFR 3282.152(g) shall apply in this case, the Secretary has considered the factors set forth at 24 CFR 3282.152(c)(4) and information and argument submitted by Fleetwood. First, there is less need for expeditions action in this case than in some other cases because no safety hazard is involved and

because Fleetwood is no longer manufacturing the affected homes. Similarly, there is less risk of future injury to affected members of the public than in cases involving safety hazards. This is an important case which may have serious economic consequences for Fleetwood, thereby justifying a former due process hearing. Finally, this case involves complex technical issues and differing interpretations of the standards, and under such circumstances, an adversary proceeding with cross-examinination and sworn testimony available under 24 CFR 3282.152(g) is appropriate. In view of these factors, the Secretary has determined that a hearing under 24 CFR 3282.152(g) is appropriate.

Interested persons may participate in writing and in the oral portion of the hearing pursuant to 24 CFR 3282.153. The presiding officer may determine that such participation should be limited or barred so as not to unduly prejudice the rights of the parties involved or unnecessarily delay the proceedings.

Issued at Washington, DC, on November 22, 1985.

Janet Hale,

General Deputy Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 85-28343 Filed 11-26-85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Tuscarora Nation of North Carolina

November 16, 1985.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Tuscarora Nation of North Carolina, c/o Robert B. Brewington, P.O. Box 565, Pembroke, North Carolina 28372 has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was forwarded and signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly § 54.8(d)) of the Federal regulations, interested parties may submit factual or legal arguments in support of or in oppostion to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs files.

The petition may be examined by appointment in the Branch of Acknowledgment and Research, Code 440B, Bureau of Indian Affairs, Interior South Building, Room 32, 1951 Constitution Avenue NW., Washington, DC 20245.

Hazel E. Elbert,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85-28264 Filed 11-26-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NM-21791]

Termination of Proposed Withdrawal and Reservation of Lands; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal and reservation of lands requested by the Department of the Army, Corps of Engineers, for the purpose of establishing the Very Large Array Radio Telescope Project.

EFFECTIVE DATE: Publication Date.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, NM 87504-1449, (505) 988-6326.

Notice of a proposed withdrawal and reservation of lands for the Department of the Army was published in the Federal Register on August 15, 1974, Vol. 39, No. 159, pages 29393 and 29394, Document No. 74-18788 and republished on August 17, 1977, Vol. 42, No. 159, pages 41486, 41487, and 41488, Document No. 77-23776.

The Department of the Army, Corps of Engineers, has withdrawn the application since the lands are now included in right-of-way permit NM 44013. Therefore, the segregative effect of the proposed withdrawal in the following described townships is hereby terminated:

New Mexico Principal Meridian

T. 3 S., R. 6 W.
T. 3 S., R. 7 W.
T. 3 S., R. 8 W.
T. 3 S., R. 9 W.

The areas described aggregate 839.56 acres, more or less, of land in Socorro and Catron Countries.

Dated: November 19, 1985.

Monie G. Jordan,

Associate State Director.

[FR Doc. 85-28260 Filed 11-26-85; 8:45 am]

BILLING CODE 4310-FB-M

[OR22029A(WASH), OR22029B(WASH)]

Proposed Continuation of Withdrawal; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard proposes that Portions of the land withdrawal for the Morrowstone Point and Point Wilson Light Stations continue for an additional 25 years. The lands would remain closed to surface entry and mining but have been and will remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: The U.S. Coast Guard proposes that portions of the existing land withdrawal made by the Executive order of September 11, 1854, be continued for a period of 25 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved are located at Morrowstone Point (3.80 acres) approximately five miles east of Port Townsend in Section 9, T. 30 N., R. 1 E., and at Point Wilson (5.30 acres) approximately two miles north of Port Townsend in Section 25, T. 31 N., R. 1 E., W.M., Jefferson County, Washington.

The purpose of the withdrawal is to protect the Morrowstone Point and Point Wilson Light Stations. The withdrawal segregates the lands from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in

writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: November 12, 1985.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-26261 Filed 11-26-85; 8:45 am]

BILLING CODE 4310-33-M

[Serial No. I-014218]

Termination of Proposed Withdrawal and Reservation of Lands; Idaho

November 20, 1985.

Notice of an application, serial number I-04218, for withdrawal and reservation of lands was published as **Federal Register** Document No. 57-9773 on page 9437 of the issue for November 26, 1957. The applicant agency has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Subpart 2091, such lands will be at 9:00 a.m. on December 26, 1985, relieved of the segregative effect of the above mentioned application.

The lands involved in this notice of termination are:

Boise Meridian

Clearwater National Forest

T. 34 N., R. 6 E.,
Sec. 9, SW¼SW¼SE¼, SE¼SE¼SW¼;
Sec. 12, E½SW¼SE¼, W½SE¼SE¼;
Sec. 13, W½SW¼NW¼SW¼, W½NW¼SW¼SW¼;
Sec. 14, NE¼SE¼SE¼, SE¼NE¼SE¼;
Sec. 16, NW¼NW¼NE¼, NE¼NE¼NW¼;
Sec. 18, N½NW¼NE¼, SW¼NW¼NE¼.

The area described aggregates 140 acres in Clearwater and Idaho Counties.

Vincent S. Strobel, Chief,

Branch of Land Operations.

[FR Doc. 85-28259 Filed 11-26-85; 8:45 am]

BILLING CODE 4310-84-M

[W-71890, W-71891]

Proposed Continuation of Reclamation Withdrawal; Wyoming

Correction

In FR 85-27168, beginning on page 47282 in the issue of Friday, November 15, 1985, make the following correction:

On page 47283, first column, thirty-seventh line (T. 30 N., R. 83 W., Sec. 35), "NW½SW¼" should read "NW¼ SW¼".

BILLING CODE 1505-01-M

Bureau of Reclamation

Grass Valley Creek Debris Dam Study, California; Intent To Prepare an Environmental Impact Statement and To Conduct a Scoping Meeting

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior intends to prepare an environmental impact statement and hold a scoping meeting for the Grass Valley Debris Dam, Trinity County, California. The proposed project is one of the specific actions proposed in the Trinity Basin Fish and Wildlife Management Program. The entire management program was analyzed in a broad environmental impact statement prepared in October 1983 by the Fish and Wildlife Service. The new EIS document will focus on the actions identified for Grass Valley Creek in that overall EIS.

The purpose of the project is to prevent harmful sediments eroding in the Grass Valley Creek watershed from entering the Trinity River where they are filling in the fishery resting pools and covering over the spawning riffles. The EIS will evaluate alternatives including dam facilities, dredging and settling ponds, and watershed management.

Other environmental review and consultation requirements will be met concurrently with the NEPA process. These include applicable requirements of the Clean Water Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Endangered Species Act, and Executive Orders 11988 and 11990 regarding flood plains and wetlands.

The Bureau of Reclamation will hold a scoping meeting in Weaverville, California, on December 17, 1985, at 7:30 p.m. The meeting will be held at the Civil Defense Hall at the northwest end of town off Highway 299 next to the Sheriff's Department. The scoping meeting is intended to solicit public input to determine significant issues, potential environmental effects, and other information related to the proposed project and alternatives. Those persons wishing to provide further input should do so in writing by December 30, 1985, to the Bureau of Reclamation at the address provided below.

Interested public entities and individuals may obtain information on the proposed project by contracting David Gore, Bureau of Reclamation, Attention: MP-720, 2800 Cottage Way, Sacramento, California 95825-1898, telephone (916) 978-4966.

Dated: November 21, 1985.

Clifford L. Barrett,

Acting Commissioner.

[FR Doc. 85-28242 Filed 11-26-85; 8:45 am]

BILLING CODE 4310-09-M

Contingency Program for Westlands Water District Disposal Project, California; Intent To Prepare a Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, the Department of the Interior (Department) proposes to prepare a draft environmental impact statement (EIS) addressing the impacts of various alternative actions by which the Bureau of Reclamation (Bureau) might ensure that subsurface agricultural drainage water originating within the Westlands Water District (WWD) is no longer discharged through the San Luis Drain north of Bass Avenue and into Kesterson Reservoir after June 30, 1986. This evaluation is part of a contingency planning process. Following the decision of the Secretary of the Interior to close Kesterson Reservior as a facility for disposal of agricultural drainage water, announced on March 15, 1985, the Department entered into an agreement with the WWD, on April 3, 1985, under which the WWD is to cease its discharges of drainage water into the San Luis Drain and Kesterson Reservoir after June 30, 1986. Should the WWD fail to perform in accordance with the terms of its April 3, 1985, agreement with the Department, the Bureau may have to act unilaterally to ensure the successful closure of Kesterson Reservoir.

The Bureau's proposed action, under this scenario, is long-term plugging of a portion or all of the subsurface drainage collection system within the WWD. In the April 3, 1985, agreement WWD represented that, at any time the flow reduction schedule could not be met by "alternative means," it could be met by blocking flow "through, along, and

around" the collection drain system "at a number of points sufficient to effect the reduction and eventual termination of drainage flows." The agreement provides that the Department has the right to block the collector drains at WWD's expense if WWD does not fulfill its commitments under the agreement. Drainage water treatment, evaporation ponds, and other alternatives for drainage water management will also be evaluated in the EIS.

Other environmental review and consultation requirements will be met concurrently with the NEPA process. These include applicable requirements of the Clean Water Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Endangered Species Act, and Executive Orders 11988 and 11990 regarding floodplains and wetlands.

WWD held two scoping meetings on the WWD drainage disposal project to gather public and agency input on April 26, 1985, in Scaramento, California, and May 2, 1985, in Fresno, California. Participants at these meetings identified several concerns, including groundwater and surface water contamination. WWD is presently preparing an enironmental impact report (EIR), as required by California State law, on its drainage disposal project. WWD proposes to utilize on-farm management and, if necessary, drainage system plugging to comply with the April 3, 1985, agreement. The draft EIR is expected in November and the final EIR in January

The Bureau is inviting further public input at this time. A scoping meeting will be held in Fresno, California, on December 19, 1985, in the Wine Room of the Fresno Convention Center at 7 p.m. The scoping meeting, which will be in a workshop format, is intended to solicit public input to determine significant issues, potential environmental effects, and other information related to the proposed EIS. Those persons wishing to provide further input should do so in writing December 24, 1985, to the Bureau of Reclamation at the address provided below.

The contact person for this draft environmental impact statement is Alan Solbert, Environmental Compliance Branch, Telephone (916) 978-5130, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825.

Dated: November 21, 1985.

Clifford I. Barrett,

Commission.

[FR Doc. 85-28243 Filed 11-26-85; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-701244

Applicant: Franklin Gress, Davis, CA

The applicant requests a permit to take (capture, salvage, band, radio-tag) California brown pelicans (*Pelicanus occidentalis*), their parts, nests, and eggs, for scientific research.

PRT-700880

Applicant: Chicago Zoological Society, Brookfield, IL

The applicant requests a permit to import 2 captive-born Goeldi's monkeys (*Callimico goeldii*) from Apenheul Nature Park, Apeldoorn, Netherlands, for enhancement of propagaton.

PRT-701456

Applicant: Gayle Brodie, Woodland Hills, CA

The applicant requests a permit to import a pair of white-eared pheasants (*Crossoptilon crossoptilon*) from Harry Hardy, Burnaby, British Columbia, for enhancement of propagation.

PRT-701492

Applicant: Bertha Daharsh, Gothanburg, NE

The applicant requests a permit to import the following captive-born pheasants from Bert Williamson, Surry, British Columbia, for enhancement of propagation: one male Edward's (*Lophura edwardsi*), pair of bar-tailed (*Syrmaticus humaie*), two female Elliot's (*S. ellioti*), two male and seven female Mikados (*S. mikado*).

PRT-701521

Applicant: Jackson Zoological Park, Jackson, MS

The applicant requests a permit to import one pair of captive-born white-fronted lemurs (*Lemur fulvus albifrons*) from the Saarbrucken Zoo in West Germany for the purpose of enhancement of propagation.

PRT-701,361

Applicant: Horst W. Schmudde, Colts Neck, NJ

The applicant requests a permit to purchase two pair of HAWAIIAN (=nene) geese (*Nesochen* [=*Branta*] *sandvicensis*) from S. Dillon Ripley, Litchfield, CT, for the purpose of enhancement of propagation of the species, and to transport the geese interstate.

PRT-701603

Applicant: National Zoo, Washington, DC

The applicant requests a permit to import up to 20 golden-headed tamarins (*Leontopithecus chrysomelas*) from Brazil and possibly other foreign countries for enhancement of propagation.

PRT-676811

Applicant: Regional Director, USFWS, Albuquerque, NM

The applicant requests amendment of their present permit to include authorization to import from and export to Canada salvaged material and viable eggs of whooping cranes (*Grus americana*). This will enable the service to fulfill obligations in their Memorandum of Understanding with the Canadian Wildlife Service for the recovery and management of the species.

PRT-700439

Applicant: Gabriel Michel, Detroit, MI

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of M.J. D'Alton in Bredasdorp, Republic of South Africa, for the purpose of enhancement of propagation.

PRT-700593

Applicant: Charles Bazzy, Bloomfield Hills, MI

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd of Mr. M.J. D'Alton in the district of Bredasdorp, South Africa, for the purpose of enhancement of propagation and survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: November 20, 1985.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-23283 Filed 11-26-85; 8:45 am]

BILLING CODE 4310-55-M

Issuance of Permit for Marine Mammals

On August 28, 1985, a notice was published in the **Federal Register** (Vol. 50, No. 167) that an application had been filed with the Fish and Wildlife Service by Dr. David Bruce, Wheaton College, Wheaton, Illinois (PRT-697747) for a permit to import 4 blood samples collected from Canadian polar bears by Canadian researchers.

Notice is hereby given that on November 14, 1985, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fish and Wildlife Service issued the permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's Permit Office in Room 605, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: November 20, 1985.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-28262 Filed 11-26-85; 8:45 am]

BILLING CODE 4310-55-M

Office Of Surface Mining Reclamation and Enforcement

Petition to Designate Certain Federal Lands in the Red Rim Area of Wyoming as Unsuitable for Surface Coal Mining Operations; Availability of Final Combined Petition Evaluation Document and Environmental Impact Statement

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

ACTION: Notice of Availability of the final combined petition evaluation document and environmental impact statement (PED/EIS; OSM-PE-5/OSM-EIS-12) evaluating whether certain Federal lands in the Red Rim area, Carbon and Sweetwater Counties, Wyoming, are unsuitable for surface coal mining operations.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is making available its final PED/EIS on the National and Wyoming Wildlife Federation's petition to designate certain Federal lands on the Red Rim area southwest of Rawlins, Wyoming, unsuitable for surface coal mining operations. The PED/EIS has been prepared to assist the Secretary of the Interior in making a decision on the petition. The Council on Environmental Quality's regulations for implementing the National Environmental Policy Act require that the Department of the Interior wait 30 days after publication of the Environmental Protection Agency notice of availability of the final PED/EIS before the Secretary makes a decision on the petition (40 CFR 1506.10(b)). The Secretary's decision will not apply to the petition as it relates to private lands.

DATE: OSM is making the final PED/EIS available on November 26, 1985.

ADDRESSES: Copies of the final PED/EIS may be obtained from Allen D. Klein, Administrator, Attn: Charles Albrecht, OSM, Western Technical Center, 2nd Floor, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado, 80202. In addition, copies of the final PED/EIS are available for review at the following locations:

Wyoming Department of Environmental Quality, Herschler Building, 3rd Floor, 122 West 25th Street, Cheyenne, Wyoming, 82002.

Bureau of Land Management, 1300 North 3rd Street, Rawlins, Wyoming 82301.

Office of the County Clerk, Carbon County Courthouse, Fifth and Spruce Streets, Rawlins, Wyoming, 82301.

FOR FURTHER INFORMATION CONTACT: Charles Albrecht, Chief, Environmental Analysis Branch (telephone: (303) 844-2451) at the Denver, Colorado, location given under "**ADDRESSES**".

SUPPLEMENTARY INFORMATION:

Abstract of Final PED/EIS

On May 10, 1982, the National Wildlife Federation and the Wyoming Wildlife Federation filed with the Wyoming Department of Environmental Quality (DEQ) a petition to have certain privately owned lands in the Red Rim area, near Rawlings, Wyoming, designated as unsuitable for surface coal mining operations. The two federations later filed a supplement to this petition with Wyoming DEQ to include Federal lands interspersed among these privately owned lands as part of their petition area. OSM received copies of this supplement and of the original petition on September 27, 1982. The major allegations of the petition are that (1) surface coal mining operations in the Red Rim petition area would adversely affect fragile land that is valuable habitat for pronghorn and (2) reclamation of this land in accordance with the Surface Mining Control and Reclamation Act of 1977 is not technologically and economically feasible. The PED/EIS analyzes these allegations.

The analyses in the PED/EIS support the conclusion that, should the petition area be mined, reclaiming it using standard reclamation practices (those reclamation techniques that both minimally comply with the requirements of the Wyoming State program and are currently being used in the State to reclaim areas disturbed by surface coal mining operations) could cause significant adverse impacts to pronghorn with the Baggs Herd. The alteration of the topography and vegetation patterns of the petition area, the reduction of vegetation densities and diversity within the area, and the reduction of forage for pronghorn within the area could reduce the carrying capacity of mined portions of the Red Rim pronghorn critical winter range over the long term following mining and reclamation. The cumulative long-term loss of pronghorn resulting form this long-term reduction of carrying capacity could therefore be large; adverse impacts to the herd from the reduction could be significant. At a maximum impact level, OSM estimated that during a severe winter, pronghorn mortality owing directly to habitat loss due to mining could range from 53 to 1,205 (0.7 to 17 percent of the herd), depending upon the extent of unreclaimed mining disturbance at the time the severe winter occurred. Assuming that a severe winter occurred once every 5 years, as a worst case, approximately 6,800 pronghorn could die over the projected life of the mine as the result of habitat loss. In addition, losses of pronghorn could occur in the short term as a result of mining-related activities such as fences, spoil piles and road traffic.

The PED/EIS also finds that reclamation in accordance with the SMCRA is not technologically and economically infeasible.

The Secretary of the Interior is required to make a decision to grant or deny the petition as it pertains to Federal lands. The alternative decisions available to him are (1) to designate the entire petition area as unsuitable for all surface coal mining operations (alternative A); (2) to not designate any of the petition area as unsuitable for surface coal mining operations (alternative B); (3) to designate parts of the petition area as unsuitable for surface coal mining operations (alternative C); and (4) to designate the entire petition area as unsuitable for surface coal mining, but to allow underground mining (alternative D). In addition to the major alternatives, nine subalternatives were developed for the PED/EIS. In accordance with the CEQ regulations (40 CFR 1502.14(e)) OSM has expressed a preferred alternative. This alternative, B4, would not designate the

area as unsuitable for mining but would require any lessee to demonstrate the success of reclamation of the pronghorn habitat in the northern half of the area before allowing the southern half to be mined. This alternative would significantly reduce the major impacts to pronghorn projected to occur as a result of mining under the one alternatives.

The Secretary's decision will not apply to the petition as it relates to private lands.

Contents of Final PED/EIS

The PED/EIS contains a copy of the petition, the full revised text of the analyses presented in the draft PED/EIS, oral testimony from the public hearing held in Rawlins, Wyoming, on January 23 and 24, 1985, written comments on the petition and draft PED/EIS, and OSM's responses to those oral and written comments it considered substantive.

Previous Notices

Additional information on this petition may be found in **Federal Register** notices of January 5, 1983 (notice of complete petition for designation of lands as unsuitable for surface coal mining operations and request for comments; 48 FR 523) and June 29, 1983 (intent to prepare a combined unsuitability petition evaluation document/environmental impact statement; 48 FR 29961). A notice of availability of the draft PED/EIS was published in the **Federal Register** on October 20, 1983 (48 FR 48724).

Dated: November 19, 1985.

Len Richeson,

Acting Assistant Director, Program Operations.

[FR Doc. 85-28271 Filed 11-26-85; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the seventy-fourth meeting of the Board for International Food and Agricultural Development (BIFAD) on December 18, 1985.

The major purpose of the meeting is to discuss AID and university ideas for an agenda for the second decade of Title XII. The members will also receive the report of the Joint Committee on Agricultural Research and Development, including a study by Morris Whitaker of Utah State University on the implications for Title XII on decentralization of the AID programming system and a discussion of BIFAD's role in AID's project review process. A presentation by Nyle Brady, AID's Assistant Administrator for the Bureau of Science and Technolgy, will be given on a proposed Matching Support Grant program for participants in AID—University Memorandums of Understanding.

The meeting will begin at 9:00 a.m. and adjorn at 12:30 p.m., and will be held in Conference Room B, Pan American Health Organization, 525 23rd Street, NW., Washington, DC. The meeting is open to the public. Any interested person may attend, may file written statements with the Board, before or after the meeting, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits.

Erven J. Long, Director, Research and University Relations, Bureau for Science and Technology, Agency for International Development, is designated as AID Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, International Development Cooperation Agency, Washington, DC 20523, or telephone him at (703) 235-8929.

Dated: November 22, 1985.

Erven J. Long,

A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 85-28278 Filed 11-26-85; 8:45 am]

BILLING CODE 6116-01-M

Joint Committee on Agricultural Research and Development of the Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the sixteenth meeting of the Joint Committee on Agricultural Research and Development (JCARD) of the Board for International Food and Agricultural Development (BIFAD) on December 16 and 17, 1985.

The purpose of the meeting is to discuss potential Title XII Agenda items and a process for further development of items for BIFAD's next decade; hear draft report of JCARD's Agricultural Policy Panel on recommendations for AID to improve agricultural development policies in developing countries; review status of Memorandum of Understanding; hear report of Human Development Panel; discuss further the implications of AID's policy of decentralization of contracting and programming authority; hear report and act on recommendations of the joint group of JCARD CRSP Panel and Committee of AID's Agricultural Sector Council on the Aquaculture (Pond Dynamics) Collaborative Research Support Program.

JCARD will meet from 1:00 p.m. to 5:00 p.m. on December 16 and from 9:00 a.m. to 1:00 p.m. on December 17, 1985. The meeting will be held in conference room number 1205 in the State Department, Washington, D.C. 20523. The meeting is open to the public. Any interested person may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meeting permits.

Dr. John Stovall, BIFAD Support Staff, is the designated AID Advisory Committee Representative at the meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, BIFAD Support Staff, Washington, DC 20523 or telephone him at (202) 632-7332.

Dated: November 22, 1985.

John Stovall,

A.I.D. Advisory Committee Representative, Joint Committee on Agricultural Research and Development, Board for International Food and Agricultural Development.

[FR Doc. 85-28277 Filed 11-26-85; 8:45 am]

BILLING CODE 6116-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-348 and 50-364]

Alabama Power Co., Joseph M. Farley Nuclear Plant Units Nos. 1 and 2; Exemption

I

The Alabama Power Company (the licensee) is the holder of Facility Operating License Nos. NPF-2 and NPF-8 which authorized operation of the Joseph M. Farley Nuclear Power Plant Unit Nos. 1 and 2. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises two pressurized water reactors at the licensee's site located near the City of Dothan, Alabama.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding the fire protection features of nuclear power plants (45 FR 76602). The revised Section 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. Only one of the fifteen subsections, III.G, is the subject of this exemption request.

By letter dated March 13, 1985, the licensee submitted the results of their Appendix R fire hazards analysis reevaluation, dated February 1985 for review. The licensee contends that the reevaluation was prompted by the interpretations to Appendix R promulgated in IE Notice 84–09 and Generic Letter 83–33. Therefore, based on the results of this reevaluation the licensee requested forty-nine additional exemptions from the specific provisions of Section III.G of Appendix R for certain fire areas in Unit 2 and for certain areas shared by Units 1 and 2. By letters dated June 26, and July 19, 1985, the licensee provided additional information clarifying and revising their justifications with regard to their technical exemption requests. The Commission previously granted an exemption on December 30, 1983 for certain system cables or components located within the containment buildings of Units 1 and 2.

Section III.G.2 of Appendix R requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

(1) Separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier;

(2) Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustible or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area; or

(3) Enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

If these conditions are not met, Section III.G.3 requires an alternative shutdown capability independent of the fire area of concern. It also requires a fixed fire suppression system to be installed in the fire area of concern if it contains a large concentration of cables or other combustibles. These alternative requirements are not deemed to be equivalent; however, they provide equivalent protection for those configurations in which they are accepted.

Because it is not possible to predict the specific conditions under which fires may occur and propagate, the design basis protection features are specified in the rule rather than the design basis fire. Plant specific features may require protection different from the measures specified in Section III.G. In such a case, the licensee must demonstrate, by means of a detailed fire hazards analysis, that existing protection in conjunction with proposed modifications will provide a level of safety equivalent to the technical requirements of Section III.G of Appendix R.

In summary, Section III.G is related to fire protection features for ensuring that systems and associated circuits used to achieve and maintain safe shutdown are free of fire damage. Fire protection configurations must either meet the specific requirements of Section III.G or an alternative fire protection configuration must be justified by a fire hazard analysis.

Our general criteria for accepting an alternative fire protection configuration are the following:

- The alternative assures that one train of equipment necessary to achieve hot shutdown from either the control room or emergency control stations is free of fire damage.
- The alternative assures that fire damage to at least one train of equipment necessary to achieve cold shutdown is limited such that it can be repaired within a reasonable time (minor repairs with components stored on-site.
- Modifications required to meet Section III.G would not enhance fire protection safety above that provided by either existing or proposed alternatives.
- Modifications required to meet Section III.G would be detrimental to overall facility safety.

III

The licensee identified forty-nine specific fire areas which would require exemptions based on their reevaluation of Unit 2 fire areas and shared fire areas with Unit 1. Based on our review of the licensee's submittals as well as site visits by the Region 2 assigned fire protection engineer and the assigned NRR Project Manager, we issued a safety evaluation finding that the licensee's alternate fire protection configuration in thirty-three of the forty-nine fire areas where exemptions or modifications were requested represent an equivalent level of safety to that achieved by compliance with Section III.G of Appendix R, 10 CFR Part 50. The remaining sixteen exemptions requested will be subject to our further review pending submittal of additional justifications by the licensee.

IV

Accordingly, the Commission has determined pursuant to 10 CFR 50.12, that these technical exemptions are authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The Commission hereby approves the requested exemptions from Appendix R of 10 CFR Part 50 Section III.G as specifically identified in the Safety Evaluation dated November 19, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Local Public Document Room, located at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (50 FR 46847, November 13, 1985).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 19th day of November 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85–28308 Filed 11–26–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–410]

Niagara Mohawk Power Corp.; Receipt of Additional Antitrust Information

In the matter of Niagara Mohawk Power Corporation, Rochester Gas & Electric Corporation, Central Hudson Gas & Electric Corporation, New York State Electric & Gas Corporation, and Long Island Lighting Corporation.

Niagara Mohawk Power Corporation, on behalf of itself and the captioned

applicants, have submitted by letter dated April 11, 1985, additional antitrust information in conjunction with their application for an operating license for a boiling water nuclear reactor known as Nine Mile Point Nuclear Station, Unit 2, located on the southeast shore of Lake Ontario, Oswego County, New York. The data submitted contains antitrust information for review pursuant to NRC Regulatory Guide 9.3 necessary to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage. (These data represent an updated response from the applicants' original data submission that was published in the **Federal Register** on April 13, 1983—Vol. 48, No. 72.)

On completion of the staff's antitrust review, the Director of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Atomic Energy Act. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, DC, and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, resquests for reevaluation may be submitted for a period of 30 days after the date of the **Federal Register** notice. The results of any reevaluation that is requested will also be published in the **Federal Register** an copies sent to the Washington, DC and local public document rooms.

A copy of the general information portion of the application for an operating license and the antitrust information submitted is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the local public document room at the Penfield Library, State University College at Oswego, Oswego, New York 13126.

Any person who desires additional information regarding the matter covered by this notice or who wishes to have his views considered with respect to significant changes related to antitrust matters which have occurred in the applicants' activities since the construction permit antitrust review should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Site Analysis Branch, Office of Nuclear Reactor Regulation, on or before December 30, 1985.

Dated at Bethesda, Maryland, this 22nd day of November 1982.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 85-28310 Filed 11-26-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458]

River Bend Station, Unit No. 1, Gulf States Utilities and Cajun Electric Power Cooperative; Issuance of Facility Operating License

Notice is hereby given that the Nuclear Regulatory Commission (the Commission), has issued Facility Operating License No. NPF-47 to the Gulf States Utilities and Cajun Electric Power Cooperative (licensees), which authorizes operation of the River Bend Station Unit No. 1 (the facility) at reactor core power levels not in excess of 2894 megawatts thermal in accordance with provisions of the License, the Technical Specifications and the Environmental Protection Plan.

The River Bend Station, Unit No. 1, is a boiling water nuclear reactor located approximately 2 miles east of the Mississippi River in West Feliciana Parish, Louisiana, approximately 2.7 miles southeast of St. Francisville, Louisiana and approximately 18 miles northwest of the city limits of Baton Rouge, Louisiana.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on September 4, 1981 (46 FR 44539-44540).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details in respect to this action, see (1) Facility Operating License NPF-47 complete with Technical Specifications and the Environmental Protection Plan; (2) the interim report of the Advisory Committee on Reactor Safeguards, dated July 17, 1984; (3) the report of the ACRS dated September 16, 1985; (4) the Commission's Safety Evaluation Report, dated May 1984, Supplement No. 1 dated October 1984, Supplement No. 2 dated August 1985; Supplement No. 3 dated August 1985, and Supplement No. 4 dated September 1985; (5) the Final Safety Analysis Report and Amendments thereto; (6) the Environmental Report and supplements thereto; and (7) the Final Environmental Statement dated January 1985.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. A copy of Facility Operating License NPF-47 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements 1, 2, 3, and 4 (NUREG-0989) and the Final Environmental Statement (NUREG-1073) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, or may be ordered by calling (202) 275-2060 or (202) 275-2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. All orders should clearly identify the NRC publication number and the requestor's GPO deposit account, or VISA or Mastercard number and expiration date.

Dated at Bethesda, Maryland, this 20th day of November 1985

For the Nuclear Regulatory Commission.

Walter R. Butler,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc 85-28309, Filed 11-26-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-223]

University of Lowell; Renewal of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 9 to Facility Operating License No. R-125 for The University of Lowell (the licensee) which renews the license for operation of the training and research reactor located on the campus in Lowell, Massachusetts. The facility is a non-power reactor that has been operating at power levels not in excess of one megawatt (thermal). The renewed

Operating License No. R–125 will expire thirty years from its date of issuance.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the **Federal Register** on March 29, 1985 at 50 FR 12668. On April 29, 1985 a Petition to Intervene was filed. A hearing Board was set up and a prehearing conference scheduled. However, on July 11, 1985 before the prehearing conference was convened, the Petition to Intervene was withdrawn. A Memorandum terminating the proceeding was issued on July 19, 1985 by the Atomic Safety and Licensing Board.

The Commission has prepared a Safety Evaluation Report (NUREG–1139) for the renewal of Facility Operating License No. R–125 and has, based on that report, concluded that the facility can continue to be operated by the licensee without endangering the health and safety of the public.

The Commission also has prepared an Environmental Assessment for the renewal of Facility Operating License No. R–125 and has concluded that this action will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined not to prepare an Environmental Impact Statement for the proposed action. The Notice of Finding of No Significant Environmental Impact was published in the **Federal Register** on November 6, 1985 at 46227.

For further details with respect to this action, see: (1) The application for amendment dated February 14, 1985, as supplemented, (2) the Finding of No Significant Environmental Impact, (3) Amendment No. 9 to Operating License R–125, (4) the Commission's related Safety Evaluation Report (NUREG–1139), and (5) the Environmental Assessment dated October 4, 1985. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Copies of NUREG–1139 may be purchased by calling (202) 275–2060 or (202) 275–2171 or writing the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7982.

Dated at Bethesda, Maryland, this 21st day of November 1985.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 85–28311 Filed 11–26–85; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–22643; File No. SR-Amex-85–38]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc., Relating to Reduction of Listing Fees for Bonds and Debentures

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 November 13, 1985, the American Stock Exchange, Inc. 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 American Stock Exchange is proposing to reduce its listing fees for bonds and debentures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange has concluded that the present bond fee schedule adopted in 1981 is too high and tends to discourage listings of debt securities.

The Exchange is therefore proposing to change its bond listing fee schedule as follows:

Fee category	Current charges	Proposed charges
Principal amount to be listed (per million)	$150	$100
Minimum application fee	5,000	[1]
Maximum application fee	15,000	10,000
One-time charge	[2] 15,000	[2] 5,000

[1] No change.
[2] Not applicable to companies which already have a security listed on the Exchange.

To further encourage multiple bond listings the Exchange is proposing that bond listing fees be determined on the basis of the aggregate principal amount of all outstanding debt issues to be listed under a single application.

(2) Basis

The proposed rule change is consistent with section 6(b)(4) of the Exchange Act, in that it will provide for the equitable allocation of fees among issuers using its facilities, and is also consistent with Section 6(b)(5) of the Exchange Act, in that it will serve to remove an impediment to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition. Rather, by reducing fees the new rule will enhance the Exchange's ability to compete with other marketplaces for the listing of securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 18, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 21, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-28268 Filed 11-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22640; File No. SR-DTC-85-5]

Self-Regulatory Organizations; Proposed Rule Change by the Depository Trust Company Relating to Fees for Back-up for Direct Mail Service

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 November 12, 1985, The Depository Trust Company 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 Depository Trust Company ("DTC") is filing herewith a reduction in the fee for back-up for direct mail service from $1.75 to $1.35 per transfer mailed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections, (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The new fee represents a reduction for DTC's Back-Up direct-mail service from $1.75 to $1.35 per transfer mailed. When management estimated DTC's fully-allocated cost of providing this service, the estimate of the number of certificates which would be lost in the mail was obtained from a survey of several Participants which mail significant numbers of transfers to customers. DTC's actual experience is that losses have been far fewer than originally forecast. By reducing the original loss estimate to that experienced to date, a reduction in DTC's fee for this service to $1.35 can be accommodated.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will equitably allocate fees among DTC Participants.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have not been solicited and received on the proposed rule change since it involves a reduction in a fee.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 18, 1985.

For the Commission, by the Division of Market Regulation pursuant to the delegated authority.

Dated: November 20, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-28319 Filed 11-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22641; File No. SR-MSTC-85-6]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Company, Relating to Revised Procedures for the National Institutional Delivery System (NIDS)

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 November 15, 1985 the Midwest Securities Trust Company 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

Attached to the filing as Exhibit A is the MST System Administrative Bulletin (#B-85/4536) which describes revised procedures for the Midwest Securities Trust Company's National Institutional Delivery System (NIDS).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The bulletin attached to the filing codifies all existing procedures of, and incorporates all system enhancements made to, the Midwest Securities Trust Company's National Institutional Delivery System since January, 1985.

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 in that it provides for the prompt and accurate clearance and settlement of securities transactions by providing complete and current procedures to be followed by MSTC's Participants in utilizing NIDS.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street, NW., Washington D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 18, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 20, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-28320 Filed 11-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-226.42 SR-NASD-85-24]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.: Filing and Order Granting Accelerated Approval of Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on September 7, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] to permit the use of cash, cash equivalents, or one or more qualified equity securities, or a combination of the foregoing, as collateral for escrow receipts issued to cover short call positions in broad-based stock index options, in lieu of margin, for a pilot period.

In its filing, the NASD states that the proposal will establish uniformity between NASD rules and the rules of other self-regulatory organizations regarding the margin treatment of broad-based index options[3] and will facilitate transactions in such options. Among other things, the NASD has agreed to monitor the use of index option escrow receipts during the pilot period.[4]

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days from the date of publication of the submission in the **Federal Register**. 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. Reference should be made to File No. SR-NASD-85-24.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the

---

[1] 15 U.S.C. 78s(b)(1982).

[2] 17 CFR 240.19b-4 (1985).

[3] Currently, the American ("Amex"), New York ("NYSE"), Pacific ("PSE") and Philadelphia ("Phlx") Stock Exchanges and the Chicago Board Options Exchange ("CBOE") are participating in a one-year pilot program involving the use of escrow receipts to cover short call positions in broad-based index options that are collateralized by cash, cash equivalents or one or more securities. *See* Securities Exchange Act Release No. 22323 (August 13, 1984), 50 FR 33439 and File Nos. SR-Amex-84-33, SR-NYSE-84-35, SR-PSE-85-19, SR-Phlx-85-18 and SR-CBOE-84-28. The NASD's proposed rule change will allow it to participate in the previously approved one-year pilot program along with the other exchanges. *See* letter from Mary S. Head, Senior Attorney, Office of General Counsel, NASD to Sharon Lawson, Attorney, Division of Market Regulation, SEC, dated November 5, 1985 ("NASD Letter").

[4] The NASD has agreed to collect the same type of data that the other exchanges are collecting on the pilot and will monitor its members' use of the receipts. In this regard, the Commission understands that the CBOE will collect the required data on the pilot for all participants. CBOE also is compiling the results of the monitoring effort and will submit a report to the Commission at the conclusion of the pilot period. *See* NASD Letter, supra note 3, at 2.

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 Room 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the NASD.

For the same reasons as discussed in the original order approving the escrow receipt pilot program, the Commission believes that the proposed rules established by the NASD to participate in the pilot provide sufficient investor protection while facilitating transactions in broadbased index options.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered securities associations and, in particular, the requirements of section 15A and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the rule change is substantially similar to those submitted by the Amex, CBOE, NYSE, PSE and Phlx which were previously noticed, published for comment and approved by the Commission.[5] We also note that no member of the public submitted comments on the rule proposals of these other exchanges. Under the circumstances, any delay in permitting the NASD to participate in the pilot program involving the escrow receipts for short call broadbased index options positions would not be justified.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 20, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-28321, Filed 11-26-85; 8:45 am]

BILLING CODE 8010-01-M

[5] *See* note 3, *supra.*

[Release No. 34-22642SR-NASD-85-24]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on September 7, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] to permit the use of cash, cash equivalents, or one or more qualified equity securities, or a combination of the foregoing, as collateral for escrow receipts issued to cover short call positions in broad-based stock index options, in lieu of margin, for a pilot period.

In its filing the NASD states that the proposal will establish uniformity between NASD rules and the rules of other self-regulatory organizations regarding the margin treatment of broad-based index options[3] and will facilitate transactions in such options. Among other things, the NASD has agreed to monitor the use of index option escrow receipts during the pilot period.[4]

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days from the date of publication of the submission in the **Federal Register.** 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. Reference should be made to File No. SR-NASD-85-24.

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 Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the NASD.

For the same reasons as discussed in the original order approving the escrow receipt pilot program, the Commission believes that te proposed rules established by the NASD to participate in the pilot provide sufficient investor protection while facilitating transactions in broadbased index options.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered securities associations and, in particular, the requirements of section 15A and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the rule change is substantially similar to those submitted by the Amex, CBOE, NYSE, PSE and Phlx which were previously noticed, published for comment and approved by the Commission.[5] We also note that no member of the public submitted comments on the rule proposals of these other exchanges. Under the circumstances, any delay in permitting the NASD to participate in the pilot program involving the escrow receipts for short call broadbased index options positions would not be justified..

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[1] 15 U.S.C. 78s(b)(1982).

[2] 17 CFR 240.19b-4 (1985).

[3] Currently, the American ("Amex"), New York ("NYSE"), Pacific ("PSE") and Philadelphia ("Phlx") Stock Exchanges and the Chicago Board Options Exchange ("CBOE") are participating in a one-year pilot program involving the use of escrow receipts to cover short call positions in broad-based index options that are collateralized by cash, cash equivalents or one or more securities. *See* Securities Exchange Act Release No. 22323 (August 13, 1984), 50 FR 33439 and File Nos. SR-Amex-84-33, SR-NYSE-84-35, SR-PSE-85-19, SR-Phix-85-18 and SR-CBOE-84-28. The NASD's proposed rule change will allow it to participate in the previously approved one-year pilot program along with the other exchanges. *See* letter from Mary S. Head, Senior Attorney, Office of General Counsel NASD to Sharon Lawson, Attorney, Division of Market Regulation, SEC, dated November 5, 1985 ("NASD Letter").

[4] The NASD has agreed to collect the same type of data that the other exchanges are collecting on the pilot and will monitor its members' use of the receipts. In this regard, the Commission understands that the CBOE will collect the required data on the pilot for all participants. CBOE also is compiling the results of the monitoring effort and will submit a report to the commission at the conclusion of the pilot period. *See* NASD Letter, supra note 3, at 2.

[5] *See* note 3, *supra.*

Dated: November 20, 1985.
John Wheeler,
Secretary.
[FR Doc. 85-28322 Filed 11-26-85; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-22652; File Nos. SR-PCC-85-9 and SR-PSDTC-85-10]

Self-Regulatory Organizations; Filing of Proposed Rule Changes of Pacific Clearing Corp. and Pacific Securities Depository Trust Co.

On October 18, 1985, Pacific Clearing Corporation ("PCC") and Pacific Securities Depository Trust Company ("PSDTC") filed proposed rule changes under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission is publishing this notice to solicit comments on the proposals.

The proposals would amend PCC's and PSDTC's By-Laws to reduce the number of directors on PCC's and PSDTC's Boards of Directors ("Boards"). Specifically, the proposals would reduce the number of directors on each Board to between ten and thirteen, down from between twelve and fifteen. The proposals provide that the initial number of directors shall be eleven, but may be changed from time to time by vote of the shareholders.[1] Currently, the exact number of directors is set at thirteen and may be changed only by the Board of Directors of PCC or PSDTC.[2]

PCC and PSDTC state in their filings that their Nominating Committees[3] nominate qualified individuals[4] to serve on PCC's or PSDTC's Board. In addition, any ten members of PCC or PSDTC can nominate qualified director candidates. The PSE, as sole shareholder of PCC and PSDTC, elects PCC and PSDTC directors from the slate of nominees. PCC and PSDTC note in their filings that their Nominating Committees and the PSE must, pursuant to their By-Laws assure fair representation of PCC and PSDTC members in the director nomination and election process.

PCC and PSDTC state in their filings that they are proposing to reduce their authorized number of directors because they have had difficulty in finding enough qualified individuals willing to serve on the PCC and PSDTC Boards. PCC and PSDTC also state that deleting their Boards' authority to set the exact number of directors and placing that authority with their shareholder will allow a change in the number of directors, within the proposed range of ten to thirteen directors, without the need for By-Laws amendments.[5] Finally, PCC and PSDTC state that the proposals are consistent with the Act because they will continue to assure fair representation of PCC and PSDTC members in the administration of their affairs. The Commission notes in addition that section 17A of the Act requires that the rules of a clearing agency assure fair representation of its participants in the selection of its directors and administration of its affairs.[6]

You can submit written comment within 21 days after notice is published in the **Federal Register**. Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submissions, with accompanying exhibits, and of all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filings also will be available at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the proposals, file numbers and should be submitted by December 18, 1985.

For the Commission, by the Division of Market Regulation pursuant to delegated authority

[1] The Pacific Stock Exchange ("PSE") is the sole shareholder of both PCC and PSDTC.

[2] PCC's and PSDTC's Boards, however, currently are composed of eleven directors with the same eleven individuals on each Board.

[3] The Nominating Committees consist of members of the Executive Committee of the Board of Governors of PSE.

[4] To be eligible, a PCC or PSDTC director candidate must be an officer, director, or general partner of PCC or PSDTC, or of a member organization of PSE, or be a governor of PSE.

[5] If the proposals are approved, the Commission would expect any change in the number of PCC or PSDTC directors, whether through By-Law amendment or otherwise, to be filed with the Commission under section 19(b) of the Act.

[6] The Commission reviews clearing agency compliance with the fair representation requirement on a case-by-case basis. Several clearing agencies, unlike PCC and PSDTC, have satisfied that requirement by requiring, among other things, participant representation on their nominating committees or reserving a number of director slots for participants. See, e.g., Rules of Midwest Clearing Corporation, Options Clearing Corporation, and Philadelphia Depository Trust Company. Although PCC and PSDTC participants are not represented as such on the PCC or PSDTC Nominating Committee, many PSE members also are PCC and PSDTC members and thus the PCC and PSDTC Nominating Committees should include participant representation. PCC's and PSDTC's Boards consist currently of six PSE members and five non-PSE members.

Dated: November 21, 1985.
John Wheeler,
Secretary.
[FR Doc. 85-28323 Filed 11-26-85; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-22649; File Nos. SR-PCC-85-07 and SR-PSDTC-85-09]

Self-Regulatory Organizations; Pacific Clearing Corp. and Pacific Securities Depository Trust Co.; Filing and Immediate Effectiveness of Proposed Changes

Pacific Clearing Corporation ("PCC") and Pacific Securities Depository Trust Company ("PSDTC") (together, "PCC/PSDTC") on October 18, 1985, submitted proposed rule changes to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission is publishing this notice to solicit comments on the rule changes.

PCC/PSDTC's proposed rule changes revise their fee schedules regarding charges for certificate transfer services. PSDTC also is eliminating from its fee schedule the separate category of "OTC Agent" charges and incorporating all transfer agent fee charges into the "Transfer" position of the fee schedule. The proposed rule changes impose varying transfer fees depending on the per certificate fees charged by transfer agents. Where transfer agent fees are $3.50 or less per certificate, PCC/PSDTC would impose a fee of $5.00; where transfer agent fees are between $3.51 and $10.00 per certificate, PCC/PSDTC would impose a fee of $10.00; and where transfer agent fees are more than $10.00, PCC/PSDTC would pass through those fees, at cost, to the requesting participant. PCC and PSDTC state in their filings that the proposals are consistent with section 17A(b)-(3)(D) of the Act because they provide for the equitable allocation of reasonable dues, fees and other charges.

The rule changes have become effective, pursuant to section 19(b)(3)(A) of the Act. The Commission may summarily abrogate the rule changes at any time within 60 days of their filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after this Notice is published in the **Federal Register**. Please refer to File Nos. SR-PCC-85-07 and SR-PSDTC-85-09, and file six copies of your comments with the Secretary of the Commission, 450 5th Street, NW.,

Washington, DC 20549. Material on the rule changes, other than material that may be withheld from the public under 5 U.S.C. 552, is available for inspection at the Commission's Public Reference Room and at the principal offices of DTC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: November 21, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-28324 Filed 11-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22653; File No. SR-PSE-85-24]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Pacific Stock Exchange, Inc. ("PSE") submitted on September 6, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to establish a simplified procedure ("Procedure") for the disposition of minor rule violations, pursuant to Article XI, section 2 of the Exchange Constitution.[1]

Under the Procedure, minor rule violations include the following:[2] (1) Floor broker failed to properly record the time of receipt, change in limit or increase in size of an order (Rule VI, section 42); (2) floor broker failed to use due diligence in the handling or execution of an order (Rule VI, section 62(a), Options Floor Procedure Advice ("OFPA") A-8); (3) floor broker improperly executed a cross transaction (Rule VI, section 63, OFPA A-6); (4) member failed to give up the name of the clearing member by public outcry when requesting a quote and size of the market or after effecting a trade (Rule VI, section 40, OFPA D-9); (5) market maker or floor broker violated procedures concerning the market maker use of a floor broker to effect transactions (Rule VI, sections 62(a), 64, OFPA B-6, OFPA A-9) (6) market maker failed to respond to demands for bids and/or offers (Rule VI, section 79); (7) market maker failed to respond to a call for market makers by an order book official (Rule VI, section 67, OFPA B-7); (8) improper communication on the floor by the use of hand signals or other means or devices (Rule VI, sections 47, 621(.02), OFPA F-5); (9) improper vocalization of a trade by a member (Rule VI, sections 47, 55(.01)), OFPA G-10); (10) member failed to time-stamp an execution in which he participated as a seller (Rule VI, section 55(.01); (11) failure to meet the market maker obligation to maintain 50% of contracted trading volume in the option classes primarily assigned (Rule VI, section 79(.04); OFPA B-9); (12) failure to meet market maker obligations to execute at least 40% of his/her total transactions in person on the trading floor (Rule VI, section 79, OFPA B-5); (13) specialist has not disseminated a quotation in assigned local issues prior to 7:30 a.m. Pacific Time (Equity Floor Procedure Advice ("EFPA") 2-B).

If a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization has been cited as violating one of the rules defined above as "minor," and has agreed to an appropriate sanction not exceeding $2,500[3] and waived any rights to contest the charge, the Exchange will then categorize the violation as a "minor rule violation" and treat it accordingly with respect to the filing requirements of Rule 19d-1 under the Act.[4]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22539, October 17, 1985) and by publication in the **Federal Register** (50 FR 43053, October 23, 1985). No comments on the proposed rule filing were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 21, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-28325 Filed 11-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22654; File No. 4-285]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Plan Relating to the Quarterly Reporting of Minor Disciplinary Rule Violations

The Pacific Stock Exchange, Inc. ("PSE") submitted on September 6, 1985, copies of a proposed plan pursuant to Rule 19d-1(c)(2) under the Securities Exchange Act of 1934 ("Act").[1] The

---

[1] In Securities Exchange Act Release No. 21013 (June 1, 1984) 49 FR 23828, the Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. Under the amendments any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to a plan filed with the Commission shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person at the SRO with respect to the matter has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

The Commission has approved minor disciplinary rule plans by the American Stock Exchange, Inc. (Securities Exchange Act Release No. 21918 (April 3, 1985), 50 FR 14068 (File No. 4-260) and the New York Stock Exchange, Inc. (Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (File No. 4-284).

[2] *See* letter from John Katovich, Compliance Department, PSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated October 7, 1985, amending the proposed rule change.

[3] The fines applicable to PSE Rule VI violations (except for Rule VI, sections 79, 55(.01), and 79(.04)) are $50 for the first offense, $100 for the second offense, and $250 for the third offense. Other applicable sanctions are as follows: PSE Rule VI, section 79 violations: $250 per offense; PSE Rule VI, section 55(.01): (1) $25 First offense, (2) $50, second offense, (3) $100, third offense; PSE Rule VI, section 79(.04): (1) Letter of caution, letter of awareness or letter of probation, first offense, (2) letter of probation and possibility of fine according to set formula, second offense, (3) letter of restriction prohibiting opening transactions outside primary assignment for a stated period of time and fine based on set formula, third offense (4) letter of super restriction, prohibiting any opening transaction for stated period and fine ($1,500 minimum) based on set formula, fourth offense; PSE Rule VI, section 79 (OFPA B-5): (1) letter of caution, first offense, (2) $250 minimum fine, second offense, (3) $500 minimum fine, third offense, (4) $1000 minimum fine, fourth offense; and EFPA 2-B: $25, sixth and subsequent offenses.

[4] The PSE already has submitted its plan to report certain rule violations and related disciplinary actions on an abbreviated and periodic basis. *See* letter from John Katovich, Compliance Department, PSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated September 5, 1985. *See also* letter from John Katovich, to Michael Cavalier, dated October 7, 1985, amending the above-referenced plan and rule filing.

[1] In Securities Exchange Act Release No. 21013 (June 1, 1984) 49 FR 23828, the Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. Under the amendments any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to a plan filed with the

Continued

proposed plan specifies those uncontested minor rule violations with sanctions not exceeding $2,500 which would not be subject to the provisions of Rule 19d–1(c)(1) under the Act requiring that a self-regulatory organization promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[2] As explained more fully in its proposed rule change,[3] in accordance with paragraph (c)(2) of Rule 19d–1, the PSE proposed to designate certain specified rule violations as minor rule violations and establish a simplified procedure ("Procedure") for the disposition of these violations, pursuant to Article XI, section 2 of the Exchange Constitution. The PSE requested that it be relieved of the current reporting requirement regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. The PSE proposed to include the following violations under its proposed plan: [4] (1) Floor broker failed to properly record the time of receipt, change in limit or increase in size of an order (Rule VI, section 42); (2) floor broker failed to use due diligence in the handling or execution of an order (Rule VI, section 62(a), Options Floor Procedure Advice ("OFPA") A–8; (3) floor broker improperly executed a cross transaction (Rule VI, section 63, OFPA A–6); (4) member failed to give up the name of the clearing member by public outcry when requesting a quote and size of the market or after effecting a trade (Rule VI, section 40, OFPA D–9); (5) market maker or floor broker violated procedures concerning the market maker use of a floor broker to effect transactions (Rule VI, sections 62(a), 64, OFPA B–6, OFPA A–9) (6) market maker failed to respond to demands for bids and/or offers (Rule VI, section 79); (7) market maker failed to respond to a call for market makers by an order book official (Rule VI, section 67, OFPA B–7); (8) improper communication on the floor by the use of hand signals or other means or devices (Rule VI, sections 47, 62[.02], OFPA F–5); (9) improper vocalization of a trade by a member (Rule VI, sections 46, 55[.01], OFPA G–10); (10) member failed to time-stamp an execution in which he participated as a seller (Rule VI, section 55[.01]); (11) failure to meet the market maker obligation to maintain 50% of contract trading volume in the option classes primarily assigned (Rule VI, section 79[.04], OFPA B–8); (12) failure to meet market maker obligation to execute at least 40% of his/her total transactions in person on the trading floor (Rule VI, section 79, OFPA B–5); and (13) specialist has not disseminated a quotation in assigned local issues prior to 7:30 a.m. Pacific Time (Equity Floor Procedure Advice ("EFPA") 2–B).

The sanctions applicable to these minor rule violations are outlined in *Exhibit C* of the PSE's filing and in the PSE letter, dated October 1, 1985, amending the filing.[5] The PSE has noted, however, that in issuing or imposing a citation, there exists discretion at all levels of the process to determine that a particular incident merits more formal disciplinary action than merely a citation. The Options Floor Trading Committee has the ability to institute formal disciplinary action against a violator if the violation is considered particularly onerous or if the violator has been found to have repeated the violation beyond the stated fine schedule.

By properly amending its Procedure and plan,[6] the PSE may periodically include additional minor disciplinary rule violations within its proposed minor rule violation plan. From time to time the PSE shall prepare and announce to its members and member organizations a listing of the Exchange rules as to which the Exchange may impose sanctions as provided in this Procedure. Such listing also shall indicate the minimum and maximum dollar amounts that may be imposed by the Exchange with respect to any such violation.

According to the PSE, the quarterly report of actions taken on minor rule violations, which under the PSE's procedure would be submitted to the SEC, would list for each violation the PSE's internal file number for the case, the SEC's file number, the name(s) of the individual and/or member organization, the nature of the violation, the specific rule provision violated, the date of the violation, the sanction imposed on each individual and/or member organization, an indication of whether the fine is joint and several, the number of times the rule violation has occurred, and the date of disposition.

Notice of the proposed plan together with the terms of substance of the plan was given by the issuance of a Commission release (Securities Exchange Act Release No. 22537, October 17, 1985) and by publication in the Federal Register (50 FR 43052, October 23, 1985). No comments were received with respect to the proposed plan.

The Commission finds that the proposed plan is consistent with the requirements of section 6 and section 19 of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19d–1(c)(2) under the Act, that the proposed plan be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Commission shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person at the SRO with respect to the matter has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

The Commission has approved minor disciplinary rule plans by the American Stock Exchange, Inc. (Securities Exchange Act Release No. 21918 (April 3, 1985), 50 FR 14063 (File No. 4–260) and the New York Stock Exchange, Inc. (Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (File No. 4–284)).

[2] In a letter dated September 5, 1985, the PSE submitted its plan to report certain rule violations and related disciplinary actions on an abbreviated and periodic basis. *See* letter from John Katovich, Compliance Department, PSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated September 5, 1985. *See also* letter from John Katovich to Michael Cavalier, dated October 2, 1985, amending the above-referenced plan and rule filing.

[3] *See* Securities Exchange Act Release No. 22653 (November 21, 1985 (File No. SR–PSE–85–24)).

[4] As illustrated in *Exhibits D* and *E* of the PSE's filing, the PSE shall serve the person against whom a fine is imposed a written notice setting forth the rule or rules alleged to have been violated, the act or omission constituting each such violation, the sanction imposed for each violation and the date within 10 business days following receipt of the notice of sanction by which such determination becomes final and such fine due and payable or such determination must be contested.

[5] The fines appliable to PSE Rule VI violations (except for Rule VI, sections 79, 55[.01], and 79[.04]) are $50 for the first offense, $100 for the second offense, and $250 for the third offense. Other applicable sanctions are as follows: PSE Rule VI, section 79 violations: $250 per offense; PSE Rule VI, section 55[.01]: (1) $25, First offense, (2) $50, second offense, (3) $100, third offense; PSE Rule VI, section 79[.04]: (1) Letter of caution, letter of awareness or letter of probation, first offense, (2) letter of probation and possibility of fine according to set formula, second offense, (3) letter of restriction prohibiting opening transactions outside primary assignment for a stated period of time and fine based on set formula, third offense (4) letter of super restriction, prohibiting any opening transaction for stated period and fine ($1,500 minimum) based on set formula, fourth offense; PSE Rule VI, section 79 (OFPA B–5): (1) Letter of caution, first offense, (2) $250 minimum fine, second offense, (3) $500 minimum fine, third offense, (4) $1,000 minimum fine, fourth offense; and EFPA 2–B: $25, sixth and subsequent offenses.

[6] To amend the Minor Rule Violation List the PSE would first amend its Procedure and then send a letter to the Commission requesting approval to amend the original plan.

Dated: November 21, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-28326 Filed 11-27-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22656; File No. SR-Phlx-85-31]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Relating to ROT's Quarterly Requirement to Trade 1,000 Contracts in Person

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice hereby is given that on November 12, 1985, the Philadelphia Stock Exchange, Inc. 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 Philadelphia Stock Exchange, Inc. ("Exchange" or "PHLX") proposes to amend Commentary .14 of Rule 1014, and Floor Procedure Advice B-3, as follows:

[Brackets] indicated material proposed to be deleted; underlining indicates material to be added.

Rule 1014, Commentary .14

Within each quarter an ROT [shall trade as principal] *must execute in person, and not through the use of orders,* a specified number of contracts, such number to be determined from time to time by the Committee on Options.

Floor Procedure Advice B-3

A Registered Options Trade ("ROT") is required to trade [as principal] *in person and not through the use of orders,* at least 1,000 contracts on the Exchange in each quarter. Also, at least 50% of a Registered Options Trader's trading activity in each quarter must be in assigned options. No application by a Registered Options Trader to change options assignments will be approved unless such Registered Options Trader is in compliance with the above two requirements at the time the application for change is made.

Fine Schedule

1. Quarterly requirement to trade 1,000 contracts in person—

1st Occurrence: warning
2nd Occurrence: $500.00
3rd and thereafter sanction is discretionary with Business Conduct Committee

2. Quarterly requirement to trade 50% in assigned options—

1st Occurence: warning
2nd Occurence: $200.00
3rd and thereafter: sanction is discretionary with Business Conduct Committee

II. Self-Regulatory Organization's States of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comment it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to require that a registered options trader ("rot") execute a minimum of 1,000 contracts per quarter in person. When added to the current requirement that a rot do at least 50% of his trading activity in each quarter in assigned options, the result should be an increase in rot presence on the trading floor to respond to public orders in their appointed classes; and consequently, the price and size of markets and overall liquidity on the PHLX floor should improve.

The proposed rule change, which will serve to improve the mechanism of a free and open market, to maintain a fair and orderly market, and generally to promote the protection of investors and the public interest, is consistent with section 6(b)(5) of the Securities and Exchange Act of 1934 ("Act").

B. Self-Regulatory Organizations Statement on Burden on Competition

The Exchange believes that the proposed rule change imposes no burden on competition which is not necessary or appropriate in furtherance of the Act. [See Release No. 21008/June 1, 1984.]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received from the Exchange membership.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 18, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 21, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-28327 Filed 11-26-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/900]

Secretary of State's Advisory Committee on Private International Law, Study Group on the Liability of Operators of Transport Terminals; Meeting

There will be a meeting of the subject Study Group at 10:30 a.m. on Friday, December 13, 1985, in Room 6320 of the Department of State. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the Chairman.

The meeting agenda will focus on the work of the United Nations Commission on International Trade Law (UNCITRAL) on uniform liability rules for international transport terminal operators and the United States position with respect to such rules. The UNCITRAL working group tasked with this project first met in December 1984 and will next meet on January 6–17, 1986 in New York. The study group meeting will receive a report of the U.S. delegation to the first UNCITRAL working group meeting and focus on questions relating to the form of the inform rules, i.e., a new international convention or model legislation or a legal guide for use in drafting contractural provisions; scope of the uniform rules; documentation; liability and the right of security. The Study Group will advise the Department of State, and the experts who will represent the United States at the 1986 and future UNCITRAL working group meetings, on the interests of the U.S. business and legal sectors that could be affected by the development of UNCITRAL uniform rules.

Entry to the Department of State building is controlled and members of the general public should use the "C" Street ("diplomatic") entrance. As entry will be facilitated by advance arrangements, members of the general public planning to attend should, prior to November 22, notify Mrs. Rochelle Mendoza, Office of the Assistant Legal Adviser for Private International Law, Department of State, Washington, D.C., 20520 (telephone: (202) 653–9853) of their name, affiliation, address and telephone number.

November 13, 1985.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice-Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 85–28237 Filed 11–26–85; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. S–782]

Lykes Bros. Steamship Co., Inc. and Totem Resources Corp.; Notice of Application for Written Permission To Permit Prospective Affiliation

By letter of counsel dated November 12, 1985, Lykes Bros. Steamship Co., Inc. (Lykes) and Totem Resources Corporation (TRC) requested permission pursuant to section 805(a) of the Act. Interocean Steamship Corp. (Interocean), the parent company of Lykes, and TRC, propose to enter into the following transaction, subject to obtaining permission pursuant to section 805(a) of the Act and to other conditions not material to the subject application.

A new parent corporation will be formed which will own 100 percent of the stock of TRC. This new parent will form a new wholly owned subsidiary which will acquire a controlling interest in Interocean. The portion of the equity interest in Interocean currently owned by officers of Lykes will remain so owned. The current management will continue to operate Lykes. Lykes will continue to own and operate vessels in the foreign trade pursuant to Operating-differential Subsidy Agreement, Contract No. MA/MSB–451, which will continue to be in full force and effect. TRC and its subsidiaries will continue to own and operate vessels in the domestic intercoastal or coastwise trade. TRC is the parent company of Totem Ocean Trailer Express Co. (TOTE), 763 Leasing Company (673), which owns the SS GREAT LAND, and 675 Leasing Company (675), which owns the SS WESTWARD VENTURE. TOTE is the bareboat charterer of the SS GREAT LAND and SS WESTWARD VENTURE and operates these vessels in the liner trade between the Pacific Northwest and Alaska. the applicants note that TRC, TOTE, 673 and 675 are all citizens of the United States pursuant to section 2 of the Shipping Act, 1916, as amended.

Lykes and TRC hereby request that written permission be granted pursuant to section 805(a) of the Act: (a) To carry out the transactions described above; and (b) to continue to make payments to Lykes, pursuant to MA/MSB–451, notwithstanding that pursuant to the transactions described above, a holding company, subsidiary, affiliate, or associate of Lykes, or an officer, director, agent, or executive thereof, directly or indirectly, may own, operate, or charter a vessel or vessels engaged in the domestic intercoastal or coastwise service, or own any pecuniary interest, directly or indirectly, in any person or concern that owns, charters, or operates any vessel or vessels in the domestic intercoastal or coastwise service.

The applicants further state that as long as Lykes is a party to an operating-differential subsidy (ODS) contract, ODS funds will not be diverted or passed on to the domestic operations of TRC or its subsidiaries, nor will ODS funds benefit vessels to be operated in the domestic service. The parties involved in this transaction request expeditious consideration of this application since they intend ot complete the transaction by December 31, 1985.

Any person, firm or corporation having any interest (within the meaning of section 805(a)) in this request and desiring to submit comments concerning the request must by 5:00 PM on Dec. 11, 1985 file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, DC, 20590, together with petition for leave to intervene. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petition for leave to intervene is received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations: (a) Could result in unfair competition to any person, firm, or corporation operating exclusveily in the coastwise or interncoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-differential Subsidies)

By Order of the Maritime Administrator.

Dated: November 22, 1985.

Georgia P. Stamas,

Secretary.

[FR Doc. 85–28453 Filed 11–26–85; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. IP85-16; Notice 1]

Olin Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

Olin Corporation, of Stamford, Connecticut, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act [15 U.S.C. 1381 *et seq.*] for an apparent noncompliance with 49 CFR 571.116, Motor Vehicle Safety Standard No. 116, *Motor Vehicle Brake Fluids*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of Recipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S5.1.3 of Federal Motor Vehicle Safety Standard 116, requires when brake fluid is tested according to S6.3, the kinematic viscosities in centistrokes (cSt.) at stated temperatures shall be neither less than 1.5 cSt. at 100 °C (212 °F.) nor more than the following maximum value for the grade indicated:

(a) DOT 3: 1,500 cSt. at minus 40 °C. (minus 40 °F.)

(b) DOT 4: 1,800 cSt. at minus 40 °C. (minus 40 °F.)

(c) DOT 5: 900 cSt. at minus 40 °C. (minus 40 °F.)

Petitioner states that on or about August 11 and 12, 1984, Olin Corporation blended one lot of HDCP-550 Brake Fluid (Lot No. OH—425). The lot was shipped in part to Gold Eagle Company (1 shipment), Standard Oil (2 shipments) and to Scholle Company (1 shipment) between September 10 and October 12, 1984. These four shipments comprised the entire lot.

Prior to shipment, petitioner conducted the required test for kinematic viscosity. The brake fluid in question is classified as a grade DOT-3. On December 14, 1984, petitioner discovered a typographical error in its HDCP-550 Brake Fluid Produt Specification dated September 8, 1982. Standard Number 116, S5.1.3(a) establishes a maximum value of 1,500 cSt. at minus 40 °C for the viscosity of DOT-3 brake fluid. Petitioner's HDCP-550 Brake Fluid Product Specification listed the minus 40 °C viscosity specification as 1,200 cSt. minimum at minus 40 °C. Petitioner's specification should have read 1,200-1,450 cSt. at minus 40 °C.

After discovering the typographical error, Olin reviewed its 1983-1984 production records for HDCP-550 Brake Fluid. One lot of material manufactured during this period exceeded the DOT-3 specification for viscosity—Lot No. OH-425—blended on August 11 and 12, 1984. The purchasers of Lot No. OH-425 were notified of the technical noncompliance, and were informed that in Olin Corporation's opinion the nonconformity presents no safety hazard and therefore no recall is warranted.

The retained test samples rechecked by Olin are as follows:

September 10 shipment to Gold Eagle: 1,546 cSt. at minus 40 °C 109,000 pounds/12,637 gallons

October 9 shipment to Standard Oil: 1,547 cSt. at minus 40 °C 43,320 pounds/4,935 gallons

October 10 shipment to Standard Oil: 1,552 cSt. at minus 40 °C 20,860 pounds/2,376 gallons

October 12 shipment to Scholle: 1,547 cSt. at minus 40 °C 2,700 pounds / 307 gallons.

Olin states the typographical error in their HDCP-550 product specification has been corrected and the product specification has been reissued, and the current lot of Olin Corporation's HDCP-550 fluid meets Federal Motor Vehicle Standard No. 116. Olin Corporation requests they be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, since any noncompliance with Standard No. 116, in fact, is inconsequential as it relates to motor vehicle safety.

As evidence, Olin states that Standard 116, S5.1.3(b) establishes 1,800 dSt. at minus 40 °C as the maximum viscosity level for DOT-4 brake fluid which is 200 cSt. higher than the viscosity levels of Lot OH-425. Further, Olin argues that Standard 116 requires that DOT-3 and DOT-4 brake fluids be fully compatible with each other. The mixing of DOT-3 and DOT-4 in motor vehicles could result in minus 40 °C viscosities in the 1,500 to 1,800 cSt. range.

Interested persons are invited to submit written data, views and arguments on the petition of Olin Corporation described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The applicaton and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

The engineer and attorney primarily resonsible for this notice are Vernon Bloom and Talor Vinson, respectively.

Comment closing date: December 27, 1986.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 [15 U.S.C. 1417]; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: November 21, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-28246 Filed 11-26-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 33-85]

Treasury Notes, Series AC-1987

Washington, November 21, 1985.

The Secretary announced on November 20, 1985, that the interest rate on the notes designated Series AC-1987, described in Department Circular—Public Debt Series—No. 33-85 dated November 14, 1985, will be 8½ percent. Interest on the notes will be payable at the rate of 8½ percent per annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-28247 Filed 11-26-85; 8:45 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of

the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: November 21, 1985.

Everett Alvarez, Jr.

Deputy Administrator.

Extension

1. Department of Veterans Benefits
2. Veteran's Application for Increased Compensation Based on Unemployability
3. VA Form 21–8940
4. On occasion
5. Individuals or households
6. 18,000 reponses
7. 13,500 hours
8. Not applicable

[FR Doc. 85–28253 Filed 11–26–85; 8:45 am]

BILLING CODE 8320–01–M

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Redution Act (44 U.S.C. Chapter 35). This document contains revisions and lists the following information: (1) The department of staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Deck Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collections should be directed to the OMB Deck Officer within 60 days of this notice.

Dated: November 22, 1985.

Everett Alvarez, Jr.,

Deputy Administrator.

Revisions

1. Department of Veterans Benefits
2. Application for Benefits under the Provisions of Section 156, Public Law 97–377
3. VA Form 21–8924
4. On occasion
5. Individuals or households
6. 12,000 responses
7. 4,000 hours
8. Not applicable

* * * * *

1. Department of Veterans Benefits
2. Federal Fiduciary's Account
3. VA Form 27–4706b
4. On occasion, Annually, Biennially, Triennially
5. Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, and Small businesses or organizations
6. 7,000 responses
7. 3,500 hours
8. Not Applicable

* * * * *

1. Department of Veterans Benefits
2. Fiduciary Agreement
3. VA Form 27–4703
4. On occasion
5. Individuals or households, State or local governments, Federal agencies or employees, and Non-profit Institutions
6. 23,500 responses
7. 1,958 hours
8. Not applicable

[FR Doc. 85–28275 Filed 11–26–85; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 229
Wednesday, November 27, 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
Federal Deposit Insurance Corporation	1
Federal Reserve System	2
International Trade Commission	3
National Mediation Board	4
Pacific Northwest Electric Power and Conservation Planning Council	5-7

1

FEDERAL DEPOSIT INSURANCE CORPORATION.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:10 p.m. on Thursday, November 21, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Dill State Bank, Dill City, Oklahoma, which was closed by the Bank Commissioner for the State of Oklahoma on Thursday, November 21, 1985; (2) accept the bid for the transaction submitted by Home State Bank, Hobart, Oklahoma, an insured State nonmember bank; (3) approve the application of Home State Bank, Hobart, Oklahoma, for consent to purchase certain assets of and assume the liability to pay deposits made in The Dill State Bank, Dill City, Oklahoma, and for consent to establish the sole office of The Dill State Bank as a branch of Home State Bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(B) adopt a resolution making funds available for the payment of insured deposits made in The Farmers and Merchants State Bank of Rush County, La Crosse, Kansas, which was closed by the State Bank Commissioner for the State of Kansas on Thursday, November 21, 1985; and

(C)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Decatur County National Bank of Oberlin, Oberlin, Kansas, which was closed by the Acting Comptroller of the Currency on Thursday, November 21, 1985; (2) accept the bid for the transaction submitted by The Bank of Oberlin, Oberlin, Kansas, a newly-chartered State nonmember bank; (3) approve the applications of The Bank of Oberlin, Oberlin, Kansas, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in Decatur County National Bank of Oberlin, Oberlin, Kansas; and (4) provide such financial assistance, pursuant ot section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

The meeting was recessed at 5:20 p.m., and at 6:43 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors:

(1) Received bids of the purchase of certain assets of and the assumption of the liability to pay deposits made in The Clarksdale Bank of Clarksdale, Clarksdale, Missouri, which was closed by the Commissioner of Finance for the State of Missouri on Thursday, November 21, 1985; (2) accepted the bid for the transaction submitted by United Missouri Bank of Clarksdale, Clarksdale, Missouri, a newly-chartered State nonmember bank subsidiary of United Missouri Bancshares, Inc.; (3) approved (a) the applications of United Missouri Bank of Clarksdale, Clarksdale, Missouri, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in The Clarksdale Bank of Clarksdale, Clarksdale, Missouri, (b) the application of United Missouri Bank of St. Joseph, St. Joseph, Missouri, for consent to merge, under its charter and title, with United Missouri Bank of Clarksdale, Clarksdale, Missouri, and for consent to establish the sole office of United Missouri Bank of Clarksdale as a branch of United Missouri Bank of St. Joseph; and (4) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: November 22, 1985.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 85-28416 Filed 11-25-85; 12:39 pm]

BILLING CODE 6714-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday December 2, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Sreet entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-28337 Filed 11-25-85; 11:09 am]

BILLING CODE 6210-01-M

3

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, December 3, 1985 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
   (a) Certain vehicles with combination steering, braking and propulsion means (Docket Number 1254).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–28415 Filed 11–25–85; 12:38 pm]

BILLING CODE 7020–02–M

4

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 P.M., Wednesday, December 4, 1985.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of November, 1985.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Director, Tel: (202) 523–5920.

DATE OF NOTICE: November 19, 1985.

Mr. Rowland K. Quinn, Jr.,

Executive Director, National Mediation Board.

[FR Doc. 85–28373 Filed 11–27–85; 11:40 am]

BILLING CODE 7550–01–M

5

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL (Northwest Power Planning Council)

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 47895, November 20, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: November 25–26, 1985, 9:00 a.m.

CHANGES IN THE MEETING: At its meeting held November 20–21, 1985, the Council announced the cancellation of the meeting planned to be held on November 25–26, 1985.

Edward Sheets,

Executive Director.

[FR Doc. 85–28417 Filed 11–25–85; 12:40 pm]

BILLING CODE 0000–00–M

6

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL (Northwest Power Planning Council)

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open.

TIME AND DATE: December 4–5, 1985, 9:00 a.m.

PLACE: Council Offices, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

1. Council Deliberation on Model Conservation Standards Amendments
2. Council Deliberation on Draft Power Plan—
   a. Non-farm strategies.
   b. Resource portfolio.
   c. Resource portfolio uncertainties.
   d. Cost-effectiveness limit.
   e. Resource option schedule.
   f. Action plan.
   g. Any other issues not resolved at prior meetings.
3. Council Business.
4. Public Comment. The record on the MCS closed on October 23, 1985, and the record on the draft plan closed October 25, 1985; therefore, no public comment can be taken on these subjects at this meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Ruth Curtis (Power Plan issues only) or Ms. Bess Atkins (all other issues) at (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–28418 Filed 11–25–85; 12:41 pm]

BILLING CODE 0000–00–M

7

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL (Northwest Power Planning Council)

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open.

TIME AND DATE: December 11–12, 1985, 9:00 a.m.

PLACE: Council Offices, 850 SW. Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

1. Council Deliberation on Model Conservation Standards Amendments
2. Council Deliberation on Draft Power Plan—
   a. Any issues not resolved at prior meetings.
3. Council Decision to Enter Rulemaking on Amendments to the Columbia River Basin Fish and Wildlife Program Regarding Spill Requirements for Hydroelectric Dams.
4. Council Business.
5. Public Comment. The record on the MCS closed on October 23, 1985, and the record on the draft plan closed October 25, 1985; therefore, no public comment can be taken on these subjects at this meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Ruth Curtis (Power Plan issues only) or Ms. Bess Atkins (all other issues) at (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–28419, Filed 11–25–85; 12:42 pm]

BILLING CODE 0000–00–M

federal register

Wednesday
November 27, 1985

Part II

Environmental Protection Agency

40 CFR Part 261

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Rule and Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL-2921-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusions and Final Vertical and Horizontal Spread Model (VHS)

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting final exclusions for solid wastes generated at six particular generating facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 as well as denying an exclusion to a petitioner for one of his waste streams. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific basis" from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous wastes under 40 CFR Part 261. In addition, this notice addresses comments received by the Agency on its general approach in evaluating delisting petitions.

EFFECTIVE DATE: November 27, 1985, except for the denial of part of Monroe Auto Equipment's petition, which is effective on May 27, 1986.

ADDRESSES: The public docket for these final exclusions is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424-9346, or (202) 382-3000. For technical information, contact Mr. Myles Morse, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION: On February 26, 1985, EPA proposed to exclude specific wastes generated by: (1) Gould Incorporated, located in McConnelsville, Ohio; (2) Keymark Corporation, located in Fonda, New York; (3) Mearl Corporation, located in Peekskill, New York; (4) Monroe Auto Equipment, located in Paragould, Arkansas; (5) Siegel-Robert Incorporated, located in St. Louis, Missouri; and (6) Vermont American Corporation, located in Newark, Ohio, from the lists of hazardous wastes (see 50 FR 7882). These actions were taken in response to petitions submitted by these companies (pursuant to 40 CFR 260.20 and 260.22) to exclude their wastes from hazardous waste control. In their petitions, these companies have argued that certain of their wastes were non-hazardous based upon the criteria for which the waste was listed. The petitioners have also provided information which has enabled the Agency to determine whether any other toxicants are present in the wastes at levels of regulatory concern. The purpose of today's action is to make final those proposals and to make the exclusions effective immediately. More specifically, today's rule allows these facilities to manage these wastes as non-hazardous, in accordance with any conditions of the exclusions. The exclusions remain in effect unless: (1) They are granted for a one-time disposal of a specific volume of waste or (2) the waste varies from that orginally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[1] In addition, generators still are obliged to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioners granted final exclusions in today's **Federal Register** have been reviewed for both the listed and non-listed criteria. As required under the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated the wastes for all other factors (including additional constituents) for which there was a reasonable basis to believe that their presence could cause the wastes to be hazardous. These petitioners have demonstrated through submission of raw materials data, EP toxicity test data for all EP toxic metals and test data on the four hazardous waste characteristics, and in some cases additional test data, including total organic carbon, and total oil and grease, that their wastes do not exhibit any of the hazardous waste characteristics and do not contain any other toxicants at levels of regulatory concern. The Agency, in its proposal to exclude the wastes covered by this rule, provided information necessary to evaluate the additional factors.

A portion of one petition, that was submitted by Monroe Auto Equipment, is being denied. The Agency is concerned that the levels of chromium in the lagoon sludge may present a hazard to human health or the environment. Monroe currently has a temporary exclusion for its wastewater treatment sludge. The denial of this portion of Monroes' petition will be effective six months after publication of this notice in the **Federal Register**. This delay is to enable Monroe to come into compliance with the hazardous waste management system.

In addition to the exclusions that were proposed on February 26, 1985, the Agency also proposed to use an analytical approach to evaluate the potential hazard of inorganic wastes that are landfilled. The approach involves the use of a ground-water transport model, the vertical and horizontal spread (VHS) model, adapted from Domenico and Palciauskas,[2] and assumes reasonable worst-case conditions to model the transport of toxicants from disposal sites to nearby receptors. More specifically, the model estimates the ability of an aquifer to dilute the toxicants from a specific volume of waste, and predicts toxicant levels at a receptor well. The predicted levels of toxicants are then compared to health-based standards for those compounds, in an effort to evaluate hazard potential. (See 50 FR 7896-7900 for a complete description of the proposed model.) Today's notice addresses the comments received regarding the model and explains any changes made by the Agency as a result of public comment.

As a result of modifications made to the VHS model in response to comments, the predicted dilution ranges from six to thirty-two times. In other words, large volume waste with extracts for a contaminant greater than six times the health-based standard are predicted to result in a concentration of that contaminant at the receptor point above the health-based standard. Similarly, small volume wastes result, according to the VHS model, in predicted contamination at the receptor point above the health-based standard if the extract exceeds thirty-two times there health-based standard. This result is chiefly due to a change in the manner in which the leachate penetration depth is calculated.

The Agency intends to publish a complete description of the VHS model

[1] The current exclusions apply only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.

[2] Domenico, P.A. and V.V. Palciauskas. 1982. Alternative Boundaries in Solid Waste Management. *Ground Water*, v. 20, pp. 303-311.

and assumptions for input parameters in the next few months. This publication is intended to assist the regulated community by explaining in detail the use of the VHS model as it applies to delisting. The Agency will publish a notice in the Federal Register when this document is available and will provide information on how to obtain the document at that time.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of the enactment of the Hazardous and Solid Waste Amendments of 1984, no State delisting programs are presently authorized. Any states which had delisting programs prior to the Amendments must become reauthorized under the new provisions.[3] The final exclusions granted today, therefore, are issued under the Federal program. States, however, can still decide whether to exclude these wastes under their State (non-RCRA) program. Since a petitioner's waste may be regulated by a dual system, (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

The exclusions made final here involve the following petitioners:

Gould Inc., McConnelsville, Ohio
Keymark Corporation, Fonda, New York
Mearl Corporation, Peekskill, New York
Monroe Auto Equipment, Paragould, Arkansas
Siegel-Robert Inc., St. Louis, Missouri
Vermont American Corporation, Newark, Ohio

I. Gould, Inc.

A. Proposed Exclusion

Gould, Inc. (Gould) has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F006, based on the destruction and immobilization of the listed constituents by its wastewater treatment system. Data submitted by Gould substantiates their claim that the listed constituents of concern, although present in the waste, are essentially in an immobile form. Furthermore, additional data provided by Gould indicate that no other hazardous constituents are present in this waste at levels of regulatory concern and that the waste does not exhibit any of the characteristics of hazardous waste. (See 50 FR 7884–7886, February 26, 1985 for a more detailed explanation of why EPA proposed to grant Gould's petition.)

B. Agency Response to Public Comments[4]

One commenter indicated that the accuracy of the EP toxicity data for total chromium should be questioned due to the high total chromium content of Gould's waste (up to 2.3 percent). The Agency notes that although the total content of chromium is a factor, we believe the ability of a toxicant (in this case, chromium) to be immobilized when the waste is land disposed is a more important factor. The EP toxicity test data presented by Gould, comprised of twenty-five separate analyses, consistently exhibited extract levels below 0.5 ppm. Quality assurance data presented by Gould using the method of standard additions showed acceptable recovery percentages which indicated that no interfering factors were encountered in these analyses. We, therefore, believe the leachate test data are accurate and will continue to be considered as part of our evaluation.

C. Final Agency Decision

Gould's claim that their wastewater treatment sludge is nonhazardous was substantiated. Representative samples of this waste were tested for total cyanide,[5] free cyanide, leachable cyanide, and photodegradable cyanide. The maximum cyanide content of this waste was less than 2 ppm, which is well below the threshold limit value of 10 ppm for workroom air suggested by the American Conference of Governmental Industrial Hygienists. This low level is therefore not of regulatory concern to the Agency from an atmospheric exposure route. The maximum cyanide extract level was less than 0.03 ppm, which is well below the U.S. Public Health Service's Suggested Drinking Water Standard of 0.2 ppm for cyanide, and therefore is not of regulatory concern with respect to ground-water. The photodegradable cyanide was non-detectable (<2 ppm) and indicates that the total cyanide present will not convert to free cyanide and therefore is not of regulatory concern with respect to either ground-water or atmospheric exposure routes.

The maximum extract levels for cadmium, chromium, and nickel are exhibited in Table 1. An evaluation of these levels using the VHS model generated the compliance point levels exhibited in Table 2.[6], [7] These levels at the compliance point are below the National Interim Primary Drinking Water Standards for cadmium and chromium, and the Agency's Interim Health Advisory for nickel,[8] and therefore are not of regulatory concern.

---

[3] RCRA Reauthorization Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions. May 16, 1985. Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

[4] The Agency received several comments on the use of the proposed vertical and horizontal spread (VHS) model in evaluating delisting petitions. These comments were not specifically directed at any petitioned waste proposed in the February 26, 1985 notice, and have therefore been addressed as a group in an Appendix of today's rule. All of the calculations in today's rule have been run using the VHS model as adjusted as a result of public comment. None of the decisions covered by today's rule, however, was adversely affected by the adjustments made to the VHS model as a result of public comment; that is, if the VHS model had initially predicted receptor well concentrations below the appropriate health-based standard for each toxicant evaluated, the receptor-well levels predicted by the adjusted model were also below the appropriate health-based standards.

[5] The Agency does not consider total cyanide concentrations in evaluating a waste's potential hazard, other than to use it as an indicator test to determine: (1) When the photodegradable cyanide test or the free cyanide test should be run (*i.e.*, when total cyanide levels exceed 10 ppm) and (2) when interferences may be affecting reported free cyanide concentrations.

[6] The Agency's VHS evaluation was calculated using a waste generation rate of 1200 tons per year.

[7] These receptor concentrations reflect the adjustments made to the VHS model as a result of public comment.

[8] The Agency's previous delisting decisions were based upon the 1980 Ambient Water Quality Criterion (AWQC) of 632 ppb. Since that time, studies upon which the AWQC was based were found to be flawed with respect to reproductive effects. The Agency has initiated a new reproductive effects study to re-evaluate the toxicity of nickel. This study will probably take more than eight months to complete. In the interim, the Agency has determined that the systemic toxicity results reported in the original studies (See Ambrose, *et al.*, 1976., J. Food Sci. Technol. 13:181–187) should be used to calculate an interim health advisory for nickel. (See 50 FR 20247, Appendix I, May 15, 1985.) The Agency will use a calculated allowable drinking water concentration of 350 ppb. Until the reproductive effects study is completed, and a new health-based nickel standard is established, the Agency will grant final exclusions in cases where the predicted exposure to nickel is less than 350 ppb. For cases where the predicted concentration exceeds 350 ppb, the Agency will defer its decision on nickel, pending the establishment of a new standard.

Table 1

Maximum EP Leachate Concentrations (ppm)

Filterpress Sludge	Cd	Cr total	Ni	CN (total) distilled water extract
	<0.1	<0.5	2.5	<0.03

Table 2

VHS Model: Calculated Compliance Point Concentration (ppm)

Filterpress Sludge	Cd	Cr	Ni
	<0.007	<0.037	0.185
Health Based Standard			
	0.01	0.05	0.35

Based on raw materials used by Gould in their manufacturing process, the Agency also has concluded that no organic hazardous constitutents are present in the waste at levels of regulatory concern.[9] Analyses of extract data for all other EP toxic metals using the VHS model indicate that compliance-point concentrations remain below each appropriate health-based standard as seen in Tables 3 and 4.

Table 3
Maximum EP Leachate Concentrations (ppm)

	As	Ba	Pb	Hg	Se	Ag
Filter Press Sludge	<0.02	<5.0	<0.5	0.013	<0.002	<0.5

Table 4
VHS Model: Calculated Compliance Point Concentration (ppm)

	As	Ba	Pb	Hg	Se	Ag
Filter Press Sludge	0.001	<0.37	<0.037	0.001	<0.001	<0.037
Health Based Standard						
	0.05	1	0.05	0.002	0.01	0.05

[9] The Agency has previously relied upon a comparison of the levels of TOC and oil and grease in the waste to the raw materials list to verify a petitioner's claim that no additional organic toxicants are present in the waste. On a theoretical basis, one would expect TOC to be 85% of the value of oil and grease. The Agency sponsored a study to develop some initial data on the TOC and oil and grease methods for solid waste analysis in order to ascertain whether the results of these two methods are comparable. As a result of this study, it was found that the general rule that the TOC value is about 85% of the oil and grease value was not followed. In general it appeared that TOC and oil and grease analyses generated two very different values that in a majority of cases could not be correlated. The Agency has therefore decided to drop the requirement that petitioners analyze for TOC; petitioners, however, will still be required to analyze for oil and grease since high levels of oil and grease may necessitate the use of the oily waste EP.

The Agency believes that this waste is non-hazardous (for all reasons) and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Gould for its electroplating wastewater treatment sludge listed as EPA hazardous Waste No. F006 generated at its McConnelsville, Ohio facility.

II. Keymark Corporation

A. Proposed Exclusion

Keymark Corporation (Keymark) has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F019, based upon the absence or immobilization of the listed constituents of this waste. Data submitted by Keymark substantiate their claim that the listed constituents of concern are either not present at levels of regulatory concern or are present in essentially an immobile form. Furthermore, additional data provided by Keymark indicate that no other hazardous constituents are present in this waste at levels of regulatory concern and that the waste does not exhibit any of the characteristics of hazardous waste. (See 50 *FR* 7886–7888, February 26, 1985, for a more detailed explanation of why EPA proposed to grant Keymark's petition.)

B. Agency Response to Public Comments[10]

One commenter indicated that the accuracy of the EP toxicity data for total chromium should be questioned due to the high total chromium content of Keymark's waste (up to 1.39 percent). The Agency notes that although the total content of chromium is a factor, we believe the ability of a toxicant (in this case, chromium) to be immobilized when the waste is land disposed is a more important factor. The EP toxicity test data presented by Keymark (comprised of ten separate analyses) consistently exhibited extract levels below 0.46 ppm. Quality assurance data presented by Keymark using the method of standard additions showed acceptable recovery percentages which indicate that no interfering factors were encountered in these analyses. We, therefore, believe the leachate test data are accurate and we will continue to consider them as part of our evaluation.

The commenter also questioned why the Agency believed the difference between oil and grease and TOC levels in the waste was not significant and further asked at what levels the difference between these values would be considered significant. The Agency noted in the proposed delisting that TOC values higher than those for oil and grease are observed due to an artifact of the test method for oil and grease. This difference results in part from the loss of the volatile components of the oil and grease during the test. Furthermore, it should also be noted that the Agency has recently determined that TOC and oil and grease do not generally correlate. In that regard, oil and grease and TOC values are viewed in light of the petitioner's raw materials list. This information is judged on a case-by-case basis and is dependent upon the level of detail provided by the facility in their raw materials list. In Keymark's case, no Appendix VIII hazardous constituents were listed in any of the raw materials used in their process. We continue to believe, therefore, that this waste does not contain any other hazardous constitutents at levels of regulatory concern.

C. Final Agency Decision

Keymark's claim that their wastewater treatment sludge is non-hazardous was substantiated. Representative samples of this waste were tested for total cyanide. The maximum total cyanide content for this waste was less than 1 ppm which indicates that free cyanide is well below the threshold limit value of 10 ppm for workroom air suggested by the American Conference of Governmental Industrial Hygienists. This low level is therefore not of regulatory concern from an atmospheric exposure route. Free or leachable cyanide tests were not required due to the low levels of total cyanide in the waste. Even if it is assumed that the 1 ppm total cyanide present in the waste was leachable, the 20:1 dilution of the leachate test data would result in an extract value of 0.05 ppm, which is below the U.S. Public Health Service's Suggested Drinking Water Standard for cyanide. This low level is therefore not of regulatory concern to the Agency with respect to ground-water contamination.

The maximum extract level for chromium was 0.46 ppm. An evaluation of this level using the VHS model generated a compliance-point concentration of 0.014 ppm.[11, 12] This level is below the National Interim Primary Drinking Water Standard for chromium and therefore is not of regulatory concern. Based upon the raw materials used by Keymark in their manufacturing process, the Agency has also concluded that no organic hazardous constituents are present in the waste at levels of regulatory concern.[13] For the other EP toxic metals, the date submitted by Keymark exhibits low extract levels as seen in Table 1. An evaluation of these data using the VHS model generated compliance-point levels below the National Interim Primary Drinking Water Standards for each metal as seen in Table 2.

[10] See footnote 4.

[11] The Agency's VHS evaluation was calculated using a waste generation rate of 108 tons per year.

[12] See footnote 7.

[13] See footnote 9.

Table 1

Maximum EP Leachate Concentration (ppm)

	As	Ba	Cd	Pb	Hg	Ni	Se	Ag
Filtered Sludge	<0.002	<0.1	<0.01	<0.1	0.001	0.1	<0.001	<0.01

Table 2

VHS Model: Calculated Compliance Point Concentrations (ppm

	As	Ba	Cd	Pb	Hg	Ni	Se	Ag
Filtered Sludge	.00006	0.003	0.0003	0.003	0.00003	0.003	0.00003	0.0003
Health Based Standard	0.05	1.0	0.01	0.05	0.002	0.35	0.01	0.05

The Agency believes that this waste is non-hazardous (for all reasons) and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion of Keymark for its conversion coating wastewater treatment sludge listed as EPA Hazardous Waste No. F019 generated at its Fonda, New York facility.

III. Mearl Corporation

A. Proposed Exclusion

Mearl Corporation (Mearl) has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste Nos. K006 and K007 based upon the immobilization of the listed constituents by its wastewater treatment system. Data submitted by Mearl substantiate their claim that the listed constituents of concern, although present in the waste, are essentially in an immobile form. Furthermore, additional data provided by Mearl indicate that no other hazardous constituents are present in this waste at levels of regulatory concern and that the waste does not exhibit any of the characteristics of hazardous waste. (See 50 FR 7888–7890, February 26, 1985, for a more detailed explanation of why EPA proposed to grant Mearl's petition.)

B. Agency Response to Public Comments [14]

One commenter asked whether the EP toxicity test using distilled water was used for both chromium and cyanide. The Agency notes that only cyanide was tested using distilled water as the extractant medium.

C. Final Agency Decision

Mearl's claim that their wastewater treatment sludge is non-hazardous was substantiated. Representative samples of these wastes were tested for total cyanide,[15] free cyanide,[16] reactive cyanide, and leachable cyanide. The maximum reactive cyanide content of these wastes was 2 ppm, which is below the threshold limit value of 10 ppm for workroom air suggested by the American Conference of Governmental Industrial Hygienists. This low level is, therefore, not of regulatory concern to the Agency from an atmospheric exposure route.[17] The maximum cyanide extract level was 0.3 ppm. An evaluation of this leachate level using the VHS model generated a compliance point concentration of 0.033 ppm.[18, 19] This level is well below the U.S. Public Health Service's Suggested Drinking Water Standard of 0.2 ppm for cyanide and is not of regulatory concern to the Agency with respect to ground-water contamination. The photodegradable cyanide was non-detectable (<1 ppm) and indicates that the total cyanide present will not convert to free cyanide and therefore is not of regulatory concern with respect to ground-water or atmospheric exposure routes.

The maximum extract level reported for chromium was 0.03 ppm. An evaluation of this level using the VHS model generated a compliance point concentration of 0.003 ppm.[20] This level is below the National Interim Primary Drinking Water Standard for chromium and therefore not of regulatory concern. Based upon the raw materials used by Mearl in their manufacturing process, the Agency also has concluded that no

[14] See footnote 4.

[15] See footnote 5.

[16] Free cyanide data were disregarded due to positive interferences; rather, the reactive cyanide data were used to evaluate the waste.

[17] In granting Mearl a temporary exclusion, our decision was conditioned to require that the waste be covered as a daily practice. Our basis for this decision was our concern that some of the complexed cyanide in the waste might be converted to free cyanide by sunlight. Based on the reactive cyanide data, however, it is very unlikely that this will occur. Our final decision, therefore, does not include a condition to cover the waste as a daily practice.

[18] The Agency's evaluation was calculated using a waste generation rate of 2000 tons per year.

[19] See footnote 16.

[20] See footnote 7.

organic hazardous constituents are present in the waste at levels of regulatory concern.[21] For the other EP toxic metals, the data submitted by Mearl show low extract levels as seen in Table 1. An evaluation of these data using the VHS model generated compliance point levels below the National Interim Primary Drinking Water Standards for each metal as seen in Table 2.

Table 1

Maximum EP Leachate Concentration (ppm)

	As	Ba	Cd	Pb	Hg	Ni	Se	Ag
Filtered Sludge	<0.02	0.4	0.001	<0.1	<0.005	0.01	<0.002	0.06

Table 2

VHS Model: Calculated Receptor Well Concentrations (ppm)

	As	Ba	Cd	Pb	Hg	Ni	Se	Ag
Filtered Sludge	0.002	0.04	0.0001	0.01	0.0005	0.001	0.0002	0.006

Health Based Standard

0.05	.1	0.01	.05	0.002	0.35	0.01	0.05

The Agency believes that this waste is non-hazardous (for all reasons) and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Mearl for its treated pigment sludge listed as EPA Hazardous Waste Nos. K006 and K007 generated at its Peekskill, New York facility.

IV. Monroe Auto Equipment

A. Proposed Exclusion

Monroe Auto Equipment (Monroe) has petitioned the Agency to exclude both their wastewater treatment sludge contained in their on-site lagoon and the dewatered sludge resulting from vacuum filtration of the sludge in the lagoon from EPA Hazardous Waste No. F006, based upon the absence or immobilization of the listed constituents of this waste. Data submitted by Monroe substantiate their claim with respect to the dewatered sludge (*i.e.*, the waste generated after vacuum filtration) that the listed constituents of concern are either not present at levels of regulatory concern or are present in essentially an immobile form. Furthermore, additional data provided by Monroe indicate that no other hazardous constituents are present in this waste at levels of regulatory concern and that this waste does not exhibit any of the characteristics of hazardous waste.

On the other hand, the Agency proposed to deny Monroe's petition with respect to the waste contained in the on-site lagoon. Our basis for this was the potential for this waste to leach chromium at levels that would exceed the National Interim Primary Drinking Water Standard at a receptor point downstream. (See 50 FR 7890–7892, February 26, 1985 for a more detailed explanation of why EPA proposed to grant and deny portions of Monroe's petition.)

B. Agency Response to Public Comments[22]

One commenter questioned whether the variability of the lagooned waste would be adequately represented by composited core samples. The Agency believes that complete core samples represent a more accurate sampling of a waste than taking grab samples at different depths. Cores will be representative of the complete sludge layer in the impoundment. As the depth of a particular stratified layer increases, it will increase the total core

[21] See footnote 9.

[22] See footnote 4.

concentration of a particular constituent that is contained in that layer. Complete cores also allow for visual inspection of any sludge variation with depth. On the other hand, grab samples may miss a particular stratified layer or may over-emphasize a particular layer with respect to the full depth of waste. In addition, the Agency believes that the compositing scheme used by Monroe—that is, five separate cores being composited within each quadrant on Monroe's lagoon—would not average out any hot spots of a volume which would be of concern, since each quadrant represents an area of approximately 100 feet long, 30 feet wide, and 6 feet deep.

One commenter indicated that in calculating the contaminant concentration for chromium at the downstream receptor well, the average chromium values, rather than maximum chromium extract values, should be used. As discussed in the Appendix of today's publication, the Agency may use the average extract value in evaluating the contaminant concentration; however, its use will be employed only where there is a sufficiently large sample population size. In this case, the maximum level was used (and will continue to be used) since only four values were reported. Since each of the four values reported already represented an average value for one-fourth of the impoundment (*i.e.*, five random cores had been composited for each of the four values reported), the Agency does not believe that any further averaging (given the number of samples collected) is appropriate.

The same commenter claimed that it was more appropriate to use a lesser volume of sludge in calculating the contaminant concentration at the downstream receptor well since the sides of the impoundment are sloped. The Agency has accepted this comment, although the volume of sludge contained in the impoundment at the time of the original petition may have been greater than the volume reported by the petitioner at the time of public comment, based on a pictorial record previously submitted. The Agency's original calculation was based on a rectangular dimension and a 8 ft. depth. The waste volume has been corrected for a 3:1 sideslope and a depth of 6 ft. We will use 1725 cubic yards, therefore, as part of our calculation.

The same commenter also requested that the Agency base its determination regarding the hazard posed by this waste on hexavalent chromium rather than total chromium. Although this waste was listed as hazardous because it contains hexavalent chromium, we believe that since the EP toxicity characteristic is based upon total chromium and since the Hazardous and Solid Waste Amendments of 1984 require that all toxicants be evaluated in determining the hazard posed by the waste, our decision also must be made with respect to total chromium. The Agency previously proposed to modify the EP toxicity characteristic to address hexavalent chromium, rather than total chromium; however, this proposal has never been made final (and is likely not to be made final) due to the concern over the potential conversion of trivalent chromium to hexavalent chromium in the environment.

C. Final Agency Decision

Monroe's claim that their vacuum-filtered sludge is non-hazardous was substantiated. Representative samples of this waste were tested for total cyanide. The maximum total cyanide content for this waste was less than 0.5 ppm, which indicates that the level of free cyanide is well below the threshold limit value of 10 ppm for workroom air suggested by the American Conference of Governmental Industrial Hygienists. This low level is therefore not of regulatory concern from an atmospheric exposure route. Free or leachable cyanide tests were not required due to the low levels of total cyanide in the waste. Even if it is assumed that the 0.5 ppm total cyanide present in the waste was leachable, the 20:1 dilution of the EP toxicity test would result in an extract value of 0.025 ppm, which is well below the U.S. Public Health Service's Suggested Drinking Water Standard for cyanide. This low level is therefore not of regulatory concern to the Agency with respect to ground-water contamination.

The maximum extract levels for cadmium, chromium, and nickel are exhibited in Table 1. An evaluation of these levels using the VHS model as adjusted by public comment are exhibited in Table 2.[23,24] It is evident that the toxicant concentrations at the compliance point are below the National Interim Primary Drinking Water Standards for cadmium and chromium and the Agency's Interim Health Advisory for nickel and are therefore not of regulatory concern.[25]

[23] The Agency's VHS evaluation was calculated using a waste generation rate of 300 tons per year.

[24] See footnote 7.

[25] See footnote 8.

TABLE 1

Maximum Oily Waste EP Leachate Concentrations (ppm)

	Cd	Cr total	Ni	CN distilled water extract
Vacuum Filter	0.12	0.34	0.363	<0.01
Sludge Lagoon	0.01	0.8	0.14	<0.01

TABLE 2

VHS Model: Compliance point concentrations (ppm)

	Cd	Cr	Ni
Vacuum Filter	0.0037	0.011	0.0112
Sludge Lagoon	0.001	0.08	0.014
Health-Based Standard			
	0.01	0.05	0.35

Based upon the raw materials used by Monroe in their manufacturing process, the Agency also has concluded that no organic hazardous constitutents are present in the vacuum filter sludge at levels of regulatory concern.[26] For the other EP toxic metals, the data submitted by Monroe show low extract levels as seen in Table 3. An evaluation of these data, using the VHS model, generated compliance point levels below the National Interim Primary Drinking Water Standards for each metal as seen in Table 4.

TABLE 3

Maximum Oily Waste EP Leachate Concentrations (ppm)

	As	Ba	Pb	Hg	Se	Ag
Vacuum Filter	0.136	3.4	0.267	0.009	0.161	0.136
Sludge Lagoon	0.119	3.67	0.229	0.009	0.013	0.189

TABLE 4

VHS Model: Calculated Compliance point concentrations (ppm)

	As	Ba	Pb	Hg	Se	Ag
Vacuum Filter	0.004	0.105	0.008	0.0003	0.005	0.004
Sludge Lagoon	0.012	0.367	0.02	0.0009	0.0013	0.019
Health-Based Standard						
	0.05	1.0	0.05	0.002	0.01	0.05

The Agency believes that the vacuum-filtered sludge is nonhazardous (for all reasons) and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Monroe for its electroplating vacuum-filtered sludge listed as EPA Hazardous Waste No. F006 generated at its Paragould, Arkansas facility.

The Agency's final decision does not apply to the sludge contained in Monroe's lagoon. The Agency originally indicated that the lagooned sludge may pose a substantial hazard to human health or the environment with respect to chromium. The VHS compliance point calculations, adjusted as a result of public comment, still indicate that chromium levels at the compliance point are above the National Interim Primary Drinking Water Standard.

The Agency considers the chromium extract levels of the impoundment to be

[26] See footnote 9.

a potential threat to human health and the environment. The Agency, therefore, has denied Monroe's delisting request pertaining to the surface impoundment.[27] The surface impoundment must therefore be managed as a hazardous waste unit pursuant to the regulatory requirements of 40 CFR Parts 262–266 and the permitting requirements of 40 CFR Part 270. (The Agency recently proposed a Recommended Maximum Concentration Limit for total chromium of 120 ppb. See the November 13, 1985 issue of the **Federal Register.** This limit may modify the existing Maximum Concentration Limit (MCL) for total chromium of 50 ppb. Until a final MCL for total chromium is promulgated, however, the Agency will continue to use an MCL of 50 ppb for total chromium. If the MCL is modified, Monroe can resubmit their petition to exclude the waste in the surface impoundment.)

V. Siegel-Robert Inc.

A. Proposed Exclusion

Siegel-Robert Inc. (Siegel-Robert) has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F006 based upon the destruction and immobilization of the listed constituents by its wastewater treatment system. Data submitted by Siegel-Robert substantiate their claim that the listed constituents of concern are either destroyed in the wastewater treatment process or are present in essentially an immobile form. Furthermore, additional data provided by Siegel-Robert indicate that no other hazardus constituents are present in this waste at levels of regulatory concern and that the waste does not exhibit any of the characteristics of hazardous waste. (See 50 FR 7892–7894, February 26, 1985 for a more detailed explanation of why EPA proposed to grant Siegel-Robert's petition.)

B. Agency Response to Public Comments[28]

One commenter questioned whether five weeks was sufficient time to adequately represent any variations which may occur in the filter press from the sludge. The Agency notes that the regulations do not indicate a minimum period over which samples must be taken. Rather, this time period is judged on a case-by-case basis taking into consideration the type of processes used and the petitioner's knowledge of its variation time. The Agency believes that sampling periods of approximately one month may be appropriate as long as all manufacturing processes used at the facility are represented during the sampling period. For example, if a spent plating bath is periodically dumped and thus introduced into the waste stream, the sampling period must include this event. In this case, Siegel-Robert claimed (and we believe demonstrated) that the sampling period was long enough to cover all scheduled variations in processes.

C. Final Agency Decision

Siegel-Robert's claim that their wastewater treatment sludge is non-hazardous was substantiated. Representative samples of this waste were tested for total cyanide. The maximum total cyanide content for this waste was less than 0.02 ppm, which indicates that free cyanide is well below the threshold limit value of 10 ppm for workroom air suggested by the American Conference of Governmental Industrial Hygienists. This low level is therefore not of regulatory concern from an atmospheric exposure route. Free or leachable cyanide tests were not required due to the low levels of total cyanide in the waste. Even if one assumes that the 0.02 ppm total cyanide present in the waste was leachable, this level is still below the U.S. Public Health Service's Suggested Drinking Water Standard for cyanide. This low level therefore is not of regulatory concern to the Agency with respect to ground-water contamination.

The extract levels for cadmium, chromium, and nickel that were evaluated with the VHS model were 0.08, 0.46, and 2.55 ppm, respectively. These values for chromium and nickel represent the maximum reported concentrations from EP leachate tests. The maximum EP leachate concentration for cadmium was 0.26 mg/l. The Agency concluded, however, that the high cadmium EP values did not reflect the typical cadmium content of Siegel-Robert's waste and used the upper limit of the 97.5% confidence interval (0.08 mg/l) for the VHS evaluation (The Agency intended to use a 95% confidence interval, however, the Agency made an error and actually used a 97.5% confidence level. For consistency the Agency is making this rule final using the 97.5% level as proposed. See the public docket to today's rule for details). This 97.5% confidence interval was established by considering all of the cadmium leachate data supplied by Siegel-Robert, including analyses of the 42 additional samples described in the proposed exclusion.

The VHS evaluation predicted cadmium, chromium, and nickel concentrations at the compliance point of 0.006, 0.035, and 0.196 ppm, respectively.[29, 30] These levels (at the compliance point) are below the National Interim Primary Drinking Water Standards for cadmium and chromium and the Agency's Interim Health Advisory for nickel [31] and are therefore not of regulatory concern.

Based upon the raw materials used by Siegel-Robert in their manufacturing process, the Agency also has concluded that no organic hazardous constituents are present in the waste at levels of regulatory concern.[32] For the other EP toxic metals, the data submitted by Siegel-Robert show low extract levels as seen in Table 1. An evaluation of these data using the VHS model generated compliance point levels below the National Interim Primary Drinking Water Standards for each metal as seen in Table 2.

[27] The Agency notes that this calculation was based on the VHS landfill model. The Agency intends to propose a modification of the VHS model to be applied specifically to surface impoundments in the near future. This modification is not expected to change the Agency's decision since it will consider the hydraulic effects of the water column in the impoundment. The Agency's denial decision with respect to Monroe's surface impoundment would therefore remain unchanged.

[28] See footnote 4.

[29] The Agency's VHS evaluation was calculated using a waste generation rate of 1260 tons per year.

[30] See footnote 7.

[31] See footnote 8.

[32] See footnote 9.

TABLE 1
Maximum EP Leachate Concentrations (ppm)

	As	Ba	Pb	Hg	Se	Ag
Filter Press Sludge	<0.01	0.01	0.21	<0.002	<0.005	0.02

TABLE 2
VHS Model: Calculated compliance point concentrations (ppm)

	As	Ba	Pb	Hg	Se	Ag
Filtered Sludge	0.0007	0.0007	0.016	0.0001	0.0003	0.001
Health-Based Standards						
	0.05	1.00	0.05	0.002	0.01	0.05

The Agency believes that the waste is non-hazardous (for all reasons) and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Siegel-Robert for its electroplating wastewater treatment sludge listed as EPA Hazardous Waste No. F006 generated at its St. Louis, Missouri facility.

VI. Vermont American

A. Proposed Exclusion

Vermont American Corporation (Vermont American) has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F006 based upon the destruction and immobilization of the listed constituents by its wastewater treatment system. Data submitted by Vermont American substantiate their claim that the listed constituents of concern are either destroyed in the wastewater treatment process or are present in essentially an immobile form. Furthermore, additional data provided by Vermont American indicate that no other hazardous constituents are present in this waste at levels of regulatory concern and that the waste does not exhibit any of the characteristics of hazardous wastes. (See 50 FR 7894–7896, February 26, 1985 for a more detailed explanation of why EPA proposed to grant Vermont American's petition.)

B. Agency Response to Public Comments [33]

One commenter questioned whether there was a possible error in the total chromium value reported in Table I of the proposed exclusion. The Agency notes that this was a typographical error and that the value should be 37,200 ppm.

C. Final Agency Decision

Vermont American's claim that their wastewater treatment sludge is non-hazardous was substantiated. Representative samples of this waste were tested for total cyanide [34] and leachable cyanide. The maximum total cyanide content for this waste was less than 0.81 ppm, which indicates that free cyanide is well below the threshold limit value of 10 ppm for workroom air as suggested by the American Conference of Governmental Industrial Hygienists. This low level is therefore not of regulatory concern from an atmospheric exposure route. Free cyanide tests were not required due to the low levels of total cyanide in the waste. Also, evaluation of the leachable cyanide level of <0.01 ppm, using the VHS model, resulted in a predicted compliance-point concentration of <0.0003 ppm which is well below the U.S. Public Health Service's Suggested Drinking Water Standard of 0.2 ppm for cyanide, and therefore is not of regulatory concern to the Agency with respect to ground-water contamination.

The maximum extract levels for cadmium, chromium, and nickel were <0.01, 1.23, and 0.41 ppm, respectively. An evaluation of these levels using the VHS model generated cadmium, chromium, and nickel concentrations at the compliance point of <0.0003, 0.038, and 0.013 ppm, respectively.[35,36] These levels (at the compliance point) are below the National Interim Primary Drinking Water Standards for cadmium and chromium and the Agency's Interim Health Advisory for nickel [37] and are therefore not of regulatory concern.

Based upon the raw materials used by Vermont American in their manufacturing process, the Agency also has concluded that no organic hazardous constituents are present in the waste at levels of regulatory concern.[38] For the other EP toxic metals, the data submitted by Vermont American show low extract levels as seen in Table 1.

[33] See footnote 4.
[34] See footnote 5.
[35] The Agency's VHS evaluation was calculated using a waste generation rate of 14 tons per year.
[36] See footnote 7.
[37] See footnote 8.
[38] See footnote 9.

TABLE 1

Maximum Leachate Concentration (ppm)

	As	Ba	Pb	Hg	Se	Ag
Filter Sludge	0.035	<0.2	<0.1	0.0046	<0.005	<0.01

TABLE 2

VHS Model: Calculated compliance point (ppm)

	As	Ba	Pb	Hg	Se	Ag
Filter Sludge	0.001	0.006	0.003	0.0001	0.0001	0.0003
Health-Based Standard						
	0.05	1.00	0.05	0.002	0.01	0.05

An evaluation of these data using the VHS model generated compliance point levels below the National Interim Primary Drinking Water Standards for each metal as seen in Table 2.

The Agency believes that this waste is non-hazardous (for all reasons) and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Vermont American for its electroplating wastewater treatment sludge listed as EPA Hazardous Waste No. F006 generated at its Newark, Ohio facility.

VII. Effective Date

This rule, except for the denial in part of Monroe Auto Equipment's petition, is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that these rules should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

The Agency is denying in part, Monroe Auto Equipment's petition. Monroe was granted a temporary exclusion on December 31, 1980 (see 45 FR 86547–86548). Monroe will need some time to bring their on-site lagoon into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the denial of part of their petition is six months after publication of this rule in the **Federal Register.**

VIII. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous.

IX. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: November 4, 1985.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Appendix: Response to Public Comment Regarding the Use of an Analytical Approach and a Ground-Water Transport Model As a Regulatory Tool

The Agency received a number of comments regarding the proposed rule set forth at 50 FR 7882, February 26, 1985, which discussed the Agency's overall approach to evaluating petitions for the delisting of inorganic wastes which are typically landfilled. The comments received, and the Agency's response to these comments, are presented here in terms of seven major issues: (1) General clarification of the VHS model and its application; (2) modification and clarification of the disperswasteey and penetration depth parameters; (3) assumptions incorporated into the ground-water model; (4) general comments regarding the VHS model approach; (5) site-specific model applications; (6) comments on the use of the Oily Waste EP (OWEP) procedure; and (7) additional concerns. These comments and the Agency's response are presented in this Appendix. A few comments are not noted here. These comments, and the Agency's responses, may be found in the public docket.

1. General Clarification of the VHS Model and Its Application

The Agency received a number of comments requesting clarification of the VHS model and its use. Specifically, the Agency received comments concerning the following issues:

- Clarification of Model Presentation.
- Definition of a Maximum Volume.

The comments received and the Agency's responses are presented in the following sections.

Clarification of Model Presentation

Comment: Several commenters requested that the Agency clarify the presentation of the model and consider using the same notation as is used in the source document.

Response: The Agency agrees with the commenters. Rather than explain the model as originally proposed and then explain those changes made in response to public comment, however, the Agency believes that it would be much easier (and simpler) to explain the final model which incorporates all of the changes made as a result of public comment.

The model is based upon the premise that the waste being evaluated is placed in a 40-ft wide, 8-ft deep trench at a disposal site (*i.e.*, landfill). The length of the trench is determined by the volume of waste. The model mathematically simulates the migration of toxicant-bearing leachate from the waste into an underlying aquifer, and the subsequent dilution of the toxicants due to dispersion within the aquifer. The Agency uses this model to predict the maximum concentration of the diluted toxicants at a compliance point located 500 ft from the disposal site. (For details concerning the selection of specific values for each of the model's parameters, see 50 FR 7882.)

In an effort to improve the clarity of the model presentation, the Agency has, to the extent possible, adopted the terminology as originally published in the source document.[1] Thus, the VHS equation is expressed as:

$$Cy = C_o \text{erf}(Z/(2(\alpha_z Y)^{0.5}))\text{erf}(X/(4(\alpha_t Y)^{0.5}))$$

where:

Cy = contaminant concentration at the compliance point (mg/l)

C_o = contaminant concentration in the leachate (mg/l)

erf[2] = error function (dimensionless)

Z = penetration depth of leachate into the aquifer (m)

Y = distance from disposal site to compliance point (m)

X = length of the disposal site measured in the direction perpendicular to the direction of ground-water flow (m)

α_t = lateral transverse (horizontal) dispersivity (m)

α_z = vertical dispersivity (m)

The orientation of the trench is such that the x direction is perpendicular to the direction of ground-water flow; the y direction is parallel to the direction of ground-water flow; and the z direction is into the underlying aquifer. That is, a left-handed coordinate system is used. (See Figure 1.)

With the exception of the contaminant concentration in the leachage (C_o) and the length of the disposal site (X), all of the values for the model's parameters are fixed and will be applied in all waste evaluations. The Agency has selected reasonable worst-case values for these fixed parameters. The significance of these fixed, as well as the waste-specific, parameters is discussed below.

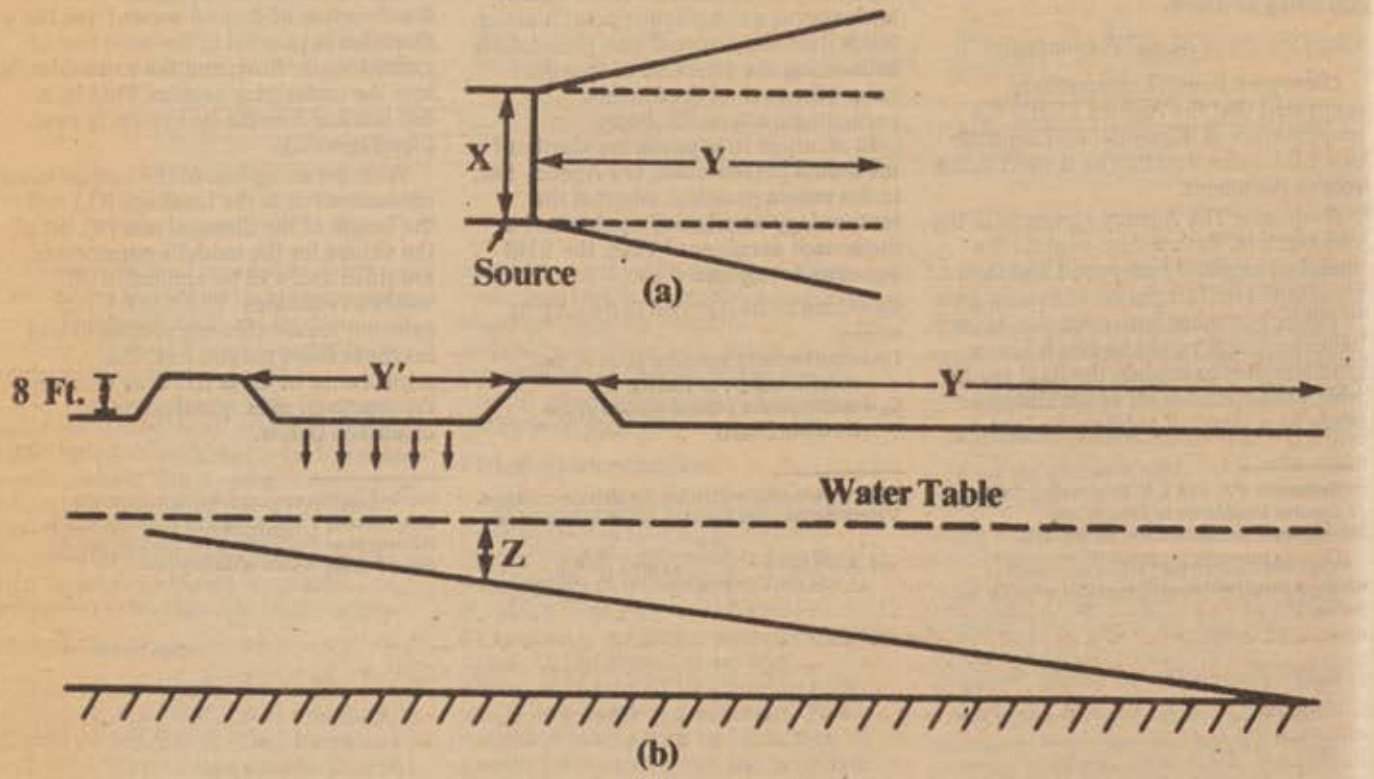
[1] Domenico, P.A. and V.V. Palciauskas. 1982. Alternative Boundaries in Solid Waste Management. *Groundwater* v. 20. 301–311.

[2] The error function (erf) arises as a result of solving a partial differential equation, which is an intermediate step in deriving the above expression. Values for the error function, which is defined as

$$\text{erf } A = 2/\pi^{0.5} * \int_0^A \exp((-t)^{0.5})dt,$$

can be found in any engineering mathematics text. In today's notice, the first error function is referred to as the Z-term error function and the second as the X-term error function.

Figure 1. Geometrical Spreading Of Contaminant Plume In A (a) Horizontal Plane and (b) Vertical Plane Where The Contaminant Occupies The Full Aquifer Thickness



• C_o is the leachate value for a specific toxicant, as determined by the appropriate leaching test (*e.g.*, EP, Oily Waste EP, *etc.*). As explained in the preamble to the February 26 proposal and in Section 3 below, it is assumed that the concentration of the toxicants in the leachate is equal to the concentration of the toxicants entering the underlying aquifer. The value for C_o is discussed further in Section 3, *Assumptions Incorporated into the Ground-water Model.*

• Z represents the depth to which the toxicants penetrate into the aquifer at the facility boundary; this term is expressed in meters. This aquifer penetration depth, as will be explained later, is dependent upon the facility width.

• Y represents the distance from the disposal site to a compliance point where the predicted concentrations of the diluted toxicants are compared to the appropriate health-based standards; this term is also expressed in meters. The Agency has selected a value of 152.4 m (500 ft) for this parameter. The rationale for the selection of this value is presented in section 3, *Assumptions Incorporated into the Ground-water Model.*

• X represents the length of the landfill trench that could accommodate the volume of the waste being evaluated; this term is also expressed in meters. For example, if 1400 yd^3 of waste was being evaluated, the length of the trench (X) would be 36 m, since 1400 yd^3=37800 ft^3=40 ft * 8 ft * 118.13 ft (118.13 ft=36 m). Values for X are discussed further in the following section, *Definition of a Maximum Volume.*

• α_z and α_t represent the vertical and transverse dispersivities, respectively. In order to clarify the relationship between dispersivity and other dispersion terms, the following discussion is provided.

Dispersion refers to the spreading and mixing caused by both molecular

diffusion and "mechanical" mixing due to microscopic variation in velocities within individual pores of a porous medium. In a general form, this can be expressed as [3]

$D = \alpha\lambda\bar{v} + D^*$, where

D = coefficient of hydrodynamic dispersion, or dispersion coefficient

α = a characteristic of the porous medium known as dynamic dispersivity or simply dispersivity

$\bar{v}$ = average linear ground-water velocity

D^* = coeficient of molecular diffusion for the solute in the porous medium.

λ = a subscript which refers to the direction being considered. For example, α_t, the transverse dispersivity, relates to dispersion in the direction perpendicular to the direction of ground-water flow. Dispersion in the vertical direction would be α_z.

In many ground-water dispersion models, the molecular diffusion term is very small (generally on the order of 10^{-9} m^2/s) in comparison to the mechanical mixing term and is disregarded. Such is the case with the Agency's model. Thus, dispersion, numerically characterized by the dispersion coefficient, is dependent upon both the dispersivity and the average linear ground-water velocity. In the case of transverse dispersivity, therefore,

$\alpha_t = D_t/\bar{v}$

The α_z term represents the dispersivity in the vertical direction. Selection of values for these terms is described in Section 2 of this Appendix.

Definition of a Maximum Volume

Comment: One commenter noted that, although the Agency has recognized the limitations of the error function (erf) as it approaches zero (*i.e.*, small waste volume cut-off), the Agency has failed to address the upper limits of the error function. That is, with large waste volumes (*i.e.*, those in excess of 2000 yd^3), the X-term error function approaches one. Thus, the VHS model would predict the same compliance point concentration for any waste exceeding 2000 yd^3, which is probably not a realistic prediction.

Response: Application of the VHS model leads conclusion that a larger volume of waste may not be delisted while a smaller volume of the same waste would be delisted. Since the quantity of leachate from a larger volume of waste will be greater, the model predicts that a large waste volume will tend to have a greater impact on an underlying aquifer. The Agency has proposed to account for this increased leachate volume in only one dimension (X). In applying the VHS model to large quantities of waste, however, the Agency realized that the single trench scenario may not always be realistic. In practice, once a trench reaches some maximum length, an adjacent trench probably would be constructed. Thus, rather than increasing the trench length indefinitely, the facility width (Y') would be increased as successive trenches are required.

The Agency agrees with the commenter that waste in excess of 2,000 yd^3 probably would have a greater than predicated impact at the compliance point. The Agency, however, currently does not have sufficient information to assess this impact and will therefore continue to consider the scenario of a single 40-ft wide trench. The Agency is gathering additional information and, if necessary, will modify the Z term in the VHS equation to address the addition of successive trenches. A separate notice proposing this change will be published in the **Federal Register** for comment before any changes are made.

2. Modification of the Dispersivity and Penetration Depth Parameters of the VHS Model

The Agency received a number of comments regarding its selection of values for transverse dispersivity (α_t) and the penetration depth (Z). As a result, the Agency has re-evaluated the selection of these values and has modified them appropriately. The Agency believes that the modifications more accurately represent a reasonable worst-case situation. The following sections present a discussion of the comments received regarding these parameters and the Agency's response.

Dispersivity

Comment: Several commenters agreed that the value selected for transverse dispersivity in the proposal— 2m —was reasonable. They, however, also commented that there are two dispersivities that should be considered separately in the VHS model— transverse (horizontal) dispersivity (α_t) and vertical dispersivity (α_z). Further, it was stated that the ratio of transverse dispersivity: vertical dispersivity is on the order of 10:1. The respondents suggested that the vertical dispersivity, therefore, should be used to model the z-direction (vertical) spreading.

Response: The Agency agrees with the commenters and has modified the equation to incorporate a separate vertical dispersivity term to characterize vertical spreading; the proposal used horizontal dispersivity to characterize both vertical and horizontal spreading. The proposed use of a single dispersivity term (α_t) to characterize both vertical and horitzontal spreading was based upon the use of a single value for dispersivity in the source document.[4] Both respondents' comments, however, included explanations (by the co-author of the source document, P. Domenico) that the use of separate terms for vertical and horizontal dispersivity more accurately describes spreading due to transverse dispersion.

There is little information available for determining the value of the vertical dispersivity. Mercer and Faust [5] have suggested, however, that α_z for sandy soils ranges from 1 m to 10 m, while other researchers have proposed a value that is an order of magnitude less that the transverse (horizontal) dispersivity.[6] The Agency, after careful evaluation, has selected the latter for use in the VHS model because (1) the original proposal assumed a soil with intermediate characteristics (*e.g.*, a silty loam), which would have a lower dispersivity than a sandy soil, thus making a range of 1–10 m inappropriate, (2) it can be related to, and made consistent with, the value used for transverse dispersivity, and (3) it allows for a reasonable worst-case estimate (*i.e.* the smaller α_z, the more conservative the estimate for C_y). Based upon this assumption, the Agency will use a value of 0.2 m for vertical dispersivity (*i.e.*, $\alpha_z = \alpha_t/10 = 2\ m/10 = 0.2$). As a result, the vertical spreading term in the VHS model will be

$\text{erf}\ (Z/(2(\alpha_z Y)^{0.5}))$.

were $\alpha_z = 0.2$ m.

Penetration Depth: The Z Parameter

Comment: Two commenters recommended that the Agency use a less arbitrary, more reliable method for estimating the penetration depth (Z). Another commenter stated that there is no physical basis for the equation used by the Agency to calculate Z and suggested the Agency use an alternate equation which does have a physical basis. In particular, one of the commenters suggested that the Z parameter can best be described by the following expresssion:[7]

---

[3] Freeze, R.A., and F.A. Cherry, *Groundwater*. Prentice-Hall, Englewood Cliffs, NY, 1979.

[4] See footnote 1.

[5] Mercer, J.W. and C.R. Faust. 1981. "Groundwater Modelling." National Water Well Association.

[6] Comment by P.A. Domenico to the Chemical Manufacturers Association (April 24, 1985).

[7] See footnote 6.

$Z = (\alpha_v Y')^{0.5}$

where

α_v = vertical dispersivity

Y' = width of the facility in the direction parallel to the direction of ground-water flow

Response: The Agency has reconsidered the proposed value for the penetration depth (Z) and agrees with the commenters that a better estimate of Z can be obtained by using the suggested approach. The Agency, therefore, has adopted the approach because it allows the value of Z to be consistent with the values selected for the dispersivity terms, and it is consistent with the estimation of Z using the source document.

The adopted Z-term modification affects only the vertical spreading term in the VHS model. Incorporation of this expression for Z, along with the modifications to the dispersivity terms described previously, results in the following expression for the vertical spreading terms:

$\text{erf}\ ((\alpha_v Y')^{0.5}/(2(\alpha_v Y)^{0.5}))$

This expression can be reduced to

$\text{erf}\ ((Y'/(4Y))^{0.5})$.

As a result of these changes, the modeling equation can be expressed as:

$Cy = C_o\ \text{erf}\ ((Y'/(4Y))^{0.5})\ \text{erf}\ (X/(4(\alpha_t Y)^{0.5}))$

where

Y' is the width of a single trench taken as 12.2 meters

Y is the distance to the receptor point taken as 152.4 meters

α_t is the transverse dispersivity taken as 2 meters.

C_o is the leachate concentration taken from the petition.

X is the trench length which is calcuated from the waste volume disposed either on a yearly basis or on a one-time basis if it is a one-time exclusion.

(The rationale for selection of 12.2 m (40 ft) and 152.4 m (500 ft) and Y' is explained in 50 FR 7882) X is calculated by dividing the waste volume by 320 ft^2 (29.7 m^2) which is the cross sectional area of the trench. Since X and Co are the only variables, Figure 2 illustrates the range of dilution available with increasing waste volume. For small volumes of waste (<475 yd^3) a minimum trench length of 40 ft (12.2 m) is considered. This results in the maximum dilution factor of 32, which is reflected in Figure 2. The consideration of this minimum trench length is discussed in 50 FR 7882.

BILLING CODE 6560-50-M

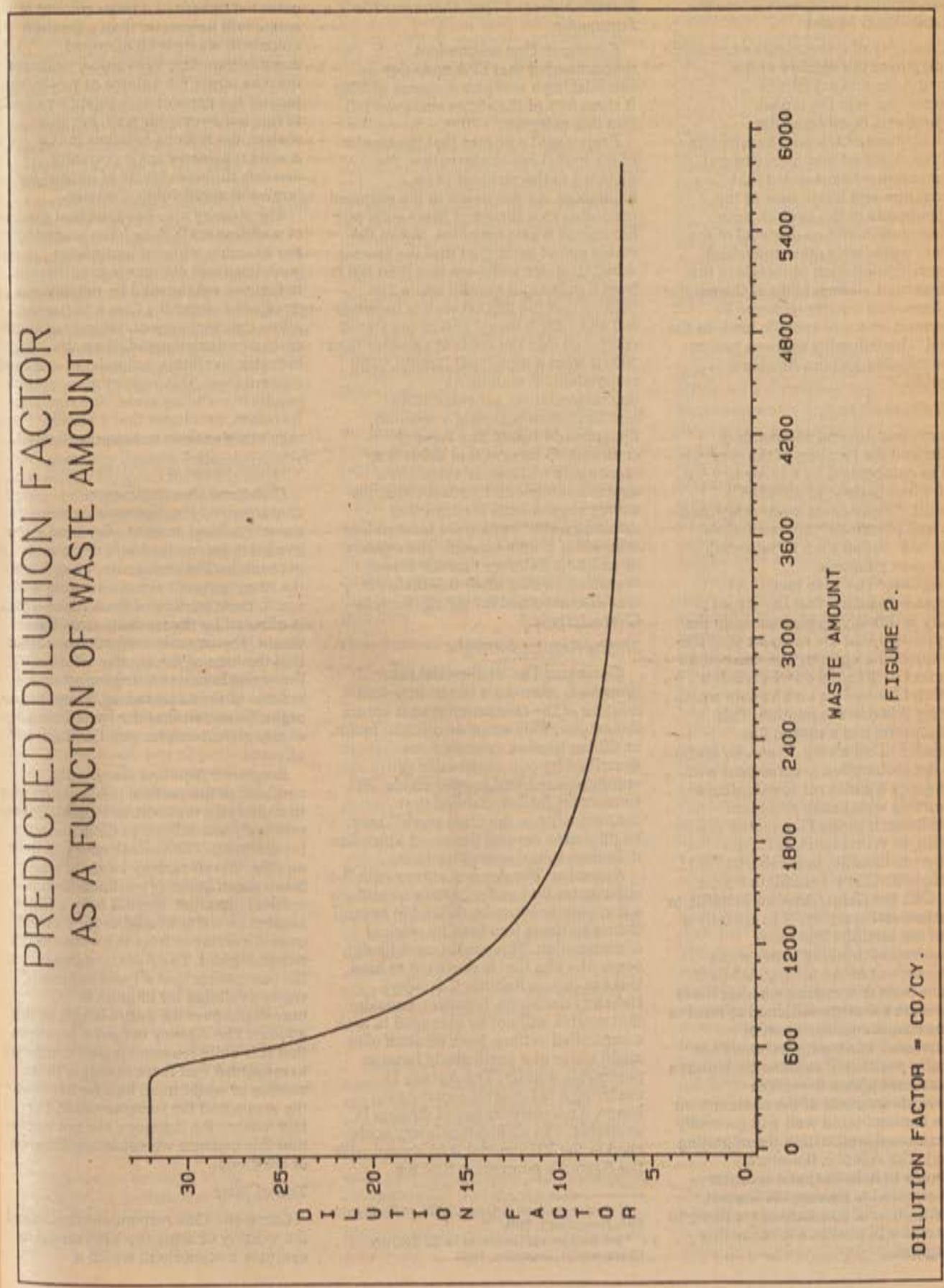


FIGURE 2.

BILLING CODE 6560-50-C

3. Assumptions Incorporated Into the Ground-Water Model

A majority of respondents expressed concern over the validity of the assumptions and assertions incorporated into the model. Respondents questioned the consideration of selected parameters and the omission of others. Several commenters recommended that attenuation and travel time of the contaminants in the aquifer, prior contamination and co-disposal of the subject waste with other industrial wastes, precipitation of metals in the environment, permeability of the aquifer and liner, and aquifer recharge be addressed on a site-specific basis in the model. The following sections present the comments and the Agency's response.

Well Placement

Comment: Several commenters challenged the location of the receptor well as established by the Agency (*i.e.*, 500 ft directly downgradient of a landfill). Respondents were concerned that well placement represented an "absolute" rather than a "reasonable" worst-case situation.

Response: The VHS model, as proposed, assumed that the disposal facility is directly upgradient from the receptor and that the receptor is at the very top of the aquifer. The commenter is correct in pointing out that such a position for a well is an absolute worst-case for this one assumption. This configuration has a reasonable likelihood of occurring, however, and thus the assumption is consistent with the Agency's endeavor to establish a reasonable worst-case situation. Landfills such as the Flemington Landfill, in Wilmington, N.C., the Pemberton Landfill, in Pemberton, N.J., the Eastside Colby Landfill in Ponca City, OK., the Gems/Amader Landfill, in Glouchester Township, N.J., are only a few of the landfills that have contaminated drinking water wells downgradient of the facility. While it has not been determined whether these wells were exactly positioned to receive the maximum concentration of contaminant, contaminated wells are typically positioned sufficiently within a contaminant plume to receive observable amounts of the contaminant (*i.e.*, a contaminated well will generally be positioned well within the migrating plume). The Agency, therefore, continues to believe that a receptor point situated to receive the highest concentration of contaminant is likely to occur and will continue to make this assumption.

Establishment of Well Distance: The Y Parameter

Comment: One respondent recommended that EPA consider establishing a receptor distance of 1000 ft since 55% of the states surveyed fell into this category.

Response: To ensure that the results of the model are conservative, the distance to the receptor (Y) is minimized. As discussed in the proposal, according to a survey of State solid and hazardous waste agencies, 24% of the states polled estimated that the closest drinking water wells are less than 500 ft from a municipal landfill while 21% believe that the closest well is between 500 and 1000 ft away; 55% of the states estimated that the wells are greater than 1000 ft from a municipal landfill.[8] The respondent, in making its recommendation, provided little justification in selecting a receptor distance of 1,000 ft. The Agency continues to believe that 500 ft is a reasonable worst-case value since approximately one-fourth (24%) of the survey respondents claimed that drinking water wells were located less than 500 ft from a landfill. The Agency, in addition, believes that 500 ft is a reasonable value since this distance was also assumed for the EP Toxicity Characteristic.[9]

Sliding Regulatory Scale

Comment: The VHS model (as proposed) assumes a ten-to-fifty-fold dilution of the contaminant as it enters the aquifer. This variable dilution factor, or sliding regulatory scale, was described by one commenter as unprecedented and unreasonable. The commenter further claimed that contaminants in the "real world" may be diluted to several thousand times less than their initial concentrations.

Response: The Agency agrees with the commenter that under certain conditions a contaminant may be diluted to several thousand times less than its original concentration. This would most likely occur at a site that is designed to limit leakage (*e.g.*, a Subtitle C facility). Delisting decisions, however, consider that wastes will *not* be managed in such a controlled setting. Such dilution also might occur at a particularly large or permeable aquifer. The Agency is modeling a reasonable worst-case, hence, a narrower range of dilution is available. The sliding regulatory scale used in the VHS model is in accord with the Agency's contention that the potential hazard of a large volume of waste will be greater than a smaller volume of waste with identical composition. The VHS model assumes that the larger the volume of waste, the greater the amount of toxicant available to reach the receptor well. For this reason, the Agency believes that a sliding regulatory scale correctly predicts different levels of hazard for large and small volume wastes.

The Agency also believes that the use of a sliding scale does have precedent. For example, effluent limitations guidelines and standards for different industries, established by regulations developed under the Clean Water Act, allow the discharge of different effluent concentrations depending on the industry, available technology, and total effluent flow. This regulatory approach results in a sliding scale. The Agency, therefore, concludes that a sliding regulatory scale is not unprecedented.

Dilution: Initial and Groundwater

Comment: One commenter characterized the Agency's decision to assume a fixed amount of ground water available for contaminant dilution as unrealistic. The commenter stated that the receptor point represents only a small, finite portion of the aquifer which is affected by the leachate from the waste. The commenter further asserted that the area of the aquifer affected by the waste leachate will increase if the volume of waste increases. They further argue, however, that the specific impact at any given receptor point will not be affected.

Response: Aquifers are usually confined in the vertical (z) direction (due to underlying non-porous media), but are relatively unconfined in the transverse (x) direction. The volume of water in an aquifer, therefore, may be quite large. Since the acquifer is confined in the vertical direction, there is only a finite amount of water available for dilution over the distance from the waste to the receptor point. The Agency agrees with the commenter that a fixed volume of water available for dilution is unrealistic over the entire length of the aquifer. The Agency believes, however, that it is quite reasonable and consistent to recognize that there is only a finite volume of water in an aquifer between the waste and the receptor point. For this reason, the Agency does not believe that this concern warrants modification of the model.

Travel Time

Comment: One respondent challenged the validity of using the VHS model to evaluate a scenario in which a

[8] Letter report from C. Gaunt, SAIC, to Jim Poppiti, EPA, November 1, 1984.

[9] See Background Document for EP Toxicity Characteristic, December, 1980.

contaminant might travel 500 ft in 100 years.

Response: The Agency recognizes that contaminants may take many hundreds of years to travel the 500 ft established as the distance to the nearest receptor. Metals are extremely persistent in the environment, however, and will not degrade. When the VHS model was proposed, the Agency assumed no degradation over time, since the contaminants under consideration were metals. The Agency also indicated, however, that degradation will be a major part in evaluating the concentration of the contaminant at the compliance point when organics are considered, especially those that are not very persistent. In that case, travel time will be important. The Agency does not believe that this concern warrants modification of the model for metals.

Attenuation

Comment: Several respondents challenged the Agency's disregard of attenuation factors. One commenter claimed that the Agency's disregard of attenuation is an "absolute," not a reasonable, worst-case approach.

Response: The Agency disagrees and points out that attenuation was considered. Based on the Agency's evaluation, it was believed that assuming no attenuation is a reasonable worst case. In particular, the degree of attenuation a chemical compound will exhibit in soil is primarily a function of the physical and chemical properties of the compound under investigation, the physical and chemical properties of the soil environment, and climatic parameters such as precipitation quantity and intensity. In general, attenuation may be considered as the sum of several processes functioning simultaneously: (1) Sorption and desorption, (2) leaching and diffusion, and (3) transformation and degradation. The first two processes influence the retardation of the chemical; the last influences the degree of persistence. Inorganic contaminants, such as metals, are substances which undergo transformation and complexation, but do not degrade in the environment. Thus, they are likely to escape into the environment. In fact, in the proposal, the Agency pointed out that numerous studies have demonstrated that, when a solution containing a metal is continuously applied to a soil column, the metal eventually "breaks through". That is, the concentration of metal entering is exactly equal to the concentration exiting. Due to the wide variability in attenuation dynamics and the need to employ a conservative approach, therefore, the Agency has chosen not to modify the application of the VHS model to consider the attenuation of inorganic contaminants. The Agency will address attenuation dynamics, as they apply to organics, in an upcoming notice.

Hydrolysis and Biodegradation Rates

Comment: Concern was expressed by a number of respondents that the effects of hydrolysis and biodegradation rates of organics should be incorporated into the model. These respondents requested that the Agency clarify its approach to consideration of these effects. One commenter noted that some groundwater transport models do not account for hydrolysis and biodegradation kinetics, and suggested that the input concentration, C_o, could be reduced by an appropriate factor to account for these processes.

Response: As the Agency indicated in the proposal, the persistence and attenuation of organic contaminants (with regard to hydrolysis and biodegradation rates) will be considered when the overall delisting approach is expanded to include evaluation of organic wastes. The Agency will present an explanation of these considerations in that notice, and will specifically request comments on this approach at that time.

Precipitation of Metals

Comment: Comment was received addressing the VHS model's disregard for the precipitation of metals. Specifically, the commenter felt that the model uses metal concentrations that are artifically high.

Response: The Agency considered metal precipitation as a possible attenuative mechanism for metals and believes that precipitation of some metal species will occur in some sites. The Agency has not yet developed a way to quantify this phenomenon in a general model. The Agency is attempting to do so as part of the work on the land disposal restrictions rule. If metal precipitation is modeled as part of that effort, the Agency then will consider revising the VHS model.

Saturated Soils

Comment: The Agency's decision to assume that soils are saturated was challenged by respondents. One respondent claimed that is some areas the water tables are often several hundred feet deep and soils are, for the most part, unsaturated. The commenter recommended that the Agency reconsider this assumption and perhaps incorporate site-specific information in the model.

Response: The Agency agrees with the commenter that at some sites the soils may not become saturated. This assumes, however, proper management of the waste. As discussed earlier, the criteria for delisting are designed to ensure that the waste will not present a substantial hazard to human health and the environment if it is improperly managed. The VHS model developed is tailored to such an approach (*i.e.*, the decision to adopt the model is based on the Agency's knowledge that the soils at many sites become saturated and the Agency's intention to establish a reasonable worst-case scenario for petition review).

Waste Spreading

Comment: One commenter argued that the Agency has characterized the effects of waste spreading incorrectly. This commenter argued that spreading the waste over a large area reduces the hazard to drinking water sources. The commenter claims that if "X" amount of waste is spread over a larger area, the waste will yield more, but less concentrated, leachate than would result if the same amount of waste were spread over a smaller area.

Response: The Agency disagrees with the commenter's assertion that spreading the waste over a larger area poses less of a hazard. For example, if a waste that has a concentration of 5000 ppm lead and leaches 1 ppm of the lead was placed in an 8-ft high column with a 1-ft^2 cross section, every cubic foot of liquid that entered the column would generate 1 ft^3 of leachate containing 1 ppm of lead; this assumes that the liquid passing through the column comes into equilibrium with the waste. If the experiment was repeated using eight 1-ft high columns, 8-ft^3 of water (containing 1 ppm of lead, again assuming equilibrium) would be collected. Eight ft^3 of leachate containing 1 ppm of lead will have more of an effect on an aquifer than 1 ft^3 at the same concentration. This condition will hold until one spreads the waste so thinly that the equilibrium condition no longer exists. In order for this to exist, the waste in the example above would need to be spread to a thickness of about 0.02 inches. Since spreading a waste this thin is not routinely done, the Agency believes that spreading is often more hazardous, not less.

Unlined Municipal Landfill

Comment: Concern was raised over the Agency's assumption that wastes are disposed of in unlined municipal landfills. The commenter questioned the validity of this assumption, arguing that

many states do not allow disposal of industrial wastes at municipal landfills, and that others require that municipal fills be lined.

Response: The Agency recognizes that some municipal landfills have liners or other protective devices. The delisting decision at the Federal level, however, is based upon whether or not the waste exhibits potential hazard in a non-RCRA setting. We believe this assumption is reasonable since once a waste is delisted, the waste may be managed at any type of facility, including an unlined municipal landfill. States that have delisting programs may choose to modify this assumption of the VHS model to reflect the standards imposed by their respective regulations. The Agency believes, however, that an unlined municipal landfill adequately represents a reasonable worst-case situation in the Federal regulatory context.

Definition of C_o

Comment: The definition of the contaminant concentration (C_o) was challenged by one respondent. The commenter explained that the concentration, C_o, of the Domenico-Palciauskas version of the model was defined as the contaminant concentration *as measured* at the waste boundary, while the Agency defined C_o as the EP toxicity leachate concentration of the contaminant. The commenter further stated that equating these two concentrations means ignoring the physical processes (*e.g.*, transverse dispersion) upon which the model is based. An alternate calculation, one incorporating the leachate and ground-water velocity, was presented. The commenter also noted that the concentration of the contaminant in the aquifer may vary with the penetration depth (Z) and, therefore, the predicted concentration at the receptor well will be somewhat higher than actually observed.

Response: After evaluating these comments, the Agency has concluded that the commenter is correct and that C_o should be taken as the concentration at the waste boundary. The Agency contends, however, that C_o will, in fact, be the EP leachate concentration at the waste boundary in the uppermost portion of the aquifer.

More specifically, if one considers a leachate moving into an aquifer at a velocity Ve and the groundwater moving at an average velocity $\bar{V}$ the mass of pollutant entering the aquifer at a given time t will be

$$\text{Mass Entering} = V_e \times Y' C_{ep}$$

where C_{ep} is the EP leachate concentration. (See figure 3).

The mass exiting will be

$$\text{Mass Exiting} = \bar{V} \times Z \, C_o$$

Now we also know that:

$Y' = \bar{V} t$ and;
$Z = V_e t$

where t is time

By substitution we find that

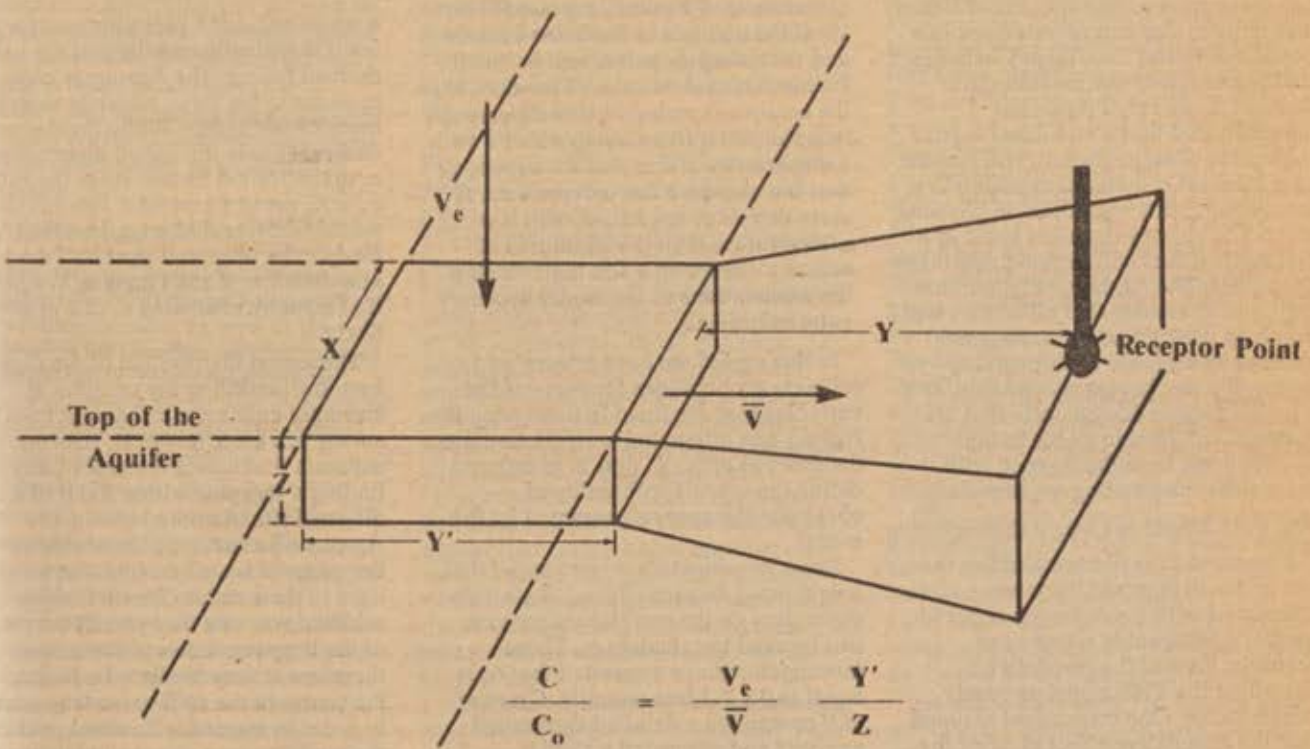
$\text{Mass Entering} = V_e \times \bar{V} \, t \, C_{ep}$ and;
$\text{Mass Exiting} = \bar{V} \, V_e t \, C_o$

Since the Mass Entering must equal the Mass Exiting (*i.e.*, conservation of mass, or mass balance)

We find that

$C_{ep} = C_o$;

Figure 3. The Relationship Of Contaminant Concentration At The Waste Boundary To Leachate Concentration



Furthermore, the Agency performed an analysis of the spreading from a sequence of sources that are aligned front to back for a distance of 40 ft. (*i.e.*, the width of the assumed trench). In this analysis the concentration at waste boundary was estimated by adding up the contribution from each source. We found that the difference in the concentration along z from the top of the aquifer to 1.6 m (*i.e.*, the assumed value for Z) is approximately 10% and that the predicted concentration at the top is .85 C_o. This analysis is in the public docket to today's rule. Given the fact that these values were arrived at by approximation and that a more rigorous treatment leads one to conclude that C_o is equal to the EP leachate concentration, the Agency believes that the EP leachate concentration should continue to be used for C_o.

4. General Comments Regarding the VHS Model Approach

The Agency's general approach to the evaluation of delisting petitions was endorsed by the majority of those responding. Most respondents favored the use of a ground-water transport model in delisting petition evaluation. Two respondents challenged the over-all approach, however. One argued that the evaluation does not consider the benefits of specific waste treatment options. The other commenter felt that the model did not address site-specific factors (*e.g.*, waste permeability, high attenuation potential) which affect hazard potential and, therefore, these factors are not addressed at all. Other commenters felt that the use of the VHS model is overly conservative and places an unnecessary bias against large volume wastes.

Consideration of Benefits of Waste Treatment

Comment: As pointed out above, one commenter argued that because the Agency does not evaluate a waste's permeability and attenuative capacity, it ignores, to a large extent, benefits derived from waste fixation or stabilization. This commenter believes that permeability and attenuative capacity should be factored into the Agency's analysis or that the Agency should grant a variance from the use of the VHS model for stabilized waste.

Response: The Agency agrees with the commenter that the overall permeability of stabilized waste is generally not taken into account as part of the delisting evaluation. As part of the Agency's required testing, the waste is usually ground to pass through a 9.5 mm sieve and in some cases is ground to 100 mesh. Thus, permeability is not a factor

in the evaluation. These grinding requirements are included because wastes are normally broken up during routine waste management. The extent to which the waste is ground reflects the particular type of management a waste might experience. (The 9.5 mm value is required for the EP test, which assumes a municipal landfill, while the 100 mesh value simulates a stabilized waste that has undergone a large number of freeze and thaw cycles and reverts back to a powdered form.) The Agency believes that permeability can be taken into account, however, if it can be demonstrated that a stabilized waste, regardless of management, will remain as a monolithic material or maintain a low permeability regardless of physical state. The Agency does not know of a test method that will demonstrate these properties. The Agency will, therefore, continue to assume that all wastes will break up during routine management and not incorporate a permeability factor. If a test becomes available, or if a petitioner can demonstrate that his material will remain stable in the environment, then the Agency will reconsider the grinding requirements.

The VHS Model as Overly Conservative

Comment: Comments regarding the use of the VHS model, in general, were concerned with the Agency's effort to predict a reasonable worst-case scenario. Four of the respondents described the VHS model as overly conservative. One respondent claimed that the cumulative effect of using the most conservative assumptions for each variable is too conservative overall. Another respondent stated that the use of worst-case assumptions is defensible only if site-specific conditions are unknown.

Response: It was the intention of the Agency to propose a conservative model. The Agency must consider that wastes, once they are exempt from hazardous waste control, may be disposed of in any available non-Subititle C facility. In the development of the VHS model, as proposed, the Agency considered reasonable worst-case management scenarios, established ranges of variables according to these scenarios, and subsequently selected what it believed were reasonable values from these ranges. In selecting these values, the Agency did not always select the worst case for each variable since several of the parameters are directly related (*i.e.*, once a value for a particular variable is established, it narrows the range of values that may be selected for other variables). This sort of off-setting effect applies when considering how the waste is placed into the landfill. If the X dimension is maximized, then Y' will be minimized and vice versa.

The commenter does have a valid point, however, that when selecting variables with a given likelihood (probability), the end result reflects the combined likelihood of all of those variables. If, as a hypothetical example, it is considered that aquifers with a dispersivity of 2 m may represent only 1% of the aquifers in the United States and that receptor points will be 500 ft from a disposal site 24% of the time, then the combined probability of observing a receptor 500 ft from a disposal site with a dispersivity of 2 m is 0.24% assuming that the variables are independent. If more variables are added with low probabilities, then the likelihood of actually observing a site that matches the assumptions in the model becomes extremely small.

In this regard we have attempted to estimate probabilities for some of the variables that are fixed in the model; the Agency has attempted to determine the distribution of α_t, Y', and Y, in order to define the overall probability of observing the case as presented by the model.

Some investigators [10] have noted that longitudinal dispersivity, α_e, is strongly dependent on the travel distance and can be used to calculate α_t. These investigators have suggested that α_e is equal to 0.1 Y. More recently, Gwen *et al.*[11] completed a detailed theoretical analysis and suggested a similar expression.

$\alpha_e = 0.093 * Y + 0.007$

Many experimental data are in agreement with the values obtained by these two estimation methods.[12] Transverse dispersivity, α_t, has been studied to a lesser degree but its magnitude is know to be less than longitudinal dispersivity and is also dependent on scale (the distance over which it is measured).[13] Typically, the ratio of α_e to α_t centers about the value 3.[14] If one use Y=152.4 m and the above relationships, then

and since

$\alpha_e = .1 * 152.4$ m

$\alpha_e = 15.2$ m

$\alpha_t = (\frac{1}{3}) * \alpha_e$

$\alpha_t = (\frac{1}{3}) * 15.2$ m

$\alpha_t = 5$ m

a mean value of 5 m is obtained for α_t (as it is typically one-third of the value derived for α_e). The Agency is using 2.0 m as the value for α_t which is slightly more conservative. While the Agency does not know the actual distribution of α_t in the United States, since the ratio of α_e to α_t centers around 3, this estimation would indicate that an α_t less than 5 is likely to be observed over half the time at a distance of 152.4 meters. We believe that actually observing α_t of 2 m is very likely.

The actual distribution of the distance from the landfill to the receptor is currently unknown. If the data from the survey are used, however, then one can estimate that 0.24 is the probability of finding a receptor within 500 ft of a disposal site. As noted above, the Agency also surveyed the states as to the range of trench widths that were used in their states. The 40 ft value selected was one that was in the range of the largest number of states and therefore is very likely to be found. Furthermore the 40 ft value was selected in order to maximize X, which makes the model more conservative then using larger values for trench width. Now if we assume that a dispersivity of 2 m or less is found about half the time, since it is close to 5 m which is a mean value, a 40 ft trench is found half the time and a receptor within 500 ft is found 24% of the time, the combined probability is about 6%. This probability indicates that the scenario assumed by the Agency can be found almost 10% of the time for people who live near the disposal site. It is believed that such a probability reflects a reasonable and not an absolute worst case. The Agency, therefore, believes that the assumptions are reasonable and they will not be changed except as indicated earlier in the preamble.

The Agency is aware, however, that other assumptions incorporated into the model will tend to make it more conservative. For example, the assumption made for the placement of the receptor at the point to receive the highest concentration, the orientation of the trench and minimum cell size, etc. make the model more conservative.

[10] Pickens, J.F. and G.E. Grisah. 1981. Scale-Dependent Dispersion in a Stratified Granular Aquifer. J. Water Resources Research. Vol. 17, No. 4, pp. 1191–1211.

[11] Gwen, O., F.J. Molz, and J.G. Melville. 1984. An Analysis of Dispersion in a Stratified Aquifer. J. Water Resources Research. Vol. 20, No. 10, pp. 1337–1354.

[12] Mulkey, L. A. and L. Brown. 1985. Development of Land Disposal Banning Decisions Under Uncertainty. U.S. EPA Environmental Research Laboratory, Athens, Georgia.

[13] Sauty, J. 1980. An Analysis of Hydrodispersive Transfer in Aquifers. Water Resources Research. Vol. 16, No. 1, pp. 145–158; and Anderson, M.P. 1979. Using Models to Simulate the Movement of Contaminants through Groundwater Flow Systems. CRC Critical Reviews in Environmental Control. Vol. 9, Issue 2, pp. 97–156.

[14] See footnote 12.

The Agency has not yet undertaken a study to determine what the probability distribution is for these assumptions. As stated above, the Agency recognizes that these assumptions will cause the model to be more conservative, however, we do not currently know to what extent. The Agency intends, as will be explained blow, to study these assumptions in light of actual distribution information and propose to make any changes that are appropriate. For the present, however, the Agency intends to make timely delisting decisions (as required by the Hazardous and Solid Waste Amendments of 1984) using the VHS model as explained in this notice.

Bias Against Large-Volume Wastes

Comment: Additional challenges addressed the VHS model's treatment of large-volume wastes, as well as the assumption that wastes are disposed on an annual basis. These respondents claimed that the Agency was creating an indefensible bias against large-volume hazardous waste generators.

Response: It was not the Agency's intention to create a bias against large volumes of hazardous waste. The Agency recognizes, however, that large sources of waste which leach a contaminant at a particular level will have a greater impact on an underlying aquifer than a small amount of waste leaching at the same (or even higher) level. One commenter eloquently summarized this finding as, "Although it is easy to quibble with the parameters used to provide these absolute numbers, or the distance taken to the so-called compliance point, it is difficult to argue against the logic that large sources are subject to less dilution." The Agency contends that, as waste volume increases, hazard potential also increases. The approach is justly weight against large-volume wastes. As discussed earlier, however, volume is only one of many factors considered in the Agency's evaluation.

5. Site-Specific Model Applications

The majority of comments received challenged the use of the VHS model without the consideration of site-specific conditions. These commenters felt that the Agency should use site-specific factors in the model or apply the model in a tiered fashion, (*i.e.*, consider site-specific waste management conditions if a waste did not satisfy the general version of the model). The following sections present the Agency's response to these issues.

Use of Site-Specific Factors or a Tiered Approach in Model Application

Comment: A majority of respondents recommended that the VHS model be modified to consider site-specific conditions. Many respondents stated that the VHS model parameter (*e.g.*, cell size, Z-parameter, dispersivity, receptor well distance) should reflect site conditions. Three of the respondents stated that actual hydrological and geological information (*e.g.*, distance to the nearest receptor well, hydraulic gradient) should also be incorporated into the analysis.

Several responents recommended that the Agency consider adopting a tiered application in which the VHS model would be used as the initial screen. Those petitioning facilities meeting the requirements of the VHS model evaluation procedure and the Agency's other remaining evaluation criteria would be delisted. Those facilities failing to meet the model conditions would have an opportunity to apply a second-level calculation using site-specific values. Failing this, a petitioner would be allowed to use a more "sophisticated" model in a third-level, and final, evaluation. These commenters argued that such a tiered approach would enable the Agency to examine more closely those petitions which fail the initial screening and to consider additional site-specific factors in the evaluation.

Response: Delisting decisions are site-specific, not disposal site-specific. They are formulated by evaluating the immediate and potential hazard of a petitoned waste in a non-RCRA regulated management setting. In order to make this evaluation, the Agency assumes that the waste will be managed at a non-regulated facility. For example, metal hydroxide sludges are managed by landfilling and are not normally incinerated or land treated. The Agency therefore assumes that metal hydroxide sludges will be disposed in a non-RCRA landfill. When a waste is delisted, it is no longer subject to hazardous waste control. That is, there are no hazardous waste requirements that generators of facilities must meet in managing their waste. Generators may dispose of their wastes on their own property or at any facility that will accept it.

For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest well, permeabillty of the aquifer, dispersivities, etc. If site-specific factors were considered, the Agency may use these factors in the model and judge that the waste, at that specific location, cannot affect the closest well and grant the petition. At the time the petition is granted, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will eventually reach the capacity of the on-site facility and subsequently send his waste off-site to a facility which may have very different hydrogeologic conditions. Furthermore, if the initial evluation was based on the nearest well being 1000 feet away, nothing would stop anyone from drilling a well closer. It could be argued that a well could not be drilled closer that the property boundary. The generator might, in the future, however, divide his property and sell a portion. Site-specific conditions can only be taken into account for as long as they may exist. In general, it cannot be guaranteed that the site-specific circumstances will not change. The Agency, therefore, believes that these conditions should not be part of its evaluation. The use of site-specific information supplied by the petitioner, therefore, does not support the evaluation of the petitioned waste.

Likewise, the Agency is unable to use a tiered approach since it would involve use of site-specific conditions. Since site-specific conditions are not considered, more sophisticated models would yield essentially the same results as the model the Agency proposed.

As indicated above, the Agency does not intend to take site-specific factors into account during delisting evaluations for wastes that are landfilled. The Agency also realizes, however, that there may be some cases where some site-specific factors may be introduced in other disposal scenarios. In such a case, the Agency would have to be convinced that it would not be feasible to manage the waste in any other manner and that the conditions at the site are such that they overshadow consideration of any other scenario or factors. For example the contaminated soil residue from a spill of a listed commercial chemcial product may be a candidate for consideration of some site-specific factors. Specifically, if the contaminated area were very large such that moving all of the contaminated soil would be infeasible, the Agency might consider the scenario of leaving the soil in place.

Waste Management Conditions for Site-Specific Delistings

Comment: Commenters argued that delistings should be granted subject to a given facility's agreement to meet specific waste management

requirements. Respondents argued that such an approach would allow more in-depth consideration of site-specific factors.

Response: The Agency has considered granting delistings conditional on a particular management of a waste at a particular site, the idea being that so long as the waste is managed in a certain way at a certain site it would not pose a hazard to human health or the environment. If the petitioner changes his management or site, the delisting is no longer effective. The conditions of the delistings could be written directly into the exclusion. After much consideration of this comment, the Agency believes it inappropriate to condition delistings on management-specific or site-specific conditions. First, the current regulations do not allow site-specific factors to be considered when evaluating delisting petitioners. Moreover, even if the regulations permitted such consideration, the Agency believes that if such conditions are necessary to insure the waste does not pose a hazard, then they should be specified in a hazardous waste permit. The entire permitting process is geared to the evaluation of site-specific and management-specific conditions in order to insure that a waste does not pose a hazard to human health or the environment.

Furthermore, it is unclear at what point a delisting is not appropriate and permitting is necessary. The Agency therefore has chosen not to adopt an approach of stipulating conditions under which the petitioned waste must be managed or treated following delisting. The Agency reiterates that the objective of delisting is to identify *wastes* which are non-hazardous and to exempt them from the management requirements for RCRA hazardous wastes. The intent of delisting is not to develop or issue delisting "permits" or to stipulate conditions for the management of delisted wastes on a site-specific basis.

6. Comments on the Use of the Oily Waste Extraction Procedure (OWEP)

A number of commenters raised concern over the use of the OWEP instead of the EP when wastes contain greater than 1% oil and grease. The commenters generally felt that the OWEP was too stringent a test and that the results grossly overestimated the amount of metal that is available to leach from the waste. One commenter pointed out that the calculation of mobile metal concentration provided in the OWEP procedure contains an error and suggested that an additional dilution factor be applied.

Comment: The Agency has received comments on the Agency's proposal to modify SW-846 by including additional methods (see 49 FR 38786-38809, October 1, 1984), and on the February 26, 1985 notice, stating that the OWEP is too stringent a test and that either the EP test should be used or a test less stringent than the OWEP, which more realistically reflects actual environmental conditions, be developed.

Response: The OWEP was developed in response to comments by several states and environmental groups which indicated that the EP underestimates the ability of metals to leach from oily wastes. These commenters argued that since the EP uses an aqueous medium it does not penetrate an oily layer. They argued that the test results in low values. Subsequently, when the waste is disposed or land treated, the oil is degraded and the leaching behavior of the waste will be altered. These commenters felt that the metals in the oily portion of the waste, as well as any leachable metals from solids associated with the waste, should be taken into account. In response to these comments, the Agency devised the OWEP. The OWEP has three steps. The first step is a liquid and solid separation, as in the EP. The third step is an aqueous leaching experiment, exactly as in the EP. The second step, however, is an extraction of the waste (after initial filtration) with strong organic solvents (tetrahydrofuran and toluene). This second step removes the oil and the total amount of metal contained in the oil. This entire quantity of metal is then incorporated into the mobile metal value. The Agency believes this solvent extraction reflects what takes place in the environment after the oil degrades. The Agency recognizes that oil does not degrade instantaneously. The manner in which the mobile metal value is calculated suggests it does. In particular, at the time the OWEP was developed, the Agency had insufficient data to estimate the extent to which the metals would be released. The Agency, therefore, assumed a worst case—that all of the metal was immediately available. In response to this comment and the one noted below, the Agency has changed the OWEP to take the metal release rate into account. These changes will make the test now more accurately reflect the actual environmental release of metals from the oil under various conditions.

The Agency notes that OWEP is not required for delisting petitions where the oil and grease in the waste exceed 1%. The Agency has proposed the OWEP for use in those circumstances, and intends to rely on that test, as modified today. Persons wishing to use another test, however, may petition the Agency for permission to use an alternative test method, pursuant to 40 CFR 260.21.

Comment: The OWEP contains an error in the way it calculates the mobile metal concentration because it does not account for the volume of oil that is extracted. This volume should be included in the denominator. Furthermore, this volume should be multiplied by 20 to make the calculation consistent with the EP.

Response: The Agency agrees with the commenter that there is an error in the way the mobile metal concentration is calculated and that the volume of the oil should appear in the denominator. The Agency, however, disagrees with the use of the 20-fold dilution factor and has determined that this factor should be 1. This factor was derived by considering the following information: the 20 to 1 dilution applied in the EP comes from the belief that an industrial waste often will go to a municipal landfill. At the landfill, the industrial waste makes up only 5% of the total amount of waste disposed. The leachate leaving the landfill thus will only be one-twentieth from the industrial waste; hence the 20 to 1 dilution factor. When considering an oil waste that is land applied, however, this 20 to 1 dilution has no basis. The only mechanism that will tend to dilute the metal is the influx of water from precipitation and the rate of release of the metal from the waste. This release rate will be controlled by the rate of degradation of the oil. That is, if an oil contains 10 mg of lead and it takes one year for the oil to degrade, then the average release rate is 10 mg/yr. The average concentration of lead in leachate leaving the waste will be 10 mg divided by the number of liters of water penetrating the waste in one year.

The Agency has collected and evaluated information on the degradation rate of oily materials that are land applied. These data indicate that most of the oil is degraded in 180 days, even at poorly managed landfarms.[15] The Agency has also collected information on percolation rates from around the country. These rates range from about 1 in/yr up to 40 in/yr. To establish the dilution factor for the oil, 0.5 yr is multiplied by 1 to 40 in/yr to get 0.5 to 20 inches, (*i.e.*, a box 12 in×12 in×0.5 in and a box 12 in×12 in×20 in). This amount of percolation

[15] E.C. Jordan Co. 1985. Analysis of Engineering Controls of Subtitle C Facilities for Land Disposal Restrictions Determinations. Prepared for Research Triangle Institute, Contract No. 68-01-7075.

will be equal to 0.04 to 1.67 ft^3 of water for each square foot of surface.

A waste that is land applied is normally spread approximately 4 to 12 inches deep. The waste volume thus is 0.33 ft^3 to 1 ft^3 for each ft^2. Since there will be between 0.04 and 1.67 ft^3 of water percolating through the waste the ratio of water to waste can be calculated. A ratio of 0.04 to 5.06 will be the water to waste ratio; this ratio corresponds to a dilution factor with the lower value being the most conservative. Generally, landfarms are located in areas of the country which have lower percolation rates (*e.g.*, the Southwest). Thus, the higher value is probably not appropriate. If it is considered that a 20 in/yr percolation rate is probably more characteristic of the South and Southwest, then a ratio of approximately 1 is obtained.[16] The Agency will, therefore, amend the OWEP to include the volume of the oil in the denominator with a prefactor of one. The amended OWEP will be published in final form when the Agency makes its October 1, 1984 proposal final. In the interim, however, the Agency will accept data that incorporates this modification.

7. Additional Concerns

Many comments addressed the need for clarification of the VHS model and its usage. These comments were presented primarily by three commenters. A few respondents also requested clarification of a number of environment- and waste-related characteristics. Respondents suggested that additional terms, descriptive of these characteristics, be incorporated into the model. An additional respondent recommended that the Agency evaluate the model based on actual field studies. The following sections present the comments received and the Agency's intended actions. A number of other comments were raised on minor points. These comments are addressed in the public docket to today's rulemaking and are available on request from the docket clerk.

Air and Surface Water Migration

Comment: One commenter requested that the Agency propose for comment an approach to modeling contaminant transport in air and surface water.

Response: The Agency intends to publish for comment, in the near future, an air exposure model that will be used for delisting evaluations. The Agency also has made some preliminary assessments of contaminant migration in surface water. These assessments indicate that in general, the risks posed by contaminated surface water are much less than those posed by air and ground-water contamination. Accordingly, the Agency has no plans (at this time) to introduce a surface water model for delisting.

Partition Coefficients

Comment: A few comments were also received concerning the development and use of the partition coefficients to estimate organic leachate concentrations. Specifically, information was requested regarding the selection of realistic coefficients, how the coefficients would be applied to chemically fixed wastes, and how the organic leachate concentration would be incorporated into the transport model. One respondent recommended that the determination of partition coefficient values be suspended until the organic extraction procedure is promulgated.

Response: The Agency will shortly propose a methodology to calculate the leachate concentration of organic contaminants, using measured values for constituent concentration and solubility, until an organic leaching test is developed. The Agency will publish its approach in its entirety in a later notice. At that time, public comments will be requested on the approach to calculate the leachate concentration and the values of selected constants.

Nickel Criterion

Comment: One respondent requested that the criterion for nickel concentration levels be re-evaluated.

Response: The Agency has recently initiated studies to establish a basis for the re-estimation of an Acceptable Daily Intake (ADI) and a health-based standard for nickel. As an interim measure, the Agency has decided to use 350 μg/l as the health-based standard necessary for the evaluation of VHS model receptor well concentrations.[17]

Detection Limits

Comment: One respondent challenged the feasibility of evaluating organic contaminants when health-based standards are set below the analytical detection limits.

Response: The Agency is aware that analytical detection limits, in a few cases, may not be adequate to demonstrate the non-hazardous nature of a waste. The Agency believes that if a petitioner makes a good-faith effort to obtain the required detection limit and shows that his waste is not hazardous at the best achievable detection limit, the Agency has an obligation to act upon his petition.

The Agency could deny the petition based upon insufficient evidence. This would be the most conservative approach. The Agency believes, however, that the generator should not be penalized because the technology is not available to prove a constituent is not present at a given level. The Agency therefore may propose to exclude the waste, provided all other criteria are met.

Establishment of Health-Based Standards

Comment: Respondents questioned how the Agency was planning to establish health-based standards.

Response: The Agency recognizes that health-based standards are not established for all hazardous constituents. Rather than attempt to formally develop a health-based standard, the Agency will consider all available information and estimate what the level might be. The Agency has recently done this for nickel (See 50 FR 20247, May 15, 1985). In some instances, however, there may be insufficient information available on the constituent to make any generalizations. In such cases, the Agency may delay the delisting decision until the appropriate studies can be performed.

Maximum Extract Concentration/90% Confidence Level

Comment: One respondent challenged the Agency's proposal to use the maximum extract concentration in the VHS model. The respondent claimed that the mean leachate concentration should be used in the VHS model evaluation, as this concentration is most representative of what would occur in the environment. One commenter was concerned that an outlying data post should not be used as an input parameter to the model. The suggestion was offered that the Agency and the petitioner might mutually determine a more reasonable confidence level, for example, a 90% confidence level in the evaluation.

Response: As a response to these comments, the Agency had reevaluated its use of maximum contaminant levels and the use of the values provided by the 95% level of confidence. As a result, the Agency agrees with the petitioner that the mean may be used instead of the maximum or 95% confidence level in certain circumstances. The Agency intends to use either the mean, the 95%

[16] With 180 days to degrade and 20 inches of percolation per year, there will be 0.83 cubic feet of water for each square foot of surface. Assuming land application 12 inches deep yields one cubic foot of waste per square foot of surface. The resulting water to waste ratio is approximately 1.

[17] See 50 FR 20247, May 15, 1985.

confidence value, or the maximum value, depending upon the process generating the waste, how the samples are obtained, and how many samples were taken. If, in the Agency's evaluation, the process produces a very homogeneous waste, the sampling was comprehensive, and enough samples were taken to adequately define the means, then the Agency will use the mean in its evaluation. When the specific exclusion is proposed, the Agency will specify which of the three values it has used and its rationale. Comments on use of the appropriate value (*i.e.*, should one of the other two have been used, or some other value) will be solicited at that time. The Agency believes that this approach will allow some flexibility to the Agency and input to the public in deciding which of the values will be used in the model.

Model Evaluation, Calibration, and Validation

Comment: One respondent recommended that the Agency conduct a model-evaluation program involving field-scale calibration and validation studies of the VHS model. Such efforts would demonstrate the degree of conservatism of the model.

Response: The Agency's intent in adopting the VHS model for use in petition evaluation is to establish a reasonable worst-case disposal scenario against which wastes can be evaluated. These evaluations enable the Agency to examine the potential hazard of delisted wastes managed in a non-hazardous-regulated disposal situation. The Agency believes calibration of the VHS model is unnecessary since calibration generally involves adjustment of parameters to give an accurate result for a site-specific situation. The Agency's intended use of this model therefore does not require that it be calibrated to make contaminant transport predictions more accurate. The Agency does agree, however, that field verification of this model would be useful and would provide a high level of confidence in predicted results. The Agency, therefore, will conduct a verification study of the VHS model to assure that the predicted leachate spreading actually occurs. Furthermore, this study will be made in conjunction with an evaluation of the parameters used in the model; the results of this study will be made availabe for public comment. In this regard, the Agency notes that a three-dimensional variant of this model has recently been used successfully in a field-scale demonstration (See P.A. Domenico and G.A. Robbins, *Groundwater*, Vol. 23, No. 4, July–August 1985). In the interim, however, the VHS model as described in this notice will be used as an aid in evaluation delisting petitions.

Additional Factors

Comment: Several commenters noted that the VHS model does not account for recharge, longitudinal dispersion, synergistic effects, or prior to contamination of the aquifers.

Response: The Agency is aware of these limitations. See 50 FR 7900, February 26, 1985. The commenters did not suggest a way of including these factors in the model and the Agency is not yet ready to use a more complex model (accounting for these factors) for delisting. The Agency will soon propose a more complex model as part of the land disposal restrictions rule and toxicity characteristic leaching procedure. It will be perhaps another year, however, until this model is in final form. In the interim the VHS model will be used for delisting decisions. In addition, it should be emphasized that the VHS model results, while providing important input to a delisting decision, are not necessarily the sole basis for such a decision. Depending on the circumstances, the Agency may consider other information that is relevant to the regulatory criteria for delisting. These factors that are not included in the model may be considered in the delisting decision where the petitioner can make a compelling case that they are germane to a particular petition.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, add the following wastestreams in alphabetical order to Table 1 on Table 2 as indicated:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Gould, Inc.	McConnelsville, OH.	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations after November 27, 1985.
Keymark Corp.	Fonda, NY.	Wastewater treatment sludge (EPA Hazardous Waste No. F019) generated from chemical conversion coating of aluminum after November 27, 1985.
Monroe Auto Equipment.	Paragould, AR.	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations after vacuum filtration after November 27, 1985. This exclusion does not apply to the sludge contained in the on-site impoundment.
Siegel-Robert, Inc.	St. Louis, MO.	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations after November 27, 1985.
Vermont American, Corp.	Nowark, OH.	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations after November 27, 1985.

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Mearl Corp.	Peekskill, NY.	Wastewater treatment sludge (EPA Hazardous Waste Nos. K006 and K007) generated from the production of chrome oxide green and iron blue pigments after November 27, 1985.

[FR Doc. 85-27069 Filed 11-26-85; 8:45 am]
BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-2922-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at four facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32, and proposing to deny an exclusion for one petitioner. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. The effect of this action, if promulgated, would be to exclude certain wastes generated at particular facilites from listing as hazardous wastes under 40 CFR Part 261.

The Hazardous and Solid Waste Amendments of 1984 recently changed the criteria to be used in evaluating delisting petitions. Consequently, the Agency's evaluation considered the factors for which the wastes were originally listed, as well as any other factors (including additional toxicants) reasonably expected to be present in these wastes.

DATES: EPA will accept public comments on these proposed exclusions until January 13, 1986. Any person may request a hearing on these proposed exclusions by filing a request with Eileen B. Claussen, whose address appears below, by December 12, 1985. The request must contain the information prescribed in 40 CFR § 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Communications should identify the regulatory docket number "Section 3001—Delisting Petitions (5)".

The public docket for this proposal is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Ms. Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from nonspecific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or 261.11(a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste meeting the listing description from an individual facility may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that his waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) are evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains nonhazardous based on the hazardous waste characteristics—namely, ignitability, reactivity, corrosivity, and EP toxicity.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally; and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine whether these residues exhibit any of the hazardous waste characteristics on a periodic basis.

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste for which the petition was submitted is non-hazardous based upon the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based upon the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to any other factors or criteria, if there is a reasonable basis to

believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volumes of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit these data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bio-accumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of the waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. (See 50 *FR* 7882, February 26, 1985; the Final Vertical and Horizontal Spread Model Rule and the proposed organics model, both published elsewhere in today's **Federal Register**, for a more detailed discussion on our approaches for evaluating delisting petitions.) The overall approach, which includes a ground-water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby receptor wells (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component to evaluate reasonable worst-case contaminant levels in air at some distance downwind of the land treatment unit. The compliance point concentration determined by the models then is compared directly to a health-based standard. If the value at the compliance point predicted by the models is less than the health-based standard, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above the health-based standard, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would not be delisted, while a smaller volume of the same waste could be considered non-hazardous.[1] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the appropriate health-based standards. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. With respect to the ground-water component, the mathematical relationship yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*e.g.*, any waste exhibiting extract levels equal to or less than six times a health-based standard will generate a toxicant concentration at the receptor well equal to or less than that same health-based standard). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is proposing to use this approach as one factor to determine the potential impact of unregulated disposal of petitioned waste on human health and the environment. In fact, the Agency has used this approach in evaluating each of the wastes discussed in today's publication. As a result of this evaluation, the Agency is proposing to delist the wastes from four petitioners, while tentatively denying to exclude the waste from the petitioner.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. In addition, the Agency has initiated a spot sampling analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984 were enacted, the Agency granted temporary exclusions without first requesting public comment. The Amendments, however, specifically require the Agency to provide notice and an opportunity for comment before granting an exclusion. All of the exclusions proposed today will not become effective unless and until made final. A notice of final exclusion will not be published until all public comments (including those at requested hearings, if any) are addressed.

Petitioners

The proposed exclusions published today involve the following petitioners:

American Cyanamid, Hannibal, Missouri;
Continental Can Company, Milwaukee, Wisconsin;
General Motors Corporation, Fisher Body Division, Elyria, Ohio;
Keymark Corporation, Fonda, New York.

The proposed denial published today is for the following petitioner:

General Motors Corporation, Saginaw Michigan.

1. American Cyanamid Company

A. Petition for Exclusion

American Cyanamid Company (American Cyanamid), located in Hannibal, Missouri, is involved in the manufacture of agricultural chemicals. American Cyanamid has petitioned the Agency to exclude its wastewater and wastewater treatment sludge contained

[1] Other factors may result in the denial of a petition, such as actual ground-water monitoring data or spot-check verification data.

within three onsite lagoons, listed as EPA Hazardous Waste No. K038—Wastewater from the washing and stripping of phorate production. The listed constitutents of concern in EPA Hazardous Waste No. K038 are: phorate, formaldehyde, phosphorodithioic, and phosphorothioic acid esters. American Cyanamid has petitioned to exclude its waste because it does not meet the criteria for which it was listed.[2]

In support of their claim, American Cyanamid has submitted a detailed description[3] of their phorate manufacturing process, thermal oxidizer unit (liquids incinerator), and wastewater treatment facility, including schematic diagrams; a description of all other non-listed manufacturing processes that may contribute to the wastewater treatment facility; and a raw materials list of chemicals used in their manufacturing operations. American Cyanamid has also submitted detailed analytical data to characterize the phorate scrubber effluent and wastewater treatment sludge contained in the North and South phosphate lagoons and utility lagoon. This includes the results of phorate, formaldehyde, and total constituent analyses for any other Appendix VIII hazardous constituents [4] that could reasonably be expected to be present in the waste. Test results were also provided on EP toxic metal analyses; sulfide analyses; and oil and grease.

American Cyanamid produces phorate by a two-step process. The first step of the process involves the reaction of phosphorous pentasulfide with ethanol to yield the O,O-diethylphosphorodithioic acid intermediate and hydrogen sulfide. This intermediate is subsequently reacted with formaldehyde and ethyl mercaptan to yield phorate.

All contaminated wastewater from the phorate manufacturing operations passes through a high-temperature thermal oxidizer. The thermal oxidizer is a liquids incinerator which treats only wastewater and gaseous emissions from the phorate manufacturing process. Incinerator temperatures are in the operating range of 750–1000°C during incineration. The unit is equipped with safety and operating equipment required for hazardous waste incineration (*i.e.*, flow monitoring, low temperature shutoff, continuous O_2 analysis, *etc.*). The thermal oxidation unit is followed by a quench tank and separator to cool the gas stream and remove any phosphorous oxides which are present.

The gas stream is then scrubbed with soda ash to remove sulfur oxides before it is vented. The scrubber effluent from this process is discharged to an oxidation tower where any remaining sulfur oxides are converted to sulfates. Overflow from the oxidation tower passes to a mix tank (to take advantage of its high pH) and is combined with effluent from the quench tower and separator (low pH). Soda ash is also added to the mix tank. Effluent from the mix tank then passes to the phorate plant effluent sump and discharges to the utility lagoon where it is combined with effluent flows from several other non-listed plant effluents. Effluent from the utility lagoon is discharged to the Mississippi River under a NPDES permit.

Before 1982, discharge from the quench tank and separator was directed to a mixing tank where lime was added (instead of soda ash) to neutralize the dilute phosphoric acid present, forming calcium phosphate compounds. The lime tank then discharged to two lagoons—known as the North and South phosphate lagoons—where calcium phosphate and lime settled out. (Before 1982, the oxidation tower effluent discharged directly to the phorate plant effluent sump, not the mixing tank.) The overflow from the phosphate lagoons then discharged to the phorate plant effluent sump, and then the utility lagoon.

As a result of the 1982 modification, the phosphate sludge lagoons were no longer required for the removal of the lime solids; the mix tank overflow was therefore routed directly to the phorate plant effluent sump.

In order to characterize their waste, American Cyanamid collected samples from the phorate plant effluent sump and the utility and phosphate lagoons. Initially, three consecutive 24-hour composite samples were collected from the effluent sump and analyzed for sulfide, oil and grease, formaldehyde, and phorate. American Cyanamid resampled their effluent at a later date; this time, four 24-hour composites were collected over a 6-day period and analyzed for the EP metals and sulfide. American Cyanamid claimed that these samples were representative because their process was uniform. In addition, American Cyanamid submitted monitoring data on the scrubber effluent (this monitoring data was required by their NPDES discharge permit); the sampling point was between the effluent sump and the utilities lagoon. These data were collected over a three-and-a-half year period, and included results from 500 discrete analyses for phorate.

American Cyanamid also collected samples from their three lagoons. Each of the lagoons was divided into quadrants. Five core samples were collected from each quadrant and combined into one composite. All samples were analyzed for sulfide, oil and grease, formaldehyde, and phorate. In addition, the sludge in the utility lagoon was also analyzed for chlorobenzene and 1,2-dichloroethane.[5, 6] The lagoons were sampled again by the above method and the samples were analyzed for the EP toxic metals. The analytical results are summarized in Tables 1 and 2. American Cyanamid claims that there are no significant quantities of any other Appendix VIII hazardous constituents in the petitioned waste streams because all effluent passes through the incinerator.

The two phosphate lagoons currently contain approximately 15,800 yd^3 of solids. The treated scrubber effluent is generated at a rate of 80,000 gal/day. This stream contains less than 100 lbs per day of suspended solids. The utility lagoon contains approximately 6600 yd^3 of solids. Solids are attributed to non-RCRA listed wastes. Average suspended solids entering the utility lagoon from all contributing sources are approximately 700 lbs per day.

[2] American Cyanamid originally submitted their petition on April 22, 1983. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. (See Section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from American Cyanamid. This additional information was submitted by American Cyanamid on June 5, 1985, September 17, 1985, and October 28, 1985.

[3] American Cyanamid has claimed their raw materials list and process descriptions as confidential business information (CBI).

[4] American Cyanamid did not test for the presence of phosphorodithioic and phosphorothioic acid esters (listed constituents). The Agency, however, believes (vide infra) that based on other data, such analyses are not needed. See the Agency Analysis and Action section for the basis of our decision.

[5] Chlorobenzene and 1,2-dichloroethane are used in another process which was claimed Confidential Business Information (CBI) by American Cyanamid. This waste stream, however, passes through another thermal oxidizer before discharge to the utility lagoon. This waste stream does not enter the phosphate lagoons.

[6] One of the four utility lagoon sludge samples was a not full-core. These samples were collected from the surface around the perimeter of the lagoon.

TABLE 1.—MAXIMUM EP ANALYSIS (PPM)

	North phosphate lagoon	South phosphate lagoon	Utility lagoon	Scrubber effluent
As	<0.05	<0.05	<0.05	0.007
Ba	0.065	0.140	0.22	0.073
Cd	<0.01	<0.01	<0.01	0.03
Cr	0.11	0.12	0.06	0.065
Hg	<0.005	<0.002	0.005	0.002
Pb	0.04	<0.04	0.04	0.24
Se	<0.01	<0.01	<0.01	0.21
Ag	<0.02	<0.02	0.02	0.012
S=	<10	<10	<10	[1] 1,100

[1] American Cyanamid claims that this result appears to be due to laboratory error. Other samples analyzed at the same time contained S= at 65 and 160 ppm. There was considerable delay between sampling and analysis, however, in addition, the samples were not preserved. American Cyanamid resampled their waste stream in August, 1985. The Concentrations of sulfides were reported (in ppm) as 0.05, 0.30, 0.05, and 0.05. the Agency agrees with American Cyanamid that the latter values more accurately represent the sulfide concentration in the scrubber effluent for the following reason: hydrogen sulfide should be easily oxidized during incineration and hence would not be expected to be detected in significant quantities in the scrubber effluent. This assumption is substantiated by the fact that sulfide was not detected in the sludge collected from the lagoons. Furthermore, sulfites, a possible by-product of incomplete combustion, is known to cause a strong positive interference in the determination of sulfide.

TABLE 2.—MAXIMUM CONSTITUENT ANALYSIS (PPB)

	North phosphate lagoon	South phosphate lagoon	Utility lagoon	Scrubber effluent
Phorate	<2.5	<2.5	[1] 15	0.67
Formaldehyde	<10	<10	<10	<1
1,2-Dichloroethane			<10	
Chlorobenzene			<0.3	

[1] Detected in one of four samples.

B. Agency Analysis and Action

Based on our current evaluation criteria, American Cyanamid has demonstrated that its wastewater treatment sludge, resulting from thermal oxidation and neutralization with soda ash and caustic soda and lime, is non-hazardous. The Agency believes that the core samples collected by American Cyanamid were non-biased and adequately represent any variation which may occur throughout the three lagoons.

Five full-depth core samples were collected from each quadrant of each lagoon, and were composited to produce four samples per lagoon. The Agency believes that any stratification occurring vertically due to settling or horizontally as a function of flow through the lagoons would be represented by the sampling scheme. The key factor which could vary constituent concentrations in the waste would be the use of different raw materials due to changes in the product line being manufactured. Variations in raw materials can be expected when a facility either performs as a job shop or changes its product line on a seasonal basis. Since this facility does not perform as a job shop or have seasonal variations, the Agency believes that American Cyanamid's claim of uniformity in manufacturing is substantiated.

In further support of this claim, American Cyanamid submitted in-plant monitoring data on their scrubber effluent discharged from the phorate process wastewater incinerator, as required under their NPDES permit. Monitoring data were collected between October 1979 and March 1983; over 500 separate analyses for phorate were performed during this period. Although EP and sulfide analyses on the scrubber effluent were collected over one week, the results of this in-plant monitoring data (collected over the three-year period) supports American Cyanamid's claim of uniformity.

The Agency has evaluated the constituents from American Cyanamid's waste using the vertical and horizontal spread (VHS) model.[2] The Agency's evaluation of American Cyanamid's waste for the EP toxic metals, using the maximum values for estimated sludge volumes contained in the lagoons and wastewater generated annually, and maximum predicted leachate concentrations (measured concentrations were used for the wastewater) as input parameters, has resulted in the maximum predicted compliance point concentrations exhibited in Table 3. The predicted maximum levels at the receptor well for all EP toxic metals, except selenium (as a consequence of its concentration in the wastewater), are below the National Interim Primary Drinking Water Standards (NIPDWS). The maximum EP leachate concentrations for selenium in the lagoon sludges were reported as below 0.01 mg/l; however, the maximum reported concentration in the effluent was 0.24 mg/l.

The Agency does not believe that the concentration of selenium in the scrubber effluent is of regulatory concern for the following reasons. Based on the raw materials in American Cyanamid's processes, selenium would not be expected to be present in American Cyanamid's waste. This assumption is confirmed by the fact that selenium was not detected at 0.01 mg/l in the lagoon sludges. The maximum concentration in the wastewater was 0.21 mg/l. The other reported values, however, were much lower: 0.021, 0.009, and 0.041 mg/l. None of the other values would result in a compliance point concentration above the NIPDWS. Furthermore, the wastewater samples were analyzed using SW-846 Method 7740, the Atomic Absorption Graphite Furnace Method for selenium. This method is prone to matrix interferences. (The sludge samples were originally analyzed by the Graphite Furnace Method. American Cyanamid later reanalyzed the same sludge samples using the gaseous hydride aeration method in order to achieve a lower detection limit.)

Sulfide concentrations in the lagoon sludge and scrubber effluent were below 10 ppm; this is below the threshold limit value of 10 ppm for hydrogen sulfide in workplace air.[3]

[2] The model simulates the dispersion of toxicants in a typical aquifer in the vertical and horizontal directions perpendicular to the direction of groundwater flow. This model, made final elsewhere in today's **Federal Register**, assumes that the waste is placed in a landfill. As we indicated when we proposed the model, this scenario may not be appropriate to evaluate the hazards posed by wastes when they are managed in surface impoundments (See 50 *FR* 7899, February 26, 1985). In fact, the Agency is currently evaluating other approaches for wastes that are placed in surface impoundments, and expects to propose such an approach in the near future. If that approach is proposed before we make final our decision on this petition, we will reconsider our decision in this case and all other situations where the Agency has proposed to exclude wastes that are managed in surface impoundments.

[3] See *Documentation of Threshold Limit Values for Substances in Workroom Air*. American Conference of Governmental Industrial Hygienists, third edition, 1971, Cincinnati, Ohio.

Table 3

Calculated Compliance Point Concentrations (mg/l)

	As	Ba	Cd	Cr	Pb	Hg	Se	Ag
Sludge	0.008	0.035	0.002	0.02	0.006	0.0008	0.002	0.0032
Wastewater	0.001	0.012	0.005	0.01	0.038	0.0003	0.033	0.0019

Health-Based Standards (mg/l)

0.05	1.0	0.01	0.05	0.05	0.002	0.01	0.05

Phorate was detected at 15 ppb in only one out of twelve full-core sludge samples. The detection limit used in the analyses was 2.5 ppb. Neither formaldehyde, chlorobenzene, nor 1,2-dichloroethane was detected in the lagoon sludge. The Agency has evaluated the mobility of the organic constituents from American Cyanamids' waste, using the VHS model. The Agency has assumed that formaldehyde, 1,2-dichloroethane, and chlorobenzene are present at concentrations equal to their detection limits. The Agency's evaluation, using the predicted leachate concentration (as estimated using the interim organic leachate model which is described in the proposed organics model published elsewhere in today's **Federal Register**) total sludge volume as input parameters to the VHS model, has resulted in the maximum predicted compliance point concentrations exhibited in Table 4. The predicted compliance point concentration for each constituent is below its health-based number.

TABLE 4.—PREDICTED MAXIMUM CONCENTRATIONS AT COMPLIANCE POINT

Constituent	Predicted leachate concentration (ppb)	Predicted compliance point concentrations (ppb)	Health-based [9] No. (ppb)
Phorate	0.016	2.5×10^{-3}	7
Formaldehyde	10	1.6	([10])
Chlorobenzene	3.1×10^{-3}	4.9×10^{-4}	1,000
1,2-dichloroethane	1.8	0.28	4

[9] "Health-Based Standards List" document available in the public docket in support of the proposed organics model published elsewhere in today's FEDERAL REGISTER.

[10] Although no health-based number for formaldehyde is currently available, the Agency believes that the levels of formaldehyde which could be found in American Cyanamid's waste are not of regulatory concern. This conclusion was based upon evidence accumulated from a literature search of information currently available on the toxicity of formaldehyde. It has been demonstrated in long-term rodent inhalation bioassays that formaldehyde can cause cancer. In 1983 (Kerns, W.D., K.L. Pavkov, D.J. Donfrio, E.J. Gralion, and J.A. Swenberg, 1983. *Cancer Res.* 43:4382-92) it was demonstrated that exposure to formaldehyde through inhalation at concentrations of 5.6 or 14.3 ppm, 6 hours per day, 5 days per week for 24 months caused squamous cell carcinomas in the nasal cavaties of approximately 50% of the rats in the high exposure group and 1% of the rats in the low exposure group. A similar study (Albert, R., A. Sellakumar, S. Laskin, M. Kuschner, N. Nelson, and C. Synder, 1982. *J. Natl. Cancer Inst.* 68:597-603) confirmed the results of Kerns, *et al.* There is no evidence in whole animal studies that formaldehyde alters any aspects of reproduction or causes birth defects. (Committee on aldehydes, Board on toxicology and Environmental Health Hazard. 1982. Formaldehyde and Other Aldehydes. National Academy Press EPA 600/6-82-002.) It has, however, exhibited mutagenic activity in several non-mammalian animal or cell systems. (Auerbach, C.M., M. Moutschen—Dahmen, and J. Moutschen. 1977. Genetic and cytogenetical effects of formaldehyde and related compounds. *Mutat. Res.* 39:217-362.) Acute oral toxicity tests on formaldehyde indicate that it is slightly toxic to rats with LD50 values in the range of 500-800 mg/kg body weight. (Smyth, H.F., Jr., J. Seaton, and L. Fisher. 1941.) There is no evidence available in the literature which indicates that formaldehyde is carcinogenic when ingested.

In addition, the concentration of phorate in the scrubber effluent is below its health-based standard. Likewise, the "non-detect" level of formaldehyde in the scrubber effluent is ten times smaller than the "non-detect" level in the lagoon sludge. The Agency, therefore, does not believe that these constituents are present in the wastewater or sludge at levels of regulatory concern. (See footnote 10 for a discussion of the toxicity of formaldehyde.)

American Cyanamid did not analyze the scrubber effluent (from a CBI process), which enters the utility lagoon, for chlorobenzene and ethylene dichloride. These constituents would be expected to be destroyed by the incineration process. This is substantiated by the fact that 1,2-dichloroethane and chlorobenzene were not detected in the utility lagoon sludge (See Table 3). The Agency, therefore, concludes that these constituents are not expected to be present in the wastewater at levels of regulatory concern.

American Cyanamid also did not test their waste for the phosphorodithioic and phosphorothioic acid esters. American Cyanamid, however, reported that the ratio of phorate to the acid esters is approximately 25 to one in the finished product. Furthermore, phrorate and the acid esters would be expected to have similar heats of combustion and, therefore, would be expected to be destroyed during incineration to the same extent. The concentration of acid esters would thus also be expected to be much less than the concentration of phorate found in the sludge. Using this line of reasoning, the predicted concentration at the compliance point would be 1×10^{-4} ppb (*i.e.*, $\frac{1}{25}$ of 2.5×10^{-3}); an extremely low value. No acceptable Daily Intake (ADI) level is currently available for the acid esters for comparison, and the Agency does not believe that acid esters are present at levels of regulatory concern. The Agency, however, specifically solicits toxicological data, if available, that could support or refute this conclusion.

For all the above reasons, the Agency believes that this waste is non-hazardous. The Agency, therefore, proposes to grant an exclusion to American Cyanamid in Hannibal, Missouri for scrubber effluent and its sludge contained in the lagoons.

II. Continental Can Company

A. Petition for Exclusion

The Continental Can Company (Continental) manufacturers and assembles metal cans at its Milwaukee, Wisconsin facility. Continental has petitioned the Agency to the exclude incinerator ash produced by the pyrolytic incineration of spent solvents, solid wastes, and waste oil. This ash is classified as hazardous due to the presence of several spent non-

halogenated solvents listed under EPA Hazardous Waste No. F003 (*i.e.*, xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol) and EPA Hazardous Waste No. F005 (*i.e.*, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine). Continental has petitioned the Agency to exclude their ash because it does not meet the criteria for which it is listed.[11]

EPA Hazardous Waste No. F003 is listed only for ignitability, while EPA Hazardous Waste No. F005 is listed for ignitability and toxicity due to the presence of a number of toxic solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine. Continental claims that their incineration process is successful in destroying the solvents and produces a non-hazardous ash. In addition, Continental claims that the ash is not hazardous for any other reason.

Continental has provided a detailed description of its manufacturing and incineration processes, including schematic diagrams; EP toxicity and total constituent analyses of the ash for all the EP toxic metals and nickel; total constituent analyses and distilled water leachate test results for cyanide; and total constituent analysis and EP toxicity results for hexavalent chromium. Continental has also submitted oil and grease analysis for the ash. Further, more Continental submitted a list of raw materials used in its manufacturing processes, and produced analyses for all Appendix VIII hazardous constituents, including the toxic solvents used, believed to be present in the ash. Much of this information was requested to determine if hazardous constituents, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.

Continental uses a multi-stage can assembly process that includes lithographic inking, coating, metal cutting and forming, heat treatment, and washing processes. These processes generate an average of over 39,000 gallons of spent clean-up and carrier solvent per year. These solvents are incinerated along with about 1,100 tons of solid wastes per year, generally rubbish and packing materials, and about 113,000 gallons per year of waste lubricating oils skimmed from a collection sump in the draw and iron process. Energy is recovered from the incinerator by the generation of steam for use in the plant's can washing process.

Incineration is performed in two stages. Pyrolysis of liquid wastes takes place in the first stage at temperatures of 1200 °F. Solid wastes are also added in the first stage. The products from the partial combustion and partial pyrolutic gasification of the waste are sent to a thermal reactor, where complete combustion is achieved at temperatures of 1800 °F.

Four samples of ash were taken from the incinerator at weekly intervals during routine cleaning and maintenance. Continental claims that the composited samples are representative of any variation over time of the listed and non-listed constituents in the waste stream. They also claim that the raw materials used in the production processes do not vary.

Maximum total constituent analysis and leachate values for the EP toxic metals, hexavalent chromium, nickel, and cyanide are presented in Table 1.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND EP TOXICITY VALUES (PPM)

	Total	EP
Arsenic	19.0	<0.35
Barium	11,000.0	0.47
Cadmium	0.9	<0.05
Chromium (total)	86.	1.2
Chromium (Hex)	<2.	0.04
Lead	160.	0.39
Mercury	<0.01	[1] <0.002
Selenium	<0.02	[1] <0.005
Silver	66.	<0.03
Nickel	42.	0.22
Cyanide (total)	0.8	[2] <0.2

[1] Differing detection limits due to separate analyses.
[2] EP value from distilled water extract.

A mass balance analysis was also performed for the ash where average through-put of organic compounds was projected using the average generation rate of 1400 lbs of ash per week. Based on these calculated concentrations, a number of volatile and base/neutral priority pollutants were selected for further analyses, including the listed toxic solvents and polynuclear aromatic hydrocarbons (PNAs) which have the potential of being formed during incomplete combustion. The results of these analyses are shown in Table 2.

Table 2.—Maximum Organics Concentrations (ppm)

Methyl ethyl ketone	0.16
Toluene	0.095
1,1,1-trichloroethane	0.066
Benzene	0.1
Bis-(2-ethyl hexyl) phthalate	1.2
Di-n-butyl phthalate	3.2
Methylene chloride	0.37

Continental also analyzed their waste for carbon disulfide but did not specifically analyze the waste for isobutanol or pyridine because these compounds were not expected in their F005 wastes. Other organic compounds identified by testing were either noted to be below detection limits or were not Appendix VIII hazardous constituents. Of all the compounds tested, the only PNA detected in the waste was phenanthrene, found in a single sample at 0.19 ppm.

The oil and grease content of the ash averaged less than 0.82%. None of the samples demonstrated the characteristics of reactivity, corrosivity, or ignitability. Continental also provided a list of all raw materials used in their process which could contribute to the waste stream. From this list, it was determined that no Appendix VIII hazardous constituents, other than those tested for, are used in the manufacturing processes and that formation of any of these constituents is unlikely. Continental claims that it produces a maximum of 45 tons of ash annually.

B. Agency Analysis and Action

Continental has demonstrated to the Agency that the ash produced by their incinerator is non-hazardous. The Agency believes that the four weekly composite samples taken from the incinerator adequately characterize any variations that may occur in the petitioned waste stream. The Agency is satisfied that the weekly compositing done by Continental will not conceal variations in concentration and that this ash will be consistent on a week-to-week basis. Due to the nature and consistency of the operations involved, the Agency believes that the samples presented in support of the petition are representative of the waste generated by Continental.

The Agency's conclusion that the sampling adequately represents Continental's waste was verified by a comparison of the EP toxicity values from each sample. This analysis would have, but did not, detect any significant variability in the waste (*i.e.*, the standard deviation was low).[12]

The Agency has evaluated the mobility of the inorganic constituents from Continental's waste using the VHS ground-water model.[13] The Agency's

[11] Continental originally submitted their petition on April 19, 1985. EPA requested additional information from Continental, which was submitted to the Agency on August 9, 1985.

[12] See standard t-test in *Biometry: The Principles and Practice of Statistics in Biological Research*, Sokal, R., and Rohlf, F.J., 1969.

[13] The model simulates the dispersion of toxicants in a typical aquifer in the vertical and horizontal directions perpendicular to the direction of ground-water flow. The VHS model (assuming disposal in a

Continued

evaluation of Continental's maximum annual generation rate of 45 tons per year and the maximum EP extract levels reported has produced the compliance point concentrations shown in Table 3. The maximum EP leachate values were used in the model because Continental submitted data on just four samples, the minimum acceptable number.

TABLE 3.—VHS MODEL: PREDICTED COMPLIANCE POINT CONCENTRATIONS (PPM)

	VHS prediction	Health-based standard
As	<0.011	0.05
Ba	0.015	1.0
Cd	<0.0016	0.01
Cr (total)	0.037	0.05
Pb	0.012	0.05
Hg	<0.00006	0.002
Se	<0.00015	0.01
Ag	<0.00093	0.05
Ni	0.0068	0.35
CN^-	<0.0062	0.20

The ash exhibited arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver levels (at the compliance point) below their respective National Interim Primary Drinking Water Standards; nickel levels were below the EPA's interim criterion;[14] and cyanide levels were below the U.S. Public Health Service's suggested drinking water standard.[15] The Agency has therefore concluded through use of the VHS model that no hazardous inorganic constituents are present in the waste at levels of regulatory concern. Total cyanide levels in the waste also are below the air threshold of 10 ppm set by the American Conference of Governmental Industrial Hygienists (ACGIH).[16] This constituent is therefore not of regulatory concern.[17]

In addition, the Agency has determined that no other hazardous constituents are present based on the indicator tests described. In particular, the ash generated by Continental contains non-significant levels or organics, as indicated by mass balance analyses of the petitioned wastestream. Most of the organics reasonably believed to be present in the waste were at non-detectable levels. Seven Appendix VIII hazardous constituents (benzene, methyl ethyl ketone, toluene, 1,1,1-trichloroethane, bis-(2-ethyl hexyl) phthalate, and di-n-butyl phthalate) were found to be present in the waste in measurable amounts. The Agency has evaluated the mobility of these organic constituents from Continental's waste by using the VHS ground-water model.[18] The evaluation of Continental's annual waste production of 45 tons and the concentration of organics predicted by the Agency's organic leachate model [19] has yielded the compliance point concentrations shown in Table 4.

TABLE 4.—PREDICTED ORGANICS CONCENTRATIONS AT COMPLIANCE POINT (PPM)

	VHS prediction	Health-based standard
Methyl ethyl ketone	0.037	2
Toluene	0.000034	10
1,1,1-trichloroethane	0.00019	1
Benzene	0.0001	0.001
Bis-(2-ethyl hexyl) phthalate	0.00012	2
Di-n-butyl phthalate	0.025	44.1
Methylene chloride	0.0041	0.06

The concentration of each organic compound in the waste leachate was first calculated from the Agency's proposed organic leachate model. These concentrations were then employed in the Agency's VHS ground-water model to determine whether these compounds could be expected to be present at the compliance point at non-acceptable levels. The concentrations predicted from the VHS model are all below the health-based standards for these compounds and these compounds are therefore not of environmental concern. The presence of phenanthrene is discounted by the fact that it was detected at a low concentration in a single sample, and because the solubility of this compound is low, which would tend to keep the compound bound up within the waste matrix.[20]

The Agency has reviewed each of the chemical components used in each raw material, as supplied by raw material lists and material safety data sheets, in Continental's operation. Based on this information, the Agency believes that neither isobutanol nor pyridine is reasonably expected to be present since they are not used by Continental. The Agency has concluded from this review that no other Appendix VIII hazardous constitutents are present in the petitioned waste.

The Agency believes that the treatment process used by Continental generates a non-hazardous waste. In compliance with RCRA interim status regulations, Continental has been storing (in on-site containers) the incinerator ash generated since February 11, 1985, pending a final decision from the Agency on this delisting petition. Since the waste stream was first sampled representatively on this date, and was sampled representatively for several weeks afterward, the Agency believes that this stored waste was correctly characterized as non-hazardous at the time of generation by the chosen sampling scheme. The Agency, therefore, proposes to grant an exclusion to Continental Can Company, located in Milwaukee, Wisconsin, for the waste incinerator ash that is generated and currently stored onsite at their Milwaukee facility, as described in their petition.

III. General Motors Corporation

A. Petition for Exclusion

The General Motors Corporation (GMC), Fisher Body Division, located in Elyria, Ohio, involved in the manufacture of plastic and metal interior and exterior automotive body parts, has petitioned the Agency for a

landfill) is used to predict reasonable worst-case containment levels in a receptor well located 500 feet from the source. See 50 FR 7895, February 26, 1985 and the "Final VHS Model" Rule published elsewhere in today's **Federal Register**.

[14] See 50 FR 20247 (May 15, 1985) for a complete description of the development of the Agency's interim health-based standard for nickel.

[15] Drinking Water Standards, U.S. Public Health Service, Publication 956, 1962 (0.2 ppm).

[16] See Footnote 8.

[17] To confirm our conclusion that the waste is non-hazardous, the Agency has used an alternative method. The Agency calculated the toxicant levels expected at the compliance point using an upper limit of a 95% confidence interval in addition to the maximum extract level.

Based upon the data submitted by Continental, a confidence interval for each constituent of concern can be calculated. This enables the accuracy with which the sampled mean concentration of each constituent in the waste to be determined. The upper confidence limit may be calculated and used in the VHS model instead of the maximum EP value reported in the petition. The use of both the upper confidence limit and the maximum reported EP value ensures that the impact of all reasonable variations in the waste extract level have been taken into account. The confidence interval (CI) is determined using the following equation:

$$CI = X \pm t(s/n^{1/2})$$

where:

X = mean concentration in the samples
t = t-value obtained from statistical tables
s = standard deviation
n = number of samples

If the upper limit of a 95% confidence interval is evaluated using the VHS model and generates a compliance point concentration below the health-based standard (e.g., the drinking water standard) then it can be concluded that at least 95.5 times out of 100, all compliance point values will fall below this level. Using the calculated upper limits from the 95% confidence interval for each metal in the VHS model calculation, the resultant compliance point concentration will not exceed their respective health-base standards.

[18] See Footnote 13.

[19] See the proposed organics model published elsewhere in today's **Federal Register** for a detailed account of the development of the Agency's organic model.

[20] See 50 FR 19550 (May 9, 1985) for additional information concerning the Agency's survey of polynuclear aromatic hydrocarbons (PNAs), which is available for inspection in the RCRA Public Docket. See also 50 FR 37364, Appendix (September 13, 1985), which describes the Agency's responses to public comments received on the PNA report.

one-time exclusion of the treatment residue generated from the use of the Chemfix® treatment process on sludge contained in three on-site surface impoundments. The sludge contained in these impoundments was generated from GMC's electroplating operations and is presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludge from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum, (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. GMC's request for a one-time exclusion for the treated waste in their three impoundments is due to the fact that this facility (where the operations have been discontinued) no longer generates electroplating or electroless copper plating waste. Alternate sludge dewatering operations will be installed for the remaining waste being generated.[21]

The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). GMC claims that the Chemfix® treatment process converts the impounded sludge into a non-hazardous stabilized treatment residue by reducing any hexavalent chromium that is present and by immobilizing the trivalent chromium, cadmium, and nickel present in the sludge. GMC also claims that cyanide is not used in any of their processes and is, therefore, not present in their waste. GMC further claims that the waste is not hazardous for any other reason since it contains no other toxicants nor does it exhibit any of the hazardous waste characteristics.

GMC has submitted a detailed description of its electroplating and wastewater treatment process as well as a description of the Chemfix® treatment process; schematic diagrams; total constituent analyses of the sludge for cadmium, total chromium, nickel, and cyanide; and EP, Oily Waste EP, and Multiple Extraction test data (MEP) for cadmium, total chromium, and nickel. GMC has also submitted total constituent analyses of the sludge before Chemfix® treatment and Oily Waste EP of toxicity test results (on the Chemfix® treated waste) for arsenic, barium, lead, mercury, selenium, and silver; and total oil and grease analyses of representative waste samples treated by the Chemfix® process. In addition, GMC has submitted a list of raw materials used in the manufacturing process and total constituent organic analyses for the organic priority pollutants. The Agency requested this information, as noted above, to determine if hazardous constituents other than those for which the waste was originally listed are present in the waste at levels of regulatory concern. GMC has also submitted a contingency plan for field verification during the Chemfix® treatment of the impoundments.

GMC's manufacturing operations involve the stamping and forming of steel and aluminum; welding and assembly; thermoforming and injection molding of plastic parts; and finishing of steel (galvanized and stainless), aluminum and plastic via cleaning alkaline washing, phosphating, electroless copper plating, copper, nickel, and chromium electroplating, and painting. Electroless copper plating is done on plastic parts to provide an electrolytic surface for subsequent copper, nickel, and chrome electroplating. Electoplating processes involve anodic and cathodic electric cleaning and sulfuric acid etching, followed by copper, nickel, and topcoat chrome plating from a chromic acid solution.

GMC's wastewater treatment system includes acid cracking of oil emulsions, where necessary; hexavalent chromium reduction via contact with sulfur dioxide during circulation through two packed tower scrubbers and subsequent addition of metabisulfite; metals precipitation through addition of lime and a polymer coagulant; gravity settling; and discharge into impoundments for additional gravity dewatering. GMC has also proposed to use the Chemfix® stabilization technology on the wastes contained in their three impoundments; these impoundments contain approximately 6.8 million gallons of sludge (7.5 million gallons after the use of Chemfix®).[22]

Before treatment, the Chemfix® process will uniformly mix the contents of each impoundment using high shear pumps. The Chemfix® process will then add reagents including aluminosilicate setting agents to generate a residue similar in texture to a clay soil comprised of a polymeric matrix which is claimed to chemically bind all metal ions.

GMC divided each impoundment into quadrants and collected complete depth core samples from ten random points in each quadrant of each impoundment. The core samples collected in each quadrant were combined into one composite sample for each quadrant. GMC claims these cores are representative of the waste contained in the impoundments since their manufacturing process was uniform. The homogenization of the waste during the Chemfix® treatment revealed the maximum concentration reported in Table 1. After being treated by Chemfix® on a laboratory scale, the Oily Waste EP [23] and EP toxicity test analyses of these samples for the listed constituents revealed the maximum concentrations reported in Table 2.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT ANALYSES (PPM)

	Cd	Cr (total)	Ni	CN total
Raw sludge:				
Impoundment No. 1	2.7	13,300	3,990	2.2
Impoundment No. 2	2.5	16,900	6,120	2.2
Impoundment No. 3	2.0	9,720	3,150	4.7

TABLE 2

	Maximum oily EP leachate concentrations (ppm)			Maximum EP leachate concentrations (ppm)		
	Cd	Cr (total)	Ni	Cd	Cr total	Ni
Sludge treated with Chemfix®:						
Impoundment No. 1	0.04	0.49	0.32	0.04	0.47	0.51
Impoundment No. 2	0.02	0.27	0.35	0.038	1.49	4.5
Impoundment No. 3	0.03	0.44	0.37	0.04	0.76	0.42

Oily EP Toxicity analyses for the non-listed metals revealed the maximum concentrations reported in Table 3.

[21] GMC originally submitted their petition on April 3, 1984. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. (See Section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from GMC (See 49 FR 4803, February 8, 1984). This additional information was submitted by GMC on October 3, 1984 and July 8, 1985.

[22] Since GMC is proposing to treat a hazardous waste, GMC will need a RCRA treatment permit for the Chemfix® treatment process.

[23] The Oily EP Toxicity test was performed since total oil and grease content of the waste exceeded 1 percent.

TABLE 3.—MAXIMUM OILY EP LEACHATE CONCENTRATIONS (PPM)

	As	Ba	Pb	Hg	Se	Ag
Chemfixed ® sludge: impoundment No. 1	0.02	0.21	0.46	<0.01	0.07	0.047
Impoundment No. 2	0.05	0.16	0.31	<0.01	0.06	0.040

TABLE 3.—MAXIMUM OILY EP LEACHATE CONCENTRATIONS (PPM)—Continued

	As	Ba	Pb	Hg	Se	Ag
Impoundment No. 3	<0.01	0.20	0.36	<0.01	0.07	0.031

Multiple Extraction [24] test data for the listed metals revealed the maximum concentrations reported in Table 4.

[24] Oily Multiple Extraction test was not run since there was very little variation between the EP and oily EP test results; where variation was encountered (in most cases) the EP test produced higher extract concentrations than the oily EP test.

Table 4

Maximum Multiple Extraction Concentrations (ppm)

Chemfixed® Sludge: Extraction #:

	1	2	3	4	5	6	7	8	9	10
Impoundment #1										
Cd	0.040	0.005	0.004	0.005	0.002	0.002	0.005	0.003	0.002	<0.001
Cr	0.395	0.142	0.077	0.050	0.060	0.067	0.055	0.048	0.038	0.027
Ni	0.473	0.125	0.060	0.044	0.041	0.031	0.039	0.034	0.044	0.021
Impoundment #2										
Cd	0.036	0.008	0.011	0.002	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001
Cr	1.494	0.541	0.445	0.313	0.225	0.174	0.110	0.084	0.063	0.053
Ni	4.536	0.625	0.370	0.240	0.157	0.121	0.057	0.052	0.047	0.038
Impoundment #3										
Cd	0.044	0.009	0.008	0.005	0.003	<0.001	0.006	<0.001	<0.001	<0.001
Cr	0.336	0.175	0.134	0.079	0.060	0.057	0.035	0.018	0.015	0.012
Ni	0.419	0.115	0.065	0.037	0.027	0.023	0.019	0.015	0.010	0.003

Maximum total oil and grease values reported were 1.84, 1.03, and 1.05 percent for impoundments #1, #2, and #3, respectively. GMC's raw materials list indicated that several hazardous Appendix VIII constituents were components in several trade name products used at the facility (*i.e.*, formaldehyde and methylene chloride), and that washings from painting operations enter the waste stream. Thus, GMC was requested to test representative samples for total content of the priority pollutants.[25] This data showed non-detectable levels at a detection limit of <1 ppm. GMC claims that the maximum volume of waste (after the Chemfix® treatment) that will be replaced into the impoundments is 7.5 million gallons (approximately 31,000 tons). Finally, GMC proposes to collect samples of the Chemfix® treatment residue from the end of the discharge hose at two-hour intervals. Each sample will be combined into 1 daily composite. Each daily sample is proposed to be tested using the EP toxicity test for the EP toxic metals. Any extract levels exceeding the USEPA maximum allowable concentration will be retreated or disposed of as a hazardous waste. In addition, any treatment residue monitored over each 48-hour period which cannot pass the U.S. EPA specified Paint Filter Test will require retreatment or disposal as a hazardous waste.

B. Agency Analysis and Action

The Agency believes that GMC's sludge after treatment by the Chemfix® process, should be considered non-hazardous as conditioned below. The Agency believes that GMC's waste can be rendered non-hazardous (*i.e.*, that the constitutents of concern can be sufficiently immobilized by the Chemfix® treatment process).

The Agency believes that the twelve composites samples (comprised of 120 individual random core samples) were nonbiased and adequately represent any variations which may occur in the impounded waste. The Agency also believes that the samples were representative since they were complete core samples which would have recorded any vertical stratification occurring in the impoundments. The random selection of sampling points would record any horizontal stratification occurring in the impoundments. Furthermore, since the Chemfix® process will homogenize the waste in the impoundments, less variability will be encountered in the waste during the actual processing effort than was encountered in the sampling performed for the petition.

The key factor that would vary toxicant concentrations in the waste would be the use of different raw materials, due to changes in the product line being manufactured, as well as vertical and horizontal stratification due to gravity settling. Variations in raw materials can be expected when the facility either performs as a job shop or when the product line changes on a seasonal basis. Since GMC's facility did not operate as a job shop or have seasonal product variations, the Agency believes that GMC's claim has been substantiated that the manufacturing and treatment processes are uniform and consistent. In addition, as cited above, the full depth cores, random collection points, and the homogenization step of the Chemfix® treatment process substantiates GMC's claim that any variation of toxicant concentrations within the lagoons have been represented. The samples, therefore, are representative of GMC's waste contained in the impoundments.

The Agency's conclusion that the sampling adequately represents GMC's waste was confirmed by a comparison of the total constitutent analyses of each sample as well as a statistical analysis of the EP toxicity data from each sample. This analysis would have detected, but did not detect any significant variability in the waste (*i.e.*, the standard deviation was low).[26]

The Agency has evaluated the mobility of the constituents for GMC's waste after Chemfix® treatment, using a vertical and horizontal spread (VHS) model.[27] The Agency's evaluation of GMC's 7.5 million gallons of Chemfix® treatment waste and the maximum oily EP and EP extract levels for the constituents of concern using the VHS model has generated the compliance point concentration exhibited in Table 5.

Table 5

VHS Model: Calculated Compliance Point Concentrations (ppm)

		Based on Oily EP Data			Based on EP data			
		Cd	Cr	Ni	Cd	Cr	Ni	CN
Chemfix® Treatment Residue	Impoundment # 1	0.006	0.077	0.050	0.004	0.07	0.08	0.017
	Impoundment # 2	0.003	0.042	0.055	0.003	0.24	0.71	0.037
	Impoundment # 3	0.004	0.069	0.058	0.006	0.12	0.06	0.017
Health-Based Standards		0.01	0.05	0.35	0.01	0.05	0.35	0.20

The Chemfix® treated sludge exhibited cadmium levels (at the compliance point) below the National Interim Primary Drinking Water Standard, and cyanide levels[28] below the U.S. Public Health Services suggested drinking water standard.[29] These constituents are, therefore, not of regulatory concern. Cyanide in the waste is also not expected to create a health hazard by atmospheric contamination. These levels are well

[25] The Agency has identified approximately 16 solvents which are common toxicants contained in waste and rinse waters from painting operations. Since it may be impossible in some cases to demonstrate the absence of these toxicants through a mass balance demonstration, priority pollutant scans of representative samples can be used to determine their concentrations in the waste.

[26] See Footnote 12.

[27] See Footnote 13.

[28] Free and leachable cyanide tests were not run since total cyanide content was so low. Leachable cyanide was determined by assuming that all of the cyanide present would leach according to the 20:1 dilution of the EP toxicity test.

[29] See Footnote 15.

below the workroom air threshold limit of 10 ppm set by the American Conference of Governmental Industrial Hygienists (ACGIH).[30]

Two of the three maximum oily EP extract levels and all of the maximum EP extract levels for chromium produced concentrations at the compliance point above the National Interim Primary Drinking Water Standard. In addition, one of three EP extract levels for nickel produced concentrations at the compliance point above the Agency's Interim Health Advisory.[31] The Agency, however, believes that the extract levels can be reduced by alteration of the mixing ratios of treatment additives.[32] At the time GMC and Chemfix® submitted the test data with their petition, the Agency had proposed a less conservative version of the VHS model (before public comments). Since the Agency's target values changed after the submission of GMC's petition, GMC and Chemfix® claimed that the lower acceptable limits of the final VHS model could be achieved by increasing the concentration of certain treatment additives. GMC claimed that they did not initially attempt to achieve any lower extract values since it would not be as economical, and at the time, did not appear to be necessary when considering the Agency's original target values.

The Agency did not request additional test data since some of the extract data points reported did fall below the drinking water standard at the compliance point. This indicates that the Chemfix® treatment process is capable of generating a treatment residue that would be considered non-hazardous with respect to chromium mobility.

A conditional exclusion is normally granted in a situation where such a large volume of impounded waste is to be retreated to assure consistent treatment results. Therefore, The Agency has chosen to rely on the requirements of a conditional proposed exclusion to assure that acceptable extract levels are achieved on a daily basis.

The MEP data reported in Table 4 indicated that the treatment residue exhibits long-term stability by leaching non-hazardous levels of nickel, cadmium, and chromium after multiple synthetic acid rain extractions.

The Agency also has concluded, through the use of the VHS model, that no other hazardous inorganic constituents are present in the waste at levels of regulatory concern other than lead (*i.e.*, none is above any health-based standard at the compliance point in the VHS model application). The compliance point values generated from these low extract levels are displayed in Table 6. The Agency, however, believes the treatment system can be adjusted to lower the mobility of lead, as already described.

The Agency has reviewed each of the chemical components used in each raw material, as supplied by raw material lists and material safety data sheets, in GMC's electroplating operation.

Table 6

VHS Model: Calculated Compliance Point Concentrations (ppm)

	As	Ba	Pb	Hg	Se	Ag
Chemfix® Treated Sludge	0.01	0.03	0.07	0.001	0.01	0.01
	Health-Based Standard					
	0.05	1.0	0.05	0.002	0.01	0.05

The Agency had concluded from this review that certain Appendix VIII toxicants were present in some of the raw materials used at the facility, and therefore requested priority pollutant analyses to determine whether these toxicants were present in the waste at hazardous levels. None of the toxicants in the acid or base-neutral fraction were detected at a detection limit of 1 ppm. None of the volatile toxicants were detected at a detection limit of 0.1 ppm.

The Agency is, therefore, satisfied with GMC's determination that no priority pollutant organics are present in the waste. The Agency believes that the Chemfix® process can generate a nonhazardous treatment residue from GMC's waste. The Agency further believes that the matrix of the Chemfix® materials has a high binding capacity for metals and can decrease their mobility in the field. Furthermore, the Agency believes that the Chemfix® process can be successfully tuned by adjusting the mixing ratios of additives to bind successfully the inorganic toxicants within the matrix of the residue. The Agency, therefore, considers GMC's Chemfix® treated waste to be non-hazardous for all reasons and believes it should be excluded from hazardous waste control under the conditions specified below.

To assure that adequate fixation occurs, the Agency is requiring GMC to test its waste due to the following circumstances: There is a large volume of waste contained in GMC's impoundments; there is a high content of toxic metals in the waste; the data in the petition were based upon laboratory and pilot scale testing; and some of the chromium, nickel, and lead extract values reported would exceed the health-based standard at the compliance point in the VHS model. The Agency has

[30] See Footnote 8.

[31] See Footnote 14

[32] The Agency has data submitted in other delisting petitions on the Chemfix® process and on other cementitious stabilization processes that indicate that the adjustment of mixing ratios can alter the leachability of each metal toxicant. Chemfix® further claims that they can achieve leachate levels of 6 times the health-based standards when treating GMC's waste.

accepted GMC's contingency plan with the following modifications:

1. Mixing ratios shall be monitored continuously to assure consistent treatment.

2. One grab sample of the treated waste should be taken each hour as it is pumped to the holding area (cell) from each trailer unit. At the end of each production day, the grab samples from the individual trailer units will be composited and the EP toxicity text [33] will be run on each composite sample. If lead or total chromium concentrations exceed 0.315 ppm or if nickel exceeds 2.17 ppm, in the extract, the waste will be removed and retreated or disposed of as a hazardous waste. (The Agency has included nickel in this testing program since it is present at substantial concentrations in the waste and could be affected by the adjustment of mixing ratios to limit chrome and lead mobility.)

3. The treated waste must be pumped into bermed cells which are constructed to assure that the treated waste generated each day is identifiable and retrievable (*i.e.*, the material can be removed and either disposed of as a hazardous waste or retreated if condition 1 or 2 are not met).

The Agency believes that GMC's treated waste generated by the Chemfix® process is non-hazardous under the conditions specified above. The Agency therefore proposes to grant a conditional exclusion to GMC's Elyria, Ohio facility, for its Chemfix® treated electroplating wastes contained in its three onsite impoundments, as described in its petition.

The Agency notes that the fact that this is a one-time exclusion for a fixed amount of waste leads the Agency to believe that it can rely on the daily testing, as required above, to demonstrate that the Chemfix® treatment process can be tuned to decrease the mobility of chromium, nickel, and lead below the maximum levels reported in the petition. Had this been a continuously generated waste, additional test data would have been required before the Agency published a proposed decision.

[33] Since the results obtained using the EP toxicity test were equal to or greater than those determined by the EP toxicity test for oily wastes (See Table 2), indicating that little or no metals were found in the oil fraction, the Agency has allowed the use of the EP toxicity test as the daily indicator test in the contingency testing program.

IV. Keymark Corporation

A. Petition for Exclusion

Keymark Corporation (Keymark), located in Fonda, New York, is involved in the chemical conversion coating of aluminum extrusions in the production of window frames. Keymark has petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F019—Wastewater treatment sludge from the chemical conversion coating of aluminum. Keymark has petitioned for a one-time exclusion of the waste contained in its onsite impoundment.[34] Keymark has petitioned to exclude its waste because it does not meet the criteria for which it is listed.

The listed constituents of concern in EPA Hazardous Waste No. F019 are hexavalent chromium and cyanide. Keymark claims the cyanide is not used in the process and that chromium, although present in the waste, is in essentially an immobile form. Keymark further claims that this waste is not hazardous for any other reason.

Keymark has submitted a detailed description of its conversion coating processes and wastewater treatment process, including schematic diagrams; total constituent analyses for total chromium, and cyanide; EP toxicity test results of the sludge for total chromium; and distilled water leachate tests for cyanide.

Keymark also submitted total constituent analyses for EP toxicity test results for arsenic, barium, cadmium, lead, mercury, selenium, and silver and total oil and grease on representative waste samples. Keymark also submitted a list of raw materials used in the manufacturing process. The Agency requested this information to determine if hazardous constituents, other than those for which the waste was listed, are present in the waste at levels of regulatory concern.

The chromate conversion coating process uses chromic, hydrofluoric, and phosphoric acid in a series of contained spray tanks. This process forms complexes consisting of hydrated chromates, hydrous chromium oxides, and aluminum ions. Waste treatment at the time that this impoundment was active, included neutralization, chromium reduction using sodium bisulfite, equalization, polyelectrolyte addition, and gravity settling.

The impoundment, which contains approximately 70,000 gallons of waste, was divided into quadrants. Five complete depth random core samples were collected from each quadrant. The cores from each quadrant were combined, resulting in one composite sample representing each quadrant. Keymark claims that these samples are representative of any variation of the listed and unlisted constituent concentrations in the waste. Keymark further claims that the manufacturing operations were operated in a consistent manner and that the use of raw materials did not vary over time.

The total constituent analyses of the impounded sludge for the listed constituents revealed the maximum concentrations reported in Table 1. EP toxicity analyses for these same constituents revealed the maximum concentrations reported in Table 2. Total constituent analyses and maximum EP data for the additional EP toxic metals and nickel are reported in Tables 3 and 4.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT ANALYSES (PPM)

	Cr (total)	CN (total)
Impounded Sludge	24,700	0.04

TABLE 2.—MAXIMUM LEACHATE CONCENTRATION (PPM)

	Cr (total)	CN (distilled water)
Impounded Sludge	1.04	<0.09

TABLE #3.—MAXIMUM TOTAL CONSTITUENT ANALYSES (PPM)

	As	Ba	Cd	Pb	Hg	Ni	Se	Ag
Impounded Sludge	0.06	55.4	2.45	56.5	0.623	31.0	0.175	5.54

TABLE 4.—MAXIMUM LEACHATE CONCENTRATION ANALYSES (PPM)

	As	Ba	Cd	Pb	Hg	Ni	Se	Ag
Impounded Sludge	0068	0.2	<0.01	<0.02	0.0083	0.11	<0.002	0.02

[34] Keymark previously submitted a petition on August 9, 1982 which addressed the filter cake generated at this facility. The petition addressing the filter cake was proposed in the **Federal Register** on February 26, 1985 (See 50 FR 7886). Today's proposal involves the waste contained in the onsite impoundment generated by the same manufacturing processes before the installation of the filter.

The maximum total oil and grease content reported was 16.6 ppm. Keymark also submitted a list of all raw materials used in their process. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process, and that formation of any of these constituents is highly unlikely. Keymark claims that the impoundment contains approximately 300 tons of waste. Keymark has proposed to remove the waste contained in this impoundment and dispose of it at a local Subtitle D landfill.

B. Agency Analysis and Action

Based on our current evaluation criteria, Keymark has demonstrated that the waste contained in its onsite impoundment is non-hazardous. The Agency believes that the four composite samples (comprised of 20 individual random core samples) were non-biased and adequately represent any variations which may occur in the impounded waste. The Agency also believes that the samples were representative since they were complete core samples which would have recorded any vertical stratification occurring in the impoundment. The random selection of sampling points would also record any horizontal stratification in the impoundment.

The key factor that would vary toxicant concentrations in the waste would be the use of different raw materials due to changes in the product line being manufactured, as well as vertical and horizontal stratification due to gravity settling. Variations in raw materials can be expected when the facility either performs as a job shop or when the product line changes on a seasonal basis. Since Keymark's facility did not operate as a job shop or have seasonal product variations, the Agency believes that Keymark's claim that the manufacturing and treatment operations are uniform and consistent is substantiated. In addition, as cited above, the full depth cores and random collection points substantiate Keymark's claim that any variation in toxicant concentration within the impoundment have been represented. The samples, therefore, are representative of Keymark's waste contained in the impoundment.

The Agency's conclusion that the sampling adequately represents Keymark's waste was confirmed by a comparison of the total constituent analyses of each sample as well as a statistical analysis of the EP toxicity data from each sample. This analysis would have, but did not, detect any significant variability in the waste (*i.e.*, the standard deviation was low).[35]

The Agency has evaluated the mobility of the constituents in Keymark's waste using a vertical and horizontal spread (VHS) model.[36] The Agency's evaluation of Keymark's 300 tons of impounded waste and the maximum extract levels reported, using the VHS model, has generated the compliance point concentrations exhibited in Table 5.

[35] See Footnote 12.
[36] See Footnote 7.

Table 5

VHS Model: Calculated Compliance Point Concentration (ppm)

Impounded Sludge	Cr	CN
	0.03	<0.003

Health Based Standard

0.05	0.20

The impounded sludge exhibited chromium levels (at the compliance point) below the National Interim Primary Drinking Water Standard and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[37] Total cyanide levels in the waste also are below the air threshold limit set by the American Conference of Governmental Industrial Hygienists (ACGIH).[38] These constitutents, therefore, are not of regulatory concern.[39]

The Agency also concluded, through the use of the VHS model, that no other EP toxic metals or nickel are present in the waste at levels of regulatory concern (*i.e.*, none is above any health-based standard at the compliance point in the VHS model). The compliance point values and the low extract levels from which they are generated are displayed in Table 6.

In addition, the Agency has reviewed each of the chemical components used in each raw material, as supplied by raw material lists and material safety data sheets, in Keymark's conversion coating operation. The Agency has concluded from this review that no other Appendix VIII toxicants are present in the petitioned waste.

Table 6

VHS Model: Calculated Compliance Point Concentrations (ppm)
Impounded Sludge

	As	Ba	Pb	Hg	Se	Ag	Cd	Ni
Leachate conc.	0.0066	0.2	<0.02	0.0063	<0.002	0.02	<0.01	0.11
VHS Predicted conc.	0.0002	0.006	<0.0006	0.0002	<0.00006	0.0006	0.0003	0.003
Health-Based Standards	0.05	1	0.05	0.002	0.01	0.05	0.01	0.35

The Agency believes that the waste contained in Keymark's onsite impoundment is non-hazardous. The Agency, therefore, proposes to grant a one-time exclusion for the waste contained in Keymark's onsite impoundment at their facility located in Fonda, New York, as described in their petition.

V. General Motors Corporation

A. Petition for Exclusion

The General Motors Corporation (GMC), at its Saginaw Steering Gear Division in Saginaw, Michigan, is involved in the manufacture of steering columns, linkages and gears, drive shafts, and pumps. GMC has petitioned the Agency to exclude the oily dissolved air floation (DAF) sludge generated from the electroplating wastewater treatment system. This waste is classified as EPA hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. GMC has petitioned the Agency to exclude their waste because it does not meet the criteria for which it is listed.[40]

The constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). GMC claims that its sludge, after the oil is reprocessed from the waste, exhibits low leaching potential, and that the constituents of concern are present at non-significant levels.

GMC has provided a description of its manufacturing and treatment processes, including a schematic diagram of the latter; total constituent and EP toxicity analyses of the sludge for cadmium, chromium (total and hexavalent), and nickle; and total constituent analysis and distilled water leachate test results for cyanide. GMC also provided EP toxicity analyses for arsenic, barium, lead, mercury, selenium, and silver.

GMC combines several wastestreams into their treatment system. These include wastewaters from electroplating, washing, and phosphating; powerhouse and cooling tower blowdown; and oil-based coolants. These combined streams, when treated, generate between 1.8 and 2.5 million gallons of sludge per year (a maximum of 12,500 cubic yards annually).

Waste treatment includes use of an API gravity separator to remove free-standing oils from the wastestream, addition of alum and a polymeric emulsion breaker, pH adjustment, addition of an anionic polymer to aid flocculation, and dissolved air floation (DAF) processing to separate the sluge the from the effluent. Treated effluent is sent to the City of Saginaw santiary

[37] See footnote 15.

[38] See footnote 8.

[39] The calculated upper limits of a 95 percent confidence interval for the chromium and cyanide extract levels are 1.01 and 0.09 ppm, respectively. Using these calculated upper limit values in the VHS model, the receptor well concentrations will not exceed the National Interim Primary Drinking Water, Standard for chromium and the U.S. Public Health Service's suggested drinking water standard for cyanide. See footnote 17 for an explanation of the confidence interval calculation.

[40] GMC originally submitted their petition on December 14, 1982. On November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was listed if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See Section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from GMC. To date, none of this additonal information has been received by EPA. Thus, we consider the petition incomplete.

sewer, while the DAF floc is held in storage until removal by tanker truck.

Sludge samples were collected over a period of four weeks at the Saginaw facility and composited into four weekly samples for analysis. GMC claims that the composited samples are representative of any variation of the listed and nonlisted constituents in the waste over time. The composited samples were centrifuged before the EP analysis of the sludge in order to separate free oil and water from the sludge solids. The water and oil fractions thus obtained were later combined with their corresponding EP leachate fractions (from the extraction of the sludge solids) for analysis.

Maximum total constituent values for the listed constituents are given in Table 1.

TABLE 1.—MAXIMUM CONSTITUENT CONCENTRATIONS (MG/KG)

	Cd	Cr (Total)	Cr (Hex)	Ni	CN^-
Oily Sludge	5.1	76.	9.5	41.6	2.9

The EP leachate values obtained from both the oil and water fractions were used to calculate a weighted average EP value for each constituent.[41] The maximum weighted EP values for each of the listed constituents are given in Table 2.

Table 2.—Weighted maximum EP leachate values (mg/l)

Arsenic	0.187
Barium	0.682
Cadmium	0.198
Chromium (total)	1.872
Lead	3.037
Mercury	0.001
Selenium	0.005
Silver	0.068
Nickel	1.34
Cyanide (total)	0.07

The sludge composites were estimated to contain between 10 and 49 percent oil. None of the samples tested demonstrated the characteristics of ignitability, corrosivity, or reactivity. Finally, GMC claims that they generate approximately 12,500 cubic yards of sludge per year.

B. Agency Analysis and Action

GMC has not demonstrated to the Agency that the DAF sludge produced by their wastewater treatment system is non-hazardous. The Agency believes that the composite DAF flow samples taken from GMC's treatment system adequately characterize any variation which may occur in the petitioned waste stream. Both the production and treatment processes are consistent over time. The facility does not act as a job shop or have seasonal product changes, as the waste is uniform from week to week. Samples taken from the DAF floc tank are representative of the waste as disposed. The DAF sludge samples are, therefore, representative of the waste generated by GMC.

The Agency has evaluated the mobility of the inorganic constituents from GMC's waste using the VHS ground-water model.[42]

The Agency's evaluation of GMC's maximum generation rate of 12,500 cubic yards per year and the maximum EP extract levels calculated for the waste has produced the compliance point concentrations shown in Table 3. Maximum EP values were used in the VHS model because GMC submitted data on only four samples.

TABLE 3.—VHS MODEL: PREDICTED COMPLIANCE POINT CONCENTRATIONS (PPM)

	VHS model	Health-based standard
Arsenic	0.03	0.05
Barium	0.11	1.0
Cadmium	0.03	0.01
Chromium (total)	0.3	0.05
Lead	0.48	0.05
Mercury	0.0002	0.002
Selenium	0.0008	0.01
Silver	0.01	0.05
Nickel	0.21	0.35
Cyanide (total)	0.01	0.20

The sludge exhibited arsenic, barium, mercury, selenium, and silver levels below their respective health-based standards; nickel levels are below the Agency's interim delisting criterion,[43] and cyanide levels likewise do not exceed the U.S. Public Health Service's suggested drinking water standard.[44] The sludge, however, exhibits cadmium, total chromium, and lead values in excess of the National Interim Primary Drinking Water Standards, and these constituents are, therefore, of regulatory concern.[45] In addition, since GMC did not respond to the Agency's requests for additional information (*i.e.*, November 26, 1984), the Agency is also proposing to deny this petition on the grounds that it is incomplete (*i.e.*, the Agency could not evaluate GMC's waste to determine whether or not any other toxicants were present in the waste at levels of regulatory concern).

The Agency believes that the wastes generated by the manufacturing processes at the GMC Saginaw Steering Gear facility are not rendered non-hazardous by the waste treatment system currently in use. The analysis of the sludge using the VHS model indicates the potential of the sludge to leach several toxic heavy metals (cadmium, chromium, and lead) and contaminate ground-water. The Agency, therefore, proposes to deny this petition for exclusion of the wastewater treatment sludge produced by GMC at its Holland Road complex in Saginaw, Michigan.[46]

VI. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since, for the petition grants, this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation, and the fact that such a deadline is not necessary to achieve the purpose of Section 3010, we believe that these rules should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act pursuant to 5 U.S.C. § 553(d). As for the denial, GMC already should be in compliance;

[41] If the EP extract includes two phases, the concentration of contaminants is determined by using a simple weighed average. Contaminant concentrations are determined in each phase. The final contaminant concentration is taken to be:

$$\frac{(\text{ml oil})(\text{contaminant conc. in oil}) + (\text{ml water})(\text{contaminant conc. in water})}{(\text{total ml of leachate})}$$

[42] See Footnote 13.

[43] See Footnote 14.

[44] See Footnote 15.

[45] The calculated upper limits of the EP leachate values for cadmium, chromium, and lead are 0.3282 mg/l, 3.1007 mg/l, and 4.6297 mg/l, respectively. Using these calculated upper limit values for the EP leachate values in the VHS model, the receptor well concentrations will also exceed the National Interim Primary Drinking Water Standards. See Footnote 17 for an explanation of the 95% confidence interval calculation.

[46] The Agency notified GMC in a letter dated July 23, 1985 that the Office of Solid Waste would recommend to the Assistant Administrator for Solid Waste and Emergency Response that GMC's petition be denied. GMC declined to exercise its option to withdraw the petition.

thus no additional time should be necessary.

VII. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. Although the Agency is also proposing to deny a petition for one waste, our decision does not trigger a Regulatory Impact Analysis, especially since the waste has been handled as hazardous over the past five years.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. The denial of GMC's petition would not effect a small entity. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Dated: November 4, 1985.

Jack W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, add the following wastestreams in alphabetical order to Table 1 or Table 2 as indicated:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NONSPECIFIC SOURCES

Facility	Address	Waste description
Continental Can Co.	Milwaukee, WI.	Incinerator ash (EPA Hazardous Waste Nos. F003 and F005) generated by the pyrolytic incineration of spent solvents, solid wastes, and waste oil and stored onsite on [date of publication] as well as such incinerator ash generated after November 27, 1985.
General Motors Corp., Fisher Body Division.	Elyria, OH	The residue generated from the use of the Chemfix® treatment process on sludge (EPA Hazardous Waste No. F006) generated from electro-plating operations and contained in three onsite surface impoundments on [date of publication]. To assure that stabilization occurs, the following conditions apply to this exclusion: 1. Mixing ratios shall be monitored continuously to assure consistent treatment. 2. One grab sample of the treated waste shall be taken each hour as it is pumped to the holding area (cell) from each trailer unit. At the end of each production day, the grab samples from the individual trailer units will be composited and the EP toxicity test will be run on each composite sample. If lead or total chromium concentrations exceed 0.315 ppm or if nickel exceeds 2.17 ppm, in the EP extract, the waste will be removed and retreated or disposed of as a hazardous waste. 3. The treated waste shall be pumped into bermed cells which are constructed to assure that the treated waste is identifiable and retrievable (*i.e.*, the material can be removed and either disposed of as a hazardous waste or retreated if conditions 1 or 2 are not met). Failure to satisfy any of these conditions would render the exclusion void. This is a one-time exclusion.
Keymark Corp.	Fonda, NY	Wastewater treatment sludges (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum and contained in an onsite impoundment on [date of publication]. This is a one time exclusion.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
American Cyanamid.	Hannibal, MO.	Wastewater and sludge (EPA Hazardous Waste No. K038) generated from the washing and stripping of phorate production and contained in onsite lagoons on [date of publication] and such wastewater and sludge generated after November 27, 1985.

[FR Doc. 85-27070 Filed 11-26-85; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-2922-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusions

AGENCY: Envronmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at six facilities from the list of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at particular facilities from listing as hazardous wastes under 40 CFR 261. Due to recent changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, the six petitions for which we propose to grant an exclusion have been evaluated both for the factors for which the wastes were orginally listed, as well as other factors and toxicants reasonably expected to be present in these wastes.

DATE: EPA will accept public comments on these proposed exclusions until January 13, 1986. Any person may request a hearing on these proposed exclusions by filing a request with Eileen B. Claussen, whose address appears below, by December 12, 1985. The request must contain the

information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Enviromental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH-562B), U.S. Environmental Protection Ageny, 401 M Street, SW, Washington, DC 20460. Communications should identify the regulatory docket number "Section 3001—Delisting Petition (4)."

The public docket for these proposed exclusions is located in Room S-212, U.S. Enviromental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Ms. Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (i.e., ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or 261.11(a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste meeting the listing description from an individual facility may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that his waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); Section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 3001(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally; and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine whether these residues exhibit any of the hazardous waste characteristics on a periodic basis.

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based upon the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based upon the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to any other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volumes of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the

environment once released from the waste, plausible types of management of the waste, and the quantities of the waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 *FR* 7882, February 26, 1985, the "Vertical and Horizontal Spread" Final Rule, and the "Proposed Organics Model" published elsewhere in today's **Federal Register** for a detailed discussion of our approach. The overall approach, which includes a ground-water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby receptor wells (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a health-based standard. If the value at the compliance point predicted by the model is less than the health-based standard, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above the health-based standard, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would not be delisted, while a smaller volume of the same waste could be considered non-hazardous.[1] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the appropriate health-based standards. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. The mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a health-based standard will generate a toxicant concentration at the receptor well equal to or less than that same health-based standard). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is proposing to use this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating each of the wastes proposed for exclusion in today's publication. As a result of this evaluation, the Agency is proposing to grant the petitions discussed in this notice.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. In addition, the Agency has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting an exclusion. All of the exclusions proposed today will not become effective unless and until made final. A notice of final exclusion will not be published until all public comments (including those at requested hearings, if any) are addressed.

Petitioners

The proposed exclusions published today involve the following petitioners:

Arco Chemical Company, Miami, Florida;
Bommer Industries Incorporated, Landrum, South Carolina;
Dover Corporation, Norris Division, Tulsa, Oklahoma;
Star Expansion Company, Mountainville, New York;
Texas Eastman Company, Longview, Texas;
United Technologies Automotive, Inc., Jeffersonville, Indiana.

I. Arco Chemical Company

A. Petition for Exclusion

The Arco Chemical Company (Arco) (formerly the Anaconda Aluminum Company) is involved in the production of painted aluminum extrusions at its Opa Locka paint plant in Miami, Florida. In April 1982, Anaconda Aluminum petitioned the Agency to exclude their wastewater treatment sludges from the chemical conversion coating of aluminum, presently listed as EPA Hazardous Waste No. F019. The listed constituents of concern in EPA Hazardous Waste No. F019 are hexavalent chromium and cyanide.

Based upon the Agency's review of the petition, the Miami facility was granted an informal exclusion in January, 1983.[2] The Agency's basis for granting the informal exclusion was the low migration potential of the constituents of concern, namely hexavalent chromium and cyanide (complexed). On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, these Amendments required the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921[f].) In anticipation of these changes, and, as a result of these new requirements, the Agency requested additional information from Arco. This information was submitted on May 29, 1984, September 4, 1984, March 19, 1985, and August 15, 1985. The Agency, therefore, has re-evaluated Arco's petition to: (1) Determine whether the informal exclusion should be made final based on the original listing criteria; and (2) evaluate the waste for factors (other than those for which the waste was listed) to determine whether the waste is non hazardous. This notice presents the results of the Agency's re-evaluation of this petition.

Arco has submitted a detailed description of its manufacturing and treatment processes, including schematic diagrams; total constituent and EP toxicity analyses of the waste for all the EP toxic metals and nickel; distilled water leachate test results for total cyanide; total constituent analyses for total cyanide and cyanide amenable to chlorination; total oil and grease content of the waste; and reactivity test data for free cyanide and free sulfide. Arco also submitted a list of all raw materials and feedstocks used in the

[1] Other factors may result in the denial of a petition, such as actual ground-water monitoring data or spot-check verification data.

[2] On January 13, 1983, a memorandum was sent from the Director of the Office of Management Information and Analysis to the Regions indicating, among other things, that the Office of Solid Waste and Emergency Response had made a determination to grant the delisting petition submitted by the Anaconda Aluminum Co. (now the Arco Chemical Corp). This memo indicated that the Assistant Administrator for Solid Waste and Emergency Response had approved the exclusion of this waste. (See RCRA docket for letter.)

manufacturing process. The Agency requested this information, as noted above, to determine whether constituents other than those for which the waste was listed are present in the waste at levels of regulatory concern.

Arco produces extruded aluminum parts at another facility, and ships these parts to the Miami paint plant for processing. At the Miami paint plant, the extrusions are conveyed through a five stage pre-treatment operation which cleans the metal surface, then deposits chromium and phosphate on the extrusion to help prevent corrosion and to aid proper bonding of the paint to the metal. The extrusions are then dried at 150 °F, cooled, electrostatically painted, cured at 360–380 °F, cooled, and packaged for shipping. Arco's waste treatment system collects wastewater from the spray washers in holding tanks. Paint wastes are kept entirely separate from the wastewater treatment system. The wastewater is then treated with sodium bisulfite to reduce hexavalent chromium to trivalent chromium, and the pH is adjusted. Neutralization is completed by use of sodium hydroxide to precipitate the trivalent chromium, and aluminum sulfate is added to help flocculation. Anionic polymers are then added to finish precipitation, and the sludge is allowed to settle in a lamella clarifier before it is removed to the thickener and filter press.

Sludge samples were collected by compositing daily samples from the transfer dumpster into which the filter press cake is deposited. Equal portions of sludge from the corners and center of the dumpster were composited into singly daily samples, which in turn were composited with other daily samples into four weekly composites. Arco claims that these weekly composites are representative of the waste because of the uniformity of the manufacturing and treatment processes, and because the transfer dumpster is emptied daily, which allows consistent, un-biased sampling of daily sludge production. Arco's demonstration was originally based on samples taken during November-December 1981. For purposes of further testing, Arco made four additional composites during April-May 1985, which were composited identically to the 1981 samples. Arco claims that the samples taken during both time periods reflect any variation of constituent concentration in the waste. Arco also claims that their raw materials do not change over time, and Arco therefore believes that the samples adequtely characterize the sludge.

The total constituent analyses and EP leachate analyses for the listed constituents in the sampled sludge resulted in the maximum concentrations shown in Table 1. The total constituent analyses and EP leachate analyses for the non-listed metals produced the maximum concentrations reported in Table 2.

TABLE 1.—FILTER PRESS SLUDGE

	Maximum total concentration (mg/kg)	Maximum EP concentration (mg/l)
Chromium (total)	76,320.0	1.1
Chromium (hex)	(a)	0.153
Cyanide (total)	0.62	b<0.02

[a] The Agency also considers total chromium in the EP analysis, although hexavalent chromium is the listed constituent of concern. Since the concentration of total chromium in the EP leachate exceeds that of hexavalent chromium, the characterization of hexavalent chromium in the sludge was not necessary.
[b] Distilled water leachate test.

TABLE 2.—FILTER PRESS SLUDGE

	Maximum total concentration (mg/kg)	Maximum EP concentration (mg/l)
Arsenic	180.0	0.04
Barium	46.0	<0.1
Cadmium	1.1	<0.001
Lead	92.0	0.03
Mercury	0.27	<0.0002
Selenium	9.7	<0.005
Silver	<0.1	<0.005
Nickel	73.0	0.62

Maximum oil and grease was found to be 0.37 percent. No cyanides are used in Arco's process; this point was confirmed in that the maximum total cyanide levels found in the waste are low (0.62 ppm). The maximum level of free cyanide is also low (<0.5 ppm), and cyanide amenable to chlorination is present at levels less than 0.62 ppm. The maximum free sulfide level was found to be 68 ppm (at pH<2). None of the samples demonstrated the characteristics of ignitability, reactivity, or corrosivity.

Examination of the Material Safety Data Sheets for compounds used in the manufacturing process indicated that only one Appendix VIII compound, hydrofluoric acid, would be expected to be present in the sludge. This compound is present in additives (20–25% by weight) which enhance the action of the chromating process. The wastewater treatment system, which uses an alkaline pH to induce precipitation of insoluble metallic hydroxides, also precipitates fluoride ion as sodium fluoride. This salt is removed by flocculation and clarification, along with other salts, in the treated waste; hydrofluoric acid is therefore not expected to be present in significant quantities in the waste. Arco claims to generate a maximum of 210 tons of sludge per year.

B. Agency Analysis and Action

Arco has demonstrated to the Agency that the sludge produced by their wastewater treatment system is non-hazardous. The Agency believes that the weekly composites taken from the waste dumpster adequately characterize any variations in constituent concentration that may occur in the petitioned waste. The Agency is satisfied that the weekly compositing done by Arco will not conceal variations in the concentrations of constituents, and that samples will be consistent from week to week. Due to the consistency of the operations involved, the Agency believes that the samples presented in support of the petition are representative of the waste generated by Arco.

The Agency has evaluated the mobility of the inorganic constituents of Arco's waste using the VHS groundwater model.[a] The Agency's evaluation of Arco's maximum annual waste generation volume and the maximum EP extract levels for the listed constituents reported in the petition has produced the receptor well concentrations shown in Table 3. The maximum leachate values were used in the Agency's evaluation (instead of averaged leachate values) because Arco submitted results for each type of analysis on only four samples (eight for the listed constituents).
Using the VHS model, the Agency's evaluation of levels for the non-listed constituents generated the compliance point concentrations shown in Table 4.

TABLE 3.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATION (mg/l)

	CN	Cr
Filter press sludge	<0.001	0.034
	Health-based standard (mg/l)	
	0.20	0.05

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATION

	VHS model: Filter press sludge	Health-based standard
Ba	<0.003	1.00
Cd	<0.001	0.01
Pb	<0.001	0.05
Hg	<0.0001	0.002
Se	<0.001	0.01
Ag	<0.001	0.05
Ni	0.019	0.35
As	0.001	0.05

[a] See 50 *FR* 7882, Appendix I (February 26, 1985) for a detailed explanation of the development of the VHS model for use in the delisting program. See also the "Final VHS Model" Rule published elsewhere in today's **Federal Register.**

For all the EP toxic metals, the predicted maximum levels at the compliance point are below the National Interim Primary Drinking Water Standards; and nickel levels are below EPA's interim criterion.[6] Thus, the Agency has concluded through use of the VHS model that no inorganic constituents are present in the waste at levels of regulatory concern. Leachable cyanide levels are below the U.S. Public Health Service's suggested drinking water standard.[7] Since the maximum cyanide content of the waste is 0.62 ppm, the total cyanide in the waste is not expected to create a health hazard by either groundwater or atmospheric contamination. The reported values are well below the workroom air threshold limit of 10 ppm set by the American Conference of Governmental Industrial Hygienists (ACGIH).[8]

Arco also presented test data on the sulfide content of their waste. The maximum sulfide content reported was 68 ppm. However, the maximum value exceeds the other reported sulfide values by a factor of 4, and also exceeds the upper limit of the 95% confidence interval calculated for the sulfide data. The maximum level, therefore, believed to be an outlier. The Agency believes that the sulfide levels shown in the petition (14–17 ppm) are probably the result of interferences caused by the use of sodium bisulfite which is used to reduce hexavalent chromium in the waste to the trivalent state. The sulfide values are, therefore, not considered to be of environmental concern. (The ACGIH threshold limit value is 10 ppm, see footnote 8.) These constituents, therefore, are not of regulatory concern.[9]

In addition, the Agency has concluded that no other hazardous constituents are present in the waste based on the raw materials used by Arco in their manufacturing process. In particular, the Agency has reviewed each of the chemical components used in each raw material, as supplied by raw material lists and material safety data sheets, in Arco's conversion coating operation. The Agency has concluded from this review that no other Appendix VIII toxicants (except as described earlier) are present in the petitioned waste.

The Agency believes that the treatment process used by Arco generates a non-hazardous waste. Based on the Agency's reevaluation of the petition, the Agency proposes to grant a final exclusion to the Arco Chemical Company for the wastewater treatment sludge generated at Arco's Opa Locka facility in Miami, Florida, as described in its petition.

II. Bommer Industries Incorporated

A. Petition for Exclusion

Bommer Industries Incorporated (Bommer), located in Landrum, South Carolina, is involved in the manufacture of builders' hardware and accessories for use in the construction industry. Bommer has petitioned the Agency to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. Bommer has petitioned to exclude the waste contained in its two evaporation ponds because the waste does not meet the criteria for which it was originally listed.

The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, cyanide (complexed) and nickel. Bommer claims that its wastewater treatment process generates a non-hazardous sludge because the constituents of concern, although present in the waste, are essentially in an immobile form. Bommer further claims that this waste is not hazardous for any other reason.

Bommer has submitted a detailed description of its electroplating and wastewater treatment processes, including schematic diagrams; total constituent analyses and EP toxicity test results of the sludge for cadmium, total chromium, and nickel; total constituent analyses and distilled water leach test results for cyanide; and photodegradable cyanide [10] test results. Bommer also submitted results from total constituent analyses and EP toxicity tests for arsenic, barium, lead, mercury, selenium, and silver; and total oil and grease analysis of representative waste samples collected from both evaporation ponds. In addition, Bommer submitted a list of raw materials used in the manufacturing process. The additional information was submitted in response to the new requirements for delisting under the Hazardous and Solid Waste Amendments of 1984. The Agency reviewed this material in order to determine whether any hazardous constituents other than those for which the waste was originally listed could be present in the waste at levels of regulatory concern.

The Agency reviewed the Material Safety Data Sheets, submitted by Bommer, and identified the following three Appendix VIII chemicals as components of raw materials used in the manufacturing process that could reasonably be expected to be present in the waste: (1) Toluene, (2) methyl ethyl ketone, and (3) trichloroethylene. (No other Appendix VIII toxicants are expected in the waste.) The Agency therefore requested that Bommer supply total constituent analyses for these three chemicals. Bommer responded to the Agency's request on July 8, 1985. They indicated that the thinners and retarders, identified from the Material Safety Data Sheets, as containing: Toluene, methyl ethyl ketone, and trichloroethylene are used in a separate process and could not possibly enter the

[6] See 50 FR1 20247 (May 15, 1985) for a complete description of the development of the Agency's interim health-based standard for nickel (0.35 ppm).

[7] Drinking Water Standards, U.S. Public Health Service, Publication 956, 1962 (0.2 ppm).

[8] *Documentation of the Threshold Limit Values for Substances in Workroom Air.* American Conference of Governmental Industrial Hygienists, 3rd ed., 1971. Cincinnati, Ohio.

[9] To confirm our conclusion that the waste is non-hazardous, the Agency has used an alternative method. The Agency calculated the toxicant levels expected at the compliance point using the upper limit of a 95% confidence interval in addition to the maximum extract level.

Based upon the data submitted by Arco, a confidence interval for each constituent of concern can be calculated. This enables the accuracy with which the sampled mean concentration of each constituent in the waste to be determined. The upper confidence limit may be calculated and used in the VHS model instead of the maximum EP value reported in the petition. The use of both the upper confidence limit and the maximum reported EP value ensures that the impact of all reasonable variations in the waste extract level have been taken into account. The confidence interval (CI) is determined using the following equation:

$$CI = X \pm t\,(s/n^{1/2})$$

where:

X = mean concentration in the samples

t = t-value obtained from statistical tables

s = standard deviation

n = number of samples

If the upper limit of a 95% confidence interval is evaluated using the VHS model and generates a compliance point concentration below the health-based standard (*e.g.*, the drinking water standard) then it can be concluded that at least 97.5 times out of 100 that all compliance point values will fall below this level. The calculated upper limits for chromium and cyanide are 1.3257 mg/a and <0.02 mg/l, respectively. Using the calculated upper limit values in the VHS model, the compliance point concentrations will not exceed the National Interim Primary Drinking Water Standard for chromium, nor exceed the U.S. Public Health Service's threshold limit for cyanide. In fact, no EP toxic metal will exceed its respective standard for this waste if the 95% confidence interval for each metal is used in the VHS model.

[10] See "Agency Analysis and Action" below for a description of this methodology.

petitioned waste. To support their claim, Bommer provided an analysis of the wastewater, before its discharge into the two evaporation ponds. Using a detection limit of ten parts per billion (10 μg/L) none of the three suspected constituents was detected.[11] No further data were requested for these toxicants.

Bommer manufactures spring hinges, apartment house mailboxes, and lavatory fixtures for use in the construction industry. In the production process, the products are either painted or electroplated, depending on the customer's preference. The painting operations consist of cleaning, phosphating, rinsing, chromating, rinsing, drying, and painting. The electroplating process employs an automatic plating line for all normal operations; a manual plating line is occasionally used for speciality items with brass parts. Both plating lines are capable of plating with brass, chrome, nickel, zinc, or bronze. The plating operations consist of buffing, cleaning, rinsing, plating, and cascade rinsing.

Bommer's spent rinse water, from the single rinse and cascade rinse tanks, is released when a water saving unit detects an unacceptable level of contamination. The spent rinse water from the phosphating operations flows by gravity to a sump. (No other paint wastes are discharged.) From this sump, the water is pumped to evaporation pond #1. The spent rinse water from the electroplating operations flows to a separate sump, and is then pumped to evaporation pond #1 or #2 on an alternating basis. In these ponds, due to the alkaline pH of the effluent (8.0–9.5), the soluble metals precipitate out as metal hydroxides. Bommer reduces "dragout" by using recovery techniques and does not use any coagulants or surfactants. There has never been an effluent discharge from either evaporation pond during Bommer's ten years of operation. To characterize the wastewaters before they enter the two evaporation ponds, eight grab samples were taken over eight hours from the electroplating sump and composited. The results of this analysis are presented in Table 1.

TABLE 1

Total constitutent analysis	As	Se	Hg	Ba	Gd	Cr	Ag	Pb	Ni	Cu	TCE
Electroplating sump effluent (ppm)	<0.1	<0.01	<0.001	<0.1	0.01	1.1	0.02	<0.1	5.2	2.3	<0.01

To characterize the electroplating sludge (which is the listed waste), both evaporation ponds were divided into a total of nine sections. A minimum of five core samples were collected and composited from each section. All core samples were representative of the entire depth of each evaporation pond.

The total constituent analyses of the sludge for the listed constituents, contained in evaporation ponds #1 and #2, found the maximum concentrations presented in Table 2. EP toxicity test results for these same constituents from both evaporation ponds found the maximum concentrations presented in Table 3.[12]

TABLE 2

Maximum total concentration analysis (ppm)	Cd	Cr total	Ni	CN total	CN free
Evaporation pond #1	13.5	762	2573	8.7	<1.0
Evaporation pond #2	11.7	748	1215	12.8	<1.0

TABLE 3

Maximum EP leachate concentration analysis (ppm)	Cd	Cr total	Ni	Cr (total) distilled water extract
Evaporation pond #1	0.06	<0.05	11.0	<0.02
Evaporation pond #2	0.03	<0.05	2.4	<0.02

Since the analysis of evaporation pond #2 for total cyanide detected levels as high as 12.8 ppm, the Agency requested that Bommer provide photodegradable cyanide analyses on four representative samples taken from evaporation pond #2. These data which were provided by Bommer on July 8, 1985, indicated that the maximum level of photodegradable cyanide was below 0.1 ppm and the total cyanide was below 10 ppm.

The maximum values reported from a total consituent analysis of the non-listed metals are presented in Table 4.

TABLE 4

Maximum EP leachate concentration analysis (ppm)	As	Ba	Pb	Hg	Se	Ag
Evaporation pond #1	13.5	17.3	57.2	<0.1	<0.5	0.9
Evaporation pond #2	15.9	9.5	74.8	<0.1	<0.5	0.9

EP toxicity analysis for the non-listed metals from both evaporation ponds detected the following maximum EP leachate values presented in Table 5.

TABLE 5

Maximum EP leachate concentration analysis (ppm)	As	Ba	Pb	Hg	Se	Ag
Evaporation pond #1	<0.01	<0.1	<0.1	<0.001	<0.1	<0.01
Evaporation Pond #2	<0.01	<0.1	<0.1	<0.001	<0.1	<0.01

Total oil and grease values reported for evaporation ponds #1 and #2 were no higher than 0.16 percent, and 0.14 percent, respectively. In addition to these analytical tests, Bommer also submitted a signed statement which regards these wastes as non-reactive, since they do not meet any of the eight criteria defined in § 261.23(a). Bommer estimates that the total quantity of sludge contained in both evaporation ponds to be approximately 384 tons.

B. Agency Analysis and Action

Based on our current evaluation criteria, Bommer has demonstrated that the material contained in its two evaporation ponds in non-hazardous.

The Agency considers the sampling procedure used by Bommer to be adequate. Bommer, by collecting five complete (top to bottom) core samples and compositing them into one composite sample per section, was able to detect any variation between the

[11] It is reasonable to expect, that due to the volatile nature of these organics, that any concentration of these organics, actually present below 10 ppb, would be reduced further by volatilization. In addition, it is not expected that these organics, at these low concentrations, would accumulate in the sludge.

[12] Hexavalent chromium is listed as the constituent of concern for this waste; however, since the concentration of total chromium is low, a determination of the concentration of hexavalent chrome is unnecessary.

vertical and horizontal boundaries of the two evaporation ponds; no such variation was found. In addition, since no new wastes are to be produced and added to the evaporation ponds, the Agency believes that there is no reason to be concerned with changes in the manufacturing process or raw materials. A comparison of the total constituent concentration with the EP leachate concentration of each constituent, as well as an evaluation of the QA/QC data (spike concentrations and percent recovery data) did not detect any significant variability in the waste (*i.e.*, the standard deviation was very low).[13] The Agency concludes that the analytical information provided by Bommer is representative of the waste contained in both evaporation ponds.

The Agency has evaluated the mobility of the constituents from Bommer's evaporation pond sludge using a vertical and horizontal spread (VHS) model.[14] The Agency's evaluation of Bommer's 384 tons of sludge and the maximum extract levels for the constituents of concern using the VHS model generated the compliance point concerntrations presented in Table 6.

TABLE 6

VHS model: Calculated compliance point concentrations (ppm)	Cd	Cr total	Ni	Cn (total) distilled water extract
Evaporation ponds #1 and #2	<0.002	<0.002	0.34	<0.001
Health—Based Standards				
	0.01	0.05	0.350	0.20

The VHS model predicted that the sludge from both evaporation ponds would exhibit cadmium and chromium levels (at the compliance point) below the National Interim Primary Drinking Water Standards, as well as nickel levels[15] below the interim standard currently being used by the Agency. These constituents, therefore, are not of regulatory concern.

Modeling the free cyanide levels predicted that the sludge would not exhibit free cyanide at levels expected to create a health hazard through exposure from ground water. This conclusion is based on the VHS model, using the free cyanide content of the waste as the input to the aquifer (<1 ppm). The cyanide concentration predicted at the compliance point was well below the U.S. Public Health Service's suggested drinking water standard.[16]

The free cyanide levels in the sludge are also not expected to create a health hazard through inhalation. These levels are well below the workroom air threshold limit of 10 ppm set by the American Conference of Governmental Industrial Hygienists (ACGIH).[17]

The concentration of total complexed cyanide initially was of concern to the Agency, because complexed cyanide may photodecompose to free cyanide (see background document for EPA Hazardous Waste No. F006 located in RCRA Docket). This concern was addressed when Bommer provided representative test data using the Agency's photodegradable cyanide test.[18] Photodegradable cyanide levels were all below 0.1 ppm. The Agency believes that this level will not pose any environmental threat, even if all the free cyanide was to volatilize, at once, since this amount would be less than the 10 ppm threshold set by ACGIH. However, even under worst-case conditions, the low concentration of photodegradable cyanide that could be generated is limited by the fraction of surface layer of sludge directly exposed to sunlight. Therefore, the Agency believes that any release of cyanide to the atmosphere will be reduced by dispersion to even lower levels.

The Agency has also concluded that there are no other hazardous inorganic or organic constituents present in the waste at levels of regulatory concern. The Agency's conclusions are based on the examination of Bommer's raw materials, knowledge of the process and the analytical test results provided by Bommer. In addition, the other toxic metals (not listed in EPA Hazardous Waste No. F006), EP extraction concentrations (Table 3) were evaluated using the Agency's VHS model. Using these values, the Agency predicts levels at the compliance point to be substantially below the applicable health-based standards, as seen in Table 7.

TABLE 7

VHS model: Calculated compliance point concentrations (ppm)	As	Ba	Pb	Hg	Se	Ag
Evaporation Ponds #1 and #2	<0.001	.003	.003	<0.0001	0.003	<0.001
Health-Based Standards						
	0.05	1.0	0.05	0.002	0.01	0.05

The Agency also has reviewed each of the chemical components used in each raw material, as supplied by raw material lists and material safety data sheets, in Bommer Industries' conversion coating operation. The Agency has concluded from this review that no other Appendix VIII hazardous constituents are present in the petitioned waste.

The Agency concludes that the sludge contained in both evaporation ponds is non-hazardous (for all reasons), and as such, should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to Bommer Industries, Incorporated, located in Landrum, South Carolina, for its electroplatingsludge contained in both evaporation ponds #1 and #2, as described in its petition.

III. Dover Corporation/Norris Division

A. Petition for Exclusion

Dover Corporation, Norris Division (Dover), located in Tulsa, Oklahoma, is involved in the manufacture of oil field subsurface pumps which are made of various types of materials including stainless steels, carbon steels, heat-treated steels, and alloy steels. Dover has petitioned the Agency to exclude its treated sludge, presently listed as EPA

[13] See standard T-test in Biometry: The Principles and Practices of Statistics in Biological Research; Sokal, R. and Rohlf, F.J. 1969.

[14] The model simulates the dispersion of toxicants in a typical aquifer in the vertical and horizontal directions perpendicular to the direction of ground-water flow. This model, made final elsewhere in today's **Federal Register** assumes that the waste is placed in a landfill. As we indicated when we proposed the model, this scenario may not be appropriate to evaluate the hazards posed by wastes when they are managed in surface impoundments (See 50 *FR* 7899, February 26, 1985). In fact, the Agency is currently evaluating other approaches for wastes that are placed in surface impoundments, and expects to propose such an approach in the near future. If that approach is proposed before we make final our decision on this petition, we will re-consider our decision in this case and all other situations where the Agency has proposed to exclude wastes that are managed in surface impoundments.

[15] See Footnote 6.

[16] See Footnote 7.

[17] See Footnote 8.

[18] The Agency developed the photodegradation test to assist in determining whether a particular waste containing complexed cyanide would photodecompose to free cyanide or hydrogen cyanide gas. The test methodology has been proposed to be added to *Test Methods for Evaluating Solid Waste* (SW-846) as Method No. 9011. (See 49 FR 38791, October 1, 1984).

Hazardous Waste No. F006—Wastewater treatment sludge from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc aluminum plating on carbon steel; (5) clearing/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. Dover has petitioned to exclude its waste because it does not meet the criteria for which it was listed.[19]

The listed constitutents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Dover claims that its wastewater treatment process generates a non-hazardous sludge because cadmium, chromium, and nickel, although present in the waste, are essentially in an immobile form. Dover also claims that cyanide is not used in their process and is, therefore, not present in their waste. Dover further claims that this waste is not hazardous for any other reason.

Dover has submitted a detailed description of its electroplating and wastewater treatment processes, including schematic diagrams; total constituent analyses of the sludge for cadmium, total chromium, nickel, and cyanide; and EP toxicity test results for cadmium, total chromium, and nickel.

Dover has also submitted total constituent analyses and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; and total oil and grease. In addition, Dover submitted a list of raw materials used in the manufacturing process to demonstrate that no other hazardous constituents are present in the waste at levels of regulatory concern. This information was requested, as noted above, to determine if hazardous constituents other than those for which the waste was listed are present in the waste at levels of regulatory concern.

Dover's operation consists of four plating lines which apply chrome, nickel, or zinc to precleaned and surface-activated metal pump casing by either electrolytic deposition (electroplating) or modified-surface coating procedures. The plating wastewater treatment system receives rinsewater from circulating rinse tanks and drag-out from plating process tanks. The wastewater treatment process involves chrome reduction with sodium bisulfite and sulfuric acid, alkaline precipitation of metal ions, flocculation, and sludge dewatering via centrifugation.

Grab samples were collected from the centrifuge every two hours over a twenty-four hour period and combined into a single daily composite. Five composites were collected over a four-month period. The petitioner claims that these composites are representative of any variation in constituent concentration in the waste. The petitioner further claims that sludge samples collected are representative of worst-case conditions since all four plating lines were contributing wastewater to the treatment system at each time of sampling. Dover further claims that the manufacturing processes used at the facility are operated in a consistent manner, and that the use of raw materials does not vary significantly over time.

Total constituent analysis of the final treatment sludge for the listed constituents revealed the maximum concentrations reported in Table 1. EP toxicity analyses for these same constituents revealed the maximum concentrations reported in Table 2. Leachate tests for cyanide were not performed due to the extremely low level of total cyanide contained in the sludge.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT ANALYSES (PPM)

	Cd	Cr total	Ni	CN total
Centrifuge sludge	140	60,833	5,590	0.16

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS (PPM)

	Cd	Cr total	Ni
Centrifuge sludge	0.016	0.34	4.0

Total constituent analyses for the non-listed EP toxic metals revealed maximum concentrations reported in Table 3.

TABLE 3.—MAXIMUM TOTAL CONSTITUENT ANALYSES (PPM)

	AS	Ba	Pb	Hg	Se	Ag
Centrifuge sludge	6.91	118	319	0.83	<1.0	8.85

EP toxicity analyses for the non-listed metals revealed the maximum concentrations reported in Table 4.

TABLE 4.—MAXIMUM EP LEACHATE CONCENTRATION (PPM)

	As	Ba	Pb	Hg	Se	Ag
Centrifuge sludge	<0.02	<.014	0.15	0.0001	<0.02	<0.02

Dover also submitted a list of raw materials used in their process. This list indicated that no other Appendix VIII hazardous constituents were used in the process and the formation of any of these constituents is highly unlikely. The maximum total oil and grease value reported was 95 ppm. Dover claims that the maximum volume of waste generated from its centrifuge is 125 tons per year.

B. Agency Analyses and Action

Dover Corporation has demonstrated that its waste treatment system produces a non-hazardous sludge. The Agency believes that the five composite samples collected from the centrifuge over a four-month period were non-biased and more than adequately represent any variations which may occur in the waste stream petitioned for exclusion. The key factor which could vary toxicant concentrations in this waste is the use of different raw materials due to changes in the product line being manufactured. Variation in raw materials used can be expected when the facility either performs as a job shop or when the product line changes on a seasonal basis. The Agency believes that the waste sampled represents any variability that might occur due to operation of the different plating lines on the various base metals used at the facility, since all plating lines were operated at the time of

[19] Dover originally submitted their petition on July 24, 1984. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constitutents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Dover. This additional information was submitted on September 10, 1985.

sampling. All of Dover's products were manufactured during the sampling period. Thus, the samples are representative of any variability occurring in the waste due to normal product line changes.

The Agency's conclusion was confirmed by an analysis of the total content of each toxicant in each sample, as well as a statistical analysis of the EP toxicity data from each sample. This analysis would have, but did not, detect any significant variability in the waste (*i.e.*, the standard deviation was low).[20]

The Agency has evaluated the mobility from Dover's waste using a vertical and horizonal spread (VHS) model.[21] The Agency's evaluation of Dover's 125 tons of sludge and the maximum extract levels for the constituents of concern using the VHS model has generated the compliance point concentrations exhibited in Table 5.

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATION (ppm)

	Cd	Cr	Ni	CN
Centrifuge sludge	0.0005	0.01	0.01	0.008
	Health-Based Standard			
	0.01	0.05	0.35	0.20

The filtered sludge exhibited cadmium and chromium levels (at compliance point) below the National Interim Primary Drinking Water Standards, nickel levels below the Agency's Interim Health Advisory,[22] and cyanide levels below the U.S. Public Health Services suggested drinking water standard.[23] Total cyanide levels in the waste also are below the air threshold limit set by the American Conference of Governmental Hygienists (ACGIH).[24] These constituents, therefore, are not of regulatory concern.[25]

Since cyanide is not used in the process and the total content in the waste was below the suggested drinking water standard, a leachate test was not required. The VHS compliance point value was calculated by assuming that the total cyanide present in the waste would leach, and is calculated using the 20:1 dilution of the EP toxicity test.

The Agency also has concluded, through the use of the VHS model, that no other EP toxic metals are present in the waste at levels of regulatory concern (*i.e.*, none are above any health-based standard at the compliance point). The compliance point values generated from these low extract levels are displaced in Table 6.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm)

	As	Ba	Pb	Hg	Se	Ag
Centrifuge sludge	0.0006	0.0004	0.005	0.000003	0.0006	0.0006
	Health Based Standard					
	0.05	1.0	0.05	0.002	0.01	0.05

The Agency also has reviewed each of the chemical components used in each raw material, as supplied by the raw material lists and material safety data sheets, in Dover Corporation's operations. The Agency has concluded from this review that no other Appendix VIII hazardous constituents are present in the petitioned waste.

The Agency believes that this waste is non-hazardous (for all reasons) and, as such, should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to the Dover Corporation, Norris Division, located in Tulsa, Oklahoma, for its electroplating wastes, as described in its petition.

IV. Star Expansion Company

A. Petition for Exclusion

Star Expansion Company (Star Expansion), located in Mountainville, New York, manufactures fasteners for the construction and transportation industries. Star Expansion has petitioned the Agency to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. Star Expansion has petitioned to exclude its waste because it does not meet the criteria for which it is listed.[26]

The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Star Expansion claims that its wastewater treatment process generates a non-hazardous sludge because the constituents of concern, although present in the waste, are in essentially an immobile form. Star Expansion further claims that this waste is not hazardous for any other reason.

Star Expansion has submitted a detailed description of its electroplating and wastewater treatment processes, including schematic diagrams; total constituent analyses, EP, and Oily Waste EP toxicity test results[27] of the sludge for cadmium, total chromium, and nickel; result of total constituent analysis and a distilled water leach test for cyanide; and results of tests for cyanide amenable to chlorination.

Star Expansion also submitted total constituent analyses and EP and Oily Waste EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver, and total oil and grease for representative waste samples. Star Expansion further submitted a list of raw materials used in the manufacturing process. This list indicated that solvents (trichlorethylene, 1,1,1-trichloroethane, and chloroform) used by Star Expansion have the

[20] See Footnote 13.
[21] See Footnote 5.
[22] See Footnote 6.
[23] See Footnote 7.
[24] See Footnote 8.
[25] The calculated upper limits of a 95 percent confidence interval for cadmium, chromium and nickel are 0.01, 0.02, and 4.03 ppm, respectively. Using the calculated upper limit values in the VHS model, the compliance point concentrations will not exceed the National Interim Primary Drinking Water Standards for cadmium and chromium, and the Agency's Interim Health Advisory for nickel. See Footnote 9 for an explanation of the confidence interval calculation.

[26] Star Expansion originally submitted their petition on November 1, 1982. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. (See section 222 of the Amendments, 42 U.S.C. 6921(f)). In anticipation of this legislation or regulatory changes by the Agency, EPA requested additional information from Star Expansion. This additional information was submitted by Star Expansion on May 1, 1984, June 24, 1985, and July 29, 1985.

[27] The Agency requested that Star Expansion perform the Oily Waste EP toxicity test on their waste due to a total oil and grease content of 3.0 percent. The Agency has decided to use the Oily Waste EP to determine the migratory potential of metals from wastes containing greater than 1 percent oil and grease content. See 49 *FR* 42561, October 23, 1984. See also Method 1330 in "Proposed Sampling and Analytical Methodologies for Addition to Test Methods for Evaluating Solid Waste," as referenced in 49 *FR* 38790, October 1, 1984.

potential to enter the rinsewater. They provided representative test data for these organics. The Agency requested this information, as noted above, to determine whether hazardous constituents, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.

Star Expansion manufactures fasteners for the construction and transportation industries. The manufacturing processes which contribute to the F006 wastestream are: A zinc plating line which involves pre-plating alkaline cleaning and acid pickling of the metal, followed by plating with zinc chloride and finished with a chromate brite dip; a mechanical zinc plating line in which the metal is prepared with cleaners and copper, and then zinc powder is applied using silica glass beads in a tumbling machine; a black oxide coating line in which metals are pickled in an acid solution, cleaned, treated in a black oxide tank, and finished with a hot water soluble oil solution to provide rust prevention; and a washing process whereby aluminum and steel parts are washed and deburred with alkaline/acidic materials in wet tumbling machines. Any oils produced in these manufacturing processes are skimmed or separated and collected in a storage tank.

Star Expansion's waste treatment system involves initial pH adjustment with muriatic acid, neutralization, cyanide destruction with hydrogen peroxide, flocculation, and clarification. The sludge then enters a thickening tank and is pumped to a drying vacuum filter. The supernatant is piped back to the first stage (pH tank) of the wastewater treatment system. The spent chromate solution is treated separately with a lime slurry to remove the soluble fluoride, and sodium metabisulfite is used to reduce any remaining hexavalent chromium. This waste then flows into the sludge holding tank.

Grab samples were collected from the rotary drum vacuum filter and from random points in the storage hopper. In their original petition, Star Expansion collected and analyzed 38 samples over a one-year period for the listed constituents. A total of 10 additional samples were collected and analyzed in 1983 and 1985. Star Expansion claims that the samples collected are representative of their waste. Their petition further states that the manufacturing processes used at the facility are operated in a consistent manner and that the use of raw materials does not vary over time.

Total constituent analyses, and EP and Oily Waste EP toxicity test results of the treatment sludge for the listed constituents, as well as for the other EP toxic metals, revealed the maximum concentrations reported in Tables 1 and 2. (The Oily Waste EP procedure was requested, as noted above, because the sludge's oil and grease content was reported at values up to 3.0%.)

TABLE 1.—MAXIMUM CONCENTRATIONS

	Total constituent analysis (mg/kg)	Oily waste EP analysis (mg/l)	EP leachate analysis (mg/l)
Cd	0.9	<0.005	0.06
Cr (total) **	3534	0.4	0.24
Ni	86.2	<0.05	0.61
CN (total) **	0.32	*NA	**0.05

*NA—test is not applicable.
**From distilled water leach test.
** Hexavalent chromium is listed as the constituent of concern for this waste; however, since the concentration of total chromium is low, a determination of the concentration of hexavalent chromium is unnecessary.
[29] In their initial petition, Star Expansion provided test data on total and amenable cyanide, as well as EP test results. The maximum total and free cyanide levels reported were 54.8 ppm and 3.2 ppm, respectively. The leachate value (in Table 1) was 0.05 ppm. In 1984, however, Star Expansion closed down the zinc plating line that used sodium cyanide, and re-tested for total cyanide in July, 1985. The maximum level reported was 0.32 ppm. Due to this low level, and the fact that the zinc plating line using cyanide will not be used again, free cyanide analysis was not required.

TABLE 2.—MAXIMUM TOTAL CONCENTRATIONS

	Total constituent analysis (mg/kg)	Oily waste EP analysis (mg/l)	EP leachate analysis (mg/l)
As	<5	<0.005	<0.005
Ba	45	<0.05	<0.2
Pb	13	<0.005	<0.05
Hg	<0.06	<0.005	<0.0004
Se	<0.5	<0.005	<0.002
Ag	<.43	<0.002	<0.01

Star Expansion also submitted a list of raw materials used in their process. This list indicated that trichloroethylene, 1,1,1-trichloroethane, and chloroform are used in their process. The maximum concentrations of these organics found in the vacuum filter sludge are reported in Table 3.

Table 3.—MAXIMUM CONVENTRATIONS

Vacuum filter sludge	Total constituent analysis (ppm)
Trichloroethylene	0.426
1,1,1-trichloroethane	0.100
Chloroform	0.055

The list of raw materials indicated that no other Appendix VIII hazardous constituents, other than those tested for, are used in the process; nor are any other toxicants expected to enter or be formed in the sludge. Star Expansion also provided data indicating that the sludge is not ignitable, corrosive, or reactive. Finally, Star Expansion claims that the maximum volume of waste generated is 420 cubic yards annually.

B. Agency Analysis and Action

Star Expansion has demonstrated that its wastewater treatment system produces a non-hazardous sludge. The Agency believes that the samples collected by Star Expansion were non-biased and adequately reflect any variations which may occur in the waste-stream petitioned for exclusion. The key factor which could vary constituent concentrations in the waste would be the use of different raw materials due to changes in the product line being manufactured. Variations in raw materials can be expected when a facility either performs as a job shop or changes its product line on a seasonal basis. Since this facility does not perform as a job shop or have seasonal variations, the Agency believes that Star Expansion's claim of uniformity in manufacturing and treatment processes is substantiated. Also, the three sampling periods would adequately reflect any temporal variations that may have occurred. The samples, therefore, are believed to be representative of the treated sludge generated by Star Expansion Company.

The Agency has evaluated the mobility of the constituents from Star Expansion's waste using the vertical and horizontal spread model (VHS model).[30] The Agency's evaluation using Star Expansion's 420 cubic yards of filtered sludge and the maximum reported EP test results as input parameters, has generated the maximum predicted receptor well concentrations exhibited in Table 4.[31] (Where leachate concentrations were below the detection limit, the value of the detection limit was used to predict these concentrations).

TABLE 4.—CALCULATED MAXIMUM COMPLIANCE POINT CONCENTRATIONS (mg/l)

	Cd	Cr (total)	Ni	CN
Vacuum filter cake	0.0002	0.00124	0.002	0.01
Health based standard	.01	.05	.35	.20

The predicted maximum levels at the compliance point for cadmium and chromium are below the National Interim Primary Drinking Water Standards, while nickel levels are below the Agency's Interim Health Advisory for nickel.[32] These constituents are,

[30] See Footnote 5.
[31] The maximum value of the oily waste EP toxicity analyses was used in the VHS model because only four samples were subjected to the oily waste EP test. Due to the small sample size, the maximum is the most conservative value to use.
[32] See Footnote 6.

therefore, not of regulatory concern.[33] The total concentration of cyanide was used in the VHS model because the value (0.32 ppm) was so low that even if all of the cyanide leached out of the waste, the level at the compliance point would still not exceed the health-based standard. The level of leachable cyanide, therefore, is not of regulatory concern.[34] Also, the low constituent values of total cyanide are not of regulatory concern from an atmospheric contamination route. These levels are well below the workroom air threshold limit of 10 ppm set by the American Conference of Governmental Industrial Hygienists.[35]

Furthermore, through the use of the VHS model, the Agency has also concluded that no other EP toxic metals are present in Star Expansion's waste at levels of regulatory concern (*i.e.*, none would be above any health-based standard at the receptor well in the VHS model). The compliance point values generated from the low extract levels are displayed in Table 5.

TABLE 5.—CALCULATED MAXIMUM COMPLIANCE POINT CONCENTRATIONS (mg/l)

	As	Ba	Pb	Se	Hg	Ag
Vacuum filter cake	0.0002	0.002	0.0002	0.0002	0.0002	<0.0001
Health-based standard	.05	1	.05	.01	.002	.05

The Agency also has evaluated the mobility of organic constituents from Star Expansion's vacuum filter sludge using the VHS model with the predicted organic leachate values.[36] Compliance point concentrations of these three compounds were calculated and presented in Table 6.[37] All of these

[33] The calculated upper limit of the 95% confidence interval for Oily Waste EP leachate values of cadmium, chromium, and nickel are as follows: 0.0005 ppm, 0.37 ppm, and 0.05 ppm. Using these calculated upper limit values for the Oily Waste EP leachate values in the VHS model, the receptor well concentrations also will not exceed the appropriate health-based standards.

[34] See Footnote 7.

[36] See Footnote 8.

[36] Insert here publication dates of organics model FR notice.

[37] The maximum level detected was used in calculating the predicted leachate concentrations since only four samples were analyzed for these organics.

levels are below the appropriate health-based standards.

TABLE 6.—VHS MODEL: COMPLIANCE POINT CONCENTRATION OF ORGANIC CONTAMINANTS (ppm)

Constituent	Predicted leachate concentration (ppm)	Predicted compliance concentration (ppm)	Health-based Standard (ppm)*
Trichloroethylene	0.0001	0.0001	0.003
1,1,1-trichloroethane	0.0094	0.0002	1
Chloroform	0.0096	0.0003	0.0005

*See "List of Compounds: Health-Based Standards" in support of the "Proposed Organic Model" published elsewhere in today's **Federal Register** available in the public docket.

The raw materials used by Star Expansion in their manufacturing process contain very low levels of trichloroethylene, 1,1,1-trichloroethane and chloroform, and tests on the petitioned waste stream have confirmed that these constituents are present at very low concentrations.

The Agency also has reviewed each of the chemical compounds as supplied by raw material lists and material safety data sheets, in Star Expansion's operations. The Agency has concluded that no other Appendix VIII hazardous constituents are present in the petitioned waste.

The Agency believes that this waste is non-hazardous (for all reasons) and as such should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to Star Expansion Company located in Mountainville, New York for its electroplating wastes, as described in its petition.

V. Texas Eastman Company

A. Petition for Exclusion

Texas Eastman Company (TEC), located in Longview, Texas is involved in the manufacture of chemicals and plastics. TEC has petitioned the Agency [38] to exclude the wastewater influent to Lagoon 8 [39] and Talley 2A of their wastewater treatment facility and the sludge contained in Lagoon 8, Talleys 2A, 2B, 2C, and 3 of the same facility. All of the wastewater and sludge contained in the wastewater treatment facility are identified as hazardous by virtue of the mixture and "derived from" rules rule [40] because they contain two listed wastes: Distillation bottoms from the production of acetaldehyde from ethylene (EPA Hazardous Waste No. K009) and distillation side cuts from the production of acetaldehyde from ethylene (EPA Hazardous Waste No. K010). TEC has petitioned the Agency to exclude the wastewater and sludge contained in the aforementioned oxidation basins because they do not meet the criteria for which they were listed. The listed constituents of concern for EPA Hazardous Waste Nos. K009 and K010 are chloroform, formaldehyde, methylene chloride (dichloromethane), methyl chloride, paraldehyde, and formic acid. EPA Hazardous Waste No. K010 is, in addition, listed for chloroacetaldehyde. TEC claims that the concentrations of these seven hazardous constituents are minimal in the wastewater influent and in the sludge to the specific basins because the listed acetaldehyde wastestreams are processed through additional pretreatment steps before they are discharged to the wastewater treatment facility and mixed with substantial quantities of other non-listed process wastewater. TEC further claims that their waste is not hazardous for any other reason.

In support of this claim, TEC has submitted a detailed description of their acetaldehyde manufacturing process pretreatment unit [41] and wastewater treatment facility, including schematic diagrams; a description of all other non-listed manufacturing processes and raw materials which could enter the wastewater treatment facility; total constituent analyses for all suspected Appendix VIII hazardous constituents in the wastewater and sludge; EP toxicity test results; and ground-water data. Texas Eastman also submitted analyses on representative sludge samples for oil and grease.

TEC produces acetaldehyde by the direct liquid-phase oxidation of ethylene over a palladium chloride-cupric chloride catalyst. The acetaldehyde product is separated from the unreacted ethylene and light hydrocarbons as it passes through a crude distillation column. The palladium catalyst is regenerated and recycled. The purified acetaldehyde is obtained from an overhead cut of a second distillation. Distillation bottoms (K009) containing high-boiling organic impurities and a side-cut stream (K010) comprised of higher boiling organics and chlorinated organics are then sent to a totally enclosed pretreatment unit [42] before being discharged to the wastewater treatment facility.

TEC's wastewater treatment facility is a facultative, biological, pond system. It is a large volume, long retention time (six to nine months) system that uses gravity flow. Wastewater from each manufacturing area is discharged into an enclosed process sewer. Only the listed wastewater (K009 and K010) is subjected to pretreatment before it is discharged into the process sewer. The process sewer then flows through a weir at the headworks of the wastewater treatment facility. The wastewater flows from the weir into sequential skimming basins. Periodically, the solids accumulated in the skimming basins are dewatered, solidified, and landfilled. The treated wastewater is discharged from the skimming basins and sequentially flows through Lagoons 2, 3 (Lagoon 1 is currently not in operation), 4, 5, and 6 which are aerated, and then into Lagoon 7, which is nonaerated. The treated wastewater is then split. Part is routed to aerated Lagoon 8, where it is mixed with wastewater from TEC's deionizing water plant and then discharged to the Sabine River. The balance (which is the largest portion) of the wastewater is sent to the large facultative basins labelled as Talleys 2A, 2B, 2C, and 3. The wastewater from Talley 3 is also discharged into the Sabine River. The lagoon sludges and wastewater which are the subject of this petition are those located in Lagoon 8 and Talleys 2A, 2B, 2C, and 3. The lagoons that comprise the earlier portion of the wastewater treatment facility and an on-site landfill are not covered by this petition and as such are still subject to regulation under Subtitle C of RCRA.

TEC conducted a comprehensive sampling plan in support of their petition. Four samples were collected from the pretreatment unit inlet and outlet. These samples were grab samples taken from a well-mixed stream over a period of a month. Four samples were also collected from the headworks of the wastewater treatment facility. These were grab samples taken from the

[38] Texas Eastman submitted their petition on October 19, 1982. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Texas Eastman. See 49 *FR* 4803, February 8, 1984. This additional information was submitted by Texas Eastman on December 10, 1984 and April 1, 1985.

[39] TEC's wastewater treatment facility is composed of a series of oxidation basins labeled Lagoons 1, 2, 3, 4, 5, 6, 7, 8, and Talleys 2A, 2B, 2C, and 3. TEC requested an exclusion solely for the oxidation basins labeled Lagoon 8 and Talleys 2A, 2B, 2C, and 3.

[40] See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i).

[41] TEC has claimed the information pertaining to their pretreatment unit as confidential business information (CBI).

[42] See Footnote 41.

process sewer weir over a month's time. Four samples were also collected at the Lagoon 4 inlet. This was well in advance of the requested delisting point.

Sampling was also conducted on the five lagoons that are the subject of this petition. Each lagoon was divided into quadrants. Six core samples were collected from each quadrant over the entire depth of the sludge. All quadrant samples were collected on the same day. These samples were then composited for each quadrant. This resulted in the analysis of twenty samples. TEC claims that these samples are representative of their sludge and reflect any variability in constituent concentrations because of the uniformity of their manufacturing process and the long retention time (six to nine months) of the wastewater treatment system.

Grab samples of the K009 and K010 wastestreams following pretreatment were analyzed for total oil and grease. Total oil and grease values reported were less than 7 ppm.

Total constituent analyses of samples collected from the pretreatment unit inlet and outlet for the organic constituents suspected of being present in the pretreatment unit [43] revealed the maximum concentrations reported in Table 1.

TABLE 1.—K009 and K010 Wastestreams Pretreatment Inlet and Outlet Maximum Constituent Concentration (ppm)

Component	Inlet	Outlet
Chloroform	1.88	8.07
Formaldehyde	83	<0.1
Dichloromethane	0.17	0.36
Methyl chloride	<0.01	<0.01
Chloroacetaldehyde	385	<2
1,1-Dichloroethane	<0.01	0.2
1,2-Dichloroethane	<0.01	<0.01

[43] This included the listed constituents that were stable at the pH of the pretreatment unit and suspected by-products from the pretreatment process.

TEC claims that the chloroform concentration in the outlet to the pretreatment unit is higher than in the inlet because chloroform is one of the transient intermediate products formed during the process of converting the more complex chlorinated organics to inorganic chloride, and thus chloroform is produced when the pretreatment unit functions properly.

Total constitutent analyses for suspected Appendix VIII constituents were conducted on wastewater samples collected from the headworks of the wastewater treatment facility, and inlet to Lagoon 4; and on sludge samples from the oxidation Lagoons 4, 5, 6, 7, and 8,[44] and Talleys 2A, 2B, 2C, and 3. Maximum constituent concentrations for the Appendix VIII hazardous constituents are presented in Table 2.

[44] Oxidation Lagoons 4–7 are not a subject of this petition. The fact that sampling was done on these lagoons is mentioned here for completeness.

TABLE 2.—MAXIMUM CONSTITUENT CONCENTRATIONS (ppm)

Constituent	Wastewater headworks	Wastewater lagoon 4 inlet (*)	Lagoon 8 sludge	Talley 2A sludge	Tally 2B sludge	Tally 2C sludge	Tally 3 Sludge
Benzene	9.44	Tr	ND	ND	ND	ND	ND
Chloroacetaldehyde	[1] ND	[2] ND	[1] ND	[1] ND	[1] ND	[1] ND	[1] ND
Chloroform	5.495	Tr	ND	ND	ND	ND	ND
Chloromethane	ND	ND	ND	ND	ND	ND	ND
1,1-Dichloroethane	*0.546	ND	ND	ND	ND	ND	ND
1,2-Dichloroethane	0.029	ND	ND	ND	ND	ND	ND
Dichloromethane	0.111	ND	0.033	0.021	0.069	0.158	0.316
Isobutyl Alchol	52.920	[1] 5	[2] ND	[2] ND	[2] ND	[2] ND	[2] ND
Methyl Ethyl Ketone	*4.99	*[1] 2	[2] ND	[2] ND	[2] ND	[2] ND	[2] ND
Paraldehyde	0.923	[1] ND	[2] ND	[2] ND	[2] ND	[2] ND	[2] ND
1,1,1,2-Tetrachloroethane	ND	ND	ND	ND	ND	ND	ND
1,1,2,2-Tetrachloroethane	ND	ND	ND	ND	ND	ND	ND
Toluene	1.229	0.005	ND	ND	ND	ND	0.012
1,1,1-Trichloroethane	0.074	ND	ND	ND	ND	ND	ND
1,1,2-Trichloroethane	ND	ND	ND	ND	ND	ND	ND
Benz(a)anthracene	ND	ND	[3] ND	[3] ND	[3] ND	[3] ND	[3] ND
Benzo(b)fluoranthene	ND	ND	[3] ND	[3] ND	[3] ND	[3] ND	[3] ND
Benzo(j)fluoranthene	ND	ND	[3] ND	[3] ND	[3] ND	[3] ND	[3] ND
Benzo(a)pyrene	ND	ND	[3] ND	[3] ND	[3] ND	[3] ND	[3] ND
Chlorobenzene	ND	ND	ND	ND	ND	ND	ND
Chrysene	ND	ND	[3] ND	[3] ND	[3] ND	[3] ND	[3] ND
Dibenz(a,h)anthracene	ND	ND	[1] ND	[1] ND	[1] ND	[1] ND	[1] ND
Dibenz(a,e)pyrene	ND	ND	[1] ND	[1] ND	[1] ND	[1] ND	[1] ND
Dibenz(a,h)pyrene	ND	ND	[1] ND	[1] ND	[1] ND	[1] ND	[1] ND
Dibenz(a,i)pyrene	ND	ND	[1] ND	[1] ND	[1] ND	[1] ND	[1] ND
o-Dichlorobenzene	ND	ND	ND	ND	ND	ND	ND
m-Dichlorobenzene	ND	ND	ND	ND	ND	ND	ND
p-Dichlorobenzene	ND	ND	ND	ND	ND		
Fluoranthene	ND	Tr	[3] ND	[3] ND	[3] ND	[3] ND	[3] ND
Naphthalene	0.971	Tr	[3] ND	*0.6	[3] ND	[3] ND	[3] ND
Indeno(1,2,3-cd)pyrene	ND	ND	[1] ND	[1] ND	[1] ND	[1] ND	[1] ND
3-Methylcholanthene	ND	ND	[1] ND	[1] ND	[1] ND	[1] ND	[1] ND
7,12-Dimethylbenz(a)anthracene	ND	ND	[1] ND	[1] ND	[1] ND	[1] ND	[1] ND
Formaldehyde	18.7	ND	0.22	[2] ND	[2] ND	[2] ND	[2] ND
Phenol	0.057	ND	[2]ND	[2] ND	[2] ND	[2] ND	[2] ND
Bis-2-ethylhexylphthalate	ND		11.4	2.9	3.0	19.8	*0.8
Dibutzl Phthalate	[3] ND	[3] ND	[3] ND	[3] ND	[3] ND		
Diethyl Phthalate			*0.7	[4]ND[5]	[3] ND	[3] ND	[3] ND
Carbon Tetrachloride	*0.014						
Trichloroethylene	ND						
Tetrachloroethylene	ND						

ND—Not detected. Detection limit is 0.01 ppm unless otherwise indicated.
[1] Detection Limit is 1 ppm.
[2] Detection Limit is 0.1 ppm.
[3] Detection Limit is 0.5 ppm.
[4] Detection Limit is 0.005 ppm for Lagoon 4 inlet unless otherwise indicated.
[5] Detected in one of four samples.

Although metals are not reasonably expected to be present in the acetaldehyde wastestream, TEC provided data on all of the EP toxic metals. Four representative samples were collected from the wastewater influent at the headworks of the wastewater treatment facility and analyzed for the characteristics of ignitability, corrosivity, and EP toxicity. Four representative sludge samples taken from Lagoon 4 were also analyzed for these characteristics. The maximum EP concentrations are presented in Table 3. TEC claims that the waste is not reactive since the sludge is approximately 80–90% water and is not a cyanide or sulfide-bearing waste.

TABLE 3.—MAXIMUM CONCENTRATIONS (PPM)

	Wastewater at headworks	Lagoon 4 sludge
As	<1.0	<0.05
Ba	3.0	2
Cd	<0.5	<0.01
Cr	<1.0	<0.05
Pb	<1.0	<0.05
Hg	<0.1	<0.002
Se	<0.5	<0.01
Ag	<1.0	<0.05
Endrin	<0.01	<0.0002
Lindane	<0.04	<0.004
Methoxychlor	<1.0	<0.1
Toxaphene	<0.05	<0.005
2,4-D	<1.0	<0.1
2,4,5-TP	<0.1	<0.01

Ground-water monitoring data were also submitted on samples collected from the five down-gradient and one up-gradient wells. These samples were analyzed for all the constituents listed in Table 2 with the exception of dibutyl phthalate and diethyl phthalate. The constituents detected in the ground-water samples are listed in Table 4 along with their concentrations; none of the other Appendix VIII constituents were detected.

TEC's ground-water specialists believe that wells 11–S and 9–S monitor Lagoons 1, 2 and 3 (this portion of the facility is not covered by the petition). Wells 31–S, 5–S, and 3–S monitor the lower portion of the facility (Lagoon 4 through Talley 3). Well 31–S is situated near Lagoons 5, 6, 7, and 8; wells 5–S and 3–S are in the vicinity of the Talleys. TEC states that their property extends from the wastewater treatment facility to the Sabine River. They state that no drinking water wells are located between the facility and the river. TEC further claims that the gound water in the uppermost aquifer moves approximately 8–10 feet per year toward the Sabine River and discharges to the river. The total ground-water flow is conservatively estimated to be in the order of 10,000 gallons per day in the segment of the river bordering the wastewater treatment facility. Ground-water recharge to the river is reported to be diluted by a factor of 190,000 to one by the river water.

TEC claims that a maximum of 1.018 billion gallons of water is discharged annually. In 1984, the average flow from the pretreatment unit was 220 gpm and the average flow at the headworks was 1656 gpm. Additionally, a maximum of 1,125 tons of sludge is generated annually in Lagoon 4 through Talley 3. It is estimated that the quantity of sludge contained in Lagoon 4 through Talley 8 is 3,500 tons.

Table 4

Maximum Constituent Concentrations Detected in Groundwater (ppm)

Constituent	Well 14-S (background)	Well 11-S	Well 9-S	Well 31-S	Well 5-S	Well 3-S
Benzene	ND	ND	0.716	ND	0.032*	ND
Chloroform	ND	ND	ND	ND	0.064*	0.016
Dichloromethane (1)	0.061	0.124	0.444	0.085	0.132	0.153
Isobutyl Alcohol (1)	ND	ND	2.0*	ND	ND	ND
Methyl Ethyl Ketone (1)	ND	0.128**	ND	ND	0.123*	ND
Paraldehyde	ND	ND	0.382	ND	ND	ND
Toluene	ND	ND	0.124	ND	ND	ND
Naphthalene	ND	ND	2.37	ND	ND	ND
Formaldehyde (1)	ND	ND	0.3	ND	ND	ND
Chlorobenzene	ND	ND	0.017	ND	ND	ND
Benz(a)pyrene	0.047**	ND	ND	ND	ND	ND

Detection limit is 0.01 ppm unless otherwise indicated

(1) Detection Limit is 0.1 ppm

* Detected in only one out of four samples

** Detected in one out of three samples

The sizes of TEC's Lagoons are as follows: Skimming Basin #2, 0.4 acres; Skimming Basin #1, 0.2 acres; Lagoon 1 (currently out of service), 12.6 acres; Lagoon 2, 9.6 acres; Lagoon 3, 13.5 acres; Lagoon 4, 4.7 acres; Lagoon 5, 8.5 acres; Lagoon 6, 5.8 acres; Lagoon 7, 8.1 acres; Lagoon 8, 4.0 acres; Talley 2A, 58 acres; Talley 2B, 65 acres; Talley 2C, 80 acres; Talley 3, 250 acres.

B. Agency Analysis and Action

Based on our current evaluation criteria, TEC has demonstrated that the wastewater and wastewater treatment sludges located in Lagoon 8 and Talleys 2A, 2B, 2C, and 3 are nonharardous. The Agency believes that the twenty composite samples collected from these five lagoons (4 composite samples from each lagoon) were nonbiased and more than adequately represent any variation which may occur throughout these segments of the wastewater treatment facility. The Agency believes that (with

respect to the sludge in the lagoons) since the samples were collected randomly throughout the lagoon quadrants, any stratification occurring vertically due to settling or horizontally as a function of flow through the wastewater treatment facility would be represented by the sampling scheme followed. Due to the nature and consistency of the manufacturing process involved and the gradual accumulation of sludge over 25 years, the Agency also believes that samples collected on one day would not be expected to vary widely from those collected any other day. The sludge samples, therefore, are representative of the waste generated by TEC in the five identified lagoons.

The four representative samples collected from the headworks and the inlet to Lagoon 4 were also nonbiased. These samples were collected over the course of a month at random times during the day. TEC operates most processes at steady-state conditions which produces a fairly uniform wastewater. During this month-long sampling program, all manufacturing units were operating.

The Agency also believes that the ground-water sampling was representative. Each well had a dedicated bailer. Taking samples over the course of the month ensured that the samples were representative because the ground water moves relatively slowly in these areas. Analytical and field duplicates plus field blanks were also run on all data sets

EP analyses on Lagoon 4 sludge revealed that all of the inorganics and pesticides listed in Table 3, with the exception of barium, were below the National Interim Primary Drinking Water Standards (NIPDWS). The Agency has evaluated the mobility of barium in TEC's waste using the vertical and horizontal spread model (VHS Model).[45] This evaluation, using a maximum waste amount of 3500 tons and the maximum reported EP leachate test result as input parameters, resulted in a maximum predicted receptor well concentration of 0.3 ppm. This maximum value is below the NIPDWS of 1 mg.L.[46]

The only organic constituents measured in the wastewater by the time it reached Lagoon 4 were isobutyl alcohol (5 ppm), methyl ethyl ketone (2 ppm), and toluene (0.005 ppm). Benzene, fluoranthene and naphthalene were detected in trace amounts (less than 0.005 ppm). These levels are not of concern because (1) the predicted constituent concentrations of the compliance point are below the health-based numbers and (2) the lagoon 4 inlet is well in advance of the requested delisting point.

The organic constituents detected in the lagoon sludges and their predicted leachate concentrations are presented in Table 5.

TABLE 5.—PREDICTED MAXIMUM CONCENTRATIONS AT COMPLIANCE POINT

Constituent	Predicted leachate concentration (ppm)	Predicted compliance concentration (ppm)	Health-based number (ppm) [47]
Dichloromethane	0.113	1.7×10^{-3}	6×10^{-2}
Naphthalene	4.4×10^{-4}	6.5×10^{-6}	
Formaldehyde	[48]0.22	3.2×10^{-3}	
Bis-2-ethylhexyl-phthalate	0.27	4.0×10^{-3}	2
Diethyl phthalate	1.34×10^{-3}	2.0×10^{-5}	500
Toluene	1.37×10^{-4}	2.0×10^{-6}	10

[47] See "Health-Based Standards List" document in the public docket in support of the proposed organics model published elsewhere in today's FEDERAL REGISTER.

[48] Due to the fact that formaldehyde is miscible with water, the maximum constituent concentration is used as the leachate concentration because the orgainc model overpredicts leachate concentrations at very high solubilities.

The predicted concentrations of dichloromethane, bis-2-ethyl hexylphthalate, and toluene at the compliance point are below the health-based numbers. No health-based numbers are currently available for naphthalene, and formaldehyde (via ingestion).[49] There is no evidence available for naphthalene, and formaldehyde (via ingestion).[49] naphthalene is a carcinogen; nor is formaldehyde by an oral exposure route. Thus, we believe these concentrations are well below a level of regulatory concern.

Although some Appendix VIII constituents were detected in wells 11–S, 9–S, and 31–S, these wells monitor the area of the wastewater treatment facility which is not covered by the petition and is thus still under Subtitle C control.[50] For well 5–S, benzene was detected in only one of four samples and it was not detected in an additional field duplicate. Benzene was also not detected in Lagoon 8, and Talleys 2A, 2B, 2C, and 3 sludge. Chloroform was also detected in only one out of the four samples in well 5–S. It was also detected in an analytical duplicate of a "non-detected" sample. Chloroform, however, was not detected in Lagoon 8, and Talleys 2A, 2B, 2C, and 3 sludge. The Agency, therefore, questions whether these observations (for both benzene and chloroform) are real. Furthermore, the concentration of chloroform is below the NIPDW standard for total trihalomethanes at 0.10 ppm.[51] Methyl ethyl ketone was detected in one out of four samples in well 5–S. The concentration was, however, below the health-based number of 2.0 ppm.[52]

Dichloromethane was, however, in sludge samples from Lagoon 8 and Talleys, 2A, 2B, 2C, and 3. It was also detected in all ground-water samples. The Agency believes, however, that dichloromethane is a laboratory contaminatnt for the following reasons: (1) Dichloromethane was detected in the up-gradient (*i.e.*, background) well, none of the other down-gradient contaminants were detected in the up-gradient wells; (2) the level of chloroform as chloroform at the headworks to the wstewater treatment facility was fifty times greater than dichloromethane. From a physicochemical standpoint, chloroform and dichloromethane would be expected to behave similarly in the enviroment. It is, therefore, logical to assume that chloroform would be detected in the sludge at higher concentrations than dichloromethane. This however, was not the case; chloroform was not detected in

[45] See Footnote 14.

[46] See 40 CFR 141.12.

[49] Although no health-based number for formaldehyde is currently available, the Agency believes that the levels of formaldehyde which could be found in Texas Eastman's waste are not of regulatory concern. This conclusion was based upon evidence accumulated from a literature search of information currently available on the toxicity of formaldehyde. It has been demonstrated in long-term rodent inhalation bioassays that formaldehyde can cause cancer. In 1983 (Kerns, W.O., K.L. Pavkov, D.J. Donfrio, E.J. Grallon, and J.A. Swenberg. 1983. *Cancer Res.* 43:4382–92). it was demonstrated that exposure to formaldehyde through inhalation at concentrations of 5.6 or 14.3 ppm, 6 hours per day, 5 days per week for 24 months caused squamous cell carcinomas in the nasal cavaties of approximately 50% of the rats in the high exposure group and 1% of the rats in the low exposure group. A similar study (Albert, R., A. Sellakumar, S. Laskin, M. Kuschner, N. Nelson, and C. Synder. 1982. *J. Natl. Cancer Inst.* 68:597–603) confirmed the results of Kerns, *et al.* There is no evidence in whole animal studies that formaldehyde alters any aspects of reproduction or causes birth defects. (Committee on aldehydes, Board on toxicology and Environmental Health Hazard. 1982. Formaldehyde and Other Aldehydes. National Academy Press EPA 600/6–82–002.) It has, however, exhibited mutagenic activity in several non-mammalian animal or cell systems. (Auerbach, C.M., M. Moutschen—Dahmen, and J. Moutschen. 1977. Genetic and cytogenetical effects of formaldehyde and related compounds. *Mutat. Res.* 39:217–362.) Acute oral toxicity tests on formaldehyde indicate that it is slightly toxic to rats with LD50 values in the range of 500-800 mg/kg body weight. (Smyth, H.F., Jr., J. Seaton, and L. Fisher. 1941. The single dose toxicity of some glycols and derivatives. *J. Ind. Hyg. Toxicol.*) There is no evidence available in the literature which indicates that formaldehyde is carcinogenic when ingested.

[50] Well 31–S Monitors not only Lagoon 8, but also Lagoons 5, 6, and 7 which are not covered by this petition.

[51] See 40 CFR 141.12.

[52] See "Health-Based Standards List" document in support of the proposed organics model published elsewhere in today's **Federal Register.**

any of the twenty sludge samples which were analyzed.[53]

The Agency concludes that the sludge and waste water contained in Lagoon 8 and Talleys 2A, 2B, 2C, and 3 are non-hazardous for all reasons. The Agency, therefore, proposes to grant an exclusion to TEC in Longview, Texas for the wastewater and sludge contained in the above-mentioned lagoons.

VI. United Technologies Automotive, Inc.

A. Petition for Exclusion

United Technologies Automotive, Inc. (United Technologies), located in Jeffersonville, Indiana, involved in the production of window frames and bumper guard strips, has petitioned the Agency to exclude its treated sludge presently listed as EPA Hazardous Waste No. F019—Wastewater treatment sludges from the chemical conversion coating of aluminum.[54]

The listed constituents of concern for EPA Hazardous Waste No. F019 are hexavalent chromium and cyanide (complexed). United Technologies claims that its wastewater treatment system reduces and immobilizes chromium, creating a non-hazardous sludge. United Technologies also claims that cyanide is not used in their process and is, therefore, not present in their waste. United Technologies further claims that this waste is not hazardous for any other reason.

United Technologies has submitted a description and schematic diagrams of its manufacturing and wastewater treatment process; total constituent analyses of the sludge for total chromium and cyanide; EP toxicity test results for chromium; and distilled water leach test results for cyanide.

United Technologies has also submitted total constituent analyses and EP toxicity test results for arsenic, barium, cadmium, lead, mercury, selenium and silver, and total oil and grease of representative waste samples. Furthermore, United Technologies submitted a list of raw materials used in the manufacturing process to demonstrate that no other hazardous constituents are present in the waste at levels of regulatory concern. This information was requested, as noted above, to determine if hazardous constituents, other than those for which the wastes was listed, are present in the waste at levels of regulatory concern.

The manufacturing process involves etching, brightening, painting, and chrome conversion coating. The wastewater treatment system involves chrome reduction via sodium bisulfite addition, neutralization, precipitation, clarification, and filter press dewatering; the dewatered sludge is then stored in a hopper.

One random grab sample was collected each day from the sludge hopper for one month. Each set of weekly samples were combined creating four composite samples. The petitioner claims that these composites are representative of any variation in constituent concentration in the waste. United Technologies further claims that although manufacturing schedules may vary in any one week, the daily samples collected throughout the course of one month are representative of any expected heterogeneity that could be exhibited by the waste.

Total constituent analysis of the final filter cake for the listed constituents revealed the maximum concentrations in Table 1. Leachate analyses for these same constituents revealed the maximum concentration reported in Table 2.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT ANALYSES (PPM)

	Cr total	CN total	CN free
Filter cake	3,026.0	0.099	0.006

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS (PPM)

	Cr total	CN
Filter cake	0.947	0.035

Note: *Assumed maximum leaching at 20:1 dilution of the distilled water EP test.

Total constituent analyses of the final treatment sludge for the non-listed inorganic constituents revealed the maximum concentrations reported in Table 3.

TABLE 3.—MAXIMUM TOTAL CONSTITUENT ANALYSIS (PPM)

	As	Ba	Cd	Pb	Hg	Se	Ag	Ni
Filter cake	0.6876	3.897	0.685	9.012	0.0251	0.008	0.64	12.66

EP toxicity analyses for the non-listed metals revealed the maximum concentrations reported in Table 4.

TABLE 4.—MAXIMUM EP LEACHATE CONCENTRATIONS (PPM)

	As	Ba	Cd	Pb	Hg	Se	Ag	Ni
Filter cake	0.009	0.284	0.009	0.03	0.0012	0.005	0.018	0.196

Maximum total oil and grease values reported were 0.39 percent. United Technologies also submitted a list of raw materials used in their process. This list indicated that no other Appendix VIII hazardous constitutents were used in the process and the formation of any of these constituents is highly unlikely.

United Technologies claims that the maximum volume of waste generated from its filter press is 360 tons per year.

[53] The Agency specifically requests comments on our interpretation of the ground-water monitoring data.

[54] United Technologies originally submitted their petition on July 17, 1984. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. (See section 222 of the Amendments 42 U.S.C. 3001(f).) United Technologies petition addressed the Agency's additional concerns, as a result of the Amendments, with a clarifications in February 1985.

B. Agency Analysis and Action

United Technologies has demonstrated that its wastewater treatment system generates a non-hazardous sludge. The Agency believes that the twenty grab samples collected and combined into weekly composites over the course of one month were nonbiased, and, more than adequately, represent any variations which may occur in the wastesteam petitioned for exclusion. The key factor which could vary toxicant concentrations in this waste is the use of different raw materials due to changes in the product line being manufactured. Variations in raw materials used can be expected when the facility either performs as a job shop or when the product line changes on a seasonal basis. The Agency believes that the samples, due to the duration of the sampling period, reflect the variability that might occur due to variation of coating used on the array of products manufactured by this facility since the petitioner has claimed that the samplying period covered all normal product line changes. The Agency's conclusion was confirmed by a comparison of the total constituent analyses of each sample, as well as statistical analysis of the EP toxicity data from each sample. This analysis would have, but did not, detect any significant variability in the waste (*i.e.*, the standard deviation was low).[55]

The Agency has evaluated the mobility of toxicants from United Technologies' waste using a vertical and horizontal spread (VHS) model.[56] The Agency's evaluation of United Technologies' 360 tons of filter cake and the maximum extract levels for the constituents of concern using the VHS model has generated the receptor well concentrations exhibited in Table 5. The chromium levels (at the well) are below the National Interim Primary Drinking Water Standards, and cyanide levels are below the U.S. Public Health Services suggested drinking water standard.[57] The presence of these constituents and their mobility (as indicated by the maximum extract levels reported in the petition) is not of regulatory concern.

Since cyanide is not used in the process and the total content in the waste was below the suggested drinking water standard, a leachate test was not required. The VHS compliance point value in Table 5 was calculated, however, by assuming that the total cyanide present in the waste would leach.

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATION (PPM)

	Cr Total	CN
Filter cake	0.029	0.0001
Health-Based Standard		
	0.05	0.2

The Agency also has concluded, through the use of the VHS model, that no other inorganic hazardous constituents are present in the waste at levels of regulatory concern (*i.e.*, none are above any health-based standard at the compliance point). The compliance point values generated from the low extract values are displayed in Table 6.[58]

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

	As	Ba	Cd	Pb	Hg	Se	Ag	Ni
Filter cake	0.0002	0.008	0.0002	0.0009	0.00003	0.0001	0.0005	0.006
Health-Based Standards								
	0.05	1.0	1.0	0.05	0.002	0.001	0.05	0.35

The Agency also has reviewed each of the chemical components as supplied by raw materials lists and material safety data sheets, used in each raw material, in United Technologies' operations. The Agency has concluded from this review that no other Appendix VIII hazardous constituents are present in the petitioned waste.

The Agency believes that this waste is non-hazardous (for all reasons) and, as such, should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to United Technologies, Inc., located in Jeffersonville, Indiana, for its conversion coating wastes as described in its petition.

VII. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that these rules should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

VIII. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's list of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous.

IX. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may

[55] See Footnote 13.

[56] See Footnote 5.

[57] See Footnote 7.

[58] The calculated upper limits of 95 percent confidence interval for each of the EP toxic metals and cyanide were also used in the VHS model in addition to maximum EP levels in calculating the receptor well concentrations. None of these receptor well values exceed the appropriate health-based standard for each constituent.

certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

X. List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling.

Dated: November 4, 1985.

J.W. McGraw,

Acting Assistant Administrotor, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestreams in alphabetical order to table 1:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Arco Chemical Company.	Miami, Florida.	Dewatered wastewater treatment sludge (EPA Hazardous Waste No. F019) generated from chemical conversion coating of aluminum after [insert date of publication].
Bommer Industries Inc.	Landrum, South Carolina.	Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from their electroplating operations and contained in evaporation ponds # 1 and # 2 on [date of publication].
Dover Corp. Norris Division.	Tulsa, Oklahoma.	Dewatered wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from their electroplating operations after [date of publication].
Star Expension Company.	Mountainville, New York.	Dewatered wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from their electroplating operations after [date of publication].

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
Texas Eastman Company.	Longview, Texas.	Wastewater and sludge (EPA Hazardous Waste Nos. K009 and K010) contained in Lagoon 8 and Talleys 2A, 2B, 2C, and 3 generated from the production of acetaldehyde from ethylene on [date of publication].
United Technologies Automotive, Inc.	Jeffersonville, Indiana.	Dewatered wastewater treatment sludge (EPA Hazardous Waste No. F019) generated from chemical conversion of aluminum after [date of publication].

[FR Doc. 85-27067 Filed 11-26-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-2921-9]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Proposed Exclusions and Proposed Organics Model

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at three facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at particular facilities from listing as hazardous wastes under 40 CFR Part 261.

Due to recent changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, the three petitions for which we propose to grant an exclusion have been evaluated both for the factors for which the wastes were originally listed as well as all other factors and toxicants reasonably expected to be present in these wastes. Finally, this notice explains how the Agency intends to evaluate petitions dealing with organic wastes.

DATES: EPA will accept public comments on these proposed exclusions until January 13, 1986. Any person may request a hearing on these proposed exclusions by filing a request with Eileen B. Claussen, whose address appears below, by December 12, 1985. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Requests for a hearing should be addressed to Eileen B. Claussen, Director Characterization and Assessment Division, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 3001—Delisting Petitions (3)."

The public docket for these proposed exclusions is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Mr. James Poppiti, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION: On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or 261.11(a)(3).

Individual waste streams may vary, however, depending upon raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste meeting the listing description from an individual facility may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to

demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria for which the waste was listed. (See 40 CFR 260.22(a) and background documents for listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, petitioners also must demonstrate that their wastes do not exhibit any of the hazardous waste characteristics as well as present sufficient information for the Agency to determine whether the wastes contain any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Wastes which are "delisted" (*i.e.*, excluded) may, however, still be hazardous if they exhibit any of the characteristics of hazardous waste, and generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remains hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally, and (2) that the waste is not hazardous after considering all criteria, constituents, and other related factors (other than those for which the waste was listed) if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is a mixture of a solid waste and one or more listed hazardous wastes or is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent listed waste or the waste mixture as a whole. Generators of these excluded treatment, storage, or disposal residues remain subject to Subpart C of Part 261, and so are obligated to test these residues for the characteristics of hazardous wastes on a periodic basis.

Approach Used To Evaluate Delisting Petitions

In making a delisting determination, the Agency evaluates each petitioned waste against the criteria for which the waste was originally listed, as well as any other factors (including additional constituents) that may cause the waste to be hazardous. Namely, the Agency considers whether the waste exhibits any of the hazardous characteristics, and whether any of the toxicants in the waste (whether or not the waste was listed for those toxicants) may escape from the waste and migrate into the environment so as to present a hazard to human health or the environment. In making these evaluations, the Agency considers both quantitative and qualitative factors. Where possible, however, EPA seeks to develop quantitative criteria for making these decisions because such an approach assists in making consistent decisions.

In this regard, EPA has announced its final overall approach for the evaluation of delisting petitions, as well as published a fate and transport model (the Vertical and Horizontal Spread (VHS) Model) which estimates the potential for ground-water contamination for wastes that are landfilled. The model estimates the ability of an aquifer to dilute a toxicant from a specific volume of waste in ground water at a nearby compliance point; the compliance point concentration determined by the model will then be compared directly to a health-based standard. (See the "Final Exclusions and Final Vertical and Horizontal Spread Model" published elsewhere in today's **Federal Register**.) Presently, the VHS model is based on the potential disposal of inorganic wastes that are landfilled. Today, the Agency is proposing to make several changes to the model so it may also be applied to organic wastes that are landfilled. In addition, we are proposing our approach for evaluating the hazards of wastes that may be land treated.

A. Approach For Evaluating Organic Wastes That Are Landfilled

In evaluating the migration potential of inorganic wastes that are landfilled, the Agency made a number of assumptions in evaluating the migratory potential of toxic heavy metals and their persistence. For organic wastes, the assumptions to be made for these are different. Thus, this notice addresses: (1) A method to estimate the leaching potential of organics from wastes; and (2) a method to incorporate persistence data for organics into the model. The remainder of this section briefly describes the Agency's approach in evaluating the migratory potential and persistence of organic wastes that are landfilled. (Appendix I to this notice, as well as the background support document, available in the public docket, provide more detail on the basis for the assumptions made and the conclusions reached).

Mobility: An acceptable leaching procedure for organics has not yet been promulgated. The Agency, therefore, evaluated a number of different leaching tests (which use an aqueous extract medium) and found, in general, that there was no significant difference in the results achieved in any of the leaching media studied. The Agency, however, does not currently have enough confidence in any single leaching medium to recommend its use for estimating the mobility of organics. The Agency does believe, however, that a general approach can be developed to estimate the leaching behavior of organic compounds and their subsequent mobility. This is based on the observation that the results obtained from using the various leaching media do not differ significantly among each other.

The Agency, therefore, has developed a simple mathematical relationship that predicts the leaching behavior of organics from a waste. The equation which best fits the available data from all aqueous leaching media is:

$C_w = BO * C^x * S^y$

for $C < 1$; $x = y = 1$; $BO = 2.14E{-}05$
for $C > 10$; $x = .71$, $y = .31$, $BO = .044$.

Where:

C_w is the predicted leachate concentration of the contaminant;
C is the concentration of the contaminant in the waste in ppm;
S is the contaminant's water solubility at ambient temperature (usually between 18 and 25 °C) in mg/l or ppm; and
BO is a constant selected in such a way to give values closest to observed C_w.

The Agency believes this relationship is the best available since it offers: (1) The best overall fit of the data at a 95% confidence level; and (2) the highest significance level of any relation evaluated. The Agency intends to use this approach to evaluate leachate concentrations of organics until the completion of efforts to develop a leaching procedure specifically for organic compounds.

The Agency also examined the potential for the migration of organic compounds from wastes in organic mobile phases, since it is possible that disposal of organic wastes with solvents would appreciably increase the migration potential of those

constitutents. An informal survey of industrial waste landfills indicated that the likelihood of commingling of wastes with solvents was very small. Based on this survey, the Agency believes it appropriate to use an aqueous media in evaluating the leaching potential of organic contaminants.

Persistence: The Agency will also consider the potential degradation of organic species when evaluating their potential hazard in making delisting decisions. The Agency will use the following procedures when evaluating this potential:

- Identification of the appropriate mechanism for degradation and half-life;
- Estimation of transport time to the compliance point;
- Calculation of the number of decays and appropriate adjustment of the compliance point concentration.

The Agency will derive half-life data from the literature where available. If such data are unavailable, the petitioner may provide the data, or the Agency may undertake research regarding the estimation of the degradation rate. The Agency will also consider the particular degradation mechanism applicable (*i.e.*, photolysis, hydrolysis) for the disposal scenario under consideration.

Transport times will be estimated by assuming the shortest amount of time necessary for the constituent of migrate to the compliance point. The Agency intends to estimate the number of decays for a compound by dividing the transport time by the half-life, and then to adjust the final receptor concentration by that factor.

B. Approach For Evaluating Organic Wastes That Are Land Treated

It is likely that some wastes will be managed by disposal other than in a landfill. The Agency intends to consider other reasonably expected disposal scenarios for a particular waste before making a delisting decision.

One alternative often used with organic wastes is land treatment. The VHS model has been adjusted for land treatment facilities. Adjustments were made to the X and Z parameters depending on the land treatment facility configuration. (X is the length of the land treatment facility in the direction perpendicular to the ground-water flow, and Z is the depth to which toxicants penetrate into the aquifer.)

The Agency also intends to assess the magnitude of air emissions from wastes which are land treated. This modeling effort is designed to obtain air emission rates that can be used to calculate ambient air concentrations which are compared to actual health-based standards. The Agency has elected to use a steady-state, Gaussian plume model to predict concentrations of organic constituents released to the air from a land treatment facility.

The Agency is proposing to use this approach to help determine the potential impact of the unregulated disposal of petitioned wastes on human health and the environment.

The Agency has used this approach in evaluating each of the wastes proposed for exclusion in today's publication. The Agency has made an effort to point out the potential limitations of this approach, and realizes that any such tool will have limits of application. The Agency, therefore, specifically requests public comments on our approach to evaluate delisting petitions for organic wastes that are landfilled and land treated.

It should also be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioner to present truthful and accurate test results. The Agency has initiated a spot check sampling and analysis program, however, to verify the representative nature of the data for some percentage of the petitions submitted before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984, the Agency granted temporary exclusions without public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting further exclusions. Notice and opportunity for public comment were also required before any previously granted temporary exclusions can be made final. The exclusions proposed today will not become effective until comments are received and addressed.

Petitioners

The proposed exclusions published today involve the following petitioners:

Eli Lilly and Company, Clinton, Indiana;
General Electric Company, Shreveport, Louisiana;
Waterloo Industries, Pocahontas, Arkansas.

I. Eli Lilly and Company

A. *Petition for Exclusion.* Eli Lilly and Company (ELC) located in Clinton, Indiana is involved in the development and manufacture of pharmaceuticals used in health-care. ELC has petitioned the Agency to exclude its incinerator scrubber effluent and the solids (presently contained in an onsite retention area) that settle from the scrubber effluent. The scrubber effluent originates from the quenching and scrubbing treatment processes at four liquid hazardous waste incinerators and one hazardous solid waste incinerator at the Clinton Laboratories facility. ELC burns spent solvents that are listed as EPA Hazardous Waste Nos. F002—The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-triflouroethane, ortho-dichlorobenzene, and trichlorofluoromethane and the still bottoms from the recovery of these solvents; F003—The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone and methanol, and the still bottoms from the recovery of these solvents; and F005—The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine, and the still bottoms from the recovery of these solvents. ELC has petitioned to exclude these wastes because they do not meet the criteria for which they are listed.[1]

Solvents that have been listed as hazardous wastes are used in production processes at Clinton Laboratories. Batch operations, by which numerous health-care products are manufactured, involve chemical reactions performed in selective solvents. Solvents are also used for washing solids that have been separated from reaction mixtures by precipitation or crystallization. ELC claims that, when feasible, solvents are recovered by distillation or fractionation for reuse. This is not always possible, however. The listed hazardous waste generated is, thus, composed of unrecoverable solvents and still bottoms from recovered solvents. Unrecovered fractions and still bottoms are collected and stored as mixed solvents and are titled "primary waste" due to their high heat content. This hazardous waste is treated by incineration. Waste solvents resulting from ELC's research, development, and quality control

[1] ELC originally submitted their petition on June 27, 1984. On November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was listed if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 3001(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from ELC. This additional information was submitted by ELC on September 4, 1984, January 9, 1985, and January 15, 1985.

laboratories are also a source of hazardous waste. These solvents are collected, transported, and blended into the above primary waste for treatment by incineration. These laboratory waste solvents constitute a small portion of the primary waste treated, *i.e.*, approximately three percent of the total. The solvents present in the laboratory waste are solvents that are also used in the manufacturing processes at the facility.

ELC washes its equipment between lots to maintain production batch identification and segregation. The resultant wash water contains solvents, process water, and water separated during solvent recovery. This waste, referred to as "secondary waste", is accumulated and stored separately. It has low heat content and is treated also by incineration.

ELC's processes also produce solid hazardous wastes which consist of filter cakes and activated carbon upon which one or more solvents are absorbed. Also included in these solid hazardous wastes are laboratory samples, disposable protective clothing, filtered solids from liquid incinerator treatment facilities, and used scintillation vials which are wetted with or contain these same solvents. These wastes are sealed in fiber drums and treated in the solid waste incinerator. This solid hazardous waste constitutes only one percent of the total feed to this incinerator.

In addition to the hazardous wastes listed as F002, F003, and F005, other hazardous constituents are used in the manufacturing processes and are therefore reasonably expected to be present in the petitioned wastes. These constituents are listed in Table 1. The Agency requested this information, as noted above, to determine if hazardous constituents other than those for which the waste was originally listed are present in the waste at levels of regulatory concern.

TABLE 1.—NON-LISTED APPENDIX VIII CONSTITUENTS CONSIDERED LIKELY TO BE PRESENT IN WASTE

Acetonitrile (I, T)
Benzene
Carbon Tetrachloride
Chloroform
1,3-Dichlorobenzene
1,4-Dichlorobenzene
1,2-Dichloroethane
1,1,2-Trichloroethane

ELC has submitted a description of its waste treatment system. It consists of four thermal oxidizers (liquid incinerators) that are operated interchangeably and a rotary kiln incinerator which burns solid hazardous waste generated in the same manufacturing processes.

The liquid hazardous waste generated in ELC's processes are accumulated in day tanks for volume measurement and characteristic determination. Wastes are than transferred from day tanks to storage tanks from which the thermal incinerators are fed. Primary and secondary wastes flow into the refractory lined incinerator chamber where complete combustion of the wastes occurs, at a minimum temperature of 1800 °F. Gases leaving this chamber contain inorganic salts and minute quantities of solvent materials. These hot gases are cooled with water in a quench chamber and are further scrubbed with water with pH control to remove residual materials including particulates and hydrogen chloride.

The hazardous solid wastes are packaged in fiber drums and are fed into the incinerator at a controlled rate from a drum charging conveyor. These wastes are burned in a rotary kiln at a minimum temperature of 1600 °F. Gases leaving the rotary kiln contain minute quantities of solvent and particulates generated by the combustion process. These gases are cooled with water and then further scrubbed with water with pH control (if necessary) to remove residual materials, including particulates and hydrogen chloride.[2]

Hot water from the quenching and scrubbing processes flows from each of the five incinerators and is collected in a common drain line. The combined water flow from the incinerators is referred to as the "scrubber effluent stream". (This is one of the two wastes for which ELC is requesting an exclusion.) The scrubber effluent stream flows through an underground pipe into a settling pond located east and north of the incinerator area. At the entrance to the pond, the scrubber effluent mixes with waters from the facility's coal fired boiler. This pond provides sufficient retention time for settling of solids from the scrubber effluent stream. Over a period of several months, solids fill the settling pond, and reduce the retention time of water flowing through the pond. To allow continuous use of the settling pond, solids are dredged and pumped as a slurry through an underground pipe to a retention area located east of the settling pond. ELC claims that these solids consist of inert solids from the incinerator feed and precipitated salts originally dissolved in the feedwater to the scrubbers. (This is the other waste which ELC is requesting to be excluded.)

ELC randomly sampled the scrubber effluent stream. Nine grab samples were collected over a period of approximately 2 months. These grab samples were collected in plastic bottles, refrigerated, and transferred to vials at the laboratory and subsequently analyzed. Samples of solids in the retention area were collected from three different sections representing the north, middle, and south portions of the area. Each sample was taken by digging out a core section. In this manner, a cross section of solids representing the material in each section was obtained. The three samples obtained were then combined into a composite sample. This sampling process was performed on four different days. Since the solids in the retention area were accumulated over several years of operation, ELC claims that the samples collected using both methodologies are representative of the wastes considered, as well as any variability in the incinerators feedstocks.

ELC also has provided analytical test data on representative samples for the scrubber effluent stream and the solids retention area. Total constitutent analyses of the scrubber effluent stream and the solid retention area for the listed constituents revealed the maximum concentrations reported in Table 2.[3] ELC also analyzed the two waste streams for ignitability.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT ANALYSES (PPM)

Constituent	Scrubber effluent stream	Retention area solids
Tetrachloroethylene	<.00003	<.00003
Methylene Chloride	.122	<.00025
Trichloroethylene	<.00012	<.00012
1,1,1-Trichloroethane	.0002	<.00003
Chlorobenzene	<.0002	<.0002
1,1,2-Trichloro-1,2,2-trifluoroethane	<.00181	<.00181
1,2-Dichlorobenzene	<.0004	<.0004
Trichlorofluoromethane	.0001	<.00181
Toluene	.0175	<.0002
Methyl Ethyl Ketone	.2150	<.0006
Carbon Disulfide	<.0006	<.0006
Isobutanol	<.0006	<.0006
Pyridine	<.0006	<.0006

ELC has also provided additional information in response to several concerns raised by the Agency. Specifically, the Agency was concerned about the variability of the feed material vis-a-vis the variability of the waste (*i.e.*, was the data submitted

[2] ELC is currently regulated as an interim status hazardous waste incinerator. ELC has not conducted their trial burn and demonstrated the required 99.99% DRE at the stack.

[3] The listed constituents for EPA Hazardous Waste No. F003—xylene, acetone, ethyl acetate, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol—were not quantitated, since they are listed only for ignitability.

representative of the variability one would expect in this waste). ELC characterized the feed to the liquid incinerators to demonstrate the variability of these incinerated wastes with respect to quantity and composition. The primary and secondary waste streams were analyzed weekly over a one-year period for hazardous constitutents that were present in the feed streams of the processes generating these wastes. Concentrations of each of the constituents in the primary and secondary waste streams are presented in Tables 3 and 4, respectively. Since the Agency has found polynuclear aromatic hydrocarbons (PNAs) in other incineration residues, ELC was also requested to submit test data that confirm the presence or absence of these compounds.

TABLE 3.—PRIMARY WASTE ANALYSIS SUMMARY

	Average (percent waste)	Standard deviation (percent waste)
Acetone	8.2	8.46
Acetonitrile	5.6	1.34
Benzene	1.8	2.64
Butyl acetate	0.8	0.96
Chloroform	0.5	1.35
Dimethyl acetamide	0.1	0.18
Dimethly formamide	3.9	4.81
Ethyl acetate	4.6	5.56
Ethyl alcohol	5.2	3.62
Ethylene dichloride	4.6	6.99
Hexane	5.6	6.90
Isobutyl acetate	0.8	0.96
Isobutyl alcohol	3.4	3.14
Isobutyl chloride	0.6	0.54
Isopropyl alcohol	1.4	2.14
Methyl alcohol	10.5	8.97
Methylene chloride	4.4	4.38
Pyridine	0.9	0.53
1,1,2 Trichloroethane	1.6	1.61
Toluene	3.1	1.72
Nonvolatile residue [1] (NVR)	11.0	4.71
Water	15.5	8.46
Total	94.1	

[1] NVR is primarily inorganic salt.

TABLE 4.—SECONDARY WASTE ANALYSIS SUMMARY

	Average (percent waste)	Standard deviation (percent waste)
Aceton	2.9	1.23
Acetonitrile	1.5	1.43
Dimethyl formamide	3.7	3.29
Ethyl acetate	0.1	0.18
Ethyl alcohol	0.5	0.47
Hexane	0.2	0.20
Methyl alcohol	0.7	0.32
Methylene chloride	0.1	0.11
Toluene	0.3	0.86
Nonvolatile residue [1] (NVR)	2.4	1.06
Water	83.7	16.66
Total	96.1	

[1] NVR is primarily inorganic salt.

Thus, ELC submitted test data on representative samples for the presence of PNAs in the solids from the scrubber effluent stream. The waste stream was analyzed for each of the PNAs listed in EPA's PNA method (*i.e.*, method 8310, SW–846). None of these compounds are present as raw materials to the processes generating the wastestream; none were identified in the primary or secondary wastes; and none of the PNA compounds were detected in the scrubber effluent stream. Analytical results and detection levels for these compounds are presented in Table 5.

TABLE 5.—SCRUBBER EFFLUENT SOLIDS ASSAYS FOR PNA COMPOUNDS

Compounds	Max. Conc. (ppb)	Detection limit (ppb)
Acenaphthene	ND	1.8
Acenaphthylene	ND	2.3
Anthracene	ND	0.66
Benzo(a)pyrene	ND	0.023
Benzo(b)fluoranthene	ND	0.018
Benzo(ghi)perylene	ND	0.076
Benzo(k)fluoranthene	ND	0.017
Chrysene	ND	0.15
Dibenzo(a,h)anthracene	ND	0.03
Fluoranthene	ND	0.21
Flucrene	ND	0.21
Indeno(1,2,3-cd)pyrene	ND	0.043
Naphthalene	ND	1.8
Phenanthrene	ND	0.64
Pyrene	ND	0.27

Note: These analyses were performed on settled solids taken from the lagoon.

The maximum concentrations of non-listed hazardous organic constituents that are used in the manufacturing process (listed in Table 1) revealed the maximum concentrations reported in Table 6. Although metals are not reasonably expected to be present in the two waste streams, ELC voluntarily submitted data for all of the EP metals, nickel and cyanide (total and free). EP toxicity analyses for the inorganic parameters revealed the maximum concentrations reported in Table 7. ELC also analyzed representative waste samples for corrosivity and TOC.

TABLE 6.—MAXIMUM TOTAL CONSTITUENT ANALYSES OF NON-LISTED APPENDIX VIII CONSTITUENTS (PPM)

Constituent	Scrubber effluent stream	Retention area solids
Acetonitile	<.0006	<.0006
Benzene	.009	<.0002
Chloroform	.0009	<.00005
1,1,2,-trichloroethane	.018	<.00002
Carbon tetrachloride	.0007	<.00012
1,3-dichlorobenzene	<.0004	<.0004
1,4-dichlorobenzene	<.0003	<.0003
1,2-dichloroethane	<.00003	<.00003

TABLE 7.—MAXIMUM EP LEACHATE CONCENTRATIONS (PPM)

Constituent	Scrubber effluent stream [1]	Retention area solids
As	<0.01	0.09
Ba	<0.0	<0.5
Cd	<0.01	<0.05
Cr	0.1	<0.05
Pb	0.1	0.02
Hg	0.0005	<0.005
Se	<0.005	0.01
Ag	<0.05	<0.005
Ni	<0.05	0.3
CN (Total)	0.01	<0.5
CN (Free)	<0.01	<0.5

[1] These concentrations represent the total amounts of the metals and cyanides in the waste since the EP extract for waste containing less than .5% solids is the waste itself.

B. *Agency Analysis and Action.* ELC has demonstrated that the scrubber effluent stream and the solids contained in the retention area are non-hazardous. The Agency belives that the nine grab samples collected from the scrubber effluent stream and the four composite samples collected from the solids retention area were non-biased and adequately represent any variation which may occur in the wastestreams. ELC has substantiated this point by providing test data that are clearly descriptive of the variability of the incinerator feed streams.

ELC has provided that data on the feed composition for a one-year period. These data shows that, while the composition of the feed varies, the variability is limited. Furthermore, ELC has provided analytical data which describe the complete composition of the feed stream which shows that the feed streams are composed of volatile solvents, water, and non-volatile residue. Since high temperature incineration destroys essentially all of the volatile solvents, the Agency believes that the composition of the waste streams are relatively independent of the feed stream composition. That is, since the scrubber effluent is water with a small amount of dissolved salts and caustic, and very little (if any) of the volatile solvents, it is reasonable to believe that the scrubber effluent composition does not depend on the feed. The Agency believes this also applies to the solids that separate from the scrubber water, since these solids are the salts and caustic.

The Agency has also evaluated these data and concludes that the period of sampling selected was adequate to allow for any variation in the incinerator feedstocks. The Agency has further concluded that, while other solvents may be used in the future, the composition of the waste will not change appreciably. This conclusion is based on the observation that the major

solvents used by ELC comprise most of the waste feed and these solvents will continue to be the most significant because of the products manufactured. Furthermore, the Agency believes that small changes in the feed will not have a significant impact on the resulting waste because incineration destroys essentially all of the waste feed. Thus, the data presented in their petition would not change significantly if the feed changed.

ELC has substantiated their claim of the non-hazardousness of the organic constituents in the waste stream by providing quantitative organic scans for the listed solvents for each of the samples analyzed. The levels found in the scrubber effluent streams ranged from non-detectable to .215 ppm (methyl ethyl ketone). For the solids retention area, none of the listed solvents was detected. The Agency has also considered other non-listed organic contaminants in reviewing ELC's petition. Only four other Appendix VIII organic contaminants were detected at the low parts per billion level in the scrubber effluent stream. None of the non-listed organic contaminants assayed was detected in the retention area.

The Agency's evaluation of this petition also included a worst-case scenario in which an Appendix VIII constituent (not previously identified) is assumed present in the waste at .05%. The .05% level was chosen as the highest level for an unknown constituent since ELC has routinely characterized its waste field down to the .05% level. If we assume that all .05% is made up of a single compound (a worst-case assumption) then one can calculate the maximum concentration of that compound in the scrubber effluent.

ELC claims, and has demonstrated through testing, that their incinerator achieves 99.95% minimum destruction efficiency. These calculations are done by using the concentration of one of the major constituents in the waste feed and in the scrubber water in conjunction with the mass flow rates for the feed and scrubber. Based on the information provided by ELC, the minimum DRE is 99.95% from the feed to the scrubber. Using the data mentioned above, the flow of the primary waste (7,000 gal/day) [4] to the incinerators, and the scrubber effluent flow (3 million gal/day), the composition of the unknown Appendix VIII constituent in the scrubber effluent stream is calculated. The concentration obtained indicates that the highest level for a constituent at .05% in the feed would be (.01 ppm) in the scrubber effluent stream. The .05% level was used since this level for a single contaminant in the waste is high and would represent a worst-case estimate.

Furthermore, a worst-case condition was defined for the solid retention area. If one assumes that all of the Appendix VIII constituents discussed above in the scrubber effluent stream is concentrated on the solids in the retention area, then a worst-case estimate of the concentration in the solids can be made. Using the average annual quantity of solids that is accumulated in the retention area (1900 tons) and the calculated concentration of the Appendix VIII constituent in the scrubber effluent stream, the concentration of the Appendix VIII constituent in the solids retention area can not be greater than 19 ppm. The Agency has determined that the concentration of 19 ppm (assuming a worst-case condition) for the unknown Appendix VIII constituent in the solid retention area is highly unlikely to ever be reached. The statement is substantiated based on the levels of other Appendix VIII constituents that were assayed below detectable limits. ELC has also mentioned that individual chromatographic peak separations were obtained in the assays permitting the identification and quantification of all volatile compounds present above the detection limit. All peaks were accounted for in all samples. Finally, the analytical information provided for PNA compounds [which may be present in these wastes since PNAs are formed as a result of incomplete combustion] verified that these compounds were not present in the solids associated with the waste.[5]

The Agency also has evaluated the mobility of the constituents from ELC's scrubber effluent stream and solids retention area using a vertical and horizontal spread (VHS) model.[6] The Agency's evaluation of the receptor concentrations of the EP toxic metals, nickel, and cyanide is shown in Table 8.

TABLE 8

Constituent	Scrubber effluent steam	Retention area solids	Health-based standard
As	<.0016	.014	0.05
Ba	<.06	<.06	1.0
Cd	<.0016	<.008	0.01
Cr	.016	<.008	0.05
Pb	.016	.0003	0.05
Hg	.00008	<.0008	0.002
Se	<.0008	.0016	0.01
Ag	<.008	<.0008	0.05
Ni	<.008	.05	0.350
CN (Total)	<.0016	<.008	0.20

Both wastes, when subjected to evaluation using the VHS model, exhibited EP metal concentrations below the National Interim Primary Drinking Water Standards, nickel levels below the Agency's Interim Health Advisory,[7] and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[8] These constituents, therefore, are not of regulatory concern.

The Agency has also applied the approach outlined in Appendix I of this notice for the evaluation of the organics listed in Tables 2, 5, and 6. Since all of these constituents were less than 1 ppm the resulting organic leachate concentrations are quite low. Table 9 lists only those constituents that were found in ELC's wastes above the corresponding health-based standards. No compounds were detected above the health-based standards in the retention area solid.

[4] The primary waste is used because this is the most likely source of any additional contaminant because of the higher levels of solvents.

Example:

$$\frac{7{,}000\ \text{gal/day} \times 500\ \text{ppm (0.05\%)}}{\frac{\times 1}{99.95}} \times \text{day} \quad \frac{3 \times 10^6\ \text{gal}}{} = 0.01\ \text{ppm}$$

[5] The solids were analyzed instead of the liquid since PNAs are very insoluble and generally bind to particulates, such as the solids.

[6] The model simulates the dispersion of toxicants in a typical aquifer in the vertical and horizontal directions perpendicular to the direction of groundwater flow. This model, made final elsehere in today's **Federal Register** assumes that the waste is placed in a landfill. As we indicated when we proposed the model, this scenario may not be appropriate to evaluate the hazards posed by wastes when they are managed in surface impoundments (See 50 *FR* 7899, February 26, 1985). In fact, the Agency is currently evaluating other approaches for wastes that are placed in surface impoundments, and expects to propose such an approach in the near future. If that approach is proposed before we make final our decision on the petition, we will reconsider our decision in this case and all other situations where the Agency has proposed to exclude wastes that are managed in surface impoundments.

[7] In previous notices, the Agency has used 632 ppb as the health-based standard for nickel (see 50 *FR* 7882, February 26, 1985). A number of persons have raised concerns, however, on which this value was calculated (*i.e.*, the data provided do not permit statistical analysis and there are inconsistencies in the dose-response and generational relationships). A group of experts was convened to evaluate the existing studies on nickel to determine what data can be used to develop a long-term health advisory or a drinking water standard for nickel. The group generally concluded that the study on which the 632 ppb value was calculated should not be used; rather, they felt that another study was more appropriate to derive a drinking water criterion for nickel. From these data, and ADI of 700 μg/day was estimated which results in an allowable concentration in drinking water of 300 μg/l. (See Appendix I, 50 FR 20247, May 15, 1985, for a more detailed discussion.)

[8] Drinking Water Standards, U.S. Public Health Service, Publication 956, 1962 (0.2 ppm).

TABLE 9

	Concentration at compliance point (mg/l)	Health-based standard (mg/l) [1]
Benzene	5×10^{-3}	.001
Carbon tetrachloride	1.7×10^{-6}	3×10^{-4}
Methylene Chloride	7.6×10^{-5}	6×10^{-3}
1,1,2-Trichloroethane	4.1×10^{-6}	6×10^{-4}

[1] See "List of Compounds: Health-Based Standards" support document for this notice in the public docket.

Based on this analysis, and the absence of any other reason to consider these waste hazardous, the Agency believes that the wastes contained in the lagoon and the retention area are non-hazardous (for all reasons) and as such should be excluded from hazardous waste control. This decision is based on the fact that the scrubber effluent and solids in the retention area are not expected to result in any of the listed constituents or other hazardous constituents (reasonably expected to be present) at the compliance point at levels above health-based standards.

The Agency, therefore, proposes to grant an exclusion to Eli Lilly and Company, located in Clinton, Indiana for the scrubber effluent and the solids in the retention area, as described in its petition.

II. General Electric Company

A. *Petition for Exclusion.* General Electric Company (General Electric), located in Shreveport, Louisiana, is involved in the manufacture of electrical transformers. General Electric has petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—*i.e.*, Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). General Electric has petitioned to exclude their waste, currently contained in four on-site treatment ponds, because it does not meet the criteria for which it is listed.[9]

General Electric's manufacturing processes include phosphatizing and painting of steel parts, some minor non-cyanide plating processes, drawing and enameling of aluminum wire, and purification and deaeration of transformer oil. General Electric claims that the wastewater from these operations results in a non-hazardous sludge, with the constituents of concern present either in insignificant concentrations or only in essentially immobile forms. General Electric further claims that this waste is not hazardous for any other reason.

In support of their petition, General Electric has submitted a detailed description of their manufacturing and wastewater treatment processes, including lists of raw materials and schematic diagrams. General Electric has also submitted analytical data to characterize their sludge. These include the results of constituent analysis for the listed metals (cadmium, chromium, and nickel), sulfides, and cyanide; the results of EP leachate tests for all EP toxic metals and nickel; and the results of tests for oil and grease content. General Electric has also provided the results of constituent analysis for organic priority pollutants and tests for ignitability. Much of this testing was performed, as noted above, to determine whether hazardous constituents, other than those for which the waste is listed, are present in the waste at levels of regulatory concern.

General Electric's wastewater treatment system consists of two settling ponds, an aeration pond, and a stabilization pond. General Electric's petition covers the sludge contained in these four ponds. The volume of sludge contained in the ponds is approximately 3800 cubic yards. In order to characterize the sludge, samples were collected from each quadrant of each pond. Each quadrant sample was a composite of three to six full-depth core samples. The resultant 16 guadrant samples were analyzed separately for constituent and EP leachate concentrations of the toxicants for which the waste was listed, as well as for EP leachate concentrations of the other EP toxic metals. These samples were also tested separately for TOC and oil and grease content. Cyanide, sulfide, and ignitability tests also were performed on four samples, each of which was a composite of the four quadrant samples from the appropriate pond. For priority pollutant analysis, quadrant samples from the two settling ponds were analyzed separately, while quadrant samples from each of the remaining ponds were combined, resulting in a total of ten samples. The samples for ponds 3 and 4 were composited since most of the sludge is contained in ponds 1 and 2, and ponds 3 and 4 contain small amounts of the same material. Constituent analysis of the wastewater treatment sludge for the listed toxicants revealed the maximum concentrations reported in Table 1. Table 1 also presents maximum concentrations from EP leachate tests for these toxicants as well as the results of TOC, oil and grease, and reactivity (cyanide and sulfide content) tests.

TABLE 1.—MAXIMUM CONCENTRATIONS

	Total constituent analysis (mg/kg)	EP leachate analysis (mg/l)
TOC	8673	NA
Oil and Grease	6.19	NA
Cd	0.80	0.006
Cr (total)	730	0.039
Cr VI		0.06
Pb	124	0.03
Ni	16	0.29
CN (total)	1.45	NR
Sulfide (total)	21	NA
Sulfide (reactive), ppm/g	44	NA

NA = test not applicable.
NR = test not required due to low concentration from constituent analysis.

General Electric also provided data addressing the characteristic of ignitability. These tests indicated that the samples exhibited no flash at 168 °F.

The results of EP leachate tests for EP toxic metals, other than those which the waste was listed, are presented in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS

Toxicant	EP leachate analysis (mg/l)
As	0.006
Ba	0.10
Hg	<0.001
Se	0.002
Ag	0.013

Since General Electric was unable to develop a list of Appendix VIII constituents that have been used at the plant during the life of the ponds, they elected to have their sludge analyzed for all of the organic priority pollutants. Of these 109 compounds, six were detected. The detected compounds and their maximum reported concentrations are presented in Table 3.

[9] General Electric originally submitted their petition on September 7, 1984. On November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which a waste was listed if the Agency has a reasonable basis to believe the such additional factors could cause the waste to be hazardous. (See Section 222 of the Amendments, 42 U.S.C. § 3001(f).) In anticipation of either enactment of this legislation or similar regulatory changes, the Agency requested information from petitioners, addressing these additional factors. Cognizant of the Agency's request, General Electric addressed these additional factors in their original petition.

TABLE 3.—MAXIMUM CONCENTRATIONS

Compound	Concentration as analyzed, ppm	Concentration as disposed (25 percent solids), ppm
Chloroform	1.7(a)	0.425
Ethylbenzene	3.7	0.925
Tetrachloroethylene	0.016 [10]	0.004
Toluene	Trace	<0.25
Trichloroethylene	Trace (a)	<0.25
Vinyl Chloride	Trace (a)	<0.25

Note:
Trace = identifiable spike below limits of detection.
(a) = compound detected in 1 of 10 samples.

[10] In General Electric's original petition, tetrachloroethylene was reported at a level of 37.8 ppm in one sample (quadrant 4 of Pond 2). This compound was not detected in any of the other nine samples. In response to the Agency's concerns, Pond 2 was re-sampled on March 16, 1985. Samples were collected in the same manner as those described in the original petition. Analysis of the March 16 samples indicated tetrachloroethylene concentrations ranging from <0.001 ppm (2 samples) to 0.016 ppm.

In a further effort to identify hazardous constituents that may be present in the sludge, General Electric provided Materials Safety Data Sheets for the raw material used in their manufacturing processes. The Agency's review of these data indicated that no additional Appendix VIII hazardous constituents, other than those tested for, are expected to be present in the wastewater treatment sludge.

B. *Agency Analysis and Action.* General Electric has demonstrated that the sludge contained in their four treatment ponds is non-hazardous. The Agency believes that the samples collected by General Electric are non-biased and adequately characterize the sludge in each pond. The collection of three to six full-depth core samples from each quadrant of the ponds takes into account any stratification or areal variations that may have occurred as the ponds were being filled. Since the waste is no longer being generated changes in raw materials, processes, *etc.* are not relevant (*i.e.*, waste being characterized was static). The samples, therefore, are believed to be representative of the sludge contained in General Electric's treatment ponds.

The Agency has evaluated the mobility of the toxic constituents in General Electric's waste using the vertical and horizonal spread model (VHS model).[11] This evaluation, using the total volume of waste in the pounds (3800 cubic yards) and the maximum reported EP leachate test results as input parameters, resulted in the maximum predicted compliance point concentrations reported in Table 4. (Where leachate concentrations were below the detection limits, the value of the detection limit was used to predict these concentrations.) Table 4 also presents, for each toxic constituent, the health-based standard to which the compliance point concentration is compared.

TABLE 4.—PREDICTED MAXIMUM CONCENTRATION AT COMPLIANCE POINT

Toxicant	Maximum compliance point concentration (mg/l)	Health-based standard (mg/l)
As	0.001	0.05
Ba	0.016	1.0
Cd	0.001	0.01
Cr	0.01	0.05
Pb	0.005	0.05
Hg	<0.0001	0.002
Se	0.001	0.01
Ag	0.002	0.05
Ni	0.046	0.35
CN	0.011	0.2

As indicated in Table 4, the maximum predicted concentrations of the EP toxic metals are all less than their health-based standards (the National Interim Primary Drinking Water Standards). Also, the predicted nickel concentration is less than the Agency's interim nickel standard.[12] The presence of these constituents at the reported levels, therefore, is not of regulatory concern.

The Agency did not request free or leachable cyanide analyses because of the low total cyanide concentration in General Electric's waste. The predicted compliance point concentration of cyanide was calculated by assuming that all of the cyanide in the waste was leachable. (The cyanide concentration in the VHS model is calculated by simulating the 20:1 dilution of the EP leachate test). This predicted value is less than the U.S. Health Service's suggested drinking water standard.[13] Cyanide is also not expected to create a health hazard through atmospheric contamination. Assuming that all of the cyanide in the waste was released into the atmosphere, the resultant concentration would not be expected to exceed established threshold limit values.[14, 15] Thus, the presence of cyanide at the reported levels is not of regulatory concern. Likewise, the low constituent concentration of sulfides in the waste are not of regulatory concern from an air contamination route.[16] (The evolution of hazardous levels of cyanide- and sulfide-containing gases, vapors, or fumes is a property of the reactivity characteristics).

The detected organic compounds and their predicted leachate concentrations[17] are presented in Table 5. The predicted compliance point concentrations and appropriate health-based standards are also presented in this table.

TABLE 5.—PREDICTED MAXIMUM CONCENTRATION AT COMPLIANCE POINT

Compound	Predicted leachate concentration (ppm)	Predicted compliance concentration (ppm)	Health-based [18] standard (ppm)
Chloroform	7.46×10^{-3}	1.18×10^{-3}	5×10^{-4}
Ethylbenzene	3.01×10^{-3}	4.77×10^{-4}	3.5
Tetrachloroethylene	2.57×10^{-4}	3.91×10^{-5}	7×10^{-5}
Toluene	$<2.86\times10^{-3}$	$<4.53\times10^{-4}$	10
Trichloroethylene	$<5.89\times10^{-3}$	$<9.33\times10^{-4}$	3×10^{-3}
Vinyl Chloride	$<5.9\times10^{-6}$	$<9.35\times10^{-7}$	2×10^{-5}

[18] See "List of Compounds: Health-Based Standards" support document for this notice in the public docket.

With the exception of chloroform, the predicted compliance point concentrations for these compounds are less than their health-based standards. The presence of these compounds at the reported concentrations, therefore, is not of regulatory concern.

Chloroform was detected in only one of the ten samples. Chloroform was reported at 1.7 ppm (dry weight). The Agency believes that this value does not reflect the true concentration of this compound in the waste. The Agency has reached this conclusion based on the following: (1) The compound was detected in only one of ten samples; (2) the compound volatilizes rapidly; and (3) since the compound is not currently used in General Electric's processes, it would not be expected to be present as as result of previous manufacturing or waste treatment processes. The Agency concludes that the concentration of chloroform reported in the one sample does not accurately reflect the true concentration in the waste and, therefore, that this compound is also not of regulatory concern in General Electric's waste.

Furthermore, the Agency has concluded that no other hazardous constituents (based on a review of their raw materials list) are present in General Electric's waste at levels of regulatory concern. The Agency believes that, based upon the constituents and factors evaluated, General Electric's waste is non-hazardous and, as such, should be excluded from hazardous

[11] See Footnote 6.

[12] See Footnote 7.

[13] See Footnote 8.

[14] See Documentation of the Threshold Limit Values for Substances in Workroom Air; American Conference of Governmental Industrial Hygienists; Third edition, 1971.

[15] The resultant concentration is based upon air dispersion calculations. A copy of these calculations is available in the public docket.

[16] See Footnote 17.

[17] See Appendix I to this notice.

waste control. The Agency, therefore, proposes to grant an exculsion to the General Electric Company, located in Shreveport, Louisiana for the electroplating wastewater treatment sludge currently held in the four treatment ponds, as described in their petition.

III. Waterloo Industries

A. *Petition for Exclusion.* Waterloo Industries (Waterloo), located in Pocahontas, Arkansas, is involved in the manufacture of stamped metal tool boxes. Waterloo has petitioned the Agency to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constitutents of concern in EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Waterloo has petitioned to exclude both their currently generated sludge and the previously generated sludge held onsite because it does not meet the criteria for which it is listed.[19]

Waterloo's manufacturing processes include metal forming, welding, cleaning, surface preparation, and painting. Waterloo claims that the wastewater from these operations is successfully treated to produce a non-hazardous sludge, with the constituents of concern present either in insignificant concentrations or only in an essentially immobile form. Waterloo further maintains that their waste is not hazardous for any other reason.

In support of this claim, Waterloo has submitted a description of their manufacturing and wastewater treatment processes, including lists of raw materials and schematic diagrams. Waterloo also has submitted analytical data to characterize their wastewater treatment sludge in its as-disposed condition. This includes the results of: total consitutent analysis for all EP toxic metals, nickel, and cyanide; EP and Oily Waste EP leachate tests for all EP toxic metals and nickel; distilled water leachate tests for cyanide; and an analysis for oil and grease content of the sludge. Waterloo also provided the results of a constituent analysis for five organic compounds that were likely to be present in their sludge. The Agency requested much of this information, as noted above, to determine if hazardous constituents other than those for which the waste was originally listed are present in the waste at levels of regulatory concern.

Waterloo's wastewater treatment system consists of pH adjustment followed by chemical coagulation. The sludge is then removed to a thickener for partial dewatering before final dewatering in a filter press. The dewatered sludge is stored in barrels while awaiting transportation and final disposition. The maximum annual sludge generation rate is estimated to be 63.4 tons.

In order to characterize the sludge, samples were collected from the filter press and, for subsequent analyses, from barrels containing previously generated sludge. Samples from the filter press were collected on four different days during a 31-day period. Each sample consisted of five or more increments and represented the filter cake generated during the previous 24-hour period of plant operations. These samples were analyzed for metals and oil and grease.

For subsequent analytical requirements, four samples were collected from barrels containing previously generated sludge. (There are 180 cubic yards of sludge currently held onsite.) Each sample consisted of ten to twelve increments and represented the filter cake generated during a specific month of plant operations. These samples were analyzed for specific organic compounds as well as for constituent and leachable cyanide. Waterloo claims that both sets of samples are representative of their waste and reflect any variation in constituent concentration that may occur.

Analysis of Waterloo's wastewater treatment sludge for constituent concentrations of the toxicants for which the waste was listed revealed the maximum values reported in Table 1. Maximum values from EP and Oily Waste EP leachate tests are also presented in Table 1. (The Oily Waste EP procedure was used because the sludge's oil and grease content was approximately 1 percent.)[20]

TABLE 1.—MAXIMUM CONCENTRATIONS

Toxicant	Total constituent analysis (mg/kg)	EP leachate analysis (mg/l)	Oily waste EP leachate analysis (mg/l)
Cd	0.2	0.022	0.015
Cr (total)	91	<0.01	<0.01
Cr VI	<1	<0.01	<0.01
Pb	870	0.62	0.19
Ni	19	0.68	0.62
CN	<0.01	<0.01 [1]	NA [2]

[1] Distilled water leach test.
[2] NA = test is not applicable.

The results of similar analyses for the remaining EP toxic metals are presented in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS

Toxicant	Total constituent analysis (mg/kg)	EP leachate analysis (mg/l)	Oily waste EP leachate analysis (mg/l)
As	<0.1	<0.005	<0.012
Ba	<1	0.11	<0.02
Hg	<0.1	<0.005	<0.005
Se	<0.1	<0.01	<0.01
Ag	<1	<0.01	<0.01

Also, Waterloo's description of their manufacturing and wastewater treatment processes and a review of their raw materials list indicated that several organic compounds were expected to be present in the sludge. These compounds, and their maximum concentrations in the sludge, are presented in Table 3.

TABLE 3.—MAXIMUM CONCENTRATIONS

Compound	Total constituent analysis (ppm)
Toluene	<0.2
Xylene	7.0
VM&P Naphtha	12
Cyclohexane	<0.1
Formaldehyde	<0.5

B. *Agency Analysis and Action.* Waterloo has demonstrated that their wastewater treatment system produces a non-hazardous sludge. The Agency believes that the samples collected by Waterloo are representative of their waste and reflect any variations in the constituent concentrations of the waste stream. The key factor which would vary constituent concentrations in the waste is the use of different raw materials due to changes in the product

[19] Waterloo originally submitted their petition on March 6, 1984. On November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See Section 222 of the Amendments, 42 U.S.C. 6921(f)). In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from petitioners (see 49 *FR* 4803, February 8, 1984). Waterloo's original petition did not contain this information. This additional information was submitted by Waterloo on July 31, 1984.

[20] The Agency has decided to use the Oily Waste EP to determine the migratory potential of metals from wastes containing greater than one percent oil and grease content. (See 49 *FR* 42591, October 31, 1984. See also Method 1330 in "Proposed Sampling and Analytical Methodologies for Addition to Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," as referenced in 49 *FR* 38790, October 1, 1984).

line being manufactured. Since Waterloo's manufacturing processes are constant from day to day and are limited to the production of a single product, the Agency believes that the sampling plan used by Waterloo is sufficient to characterize their waste.

The Agency's evaluation of the concentration and mobility of the constituents in Waterloo's wastewater treatment sludge included the use of the vertical and horizontal spread (VHS) model.[21] This evaluation, considering the volume of waste currently onsite (180 cubic yards) and the maximum reported leachate values, generated the maximum predicted compliance point concentrations exhibited in Table 4.

TABLE 4.—MAXIMUM CONCENTRATIONS

Toxicant	Calculated compliance point concentration (mg/l)	Health-based standard (mg/l)
As	<0.0004	0.05
Ba	0.0034	1.0
Cd	0.0007	0.01
Cr (total)	<0.0003	0.05
Pb	0.019	0.05
Hg	<0.0002	0.002
Se	<0.0003	0.01
Ag	<0.0003	0.05
Ni	0.0210	0.350
CN	<0.0003	0.2

The predicted maximum levels for the EP toxic metals are all less than their health-based standards (the National Interim Primary Drinking Water Standards). The predicted maximum nickel and cyanide levels are less than the Agency's interim nickel standard [22] and the U.S. Public Health Service's suggested drinking water standard,[23] respectively. The presence of these constituents at the reported levels, therefore, is not of regulatory concern.

Of the expected organic compounds for which the sludge was analyzed, only xylene and VM & P naphtha were found in detectable quantities. These compounds are not listed in Appendix VIII, and thus, their presence in Waterloo's waste at the levels indicated in Table 4 is not of regulatory concern.

[21] The model approximates the dispersion of toxicants in an aquifer in the vertical and horizontal directions perpendicular to ground-water flow. The VHS model is used to predict reasonable worst-case contaminant levels in a receptor well 500 ft. from the contaminant source. The model primarily considers the maximum extract concentrations from leachate test and the volume of waste to be disposed. The model determines the ability of an acquifer to dilute the toxicant from a specific volume of waste without exceeding a health-based standard at the receptor well. See 50 *FR* 7896–7900, February 26, 1985 and the "Final Vertical and Horizontal Spread Model" elsewhere in today's **Federal Register** for details.

[22] See Footnote 7.

[23] See Footnote 8.

Since the Appendix VIII compounds toluene and formaldehyde were used at Waterloo, the Agency evaluated the presence of these compounds by using the detection limits (0.2 ppm and 0.5 ppm for toluene and formaldehyde, respectively) as the contaminant concentration. This resulted in the predicted leachate and compliance point concentrations presented in Table 5.

TABLE 5.—PREDICTED MAXIMUM CONCENTRATION AT COMPLIANCE POINT

Compound	Predicted leachate concentration (ppm)	Predicted compliance point concentration (ppm)	Health-based standard (ppm)
Toluene	$<2.29\times10^{-4}$	7.09×10^{-5}	10
Formaldehyde	.05 ppm	.015 ppm	[1] NA

[1] NA = Not Applicable.

Since the predicted compliance point concentration of toluene is well below its health-based standard, the Agency believes that it is not present in the waste at levels of regulatory concern. In addition, the Agency believes that the level of formaldehyde in the waste will not present a hazard to human health or the environment. See the following section for an explanation of this decision. Furthermore, based upon a review of Waterloo's raw materials list, the Agency believes that no other hazardous constituents are present at levels which would cause the waste to be hazardous.

The Agency believes that Waterloo's wastewater treatment sludge is non-hazardous and, as such, should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to Waterloo Industries, located in Pocahontas, Arkansas, for their electroplating wastewater treatment sludge, as described in their petition.

C. *Additional Agency Concerns.* Although no health-based number for formaldehyde is currently available, the Agency believes that the levels of formaldehyde which could be found in Waterloo's waste are not of regulatory concern. This conclusion was based upon evidence accumulated from a literature search of information currently available on the toxicity of formaldehyde. It has been demonstrated in long-term rodent inhalation bioassays that formaldehyde can cause cancer. Kerns, et al. (1983) [24] demonstrated that exposure to formaldehyde through inhalation at concentrations of 5.6 or 14.3 ppm, 6 hours per day, 5 days per week for 24 months caused squamous cell carcinomas in the nasal cavities of approximately 50% of the rats in the high exposure group and 1% of the rats in the low exposure group. A similar study by Albert, et al. (1982) [25] also demonstrated results similar to Kerns, et al. There is no evidence in whole animal studies that formaldehyde alters any aspects of reproduction or causes birth defects.[26] It has, however, exhibited mutagenic activity in several nonmammalian animal or cell systems.[27] Acute oral toxicity tests on formaldehyde indicate that it is slightly toxic to rats with LD50 values in the range of 500–800 mg/kg body weight.[28] Formaldehyde has not been found to be carcinogenic in rodents when orally ingested at high doses for a lifetime. There is no evidence available in the literature which indicates that formaldehyde is carcinogenic when ingested.

While exposure to formaldehyde through inhalation may pose a threat to human health, the reasonable disposal scenario for Waterloo's waste (*i.e.*, disposal in a landfill) would make this exposure route very unlikely. The only reasonably likely route of exposure is through ingestion of ground water contaminated by leachate from the waste. Even if it is assumed that formaldehyde would readily leach from the waste, the VHS model predicts a concentration of 0.015 ppm formaldehyde at a compliance point 500 feet from the source of the waste. There is no evidence in any toxicological studies to support the contention that the concentration of formaldehyde which could be present in Waterloo's waste and which could enter the ground water could cause a threat to human health or the environment. Based upon the evidence cited above, the Agency believes that the maximum concentration for formaldehyde found in the waste is not of regulatory concern.

IV. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six

[24] Kerns, W.O., K.L. Pavkov, D.J. Donofrio, E.J. Grallon, and J.A. Swenberg, 1983. *Cancer Res.* 43:4382–92.

[25] Albert, R., A. Sellakumar, S. Laskin, M. Kuschner, N. Nelson, and C. Synder. 1982. *J. Natl. Cancer Inst.* 68:597–603.

[26] Committee on Aldehydes, Board on toxicology and Environmental Health Hazard. 1982. Formaldehyde and Other Aldehydes. National Academy Press EPA 600/6-82-002.

[27] Auerbach, C.M., M. Moutschen-Dahmen, and J. Moutschen. 1977. Genetic and cytogenetical effects of formaldehyde and related compounds. *Mutat. Res.* 39:317–362.

[28] Smyth, H.F., Jr., J. Seaton, and L. Fisher. 1941. The single dose toxicity of some glycols and derivatives. *J. Ind. Hyg. Toxicol.*

months when the regulated community does not need the six month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that these rules should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's hazardous wastes regulations, thereby enabling the facility to treat its waste as nonhazardous.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.* small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: November 4, 1985.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Appendix I

I. Background

On February 26, 1985, EPA explained its general approach to evaluating future delisting petitions. See 50 *FR* 7882–7900. This notice described the approach and how it would be applied to inorganic wastes (*i.e.*, wastes that are chiefly composed of inorganic contaminants) that are landfilled. The Agency also set forth the basic framework that will be used and the factors that will be considered in determining whether a petitioner's waste is hazardous. These factors are:

- the toxicity of the constituents of the waste;
- the mobility of the toxic constituents of the waste;
- the persistence of the toxic constituents;
- the concentration of the toxic constituents in the waste;
- the quantity of waste generated; and
- the plausible types of improper management of the waste.

These factors were discussed as they apply to inorganic wastes, since those were the wastes under consideration.[1] (While all of these factors were discussed, many of these were not used in the Agency's evaluation of whether inorganic wastes were hazardous. For example, metals are extremely persistent, therefore, the Agency did not consider degradation of metals in the environment.) The Agency noted, however, that when other wastes were considered, especially organic wastes, three of the factors would need to be further refined (*i.e.*, mobility, persistence, and other waste management scenarios).

The Agency intends, in this notice, to explain how these factors will be used in evaluating delisting petitions with regard to organic wastes that are landfilled and land treated, in order to determine their suitability for delisting.

[1] The Agency will also take into account the extent to which a contaminant can bioaccumulate in ecosystems, the nature and severity of human health effects and environmental damage caused as a result of improper management of the waste, actions taken by other governmental agencies with respect to the waste or constituents in the waste, and such other factors as may be appropriate if there is a reasonable basis to expect they may cause the waste to be hazardous.

II. Overview of Topics Discussed in This Appendix

The topics covered in this Appendix are: the development of an estimation method for the mobility of organics from waste; a method for incorporating the persistence of organic compounds into models; and models or model modifications for other disposal scenarios.

A. Mobility

As indicated in the February 26, 1985 notice, the Agency does not believe that an acceptable leaching procedure which reflects the concentration of organics that would leach from a waste has yet been developed (see 50 *FR* 7897). At the same time, the Agency believes that for all of the procedures that have been evaluated to simulate the mobility of organic toxicants, none of the results differ significantly from any of the others, especially with respect to neutral compounds.

This conclusion was set forth in a report prepared by Battelle Columbus Laboratories for EPA.[2] The conclusions of this report state that of all the leaching media which were evaluated, no aqueous-based leaching medium was significantly better or worse than any other for estimating the potential for organic toxicants to leach from a waste.[3] In fact, the results of these leaching experiments seem to indicate that the difference between the concentration of organic toxicants found in the extract when using the various leaching media is at most a factor of two to three. Such results may be accounted for by the experimental variabilities of the leaching tests.[4] Based on these data and

[2] Solid Waste: Methodology for Evaluation, Volume 1: Test for Potential Mobility of Toxic Wastes as Leachates, January 1981 (SW–196C.1); and Solid Waste: Methodology for Evaluation, Volume 2: Analysis of Residual Waste, December 1980 (SW–196C.2).

[3] A total of 14 aqueous media were evaluated for leaching of organics. These media were:

Distilled Water, Acetic Acid (pH 5), Sodium Acetate Buffer (.1M, pH 4), Sodium Citrate Buffer (.1M, pH 4), Sodium Citrate Buffer (.1M, pH 5), Sodium Thiosulfate (.05M), Sodium Citrate Buffer (.05M, ph 4), Ammonium Citrate Buffer (.1M, pH 4), Iron Sulfate/Sodium Citrate (.1M, pH 5), University of Wisconsin Synthetic Leachate (pH 4.5), Sodium Thiosulfate/Sodium Citrate (.1M, pH 5), Igepal CO–630 (.01%), Igepal CO–630 (.01%)/Sodium Citrate (.1M, pH 5), Sodium Citrate (.05M, pH 5). (Igepal is a surfactant.)

[4] Over 138 separate leaching experiments were performed and 1126 separate determinations of individual organic chemicals were made. The results of these experiments generally indicate that mobility of organics does not depend on the aqueous leaching media used. These experiments also involved the determination of serveral metals. These results seen to indicate that the choice of leaching medium greatly affects the mobility of

Continued

other studies [5], the Agency has concluded that, while no leaching procedure for organics has yet been developed and approved for use by the Agency, a general approach could be derived to estimate the leaching behavior of organic compounds and used to estimate the mobility of organics until such a test is adopted by the Agency.[6] This estimation approach, using a predictive organic leaching equation, is presented in this Appendix.

It should be noted that the Agency has also been concerned that wastes which contain organic constituents may be co-disposed with other wastes that contain organic solvents or an oily mobile phase. Such a situation would alter the overall approach used to develop a predictive organic leachate equation since the leachate studies conducted by the Agency used aqueous based leaching media. The Agency has conducted a survey of industrial landfills in order to determine the likelihood of co-disposal of organic solvents or some other organic mobile phase with wastes that are known to contain organics. The results of this survey, which are also presented in this appendix, generally indicate that this type of co-disposal is unlikely.

B. Persistence

Persistence of toxic contaminants also has been, and continues to be, of great concern to the Agency. In the February 26, 1985 **Federal Register** notice, the Agency considered no degradation in its evaluation since that notice was concerned only with metals, which no not degrade. The Agency indicated in that notice, however, that persistence would be considered, if appropriate, for improper management practices of organic wastes. The Agency, today, will describe how persistence and degradation will be taken into account. The approach involves three basis steps:

- identification of the specific degradation mechanism and the appropriate half-life of the constituent;
- estimation of the transport time of the constituent to the desired compliance point; and
- calculation of the number of half-lives the compound would go through *en route* to the compliance point and adjusting the concentration at the compliance point by that factor.

The specific degradation mechanism will be dictated by the transport mode being considered. For example, if ground-water transport is being considered, then hydrolysis would be expected but photolysis would not.

Transport times may vary by sereral orders of magnitude depending on site-specific conditions. The Agency intends to use an estimated transport time consistent with the assumptions in its transport model. For example, if the VHS ground-water transport model is used then the Agency will consider only ground water velocities consistent with its assumption for dispersivity, dispersion coefficient, *etc.* Half-lives for constituents will be obtained either from the open literature, from the petitioner, or from EPA's own laboratory determination. The Agency recognizes that this estimation method is somewhat speculative, however, we believe that this method is consistent with previous assumptions and provides a regulatory framework for timely review of delisting petitions.

As part of its evaluation of persistence of organic compounds, the Agency has determined that biodegradation will generally not be considered as a generic degradation mechanism. This determination is based on the observation that the rate of biodegradation is dependent on a number of factors that may cause degradation to be very slow. Mass loading, temperature, type of organisms, specific chemical, *etc.* are among these factors. The Agency, therefore, believes that a reasonable worst case will be represented by assuming no bio-degradation.

C. Other Waste Management Scenarios

The Agency also noted in the February 26, 1985 **Federal Register** notice that it would consider all reasonable management scenarios for a particular waste before making a decision on whether or not to exclude the waste from hazardous waste control. In the February 26 notice, only landfilling in a sanitary landfill was considered, since this mode of disposal seemed to be a reasonable worst-case for the types of wastes proposed for exclusion at that time. The Agency stated, however, that it would consider all relevant management scenarios, as appropriate. The Agency pointed out that organic wastes, for example, are not only landfilled at municipal landfills but also are disposed in industrial landfills or land treated.

The Agency, today, is proposing its methodology for determining whether a waste should be excluded when it is land treated or co-disposed with other wastes in an industrial landfill. The Agency is continuing its evaluation of other disposal scenarios, in particular surface impoundments and drying ponds. The Agency expects to propose a methodology for these cases later this year.

III. Mobility

A. Migration of Organic Compounds from Wastes in Aqueous Mobile Phases

1. *The Data.* The Agency used the concentration of the contaminant in the waste and the aqueous solubility of the contaminant in order to predict the contaminant's concentration in the aqueous mobile phase. The leachate concentration of the contaminant was then used from several aqueous leaching media, in order to provide the necessary data for comparison of predicted to actual leachate concentrations. The data have been composed primarily from three sources.[7] Collectively, this information has yielded 342 separate observations which make up the date base used to devise an expression to estimate leachate concentration.[8] This information has been used in conjunction with solubility data for individual compounds.[9]

The data base consists of experimental results using many different wastes from many industrial manufacturing categories. The available data on waste and leachate composition is limited, however, in a number of ways. First, there is virtually no physical information about the waste matrix (*e.g.*, total organic content, particle size, *etc.*) which may affect observed leachate concentrations. Second, many Appendix

---

metals. Ranges of metal concentrations spanning 1 to 100 were observed while only a factor of 2 to 3 were observed for organics.

[5] Mobility of Toxic Compounds from Hazardous Waste: NTIS: PB 85-117-034; Mobility of Toxic Compounds from Hazardous Wastes: Phase 2 Comparison of Three Test Methods to a Lysimeter Model; Oak Ridge National Laboratory; May 1984; Interagency Agreement DOE 40-1087-80; Sampling and Analysis of Waste in Support of the Land Disposal Ban Rule; Report from Energy Resources Company (ERCo.); EPA Contract 68-01-6467; October 1984.

[6] Until the Agency develops an organic leaching test and proposes it for comments, we believe it inappropriate to use any single leaching test (*e.g.*, the existing EP procedure) to evaluate the mobility of organic toxicants. We currently expect to propose such a procedure later this year.

[7] See Footnote 2 and 5. The data used for this purpose are taken directly from the references provided in these two footnotes. About 50% of the data came from the references in each footnote. The ERCO report provided most of the information generated from the references given in footnote 5.

[8] While there were over 1000 separate determinations, most of the leachate experiments were conducted in triplicate and in some cases higher levels of repetitions were performed. The Agency believes the inclusion of each individual value would bias the data toward the experiments which had the most repetitions. Only average values were used and, hence, 342 observations.

[9] Characterization of Constituents from selected waste streams. 40 CFR 261, Draft Profiles, prepared for the Waste Identification Branch, CAD/USEPA Aug. 3, 1984. ICF Linear Location Data Base, Jan. 1985.

VIII compounds are not represented in the data set. Thus, while the resulting methods may accurately predict leachate concentrations for those compounds for which there were many observations, it may be less accurate for those compounds not adequately represented. (The Agency believes, however, that the use of aqueous solubility in a model will, to some extent, compensates for some of these shortcomings (*e.g.*, the effect of too few data points for a particular compound is not significant since solubility is independent of the compounds).) Finally, the extent to which the matrix of waste plays a part in leachate composition is virtually unknown. If the matrix exerts a powerful influence on the leaching of a compound from a particular waste, then omission of such an effect from any evaluation will introduce an error. The Agency is aware of this shortcoming and is in the process of collecting additional information to assess the extent to which the waste matrix affects the leachate concentration, and whether the matrix can be factored into a particular method.

Since the Agency does not yet have sufficient information to evaluate the significance of the matrix, the only data available for development of a predictive organic leachate equation are concentration in the waste, and aqueous solubility.

2. *Methods Examined to Estimate Mobility of Organic Compounds.* As discussed earlier, the Agency has conducted a number of experiments to predict the ability of organic contaminants to leach from a waste. These investigations employed different types of wastes with varying levels of organic toxicants and different leaching media. The results of these investigations are summarized in a number of reports.[10] These data generally indicate that the concentration of organics found to leach from a waste using any of the evaluated leaching media do not differ significantly. The Agency has, on numerous occasions, indicated that it did not have enough confidence in *any one* of the leaching tests to recommend its use in evaluating the mobility of organics[11] Based on the information contained in those studies, however, as well as studies that the Agency has conducted in support of a new organic toxicity characteristic, the Agency believes that a simple mathematical relationship can be established to predict the leaching behavior of organics from a waste. In this regard, the Agency has investigated the use of partition coefficients and general linear models in estimating the aqueous leachate concentration of organic compounds.

a. Partition Coefficients. The Agency initially considered using partition coefficients for the various hazardous constituents in conjunction with the total concentration of the constitutent in the waste as a way to estimate the level of the constituent in the leachate. In order to establish these partition coefficients, the Agency has conducted a statistical analysis of all of the available data to determine which factors influence the leachate levels and subsequently the partition coefficients.

The results of this initial attempt to predict partition coefficients pointed to some problems which are explained in some detail in the section of the docket to this proposed rule dealing with partition coefficients.[12] Specifically, it was found that the partition coefficients observed from the data were not constant over the range of concentrations expected. This unexpected result might have been due to interactions of the waste matrix. Due to this result, it occurred to the Agency that it would be easier to model the leachate concentration directly and thus obviate the need for the partition coefficient. This approach is desirable since it simplifies the mathematical manipulations while still providing the estimated leachate concentrations. As a result, the Agency dropped the partition-function approach and has evaluated expressions that provide the leachate concentration directly.

b. General Linear Models to Predict Leachate Concentration. As a result of dropping the partition function approach, the Agency investigated the use of a linear equation to predict leachate concentration. In this investigation, the Agency first used several modeling equations which encompassed a large number of combinations of solubility and concentration. The statistical results of these models yielded a very poor overall fit (*e.g.*, R-squared of 0.0579).[13] The Agency then tried to group chemicals by solubilities, by concentration in the waste, and by the product of solubility and concentration in order to determine if leaching behavior was piece-wise linear. That is, certain models accurately predict leachate concentration in particular data regions but not in other regions. In some regions of the data (*e.g.*, when concentration is less than 1 ppm or solubility is less than 0.1 ppm), some equations have good fits (e.g., R-square of 0.9775).

The Agency also investigated linear combinations of logs of concentration and solubility, which proved to be a better way to describe leachate behavior. The logarithmic relation had the best overall fit (R-squared of .60) of any of the linear equations evaluated over all the data in the data set. This observation indicates that the relationship between leaching concentration and one or more of the independent variables (*e.g.*, concentration of contaminant in the wastes and solubility of the contaminant in water) may be expressed exponentially.[14, 15]

We were able to obtain some general observations from the data obtained from all of these general linear models. Equations which use a product of concentration and solubility and those which use linear combinations of logarithms of concentration and solubility are appropriate modeling equations because if either concentration or solubility values are zero, the predicted leachate concentration is zero. In addition, only equations with the interactive term of the product of concentration and solubility produce good fits.

B. Model Selection

From the Agency's initial attempts to develop a model using general linear models (GLM), it was postulated that the best modeling equation to use is linear when concentration is low and a linear combination of logarithms (exponentials) when the concentration is high. In order to determine whether this was true, and to determine what range of concentrations (solubility was also evaluated) would dictate the use of one equation over the other, the Agency made a series of computational runs varying the concentration and solubility of the input variables for both the linear and logarithmic models. The results of our analysis (which also are in the public docket) showed that leaching behavior is linear up to 1 ppm and logarithmic above 10 ppm. Accordingly, the model proposed today is linear foir concentrations below 1 ppm and logarithmic for concentrations above 10 ppm. The model the Agency finally

[10] See Footnotes 2 and 5.

[11] See 47 *FR* 52681–52688, November 22, 1982.

[12] The results of these statistical evaluations, in the form of computer output, are available for review in the public docket. These printouts are several hundred pages.

[13] A complete discussion of the Agency's modeling efforts and results is available for review in the public docket.

[14] Logs and exponents are inverse functions: If Log x=y. Then Exp y=x. Therefore Log (Exp y]=y.

[15] See footnote 12.

selected to estimate the leachate concentration of organic constitutents for wastes accommodates a transition range between 1 ppm and 10 ppm. This equation can be expressed mathematically as:

$C_w = BO^x C^x S^y$ Equation (1)

for C<1; x=y=1; BO=2.14E05
for C>10; x=0.71; y=0.31; BO=0.44

Where:

C_w is the predicted leachate concentration of the contaminant;
C is the concentration of the contaminant in the waste in ppm;
S is the contaminant's water solubility at ambient temperature (usually between 18 and 25 °C) in mg/l or ppm; and
BO is a constant selected in such a way to give values closest to observed C_w.

In order to define C_w in the transition area, the Agency evaluated a number of possible approaches. These involved equations of x and y as a function of C. The results of these evaluations indicated that no single function would always provide a well-behaved transition. The Agency determined, however, that a well-defined transition can be made using a simple linear interpolation between the values obtained at 1 ppm and 10 ppm. Thus, the Agency is proposing that when the concentration of the contaminant in the waste is between 1 and 10 ppm, the leachate value be determined by linear interpolation between the value of the leachate concentration at 1 ppm and the value of the leachate concentration of 10 ppm. For example, if the predicted leachate concentrations are .3 ppm and 4 ppm for a constituent in the waste at 1 and 10 ppm respectively, then the predicted concentration at 5 ppm in the waste would be 1.9 ppm. (*i.e.*, at 5 ppm, $C_w = .3 \text{ ppm} + 4/9(3.7 \text{ ppm}) = 1.9$)

The Agency is proposing to use equation 1 to estimate the leachate concentration of organic constituents from wastes. The Agency selected this model because it has the best overall fit (at the 95% confidence level) and the highest significance of any model evaluated. The Agency recognizes that this model is limited by the data that were used to develop it. At this time, however, this model represents the best estimate (95% confidence) of leachate concentration for organics.

The Agency is currently developing a new leachate test to estimate the migration potential of organic compounds. When this new leachate procedure is promulgated, the Agency intends to incorporate the results obtained from this test into delisting decisions and eventually discontinue use of this modeling equation in favor of this predictive tool. Until that time, however, the Agency intends to use equation 1 for estimating organic leachate concentrations.

Finally, as discussed previously, this approach does not consider the effect the waste matrix would have on the potential for the contaminant to leach from the waste. The Agency is aware of this drawback and is currently conducting additional experiments to collect the needed information. The Agency intends to evaluate this information and adjust the equations, as necessary, to get the most accurate prediction of leachate behavior. Preliminary studies have been conducted by the Research Triangle Institute using thermogravimetric analysis and percent volatile constituents, which should be useful in estimating the extent to which the matrix has an effect on leaching behavior. These data are available for review in the Public Docket for this rulemaking. The Agency has not yet fully analyzed these data to determine if, in fact, it will be useful in predicting leachate compositions. The Agency specifically requests comment on the use of this information and whether other tests might be more appropriate for estimating matrix effects on leaching behavior.

C. Mobility of Organic Compounds from Wastes in Organic Mobile Phases

In developing the equations presented in the previous section, the Agency is aware that the data base used was limited to those leaching media which were aqueous liquids. While these media were used to represent leachates that might be encountered at municipal landfills (*i.e.*, from co-disposal with municipal refuse), the Agency is aware that wastes also may be disposed in industrial waste facilities. One may expect that the leachate generated from industrial landfills would be different than that of a municipal landfill since the make-up of the wastes each receives is different. In this regard, the Agency is especially concerned that wastes containing hazardous organic constituents that would not be expected to migrate in an aqueous media may be co-disposed with wastes containing solvents which would significantly increase the migration of those constituents. If there is a likelihood that wastes containing organic hazardous constituents can be co-disposed with solvents, then the mathematical relationships presented above would underestimate the leaching behavior of the organics. In order to determine whether this type of co-disposal is in fact likely, the Agency conducted a limited survey of State and Regional Solid Waste Personnel and a number of Subtitle D landfills.[16]

This survey involved only landfills which accepted industrial wastes. Lists of landfills in each state were obtained from state and regional personnel. Each landfill was then contacted to determine what types of industrial wastes were accepted; whether they required analytical testing; whether they accepted organic liquids or other solvents; and the likelihood that solvents, if accepted, would be co-disposed with other wastes. Thirty-four facilities from across the United States participated in the survey. The results of the survey indicate that only one facility accepts solvents and that the solvents make up less that .007% of the 400 tons of waste disposed of each month. This facility also indicated that it was likely that other wastes that contain oils and other organics could be co-disposed. All other facilities indicated that they do not accept organic wastes, and in fact, three of the facilities are located in states which do not permit disposal of organic wastes in Subtitle D facilities. Based on the results of this study, the Agency believes that the likelihood of wastes, that contain toxic organics and that are delisted, being co-disposed with organic solvents is very small and, thus, the Agency proposes to use the mathematical expressions derived for aqueous leaching media. The Agency specifically solicits comments, however, on the sole use of an aqueous media to predict migration of organic constituents and the extent to which organics may be managed with solvents or other materials that would cause them to migrate.

D. Example Calculations

To show how this approach will work, we have used equation 1 to estimate the leachate concentrations for a number of the more common organic toxicants which we have found in a number of wastes for which delisting petitions have been submitted. See Table I. This table estimates the concentration of benzene, benzo(a)pyrene, methylene chloride, toluene, and phenol expected in a leachate when these toxicants are present in the waste at 1, 5, 10, and 100 ppm. All of the pertinent data are included so that these calculations can be repeated by any interested party or commenter. Also, examples are provided of the predicted leachate concentrations for pentachlorobenzene and phenol as it varies with

[16] Letter report from Chris Rioux of SAIC/JRB to J. Poppiti dated July 3, 1985.

concentrations in the waste. (See Figures 1 and 2.)

IV. Persistence

As indicated above, the Agency will consider degradation of organic species, where appropriate, by considering three basic steps:

1. identification of the appropriate mechanism and half-life;
2. estimation of transport time to the receptor; and
3. calculation of the number of decays and adjusting the concentration at the receptor.

The particular type of disposal scenario considered dictates the degradation mechanisms to be evaluated. For example, if a compound is known to have a particular half-life due to photolysis, but the specific management practice being considered is landfilling, the Agency will not apply the photolysis degradation mechanism since it is highly unlikely that the compound would encounter light. On the other hand, if the compound is also known to have a specific hydrolysis half-life, the Agency will apply this degradation mechanism since migration of compounds from landfills assumes an aqueous mobile phase during the entire transport time.

TABLE I.—EXAMPLES

Compounds	Concentrations in wastes (ppm)	Solubility (ppm)[2]	Cw (ppm)
Benzene	1.	1780.	.038
Benzene	5.	1780.	.963
Benzene	10.	1780.	2.120
Benzene	100.	1780.	10.898
Benzo(a)pyrene	1.	.0038	8.1E-8
Benzo(a)pyrene	5.	.0038	2.1E-2
Benzo(a)pyrene	10.	.0038	4.3E-2
Benzo(a)pyrene	100.	.0038	2.2E-1
Methylene chloride	1.	16700.	.357
Methylene chloride	5.	16700.	2.026
Methylene chloride	10.	16700.	4.113
Methylene chloride	100.	16700.	21.142
Toluene	1.	535.	.011
Toluene	5.	535.	.666
Toluene	10.	535.	1.485
Toluene	100.	535.	7.635
Phenol [1]	1.	93000.	[1] 1.990
Phenol	5.	93000.	4.144
Phenol	10.	93000.	6.837
Phenol	100.	93000.	35.147

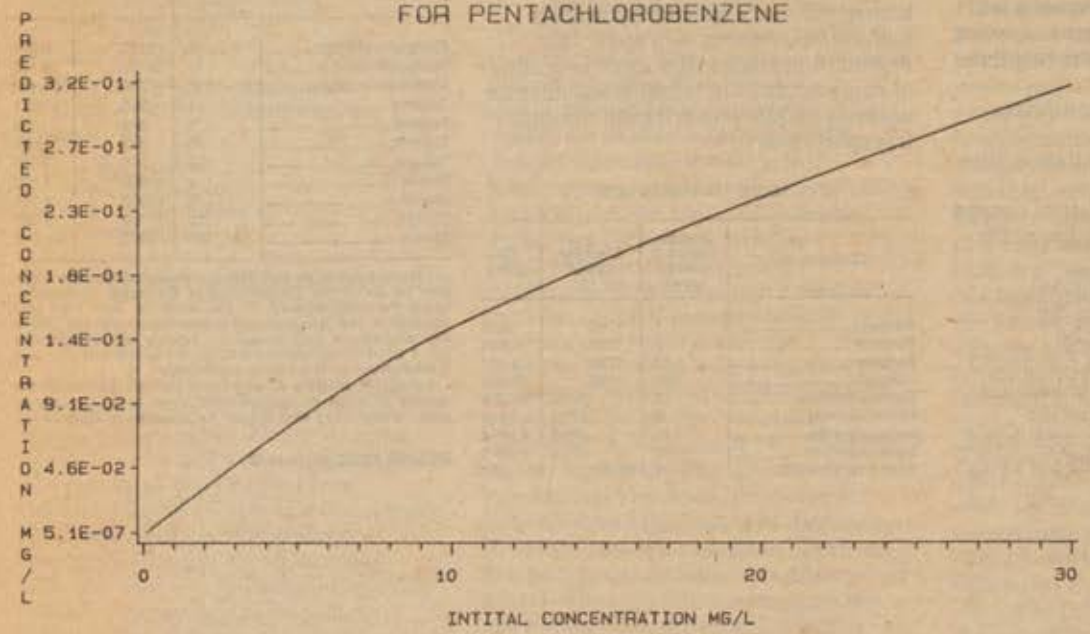
[1] When solubility is very high the predicted leachate value may be above the concentration in the waste. Conversely, when the concentration in the water is very high and solubility is low the predicted concentration may be above the solubility. In such cases the Agency will assume that either all of the constituent leaches out of the waste or that it leaches out at its solubility respectively.

[2] Normally solubility is expressed in mg/l, but since the density of water is approximately equal to 1, solubility in water is expressed here in ppm for purposes of consistency.

BILLING CODE 6560-50-M

PREDICTED LEACHATE CONCENTRATION

FOR PENTACHLOROBENZENE

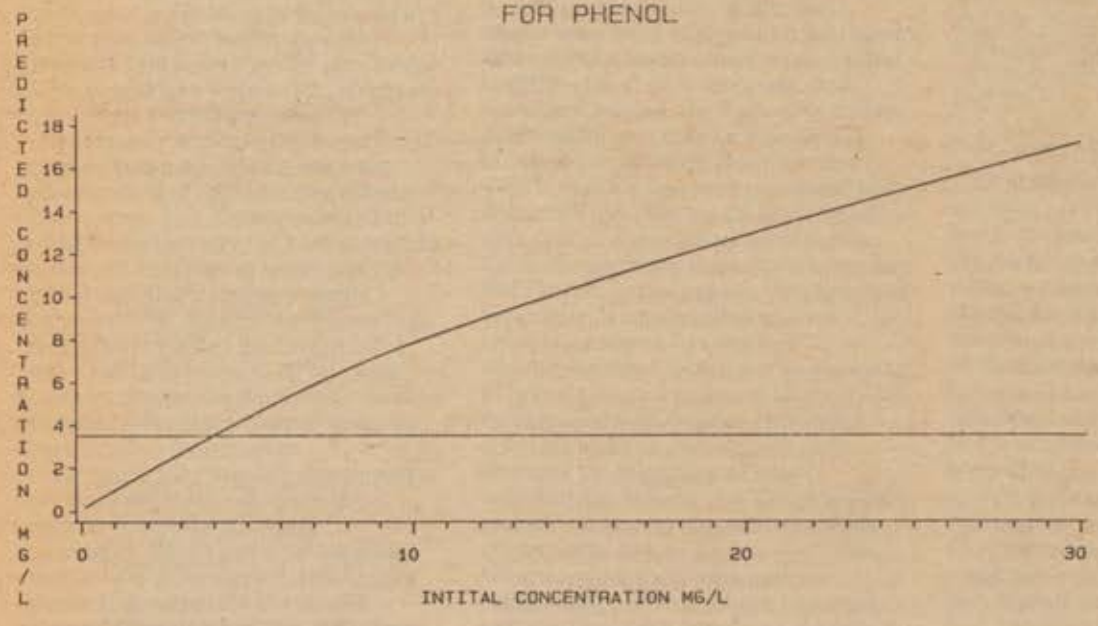


SOLUBILITY=0.24 MG/L ADI=0.6 MG/L

FIGURE 1

PREDICTED LEACHATE CONCENTRATION

FOR PHENOL



SOLUBILITY=93000 MG/L ADI=3.5 MG/L

FIGURE 2

BILLING CODE 6560-50-C

Half-lives of many of the Appendix VIII hazardous constituents are available from EPA publications and in the open literature. In cases where the half-life for a constituent is not available or the half-life is long (*i.e.*, three or more times longer than the transport time), the Agency will not include degradation in its assessment.

Transport times will be estimated by assuming the shortest amount of time that might reasonably be expected for the constituent to migrate to the receptor. These transport times will differ depending on the waste management options considered. For example, estimation of the transport time for a given compound to a receptor via ground water will differ from the time expected if that compound were to travel via an air route.

In the case of landfilling, the Agency assumes immediate release of the leachate into the underlying aquifer followed by ground-water transport at about 2 meters per year. This provides a total transport time of 76 years given a compliance point 152.4 meters away. (See February 26, 1985 **Federal Register**.)

The Agency's assumption that the leachate is immediately released to ground water is consistent with the approach that was adopted in the final rule for the use of the VHS model, published elsewhere in today's **Federal Register**, and is conservative since it represents the worst-case. While this situation is a worst-case, the Agency believes it is reasonable that the leachate can enter the aquifer immediately because many municipal landfills in the United States are situated either immediately above or actually in the saturated zone. Based on this information, the Agency feels that the immediate release assumption is justified.

In the VHS model, the Agency assumed an aquifer dispersivity of 2 meters. This value was chosen to represent an aquifer that is acceptable for drinking water and yet results in the minimum dispersion of contaminants. Based on this value, a reasonable worst case ground water velocity can be calculated by recognizing that a dispersivity of 2 meters corresponds to an aquifer composed of somewhat permeable material such as a mixture of sand, silt, and clay, or silty sand, *etc.* The highest ground-water flows that can be obtained from these materials is approximately 2 meters/year under extreme hydraulic pressure.[16a] The Agency, therefore, has assumed a velocity of 2 meters per year as a reasonable worst case for ground-water flow.

The Agency will take degradation mechanisms into account if there is a significant likelihood that they will occur regardless of waste treatment. For example, biodegradation might be expected to occur at a land treatment unit. There may also be cases where biodegradation does not occur, however, because the waste was over-applied and the microbes responsible for the degradation were overwhelmed. The same argument can be used when wastes are landfilled. Since biodegradation may not always occur the Agency believes it inappropriate to assume that it will. On the other hand, when ground-water transport is assumed to take place the Agency must take hydrolysis into account since the contaminant is transported by water.

V. Use of Organic Leachate Concentration and Degradation in Making Delisting Decisions

The Agency has compiled a list of compound solubilities, half-lives (under various conditions), and associated health-based standards. This list, which represents the Agency's best available data, is available for comment in the public docket to today's rulemaking. The Agency recognizes that, in some cases, values for all parameters needed to make a delisting evaluation may not be available. In these cases, the Agency will make every effort to obtain the necessary information. However, if data are not available, the Agency will either conduct studies to develop such information or, in the case of half-lives, ignore such effects. The Agency, therefore, intends to develop health-based standards for all Appendix VIII hazardous constituents found in petitioned wastes and solubility information. The Agency may choose, however, not to develop half-life information if there is a substantial likelihood that the particular half-life in question will be very long. The Agency will initially approximate the half-life using physical chemical properties (*i.e.*, chemicals with similar structures have similar properties and hence behave similarly in the environment). The Agency believes this is reasonable since ignoring a half-life may lead to a somewhat more conservative outcome.

In order to estimate the amount of a given organic constituent that will reach a compliance point, the following data are required:

1. The identity of the constituent;
2. the concentration of the constituent in the waste;
3. the solubility of the constituent;
4. the quantity of waste disposed;
5. the half-life of the constituent in the appropriate media or under the conditions assumed during transport.

I. For example, if it is determined that 10 ppm of methylene chloride are present in 3900 cubic yards of waste, then the following calculations will estimate the amount of methylene chloride that will reach a receptor well 500 feet from the disposal facility's boundary, assuming no degradation occurs.

A. Calculating the leachate concentration:

$Cw = BO * C^{s} * S^{y}$

$Cw = 0.044 * (10).\&1 * (1.67 * 10^{4}).31$

$Cw = 4.60$ mg/L

B. Using the VHS model [17] to estimate the concentration of methylene chloride at a compliance point:

$C = Co\ Erf\ (Y'/Y)^{-5}\ Erf\ (X/4(\alpha_t Y)^{-5})$

C = contaminant concentration at the receptor well (point of compliance) (mg/L);

Co = contaminant concentration in the leachate (mg/L);

Erf = error function (dimensionless);

αt = transverse dispersivity = 2 m;

Y = distance to the receptor well = 152.4 m (500 ft.);

Y' = facility width 12.19 m (40 ft.)

X = length of disposal site perpendicular to ground water flow.

X calculation: amount of waste = 3900 $yd^3 = 2982\ m^3$

We assume the waste is placed in a treach 12.1 m wide and 2.5 m deep.

volume = X (12.2) (2.5)

2982 = X (12.2) (2.5)

X = 97.8 m

Insert these values into the GLM equation:

$C = Co\ Erf[12.2/(4[152.4])]^{-5}\ Erf[97.8/4(2[152.4])]^{-5}]$

$C = Co\ Erf(.14)\ Erf\ (1.43)$

$C = Co\ (.159)\ (.958)$

$C = Co\ (.152)$

The leachate concentration of methylene chloride at the receptor well is .152 times the predicted leachate concentration:

$C = 4.60$ mg/L (.152)

$C = 0.699$ mg/L

If we are to consider the degradation of methylene chloride, the potential at the compliance point may be less. Radding *et al.* (1977) [18] reported a

[16a] Letter report from Z. Saleem of SAIC/JRB to J. Harris dated June 11, 1985.

[17] See the Final "Vertical and Horizontal Spread Model" published elsewhere in today's **Federal Register**.

[18] Radding, S.B., D.H. Liu, H. L. Johnson, and T. Mill, 1977. Review of the environmental fate of selected chemicals. USEPA. 560/5-77-003.

maximum hydrolytic half-life for methylene chloride at pH 7 and 25 °C to be 704 years. The half-life is so long that it will not greatly affect the final concentration of methylene chloride. As explained previously, the Agency is assuming a ground-water velocity of 2 meters per year. In 76 years, methylene chloride may degrade 5 percent. The final estimated concentration would, therefore, be 0.66 mg/L at the compliance point. Comparing this value to the health-based standard for methylene chloride (0.06 mg/L), would indicate that the levels of methylene chloride in the waste are too high to allow the waste to be delisted. II. If 1 ppm of benzo(a)pyrene is present in 15,000 cubic yards of waste, the following calculations will provide an estimated concentration of benzo(a)pyrene at a compliance point:

A. Calculating the leachate concentration:

$Cw = BO * C^x * SY$
$Cw = 2.14 * 10^{-5} (1) (3.8 * 10^{-3})$
$Cw = 8.1 * 10^{-8}$ mg/L

B. Using the VHS model:

X calculation:
$15.000\ yd^3 = 11468\ m^3$
$11468 = X\ (12.2\ (2.5)$
$X = 376$ m
$C = Co\ Erf\ [12.2/4(152.4)]^{-5}\ Erf[376/4(2(152.4))^{-5}]$
$C = Co\ Erf\ (.14)\ Erf\ (2.8)$
$C = Co\ (.159)\ (.999)$
$C = Co\ (.159)$

The leachate concentration of benzo(a)pyrene at the receptor well is .159 times the predicted leachate concentration:

$C = 8.1 * 10^{-8}$ mg/L (.159)
$C = 1.28 * 10^{-8}$ mg/L.

Hydrolysis would not be considered here as a form of degradation because polycyclic aromatic hydrocarbons do not contain groups amenable to hydrolysis. In particular, hydrolysis of benzo(a)pyrene is very slow. So slow that it has not actually been determined. The Agency, therefore, assumes that the half-life is so long that it would not affect the predicted receptor value of 1.28×10^{-8} mg/L. Since this value is well below the health-based standard of 3×10^{-6} mg/L, the Agency would be likely to recommend this waste for delisting, given that there are no other hazardous constituents in the waste.

V. Other Disposal Scenarios

A. Land Treatment

The Agency in this section sets forth the basic framework that will be used and the factors that will be considered in the evaluation of delisting petitions for wastes which have a high likelihood of being land treated. The Agency has evaluated the following fate processes in the development of this model:

- biodegradation
- transport to ground water
- volatilization to the atmosphere

The model that the Agency is proposing today is based on the premise that the waste being evaluated is placed on the land (a site) to a depth of 1 foot (0.3 m). The length and width of the site are equal and are determined by the volume of waste. The Agency will use the Vertical and Horizontal Spread (VHS) model (See 50 *FR* 7882, February 26, 1985 and the Final VHS Model Rule published elsewhere in today's **Federal Register**, with minor modifications, to simulate mathematically the migration of a toxicant-bearing leachate from the waste into an underlying aquifer and the subsequent dilution of the toxicant due to a dispersion within the aquifer. The Agency will use this model to predict the maximum concentration of the diluted toxicants at a compliance point 1,000 ft. from the unit boundary. The waste volume and leachate concentration (as determined by the Oily Waste EP or GLM) are the only variables needed for the equation, all other parameters are fixed. The dilution factor is therefore a function of waste volume. For small volumes of waste ($<475\ yd^3$) the dilution factor is approximately six. As the waste volume increases, the dilution factor decreases so that for a waste volume of 32,000 yd^3, the dilution factor is approximately two.

As discussed below, the fate of organic constituents in a land-treated waste is dependent not only on its intrinsic physio-chemical properties, but also on the specific soil and climatic characteristics of the site, and the method and frequency of application. For certain organic constituents, under certain conditions, volatilization may be a significant removal mechanism. Consequently, the Agency also plans to propose an Ambient Air Dispersion Model (AADM) to assess the hazard posed by the release of certain volatile organic compounds (VOCs) from a land treatment site. The model assumes that 100% of the VOCs are available for release. Emissions from a land treatment facility are treated as if they arose from an upwind virtual point source. Dispersion in the cross-wind and the vertical direction are governed by the Gaussian plume equations. The model predicts the ambient air concentration at a compliance point 1000 ft. from the unit boundary.

Finally, the Agency has concluded that biodegradation is not an appropriate factor to consider in the evaluation of delisting petitions for wastes which have a high likelihood of being land applied. This conclusion is based on the fact that biodegradation rates are highly variable and dependent on numerous site specific factors (such as application rate, soil type, nutrient content, etc.)

These points will be discussed in detail in the following sections. An example of how petitions for wastes which have a high likelihood of being land applied will be evaluated follows that discussion.

1. *Land Treatment—An Overview.* Land treatment , also called landfarming, land spreading, or soil incorporation, is one method applicable to the disposal of waste with high organic content, such as oily waste from petroleum refineries. Ideally, this method involves the controlled application of waste to a soil system. The wastes are usually applied directly to the surface or mixed with the top layer of soil (0–1 ft.).[19] The intent of this method is to allow micro-organisms, naturally present in the soil, to biodegrade the organic constituents present in the waste into non-toxic substances.

Although biodegradation may be an important mechanism for the destruction of certain types of organic constituents, transport through the soil column or volatilization to the atmosphere may also occur to a considerable extent. The relative rates of these competitive processes are dependent on a number of chemical or site-specific factors. For instance, the Agency has evaluated, using the Seasonal Soil Compartment Model (SESOIL),[20] the environmental fate of a number of classes of chemicals under different soil and climate conditions. The results of this evaluation are as follows:

- volatilization is favored for those chemicals with large Henry's law constants and diffusion rates. Volatilization is further enhanced by dry conditions and porous soils.
- migration to ground water is favored for chemicals with small Henry's law constants, low diffusion coefficients, and low soil adsorption coefficients.
- constituents with small Henry's law constants and high adsorption coefficients are essentially immobile in the soil column.

---

[19] Loehr, R.C., Overcash, M.R., *Journal of Environmental Engineering*, Vol III, No. 2, pp 141–160 (April, 1985).

[20] Bonazountas, M. and Wagner, J.M., (SESOIL). A Seasonal Soil Compartment Model, EPA Contract No. 68–01–6271 (1984) and Wagner, J., et. al., "Potential Fate of buried Halogenated Solvents via 'SESOIL' ", draft report EPA Contract 68–01–6271 (1983).

Based on SESOIL, 85–100% of the volatile organic compounds (VOCs), (*e.g.*, benzene, toluene, and chlorinated solvents) are expected to volatilize to the atmosphere. Conversely, base/neutrals (*e.g.*, polynuclear aromatic hydrocarbons [PNAs]) and polar compounds (*e.g.*, phenols) do not display an appreciable air component. In fact, PNAs appear quite immobile in the soil column while phenols appear to migrate quite readily to ground water. The Agency, therefore, believes it is appropriate to consider all likely fate processes (*i.e.*, biodegradation, transport to ground water, and volatilization to the atmosphere) in the evaluation of a delisting petition in which the waste has high probability of being land applied. These processes will be discussed in turn.

2. *Biodegradation.* After careful consideration, the Agency has determined that biodegradation is not an appropriate factor in the evaluation of delisting petitions for wastes which have a high likelihood of being land treated. The basis for the decision is the fact that biodegradation rates are dependent on variable and unquantifiable site-specific factors.

The Agency has conducted laboratory and field studies to identify, evaluate, and optimize the factors which influence the biodegradability of oily residues which are land treated.[21] Factors which have been shown to affect the degradation rates of organic constituents in the soil column are waste loading rates, the oxygen content of the soil, the nutrient content of the soil (*i.e.*, nitrogen, phosphorous, and potassium), pH, temperature, climatic factors, and soil conditions. The biodegradation rates for organic waste constituents are, therefore, dependent on both chemical specific and site-specific factors. In order that no adverse environmental effects result from land treatment (such as migration of toxic organic constituents to the ground water), biodegradation rates must compete favorably with other removal mechanisms such as transport through the soil column (*i.e.*, leaching) and volatilization to the atmosphere. Although biodegradation may be a significant fate process for the removal of certain organic constituents applied to soil under certain conditions, its extent is difficult to predict because the biodegradation rate is dependent on so many site-specific factors.

The conclusion of numerous studies [22] was that maximization of the assimilative capacity of the soil (*e.g.*, biodegradation, fixation, etc.) requires proper design, operation, and management of the facility. Continuous monitoring is therefore required to determine optimum loading rates, nutrient content, and proper tillage intervals so as to maximize biodegradation and minimize damage to the environment caused by the uncontrolled release of hazardous constituents. Although biodegradation may occur to a considerable extent at a well-managed facility, there is evidence to show that organics can leach from a land treatment site and reach the ground water. For instance, a survey [23] by the American Petroleum Institute (API) of the volume, composition, and fate of various solid wastes generated by the petroleum refinery industry revealed higher levels of organic constituents, as measured by TOC, at down-gradient wells as compared to up-gradient wells. Results of another study,[24] in which a wastewater treatment sludge from a petroleum refiner was applied to a land treatment site, found significantly higher concentrations of extractable organic material in the upper six inches of soil in the application area (3000 ppm) compared to the control area (140 ppm). A comparison of the relative proportion of the various polarity classes for the extractable organic material in the application area to that of the control area and the waste itself revealed that the application area soils were also much richer in polar organics than the waste, indicating that some oxidative degradation occurred. Significant accumulation of non-oxygenated aliphatic and aromatic hydrocarbons, however, was also measured. Another study[25] found that the water soluble fraction (WSF) of an API oil-water separator sludge, composed predominantly of mono- and diaromatics such as phenols and naphthalenes, presented an acute toxicity hazard to soil micro-organisms. As a group, these compounds were not easily degradable by soil micro-organisms and may be extremely mobile in surface soils at high concentrations. This study also found that excessive applications of both refinery and petroleum sludges to sandy soils, containing even low concentrations of water soluble compounds, could reach ground water.

Furthermore, results of an informal Agency survey [26] (sent to 93 land treatment facilities) on current land treatment practices revealed that only 12% of the facilities that responded to the survey (33 responded) did any ground-water monitoring and only 3% did any Appendix VIII analyses to support the claim that no hazardous constituents reached the ground water.

EPA's hazardous waste regulations no longer apply to the waste once it has been delisted. This means the Agency no longer has the authority to enforce the type of "good management practices" which would optimize biodegradation and ensure, through ground-water monitoring, that no leaching of hazardous constituents has occurred. The Agency, for the reasons stated above, does not believe that biodegradation is an appropriate factor to consider in its evaluation of delisting petitions for wastes which have a high likelihood of being land treated. The Agency, however, solicits comments on this assumption. If commenters believe that biodegradation should be considered, we request that comments be provided which explain how biodegradation should be considered—quantified—in the Agency's evaluation.

3. Transport to Ground Water—Use of the VHS Model for Land Treatment Facilities. The Agency is today proposing to use the VHS model (see 50 FR 7682, February 26, 1985, and the "Final VHS Model" Rules published elsewhere in today's **Federal Register**) with minor modifications to model the transport of a hazardous constituent to a point of compliance (receptor well). The VHS model considers three basic steps:

- generation of a leachate from the waste;
- migration of the leachate to an underlying ground-water aquifer; and
- migration of ground water in the aquifer to the point of compliance (henceforth assumed to be a nearby drinking water well).

The first phase of the model uses an appropriate leach test for metals (*i.e.*, oily waste EP) to generate a leachate value or the GLM (discussed previously in this Appendix) to generate a theoretical (as opposed to experimental) leachate value for organic constituents.

The second phase of the model estimates the attenuation that may occur during the migration of the leachate from the waste to ground

[21] Brown, K.W., Deuel Jr., L.E., and Thomas, J.C., "Land Treatability of Refinery and Petrochemical Sludges" EPA-600/2-83-074 (1983), and Berkowitz, J.B., *et al.*, "Land Treatment Field Studies, Vol. I Petroleum Wastewater Pond Bottoms", EPA-600/2-83-057a (1983).

[22] See footnote 17, 19 and also Frandsen, Carl. *Pollution Engineering*, pp. 55–57 (Feb. 1980).

[23] American Petroleum Institute Survey (1982).

[24] See footnote 21, Berkowitz et al.

[25] See footnote 21, Brown et al.

[26] Letter from Janie Harris, SAIC, to Jim Poppitt, April 19, 1985. See public docket for complete results.

water. As explained in the final notice on the VHS model, many models evaluated by the Agency predict no attenuation at all since eventually a soil will become saturated and unable to adsorb any more of a particular toxicant. This assumption would apply to both the soil under a landfill and under a land treatment site. The Agency, therefore, has also assumed that no attenuation occurs during this phase of the model since this is a reasonable worst-case characteristic of saturated soil systems. (See the preamble discussion in 50 FR 7882, February 26, 1985, for a more detailed discussion.)

The third, and most complex phase of the model approximates the dispersion of the contaminants in a drinking water aquifer in the vertical and horizontal direction perpendicular to ground-water flow. This portion of the model represents a continuous source of contamination to the aquifer while moving at a steady velocity in one direction; the contaminants in the aquifer are subject to spreading in the vertical and horizontal directions perpendicular to the flowpath. Domenico and Palciauskas have described this (VHS) model [27] which can be expressed by the following equation:

$C_y = C_o \text{ erf } [Z/(2[\alpha_z Y)^{0.5}]] \text{ erf } [X/(4(\alpha_T Y)^{0.5}]$

Where:

C_y = Contaminant concentration at the compliance point (mg/L)
C_o = Contaminant concentration in the leachate (mg/L)
erf = Error Function (dimensionless)
Z = Penetration depth of leachate into the aquifer (m)
Y = Distance from disposal site to compliance point (m)
X = Length of the disposal site measured in the direction perpendicular to the direction of ground-water flow (m)
α_T = Lateral transverse (horizontal) dispersivity (m)
α_z = Vertical dispersivity (m)

This equation has three basic terms: the initial concentration of the contaminant in the leachate (C_o), a term for the spreading of the contaminant in the vertical direction (the error function term in Z), and a term for the spreading of the contaminant in the horizontal direction (the error function term in X). To use the VHS ground-water model, all of the factors must be specified in order to calculate C_y, the contaminant concentration expected at the compliance point. Specifically, one must identify the concentration of the contaminant in the leachate reaching the aquifer, the transverse and vertical dispersivities of the aquifer, the distance to the compliance point, the maximum penetration depth of the leachate into the aquifer, and the length of the waste disposal site. As discussed in the "Final VHS Model" Rule published elsewhere in today's **Federal Register**, EPA has selected reasonable worst-case values for many of these parameters; however, the leachate concentration and the size of the disposal site (amount of waste) will vary with each delisting petition. A discussion of each of these parameters follows, including our rationale for selecting the values to be used in the model.

a. Leachate Concentration. The first value required by the model is the contaminant concentration in the leachate. It is assumed that the concentration of the contaminant in the leachate is equal to the concentration of the contaminant entering the underlying aquifer. Results from the oily waste EP for metals will be used as input to the equation (*i.e.*, C_o). For organics, the GLM (discussed earlier) will be used to calculate a theoretical leachate concentration.

b. Dispersivity. Dispersion refers to the spreading and mixing of contaminants in the aquifer caused by both molecular diffusion and "mechanical" mixing due to the microscopic variation in velocities within individual pores of a porous medium. In a general form, this can be expressed as:

$D_i = \bar{v} + D^*$

Where:

D_i = Coefficient of hydrodynamic dispersion, or dispersion coefficient
α = A characteristic of the porous medium known as dynamic dispersivity or simply dispersivity
$\bar{v}$ = Average linear ground-water velocity
D^* = Coefficient of molecular diffusion for the solute in the porous medium
$_i$ = A subscript which refers to the direction being considered.

The molecular diffusion term is very small in comparison to the mechanical mixing term and is normally disregarded. Thus, the above equation becomes: $D_i = \alpha_i v$

The dispersivity is a measure of the intrinsic spreading potential of the aquifer which controls dilution of a contaminated volume of water. The dispersivity can be described by the terms $_z$ and $_T$ which represent the vertical and transverse dispersivities, respectively. As discussed in the Agency's "Final VHS Model Rule" published elsewhere in today's **Federal Register**, $_T$ is assigned a value of 2 m and $_z$ is assigned a value of 0.2 m.

c. Distance to well. The Agency has selected 1,000 ft (304.8 m) for the distance from the unit boundary to the point of compliance (*i.e.*, a drinking water well). This distance is based on an informal survey [28] of 93 land treatment facilities. Of the 33 facilities which responded to the survey, 27% reported the nearest drinking water well was greater than 5,000 ft. away, 33% reported the closet well was between 1,000 and 5,000 ft., 9% reported the closest well was between 500-1,000 ft. and 6% reported the closest well was less than 500 ft. The closest well was reported to be 200 ft. away. Of the facilities that responded, however, 25% of the facilities either said they did not know the distance to the nearest drinking water well, or gave an ambiguous answer.

Although the respondents gave their estimate of the distance from the facility boundary to the nearest drinking water well, the Agency will apply this as the distance from the unit to the nearest well. This is because the unit receiving the petitioned waste may be near the relevant facility boundary. The Agency believes that most facilities would not treat wastes right at the edge of their property, however, we have no information with which to estimate the setback. The Agency solicits comment on this point.

Although 1,000 ft. is not the absolute worst-case, the Agency believes it is a reasonable worst-case since at least 60% of the facilities that responded to the survey had a drinking water well no closer than 1,000 ft. to the facility. In addition, we believe that some percentage of the 25% that did not know the distance to the closest well, or gave an ambiguous answer to the question are also closer than 1000 ft. Thus, a large percentage of the facilities contacted had wells no closer than 1000 ft. In addition, the model considers not only the distance from the unit to the well (point of compliance) but also its placement. The model assumes that the well is in a position to receive the highest concentration of the contaminant; therefore, the placement assumptions represents a worst-case. (Refer to the "Final VHS Model" Rule published elsewhere in today's **Federal Register** the discussion of the VHS parameter for a more complete explanation of this discussion.) The Agency specifically solicits comments on the choice of 1,000 ft. as the distance from the unit boundary to a compliance point.

d. Penetration Depth and Unit Configuration. The aquifer penetration depth (Z) and the unit length (X) perpendicular to ground-water flow are related terms and must be considered

[27] Domenico, P.A., Palciauskas, V.V. Ground Water, Vol. 20., No. 3, pp. 303–311 (1982).

[28] See footnote 26.

together. The penetration depth of the leachate (Z), or mixing zone, is the maximum penetration of the leachate into the aquifer at the waste boundary. This value is a function of the width of the unit (parallel to ground-water flow (Y')) and the dispersivity of the aquifer in the vertical direction. Other things being equal, the greater the unit width (Y') the greater the penetration (Z) will be. The penetration depth can be described by the formula in the "Final VHS Model" Rule published elsewhere in today's **Federal Register**:

$$Z=(\alpha_x Y')0.5$$

where Z is the penetration depth (m) and Y' is the width of the unit in the direction parallel to the direction of groundwater flow.

The length of the disposal site (X) is a function of the quantity of waste disposed and the placement of the waste at the disposal site. The amount of waste generated annually is obtained directly from the petition. Waste placement, however, is a site-specific factor. A number of studies reported [29] that waste is normally incorporated into the top 12 inches of the soil (the treatment zone). In order to determine more accurately how wastes are applied to a land treatment site, the Agency surveyed [30] 93 land treatment facilities. Of the facilities surveyed, 11 supplied sufficient information to calculate a loading rate (wt./acre/unit time). Based on the waste volume generated annually and the size of the land treatment facility, the waste thickness ranged from a half an inch up to 32 inches, and the mean was 8.5 inches.

The Agency has decided to use 12 inches as the depth of the unit. Although this is not a worst-case assumption, the Agency believes it is a reasonable one. Using a much smaller value for the depth of the site would result in unreasonably large unit sizes.[31] Furthermore, the error function for the X term approaches one as the unit size approaches 10 acres. This means that for large units, the model will be insensitive to the unit length and consequently the X term.

The size of all land treatment facilities was reported in units of acres. The Agency believes that the dimension of the sites are highly variable and irregular; therefore, the Agency will assume that the length of the disposal site perpendicular to ground-water flow (X) is equal to the width of the unit parallel to ground-water flow (Y') (*i.e.*, a square configuration). The Agency believes this assumption is reasonable since no data are available that supports any other configuration. The Agency specifically solicits comments on the choice of a land treatment site configuration which is square and one foot deep.

To determine the length of the unit (X), the Agency will divide the volume of the waste by 1 ft., and take the square root [*i.e.*, V=(X)(X)(1 ft.)]. To further ensure that X will be conservative; (*i.e.*, the maximum reasonable amount for each generator), the Agency will use either the volume of waste generated by the facility annually or the volume of waste discarded at the time of disposal, whichever is greater. This is very conservative since more frequent disposal probably would result in lower concentrations at the well due to a probable decrease in concentration through other removal mechanisms. Once the waste has been delisted, however, EPA's hazardous waste regulations no longer apply, and we cannot mandate "best management practices". The Agency therefore believes that our assumption (*i.e.*, the waste will be disposed of no more than once a year) is reasonable.

4. Transport to the Air—Ambient Air Dispersion Model (AADM) [32]. Organic constituents, emitted to the atmosphere from land treatment facilities, may present a significant hazard to human health. In the evaluation of delisting petitions, the Agency intends to assess the magnitude of air emissions from waste which has a high probability of being land applied in order to ascertain whether emission rates and resultant ambient air concentrations of hazardous organic constituents will exceed acceptable health-based ambient air criteria or standards.

The Agency, therefore, is proposing today to use a qualitative and quantitative approach to assess this hazard. The approach considers the following steps:

- release of organic constituents to the atmosphere from a land treatment facility (*i.e.*, emission rate).
- dispersion of the constituent to a point of compliance.

The general form of the equation that governs dispersion can be expressed as:[33]

$$C = \frac{16(20)\phi}{2\pi L_v(2\pi)^{0.5}\sigma_z u} = \frac{2.03\ 0\phi}{L_v\sigma_z u}$$

Where:

C = concentration at the compliance point (mg/m^3)
Q = emission rate (Mg/sec)
L_v = vertual downwind distance
σ_z = vertical dispersion coefficient
u = wind speed (m/sec)
ϕ = frequency that wind blows from sector of interest

This equation is discussed in detail in the section labeled "dispersion".

a. Emission Rate. The calculation of an air emission rate (Q, mg/sec) is required as an input parameter in all air dispersion models. The release of organic constituents to the atmosphere from a land treatment facility is, however, dependent on a number of site-specific and chemical specific factors. As mentioned previously, the Agency has evaluated, using SESOIL, the environmental fate of a number of chemicals (representing different chemical classes) under different soil and climatic conditions. Based on this model, the Agency has determined as a reasonable worst-case that 85–100% the of VOCs (*e.g.*, benzene, toluene, chlorinated solvents) applied to a soil will volatilize to the atmosphere. According to SESOIL, base/neutrals (*e.g.*, PAHs) and polar compounds (*e.g.*, phenols) did not display an appreciable air component.

For the purpose of calculating the emission rate, Q, the Agency will assume that only the VOCs, which can be measured by the head space or a purge and trap method, have an appreciable air component (See SW–846, Methods 5020 and 5030). The VOCs typically found in waste which are land applied (*e.g.*, petroleum refinery sludges) are listed in Table II. The Agency will further assume that 100% of the VOCs will be lost to the atmosphere over the course of a year.

[29] See footnote 19.

[30] See footnote 26.

[31] From this survey, the median facility size that accepted petroleum waste was 21 acres. This was in good agreement with the 19 acre average reported in the API survey.

[32] It should be noted that the Agency is currently developing an air model as part of the land disposal ban program. EPA has decided not to use that model at this time in the delisting program since it is not yet ready for use. Once that approach is promulgated, however, the Agency again will consider using it for delisting.

[33] Hwang, S.T., "Land Disposal Toxic Air Emissions Evaluation Guideline", OSW (1981), and Turner, Bruce D., "Workbook of Atmospheric Dispersion Estimates", U.S. Department of Health, Education, and Welfare (revised, 1969).

TABLE II.—VOLATILE ORGANIC COMPOUNDS

benzene
carbon disulfide
chloroform
1,2-dibromoethane
1,2-dichloroethane
1,4-dioxane
ethyl benzene
methyl ethyl ketone
toluene
styrene
xylene

The Agency does not believe that this assumption is inconsistant with the use of the VHS land treatment ground water scenario. As discussed previously in this Appendix, the fate of an organic constituent in a landtreated waste is dependent not only on its intrinsic physio-chemical properties, but also on the specific soil and climatic characteristics of the site, and the method and frequency of application. In essence, the Agency is modeling two different worst-case scenarios: one in which soil, climatic, and application conditions optimize air release, the other in which ground water release is optimized.

Laboratory studies [34] have shown that the hydrocarbon concentration in air, from land treatment of petroleum refinery sludge, is at a maximum during and immediately following sludge application. The concentration dropped to less than 50% of its maximum value within two hours of application. The emission rates would also be expected to show a similar trend. SESOIL predicted that the volatilization half-life for benzene, from a land treatment facility, applied all at once, is 9 days. Thus, 96% of benzene applied to the soil will have volatilized within 54 days, (*i.e.*, calculated from the first-order rate equation, $\ln (C/C_o) = -kt$).

Another model also predicts [35] that the majority of the release of a volatile chemical occurs within 50 days after application and that the rate of volatilization steadily decreases over time. If one assumes a constant waste volume applied to a land treatment site per year, then as the application rate (number of times applied/yr) increases, the loading rate (Kg of sludge/application) will decrease and consequently, the emission rate will likewise decrease. As the application rate increases, therefore, instead of having one high emission rate followed by a rapid decrease, one would instead have pulses of smaller release rates followed by smaller decreases until the release rate Q, becomes constant. Thus, averaging the release rate over the course of a year yields:

$Q = [C_i]\,[W]/3.15 \times 10^7$ sec

where:
Q = emission rate, mg/sec
C_i = concentration of constituent i, in mg/Kg
W = weight of sludge in Kg
and 3.15×10^7 is the number of seconds in a year.

Thus, the Agency will use this equation to calculate the emission rate; both Ci and W will be taken directly from the petition. It should be noted that the Agency believes that for most constituents, photolysis or photo-oxidation rates will be small compared to the time necessary for the constituent to travel from the site to an appropriate compliance point. The Agency may consider photolysis or photo-oxidation in cases where the half-lives of degradation are small in comparison to the transport time.

b. Dispersion. The Agency is proposing today to use a steady-state, Gaussian plume model to predict the concentrations of organic constituents released from a land treatment unit. The model makes the following general assumptions:

- the emission rate is constant from day to day and hour to hour so that an annual average concentration can be calculated;
- emissions from a land treatment unit are treated as if they arose from an upwind virtual point source with emissions occurring at ground level (assumes no plume rise);
- no atmospheric destruction or decay occurs;
- assumes one stable meteorological dispersion; and
- as described previously in this Appendix, the waste is assumed to be applied to a depth of 12 inches and the width of the unit is equal to the length.

The general form of the equation becomes:

$$c = \frac{2.03Q\emptyset}{L_v\,\sigma_z u}$$

where:
C = concentration at the compliance point mg/m_3)
Q = emission rate (mg/sec)
L_v = virtual downwind distance to receptor (m)
σ_z = vertical dispersion coefficient
u = wind speed (m/sec)
$\emptyset$ = frequency that wind blows from the sector of interest.

These terms are described below.

Emission Rate—The calculation of the emission rate, Q has been described previously in this Appendix. As noted, only VOCs are considered to have an air component; Q is a function of the amount of waste disposed per year and the concentration of the VOC contained within the waste.

Virtual Downwind Distance—As stated previously, the model treats the emissions of a land treatment unit as if they resulted from an upwind point source. The virtual point source approach hypothesizes a point source located at an appropriate distance upwind such that the horizontal dispersion at the unit is equal to the unit width. (See Figure 1.) The horizontal dispersion downwind of the unit can then be simulated as if all the unit emissions were being emitted from a virtual point source. Lv can be calculated by the following equation:

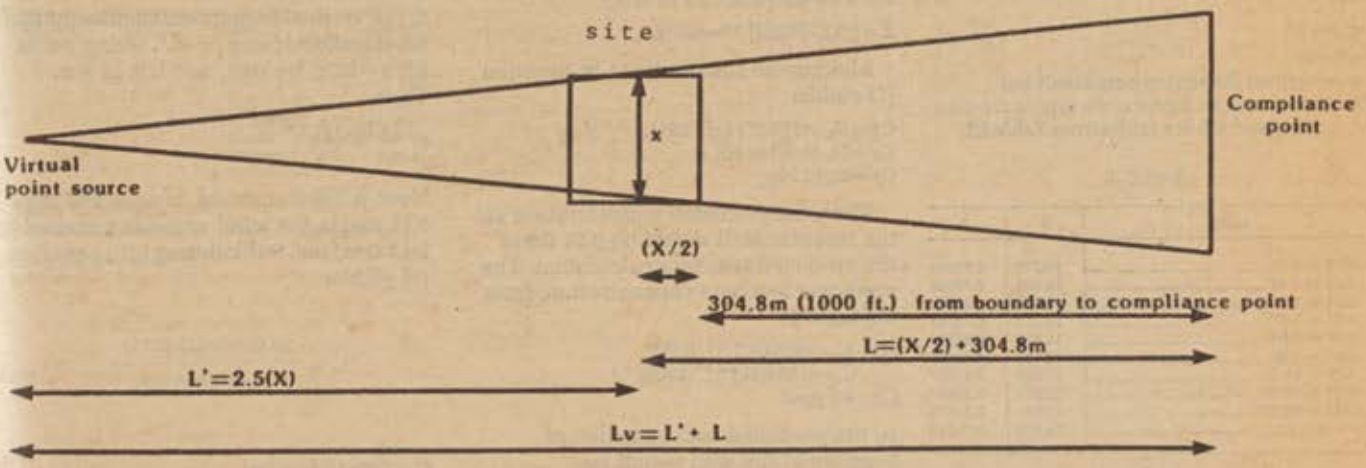
$Lv = L + L'$

where,
L = the distance from the unit center to the receptor (defined below)

[34] Wetherold, R.G., *et al.*, "Laboratory Assessment of Potential Hydrocarbon Emissions from Land Treatment of Refinery Oily Sludges, Phase II, "Prepared for the American Petroleum Institute, DCN 210-009-03 (1983) and Streebin, L.E., *et al.*, "Land Treatment of Petroleum Refinery Sludges", EPA-600/2-84-193 (1985).

[35] ICF, Inc., "The RCFA Risk-Cost Analysis Model Phase III Report, Appendices", Submitted to Office of Solid Waste, Economic Analysis Branch (1984).

Figure 1: Dispersion of VOCs from a Land Treatment Site Using the Virtual Point Source Approach



The Ambient Air Dispersion Model assumes a square configured site so that the length is equal to the width.

L'=the distance upwind that a point source would have to be located to have the same horizontal dispersion as is inherent in the source

L' can be calculated by the following equation

$$L' = \frac{X}{2} \quad \cot(22.5/2) = 2.5X$$

where X=the width of the unit as described in the VHS section (*i.e.*, waste volume, m^3=(X)(X)(0.3 m).

The Agency has selected 1,000 ft (304.8 m) for the distance from a unit boundary to a receptor. The Agency conducted an informal survey to determine the average distance from the waste boundary to a human dwelling.[36] Surveys were sent to 93 land treatment facilities. Of the facilities that responded to this section of the survey (32), 12.4% of the facilities were within 500 ft. of a human dwelling, 9.4% were between 500–1,000 ft., 34.3% were within 1000 to 2500 ft., and 43.8% were 2500 ft. or greater. Of the four facilities closer than 500 ft., however, two were within 200 ft. and one was within 300 ft. of a human dwelling. The Agency, therefore, considers 1,000 ft. to be a reasonable worst-case assumption. The Agency specifically solicits comments on this assumption.

L, the distance from the unit center to the receptor is, therefore:

L=(X/2) + 304.8 m

where M and X are in meters.

It should be pointed out that one limitation of this model is that the source width should be no greater than 0.4L, *i.e.*, 2L tan(22.5/2). (This is a mathematical consequence of assuming 16 point wind directions.) For facilities larger than 23,200 m^2 (about 5.7 acres), this restriction is exceeded. In general, the degree of overprediction is a function of meteorologic stability, the orientation of the receptor with respect to the area source, and the mean wind direction. The degree of overprediction near the area source, however, rarely exceeds about 30 percent.[37]

Vertical Dispersion Coefficient[38]— Once the plume has been released from the virtual point source, dispersion will occur in three directions. Dispersion in the downwind direction, y, will be proportional to the mean wind speed. Dispersion in the crosswind direction, X, and in the vertical direction, Z, will be governed by Gaussian plume equations.[39] For purposes of this model, σ_x is assumed to be unity.[40]

[36] See footnote 26.

[37] "Industrial Source Complex (ISC) Dispersion Model Users' Guide", Vol. 1, EPA–450/4–79–030 (1979).

[38] See footnotes 34, 36, and Gordon, Steven I., *Computer Modeling in Environmental Planning*, Van Nostrand Reinhold Company, N.Y. pp. 84–114 (1985); Baridan, R.J., *et al.*, "The Atmospheric Transport Model for Toxic Substances (ATM–TOX)", ORNL/CSD–94 (1984); and "OAQPS Guideline Series, Guideline on Air Quality Models", EPA–450/2–78–027 (1978) for general information.

[39] σ_x and σ_z are standard deviations of the plume concentration distributed along the x and z axis, respectively.

[40] Wind roses, statistical descriptions of wind behavior, are used to show with vectors the frequency in which the wind blows in each

Continued

The dispersion coefficients vary with downwind distance and stability class. [41] The stability class F is considered moderately stable. The use of stability class F will result in the least dispersion and, hence, will be used in all calculations since it is most conservative.

The following equation can be used to calculate σ_z, assuming a stability class of F: [42]

$\sigma_z = aL^b$

where:
σ_z = vertical dispersion coefficient (m)
L = distance from center of facility to receptor (Km) and a,b are taken from Table III:

TABLE III

L(Km)	a	b
0.10 to 0.20	15.209	0.81558
0.21 to 0.70	14.457	0.78407
0.71 to 1.00	13.953	0.68465
1.01 to 2.00	13.953	0.63227
2.01 to 3.00	14.823	0.54503
3.01 to 7.00	16.187	0.46490
7.01 to 15.00	17.836	0.41507
15.01 to 30.00	22.651	0.32681
30.01 to 60.00	27.074	0.27436
>60.00	34.219	0.21716

Wind Speed—A wind speed of 2–3 m/sec is associated with stability class F. A wind speed of 2 m/sec will be used in all calculations since it is The most conservative assumption. [43]

Frequency—The Climatic Atlas of the United States compiles information on the frequency that the wind blows from various directions for many U.S. cities. As reported by Hwang, [44] an average value of 0.15 is normally assumed.

5. *Sample Calculations.* a. Groundwater Scenario. To demonstrate how the land treatment model works, the following example is provided.

A refinery generates 2892 kkg of waste per year containing 20 ppm of benzene. Calculate the concentration (in both air and ground water) at a receptor 1,000 ft (304. 8 m) from the unit boundary:

2892 kkg/1.9 kkg/m^3 = 2430 m^3 = (3178 yd^3)
(When no density information is provided, the Agency normally assumes that a ton is equal to a yd^3)

The dimension of the site, is assumed to be a square, 1 ft. (0.3 m) deep; thus:

2430 $m^3 = (X)^2 (0.3\ m)$
X = 90 m (293 ft.)

Since the unit is square, $X = Y'$, the generalized form of the VHS model is:

(1) $Cy = C_o \text{ erf } [Z/(2(\alpha_z Y)^{0.5})] \text{ erf } [X(4(\alpha_T Y)^{0.5})]$

(2) and $Z = (\alpha_z Y')^{0.5}$ or $Z = (0.2Y')^{0.5}$ for a 90 mx90 mx0.3 m site,

$Z = [(0.2)(90m)]^{0.5} = 4.2$ m

Making the substitutions in equation (1) yields:

$Cy = C_o \text{ erf } (0.27) \text{ erf } (0.91)$
$Cy = C_o (0.30)(0.80)$
$Cy = C_o (0.24)$

Thus, the predicted concentration at the receptor well would be 0.24 times the predicted leachate calculation. The predicted leachate concentration, from the GLM is:

(4) $C_o = 0.044(C)^{0.7} S^{(0.9}$
$C_o = 0.044(20)^{0.7} (1800)^{0.9}$
$C_o = 3.5$ ppm

so the predicted concentration of benzene at the well would be:

$Cy = (3.5)(0.24)$
$Cy = 0.84$ ppm

b. Air Scenario. To calculate the air concentration at a receptor 304.8 m (1,000 ft.) downgradient from the unit boundary, the following equation should be used:

$$(5)\quad C = \frac{16(2Q)\phi}{2\pi Lv (2\pi)^{0.5}\sigma_z u} = \frac{(2.03)Q\phi}{Lv\,\sigma_z u}$$

and

(6) $Q = C_i W / 3.5 \times 10^7$ sec

Where C_i is the concentration of constituent in the waste in ppm (mg/kg) and W is the amount of waste disposed of in one year in Kg.

$$Q = \left(\frac{20mg}{kg}\right)(2.89 \times 10^6\ kg)/(3.15 \times 10^7\ sec)$$

$Q = 1.83$ mg/sec

Lv, the distance from the virtual point source to the receptor is:

(7) $Lv = L + L'$

and

(8) $L' = 2.5(X)$

Where X is the width of the site and L' is the distance from the center of the unit to the virtual point source. Then

$L' + (2.5)(90) = 225$ m

and

$$L = \frac{X}{2} + 304.8$$

$L = 90/2 + 304.8$
$L = 350$ m
Then,
$Lv = 225\ m + 350\ m$
and $Lv = 575$ m

z, the vertical dispersion coefficient can be calculated from $_z = aL^b$. Using Table III, a = 32.1, b = 0.81, and L is in Km. Then,

$_z = 14.4(0.35)^{0.78}$
$_z = 6.3$

Now, 0, the frequency, is assumed to be 0.15 and u, the wind speed is assumed to be 2.0 m/sec. Substituting into equation (5) yields:

$$C = \frac{(2.03)(1.83)(0.15)}{(575)(6.3)(2)}$$

$C = 7.69 \times 10^{-5}$ mg/m^3

This then is the predicted air concentration, 1,000 ft. from the unit boundary.

For the reasons set out in the Preamble, 40 CFR 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, add the following wastestreams in alphabetical order to Table 1:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Eli Lilly and Company.	Clinton, Indiana.	Incinerator scrubber liquids, and solids settling from those liquids, originating from the burning of spent solvents (EPA Hazardous Waste Nos. F002, F003, and F005) contained in an onsite lagoon and solids retention area on [date of publication) and any new liquids generated after [date o publication].

---

direction, at each speed, and with each stability class. If the wind directions are taken as 16 points and it is assumed that the wind directions within each sector are distributed randomly over the year, it can be assumed that the constituent is uniformly distributed in the horizontal direction in each sector, hence σ_x is unity.

[41] The stability class is a meteorologic classification of the atmospheric properties as they relate to the dispersion of airborne materials; they are rated from A, extremely unstable up to F, moderately stable.

[42] See footnote 35.

[43] See footnote 33. Turner, Bruce D.

[44] See footnote 33.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
General Electric Company.	Shreveport, Louisiana.	Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations and contained in four onsite treatment ponds on [date of publication].
Waterloo Industries.	Pocahontas, Arkansas.	Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after dewatering and held onsite on [date of publication] and any such sludge generated (after dewatering) after [date of publication].

[FR Doc. 85-27068 Filed 11-26-85; 8:45 am]
BILLING CODE 6560-50-M

Federal Register

Wednesday
November 27, 1985

Part III

Federal Home Loan Bank Board

12 CFR Parts 547, 548, 549, 563, 569a, 569b, and 569c

Conservators and Receivers; Proposed Rule

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 547, 548, 549, 563, 569a, 569b, and 569c

[No. 85-1007]

Conservators and Receivers

Dated: November 8, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), in its own right and as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is proposing extensive revisions to its regulations governing the conservatorship and receivership of associations chartered by the Board or the accounts of which are insured by the Corporation.

DATE: Comments must be received by January 28, 1986.

ADDRESS: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Public comments received on this proposal will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, Office of General Counsel, (202) 377-6428; F. Clement Dinsmore, Senior Attorney for FSLIC, Office of General Counsel, (202) 377-7051; Terrill A. Rupp, Attorney, Office of General Counsel (202) 377-6773; or Mary Rawlings-Milton, Chief Paralegal for FSLIC Attorneys, Office of General Counsel (202) 377-7048; Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION:

1. Introduction

Under the proposed revisions the Board will unify appointment of receiver procedures for state and federal institutions, adopt procedures for appointment of receivers under § 406(c)(1)(B) of the National Housing Act ("NHA"), and address many issues—including priorities in liquidation and participation interests in liquidation—which are absent from or inadequately covered in the present regulations. In recent receiverships and conservatorships, the Board has addressed such issues by resolution on a case-by-case basis. The proposed regulations provide for new rules of general applicability in these areas, clarify existing provisions, and reorganize and recodify all regulations governing conservatorships and receiverships.

Pursuant to section 5(d)(11) of the Home Owners' Loan Act of 1933, as amended, ("HOLA") 12 U.S.C. 1464(d)(11), the Board has plenary authority to make rules and regulations for federally chartered associations in conservatorship or receivership, for the conduct of conservatorships and receiverships, and for the liquidation and dissolution of such associations. Pursuant to section 406(c)(3)(A) NHA, 12 U.S.C. 1729(c)(3)(A), the provisions of section 5(d)(11) HOLA are applicable to a State-chartered insured institution for which the Board has appointed the FSLIC as conservator or receiver "in the same manner and to the same extent as if such [State-chartered] institution were a Federal association. . . ."

Congress has twice amended section 5(d) HOLA to enlarge the Board's power to regulate conservatorships and receiverships. Originally, the 1933 version of section 5(d) provided that "The Board shall have full power to provide in the rules and regulations . . . for the liquidation of such associations . . . including the power to appoint a conservator or receiver. . . ." Home Owners' Loan Act of 1933, Pub. L. No. 73-43, section 5(d), 48 Stat. 132 (1933). The original powers were clarified in 1954. "The Board shall have power to make rules and regulations for the reorganization, merger, and liquidation of Federal associations and for such associations in conservatorship and receivership and for the conduct of conservatorship, and receiverships." Housing Act of 1954, Pub. L. No. 83-560, section 503(2), 68 Stat. 590 (1954).

In 1966, Congress recognized that "it is essential that the Federal supervisory agencies have the statutory and administrative facility to move quickly and effectively to require adherence to the law and cessation and corrections of unsafe or improper practices." S. Rep. No. 1482, 89th Cong., 2nd Sess., *reprinted in* 1966 U.S. Code. Cong. & Ad. News 3532, 3536. To this end, Congress altered provisions concerning the grounds of appointment and challenges to appointment and enacted section 5(d)(11) in its present form. Financial Institutions Supervisory Act of 1966, Pub. L. No. 87-695, section 101(a), 80 Stat. 1028 (1966). The broad powers restated and amplified in the 1966 amendment authorize the Board's present legislative rulemaking authority under HOLA.

In 1968, by the enactment of section 406(c)(3) NHA, Congress extended the Board's regulatory powers to include authority to issue similar legislative regulations for the receivership and liquidation of State-chartered institutions. Bank Protection Act of 1968, Pub. L. No. 90-389, section 6, 82 Stat. 294 (1968). Congress based this extension of regulatory powers on the FSLIC's "vital interest in seeing that the liquidation of the [State-chartered] association proceeds in an orderly manner." S. Rep. No. 1263, 90th Cong., 2d Sess., *reprinted in* 1968 U.S. Code Cong. & Ad. news 2530, 2531.[1]

These grants of statutory authority are not less broad than those conferred upon the Board by section 5(a) HOLA, 12 U.S.C. 1464(a), which the United States Supreme Court regards as authorizing the Board to govern "the powers and operations of every federal savings and loan association from its cradle to its corporate grave." *Fidelity Federal Savings and Loan Association v. de la Cuesta*, 458 U.S. 141, 145 (1982), *citing People v. Coast Federal Savings and Loan Association*, 98 F. Supp. 311, 316 (S.D. Cal., 1951).[2]

For the last fifty years, Congress has consistently acted to protect the welfare of depositors, the credibility of the nation's financial institutions, and the soundness of the FSLIC reserves, by granting the Board increasing authority over associations in conservatorship or receivership, and the authority to engage in legislative rulemaking concerning the receivership, liquidation, and dissolution of insured institutions.

Accordingly, the Board has determined that the proposed conservatorship and receivership regulations are within the Board's statutory authority under section 5(d)(11) HOLA and section 406(c)(3) NHA.

2. General Structure

Existing regulations, codified in the Rules and Regulations for the Federal savings and loan system, provide for the appointment of conservators and receivers for federal associations in part 549, the conduct of federal association conservatorships in Part 548, and the conduct of federal association receiverships in Part 549. Part 569a of the Rules and Regulations of the FSLIC now covers the appointment and conduct of the FSLIC as receiver of a State-chartered association appointed by the Board pursuant to section 406(c)(2) NHA. If the FSLIC is appointed

[1] A further revision was made in 1982 extending these powers to appointments under the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, section 122(f) 96 Stat. 1469, 1482.

[2] Section 5(a) HOLA provides in part that the Board "is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as federal savings and loan associations, or federal savings banks, and to issue charters therefor . . ."

as receiver for a State-chartered association pursuant to section 406(c)(1)(B) NHA, the Board has by order and pursuant to section 406(c)(1)(B)(i)(II), directed the receivership to operate under Part 549.

The proposed regulations would continue the same framework for federal associations, but Part 549 would be shortened drastically and would refer to new Part 569c for substantive rules on the conduct of federal association receiverships. New Part 569a would deal not only with the appointment of the FSLIC as receiver or conservator of a State-chartered association under section 406(c)(1) NHA, but with the FSLIC's possible actions if a receiver is appointed that is not the FSLIC. New Part 569b would deal with the appointment of the FSLIC as receiver for a State-chartered association under section 406(c)(2) NHA. New Part 569c would provide substantive rules applicable to the conduct of all receiverships in which the FSLIC has been appointed as receiver by the Board, whether of state or federal associations.

Within the proposed framework of reorganized receivership rules, the Bank Board is proposing significant regulations dealing with a wide variety of legal issues. Such regulations cover topics such as the effect of the receivership appointment on executory contracts (§ 569c.5), on employment agreements (§ 569c.3(c)), on certain golden parachute agreements (§ 563.39(a)), on participation agreements (§ 563c.10), on repurchase agreements (§ 569.8(g)), and on agreements relating to secured and unsecured borrowings by an insured institution, including agreements providing for prepayment or default penalties (§§ 563.8–3, 569c.8(d)). The proposed uniform receivership regulations appearing in Part 569c include specific procedures relating to the disposition of claims, the priority of claims, and appeals from the receiver's determinations with respect to claims (§ 569c.7–§ 569c.9, § 569c.11). The proposed rules also confirm for the FSLIC as receiver the same rights and powers to avoid the transfers of property or obligations incurred by the association that would be avoidable by various creditors, bona fide purchasers of real property, or equity receivers (§ 569c.6(b)).

The proposed regulations, while more comprehensive than those now in effect, are not intended to address all legal issues presented by the receivership of an insured institution, nor do they establish all procedures which may be necessary in specific cases to resolve particular questions. The FSLIC, when appointed by the Board as receiver for an insured institution, is subject to the regulation of the Board. Section 406(d) NHA, 12 U.S.C. 1729(d). Pursuant to its overall regulatory and supervisory authority, the Board may, by resolution or otherwise, establish additional procedures governing these statutory receiverships or address specific legal issues presented by particular receiverships, in much the same manner as a court supervising a court-appointed equity receivership. These proposals represent an effort to articulate and establish those procedures which, based on experience, should be uniformly applicable to all receiverships for insured institutions and to deal with recurring legal questions that the Board may resolve pursuant to its substantive rulemaking authority granted in section 5(d)(11) HOLA, 12 U.S.C. 1464(d)(11), and § 406(c)(3) NHA, 12 U.S.C. 1729(c)(3).

3. Parts 547 and 548

The most significant changes proposed in the revision of Parts 547 and 548 concern the appointment of a conservator or receiver. Proposed alterations in Part 548 consist largely of updating and clarifying the present regulations.

Section 547.1 Grounds for Appointment of Conservator or Receiver

The proposed revision would reword the description of the grounds for the appointment of a conservator or a receiver for a Federal association to conform to the precise language of section 5(d)(6)(A) HOLA, 12 U.S.C. 1464(d)(6)(A). Insolvency standards have been addressed in detail by some courts considering challenges to receivership appointments, *Telegraph Savings & Loan Association v. FSLIC*, 564 F. Supp. 880 (D. Ill. 1982) *aff'd* 703 F.2d 1019 (7th Cir.), *cert. denied*, 464 U.S. 992 (1983); *Biscayne Federal Savings and Loan Association v. Federal Home Loan Bank Board*, 720 F.2d 1499 (11th Cir.), *cert. denied*, 104 S.Ct. 2656 (1983). But, of course, these cases do not address all of the factual situations in which the Board must evaluate the solvency of an institution.

The grounds of unsafe or unsound condition and substantial dissipation of assets due to unsafe or unsound practices are flexible concepts requiring the exercise of judgment by the Board to address particular facts and circumstances. The Board would consider the inclusion of examples of such conditions or practices in the new regulations, however, and it invites comment on this subject.

General guidance to the meaning of the phrase "unsafe or unsound practice" is available in the legislative history accompanying the 1966 amendments to Section 5(d) HOLA, 12 U.S.C. 1464(d). In connection with the discussion of the "unsafe or unsound practices" standard, then Board chairman John E. Horne offered the following definition of the phrase to the House Committee on Banking and Currency:

> Generally speaking, an 'unsafe or unsound practice' embraces any action or lack of action which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk of loss or damage to an institution, its shareholders, or the agencies administering the insurance funds.
>
> A particular activity not necessarily unsafe or unsound in every instance may be so when considered in the light of all relevant facts. Thus, what may be an acceptable practice for an institution with a strong reserve position . . . may well be unsafe or unsound for a marginal operation.

Hearings on S. 3158 before the House Committee on Banking & Currency, 89th Cong. 2nd Sess. 49–50 (1966).

The legislative history indicates that Congress accepted this definition of the phrase, as well as the following views of Chairman Horne that it would not be possible to enumerate all unsafe or unsound practices:

> The concept of 'unsafe and unsound practices' is one of general application which touches upon the entire field of the operations of a financial institution. For this reason, it would be virtually impossible to attempt to catalogue within a single all-inclusive or rigid definition the broad spectrum of activities which are embraced by the term.

The nature of the unsafe or unsound practice standard was discussed by the United States Court of Appeals for the Fifth Circuit in *First National Bank of Lamarque v. Smith*, 610 F.2d 1258, 1265 (5th Cir. 1980), which concluded:

> 'Unsafe or unsound banking practice' is widely used in the regulatory statute and in case law, and one of the purposes of the banking acts is clearly to commit the progressive definition and eradication of such practices to the expertise of the appropriate agencies.

See also *First National Bank of Eden v. Department of Treasury*, 568 F2d 610, 611 (8th Cir. 1978).

The same factors which led Chairman Horne and the courts to conclude that the "unsafe or unsound practice" standard was judgmental and necessarily committed to the regulatory agency the discretion and responsibility

for identifying particular practices falling within the proscription also apply to the definition of the "unsafe or unsound condition to transact business" ground. The particular financial facts and circumstances that may result in a determination that a savings and loan association is in an unsafe or unsound condition to transact business cannot be fully enumerated or catalogued within a single all-inclusive or rigid definition. The standard necessarily involves the exercise of the Board's judgment under the circumstances of each case. In utilizing these broad standards to describe the Board's exculsive power and jurisdiction to appoint a conservator or receiver, Congress committed to the discretion of the Board the application of these standards to particular cases.

In the exercise of the discretion conferred upon it by Congress, the Board has determined on several occasions that an institution was in an unsafe and unsound condition to transact business. For example, in appointing a receiver for Washington Federal Savings and Loan Association of University Heights, Ohio, the Board determined that the association was in a unsafe and unsound condition to transact business because of its inability to meet its obligations as they matured, a determination upheld by the court when the association's board of directors challenged the appointment. *Washington FS&LA* v. *FHLBB*, 526 F. Supp. 343 (N.D. Ohio, 1981). A determination that an institution is unable to meet its obligation as they mature may be based upon a combination of specific obligations and exhausted resources as complex as that of the *Washington Federal* case or, to use another extreme fact situation, upon a relatively straightforward unstoppable "run", caused by loss of public confidence. There are many other possible situations, but a key element in each is the institutions's capacity to anticipate and meet liquidity needs and other obligations; and evaluation of this capacity of a financial institution requires the experience and expertise that is possessed by the regulator.

Further, determinations that associations are in unsafe or unsound condition cannot be limited to findings of illiquidity. Other factual situations that would justify such a determination would include:

Operating conditions such that the regular deposit and lending functions of the association are imparied, endangering the interests of borrowers and depositors;

Drastic loss of management capacity because of resignations, continuing absence, or other reasons;

Abandonment of an association by its board of directors;

Loss or impairment of a function that is critical to the operation of a particular association;

Such disarray of books and records that supervisory authorities cannot determine or reasonably estimate the condition of the association.

The Board is extremely interested in receiving comments on the issue whether findings such as these should be incorporated in some manner in regulatory form for the guidance of the industry and the public and whether the public interest would be served by codifying examples of unsafe and unsound condition to transact business. In particular, the Board would like to receive comment on the example listed above of "[s]uch disarray of books and records that supervisory authorities cannot determine or reasonably estimate the condition of the association."

Section 547.1(b) would be added to incorporate the statutory provision of section 5(b)(1) HOLA, 12 U.S.C. 1464(b)(1), that one basis on which the Board may determine that an association is in an unsafe or unsound condition to transact business is its failure to make full payment of any withdrawal when due.

Section 547.5 Action for Removal of Conservator or Receiver.

The existing regulations acknowledge that an association may, within thirty days after the appointment of a conservator or receiver, bring an action seeking an order requiring the Board to remove the conservator or receiver. Elsewhere in the statuies and regulations, however, it is provided that, immediately on taking possession of the association, the conservator or receiver shall have or succeed to all of the powers of the association's officers and directors. The existing regulations do not specify upon whose authority "the association" may determine to bring an action to challenge the appointment of a receiver or conservator. The new regulation would authorize the board of directors of an association for which a conservator or receiver has been appointed to meet following the appointment and to authorize the filing of an action in the name of the association seeking an order requiring the Board to remove the conservator or receiver. This accords with the legislative history of the provisions of section 5(d)(6)(A) HOLA. The new regulation would also clarify that, absent such an authorization by the former board of directors of the association, no action may be brought in the name of the association pursuant to section 5(d)(6)(A) HOLA, 12 U.S.C. 1464(d)(6)(A), challenging the receivership or conservatorship appointment.

Section 547.7 Possession by Conservator or Receiver.

The existing § 547.7 of the regulations governing the appointment of a conservator or receiver for a Federal association sets forth procedures for the conservator or receiver to take possession of the association that closely parallel similar provisions set forth in Part 569a with respect to taking possession of State-chartered institutions. In an effort to simplify the regulations and provide uniform rules, where possible, governing receiverships for Federal and State-chartered institutions, the proposed § 547.7 would provide that a receiver shall take possession of a Federal association in accordance with the uniform procedure set forth in new Part 569c of the regulations. Procedures for a conservator's taking possession of a Federal association would continue to be separately set forth in § 547.7 and Part 548.

Section 547.8 Surrender of Possession by Conservator or Receiver.

The proposed regulations would add a new subsection (c) to existing § 547.8 to provide that the removal of a conservator or receiver, the placement of an association under its previous or new management, or the replacement of a conservator by a receiver, shall not impair the validity of the exercise of powers or functions of a conservator or receiver. The regulation would also provide that no action of or transaction effected by such a receiver or conservator shall be void or voidable by reason of the removal of such conservator or receiver. This provision clarifies the implications of section 5(d)(6)(C) HOLA, which provides that "no court . . . may restrain or affect the exercise of powers or functions of a conservator or receiver." There should be no doubt or uncertainty concerning the authority of the receiver or conservator, or the ability of the receiver or conservator to engage in business dealings with third parties to the benefit of the receivership or conservatorship estate.

4. Part 549—Conduct of Federal Association Receiverships

Section 549.1 The Federal Savings & Loan Corporation as Receiver.

The existing regulations set forth in Part 549 largely duplicate similar

regulations set forth in existing Part 569a with respect to receiverships for State-chartered institutions. Accordingly, in order to simplify the regulations and promote uniformity, Part 549 would be drastically cut to eliminate duplicative provisions and make the rules and regulations set forth in new Part 569c applicable to receiverships of Federal associations or Federal savings banks for which the Board has appointed the FSLIC or the FDIC as receiver.

Section 549.2 The Federal Deposit Insurance Corporation as Receiver.

This new section would provide that the receivership of a Federal savings bank chartered under section 5(o) HOLA, 12 U.S.C. 1464(o), the deposits of which are insured by the FDIC, shall be conducted by the FDIC as a receiver appointed by the Board with the powers granted by section 5(d)(6) HOLA, 12 U.S.C. 1464(d)(6), subject to the rules and regulations set forth in new Part 569c and to section 12(a) of the Federal Deposit Insurance Act, 12 U.S.C. 1822(a).

5. Borrowings: Compliance With Receivership Rules

The proposal to add a new § 563.8-3 should be viewed in the context of the new receivership rules set forth in Part 569c. Section 563.8-3 deals with provisions in securities issued by insured institutions. It provides that any such security issued for borrowing and any agreement or arrangement entered into by an insured institution for borrowing shall be consistent with the rules and regulations set forth in Part 569c. The purpose of this regulation is to make it clear that contractual provisions in such instruments which conflict with the provisions of 569c concerning the marshalling and distribution of assets in receiverships would not be enforceable in the event of a receivership. Section 563.8-3 would not apply to securities issued by an insured institution's subsidiary that had a separate corporate identity, such as a separate validly established finance subsidiary of a Federal association.

6. Employment Agreements and Golden Parachute Agreements

Existing § 563.39 of the regulations, dealing with employment contracts, requires such contracts to provide for termination as of the date of default, as that term is defined in section 401(d) NHA, 12 U.S.C. 1724(d). In accordance with the policy of this regulation, a new provision would be included in § 569c.3(c) explicitly stating that "all contracts or arrangements for employment or compensation of officers, employees, consultants, and advisers of the association shall terminate as of the date of default," whenever a receiver is appointed for an insured institution. Since all receivership appointments are "for the purpose of liquidation," any association for which a receiver has been appointed will, by definition, be "in default," and all employment agreements or arrangements which the association previously had with its officers or employees would be automatically terminated by virtue of this provision.

In addition to the provisions dealing generally with termination of employment agreements upon the appointment of a receiver for an insured institution, the proposed revisions would specifically address and prohibit certain "Golden Parachute" agreement. Section 563.39(a) of the regulations governing employment contracts would be amended to add a new sentence providing that the making of an employment contract would constitute an unsafe and unsound practice if such contract provides for a bonus, severance pay, or other compensation that is paid in anticipation of, or that is in any way related to, the appointment of a receiver or a conservator for the institution; provision of assistance under section 406(f) NHA, 12 U.S.C. 1729(f); the approval of a supervisory merger; or a determination that the institution is in default, insolvent, or in an unsafe or unsound condition to transact business. The necessity for a specific prohibition against such clearly improper agreements is highlighted by the experience of the FSLIC as receiver for Unity Savings Association ("Unity"). Shortly after its appointment as receiver for Unity, the FSLIC discovered that various officers of Unity had entered into employment agreements with the association pursuant to which they would receive substantial "termination payments" in the event that a receiver was appointed for Unity or the association was merged, consolidated, reorganized, liquidated or dissolved. The FSLIC filed suit to prevent the disbursement of these termination payments from an escrow, contending, among other things, that the agreements constituted unsafe or unsound practices violating § 563.39 of the regulations. Unity's officers contended that, under existing Section 563.39, a contract constituted an unsafe or unsound practice only if it "could lead to material financial loss or damage to the institution" and that the payments in question were not "material" for an association the size of Unity. The United States District Court for the Northern District of Illinois rules in favor of the FSLIC, holding that the agreement did constitute an unsafe or unsound practice violative of § 563.39(a) *FSLIC v. Bass*, 576 F. Supp. 848 (N.D. Ill. 1983). Given the importance of the question and in order to avoid any further dispute about the absolute illegality of such "Golden Parachute" agreements, the new regulation would specifically address and prohibit such agreements and would eliminate the necessity to engage in further litigation concerning the propriety of such arrangements under particular circumstances.

7. Part 569a—Rules for Section 406(c)(1) of the National Housing Act

The proposed regulations set forth in new Part 569a address the various situations pursuant to which the FSLIC may be appointed as receiver for an insured institution other than a Federal association (hereinafter referred to as State-chartered institution) under section 406(c)(1) NHA, 12 U.S.C. 1729(c)(1).

Section 569a.2 Appointment of the Corporation as Receiver or Custodian Under State Law.

This proposed rule would confirm the availability of the FSLIC, pursuant to section 406(c)(1)(A) NHA, 12 U.S.C. 1729(c)(1)(A), to serve as receiver for a State-chartered insured institution when a receivership appointment is tendered by a State court or other public authority having the power to appoint a receiver for the institution. The regulation would specify that the FSLIC would accept appointment only as sole receiver for an insured institution, would not act as co-receiver, and would serve only as conservator, receiver, or other legal custodian for the purpose of liquidation. When such an appointment is made, the FSLIC shall have the authority conferred by section 406(b)(1) NHA, 12 U.S.C. 1729(b)(1), but the receivership shall be conducted in accordance with the requirements and authority of the law under which the institution was chartered. However, when the FSLIC has been appointed as sole receiver for a State-chartered institution under State law, the Board continues to have authority pursuant to sections 406(c)(1)(B) and 406(c)(2) NHA, 12 U.S.C. 1729(c)(1)(B), 1729(c)(2), to make an independent appointment of the FSLIC as receiver for the institution under Federal law. *Fidelity Savings & Loan Association v. Federal Home Loan Bank Board*, 689 F.2d 803 (9th Cir. 1982), *cert. denied*, 461 U.S. 914 (1983). The proposal therefore also specifies that, if the FSLIC is thereafter appointed as conservator or receiver by the Board pursuant to

Federal law, the receivership shall be conducted in accordance with applicable Federal statutes and regulations.

Section 569a.4 Appointment of Conservator or Receiver Under Section 406(c)(1)(B).

This regulation would address the authority granted to the Board in 1982 to appoint a receiver for a State-chartered institution when any one of the grounds specified in section 5(d)(6)(A) (i), (ii) or (iii) HOLA, 12 U.S.C. 1464(d)(6)(A) (i), (ii) or (iii) exists.[3] In accordance with the statutory provision, the regulation would authorize the Board to exercise its authority only after the State official having jurisdiction over the institution has given written approval that the grounds for the appointment exist, or after ninety days have passed and other requirements of the statute have been satisfied. The regulation would establish clear procedures and presumptions on which the Board and State authorities may rely in taking action pursuant to section 406(c)(1)(B). Specifically, the regulation would provide that the State shall be deemed to have received the Board's determination that grounds for the appointment exist upon the delivery of an order or resolution of the Board setting forth the determination to the State official having jurisdiction over the institution, to a deputy of such official, to any supervisor of such official or to any person authorized to sign for receipt of mail or other deliveries to such official, deputy or supervisor. In accordance with the provision of section 5(d)(6)(A) HOLA, 12 U.S.C. 1464(d)(6)(A), made applicable to receivership appointments pursuant to section 406(c)(1)(B) NHA by section 406(c)(3)(A) NHA, § 569a.4(e) would confirm that an appointment pursuant to this regulation may be made *ex parte* and without notice.

Section 569a.5 Conduct of Receivership Under § 406(c)(1)(B).

This regulation would make applicable to receivership appointments pursuant to § 406(c)(1)(B) NHA, 12 U.S.C. § 1729(c)(1)(B), the newly adopted uniform receivership regulations set forth in Part 569c.

Section 569a.6 Conduct of Conservatorship Under § 406(c)(1)(B).

This regulation would make the conservatorship provisions set forth in § 547.7 (b) and (c) and Part 548 for Federal associations applicable to the FSLIC as conservator appointed pursuant to section 406(c)(1)(B) NHA, 12 U.S.C. 1729(c)(1)(B).

Section 569a.8 Action for Removal of Receiver or Conservator.

This provision would address the right of an association for which a receiver or conservator has been appointed pursuant to section 406(c)(1)(B) NHA, 12 U.S.C. 1729(c)(1)(B), to bring an action to challenge the appointment pursuant to section 5(d)(6)(A) HOLA, 12 U.S.C. 1464(d)(6)(A), and would set forth the same requirements with respect to authorization of such an action by the association's former board of directors as are set forth in new § 547.5. Additionally, the regulation would establish, as in the case of § 547.8(c) with respect to receiverships and conservatorships for Federal associations, that the removal of a conservator or receiver appointed pursuant to section 406(c)(1)(B) NHA, 12 U.S.C. 1729(c)(1)(B), shall not impair the validity of the exercise of the powers or functions of the conservator or receiver and no action of or transaction effected by such conservator or receiver shall be void or voidable by reason of the removal of such conservator or receiver.

8. Part 569b—Receiverships Under Section 406(c)(2) of the National Housing Act

The proposed regulations set forth in Part 569b parallel existing §§ 569a.1 through 569a.3 governing appointments of a receiver for a State-chartered institution pursuant to section 406(c)(2) NHA, 12 U.S.C. 1729(c)(2). Certain issues not addressed in the existing regulations, however, are the subject of specific provisions in new Part 569b.

Section 569b.2 Grounds for Appointment of Receiver.

This regulation would address the three part test for appointment of a receiver pursuant to section 406(c)(2) NHA, 12 U.S.C. 1729(c)(2). Section 569b.2(b) is new and deals with the interplay between the first and third requirements of the statute, 12 U.S.C. 1729(c)(2) (A) and (C). The meaning of these provisions was extensively litigated in *Telegraph Savings & Loan Association v. FSLIC*, 564 F. Supp. 862 (D.C. Ill. 1981), *aff'd*, 703 F.2d 1019 (7th Cir.), *cert. denied*, 464 U.S. 992 (1983), and in *Fidelity Savings and Loan Association v. Federal Home Loan Bank Board*, 689 F.2d 803, 814 (9th Cir. 1982), *cert denied*, 461 U.S. 914 (1983).

In the *Telegraph Savings* case, the Illinois Commissioner of Savings & Loan Associations took custody of Telegraph Savings and Loan Association and closed the institution under State law, thus satisfying the requirement of section 406(c)(2)(A)(ii) NHA, 12 U.S.C. 1729(c)(2)(A)(ii). Immediately after the closing of the institution, a depositor attempted, at the request of the State and Federal regulatory officials, to make a withdrawal from the association, which request was denied by the Commissioner. This unsuccessful withdrawal request fulfilled the requirement of section 406(c)(2)(C) NHA, 12 U.S.C. 1729(c)(2)(C), that a withdrawable accountholder be "unable to obtain a withdrawal." In the ensuing stockholder litigation, Telegraph challenged the use of a depositor selected by the regulatory authorities to make a withdrawal request in order to satisfy the section 406(c)(2)(C) NHA requirement, and disputed the alternative position of the Board that that requirement is automatically satisfied whenever an insured institution is closed by or under the laws of a State.

The District Court held, and the Court of Appeals affirmed, that the section 406(c)(2)(C) NHA requirement was automatically satisfied as a result of the closing of Telegraph and that the additional precaution of having a selected depositor seek to make a withdrawal request was unnecessary. *Telegraph Savings & Loan Association v. FSLIC*, 564 F. Supp. 862, 874 (N.D. Ill. 1981). On appeal, the Seventh Circuit rejected Telegraph's argument that the District Court's construction of the statute would render the section 406(c)(2)(C) NHA requirement superfluous and held that that requirement would have independent significance in a situation where 406(c)(2)(A) was satisfied, not by the closing of the institution under 406 (c)(2)(A)(ii), but by the appointment of a receiver or conservator for at least fifteen days under 406(c)(2)(A)(i). Under a section 406(c)(2)(A)(i) appointment, the 406(c)(2)(C) requirement performs the important function of enabling the Board to intervene to appoint a receiver or a conservator when depositors are unable to withdraw their money despite a State Commissioner's efforts to keep the institution open. *Telegraph Savings*, 703 F.2d at 1025–1026.

Similarly, in *Fidelity Savings*, the Ninth Circuit refused to require independent proof of an actual denial of an accountholder's withdrawal to satisfy section 406(c)(2)(C) NHA. Instead, the Court held that the California State Savings and Loan Commissioner's issuance of a liquidation order and appointment of FSLIC as state receiver satisfied both 406(c)(2)(A), and, by logical inference,

[3] This authority, unless renewed by Congress, will expire on April 15, 1986. Pub. L. No. 99-120.

406(c)(2)(C). The Court noted that section 406(c)(2)(C) merely requires that an account holder be "unable" to make a withdrawal; it does not require that an accountholder actually be denied a withdrawal. *Fidelity Savings*, 689 F.2d at 314. Therefore, the required inability to withdraw "follows logically from the conclusion that Fidelity was closed." Id.

Section 569b.2(b) would adopt the *Telegraph* and *Fidelity* construction of the statute, by providing that a determination that an insured institution has been closed by or under the laws of a State under 406(c)(2)(A)(ii) would be deemed to be a determination that one or more holders of withdrawable accounts in the institution was unable to obtain a withdrawal of his or her account in whole or in part. The regulation would also provide that the Board must independently determine whether an accountholder is unable to withdraw funds under 406(c)(2)(C) *only* when the appointment of a conservator, receiver, or other legal custodian has been outstanding for at least fifteen consecutive days under 406(C)(2)(A)(i).

It is anticipated that this interpretive regulation will avoid confusion about the operation of the requirements of section 406(c)(2)(A) and (C) NHA, 12 U.S.C. 1729(c)(2)(A) and (C), and will provide a clear indication of the Board's long-standing construction of the statute. *Redlion Broadcasting Co. v. FCC*, 395 U.S. 367, 381 (1969); *Miller v. Youakim*, 440 U.S. 125, 144 (1979).

Section 569b.2(c) would be added to clarify the meaning of the second alternative requirement set forth in section 406(c)(2) NHA, 12 U.S.C. 1729(c)(2) that an insured institution be closed "by or under the laws of any State." This requirement was also the subject of extensive litigation in the *Telegraph* case in which the court held that the requirement is satisfied whenever an institution is closed by any official acting for the state. *Telegraph Savings & Loan Association v. FSLIC*, 564 F. Supp. 862, 872 (N.D. Ill. 1981). The Court specifically rejected Telegraph's contention that, in an action challenging the Board's appointment of the FSLIC as receiver for a State-chartered institutions under section 406(c)(2) NHA, 12 U.S.C. 1729(c)(2), the Board must establish that the institution was closed "in compliance with" applicable provisions of state law. In the words of the Seventh Circuit, affirming the District Court's interpretation of the statute:

> No language in this section requires the FHLBB to evaluate whether or not the closing was in compliance with state law. Our interpretation is supported by S. Rep. No. 1263, which states that Congress amended § 1729(c) in order to safeguard the financial integrity of the FSLIC and "to enable the FSLIC to defend its appointment under Federal law instead of requiring it to defend the legality of the State savings & loan administrator's determination under State law."

Telegraph Savings & Loan Association v. Schilling, 703 F.2d 1019, 1024 (7th Cir. 1983).

The proposed regulation would adopt the Court's construction of the statute, and would describe certain evidence on which the Board may rely in determining that an institution has been closed by or under the laws of any State. Specifically, the regulation would provide that the Board may rely, among other things, upon the order or action of such State court of competent jurisdiction, or public authority, authorized by State law, closing or directing the closing of such institution, taking possession of such institution for the purpose of liquidation, directing the taking of possession of such institution for the purpose of liquidation, or ordering the liquidation of or liquidating such institution. The proposed rule would also confirm that the Board's determination that an institution has been closed by or under the laws of any State would not be affected by a subsequent ruling or determination invalidating the State order or action.

Section 569b.5 Action for Removal of Receiver.

This provision would address the right of an association for which a receiver or conservator has been appointed pursuant to section 406(c)(2) NHA, 12 U.S.C. 1729(c)(2) to bring an action to challenge the appointment pursuant to section 5(d)(6)(A) HOLA, 12 U.S.C. 1464(d)(6)(A), and would set forth the same requirements with respect to authorization of such an action by the association's former board of directors as are set forth in new § 547.5 and § 569a.8. Additionally, the regulation would establish, as in the case of § 547.8(c) with respect to receiverships and conservatorships for Federal associations and §569a.8 with respect to receiverships or conservatorships of State-chartered associations under section 406(c)(1)(B) NHA, that the removal of a receiver appointed pursuant to section 406(c)(2) NHA, 12 U.S.C. 1729(c)(2), shall not impair the validity of the exercise of the powers or functions of the receiver and that no action of or transaction effected by such receiver shall be void or voidable by reason of a removal of such receiver.

10. Part 569c—Receivership Rules

New Part 569c would establish uniform rules applicable to receiverships for both State and Federally-chartered insured institutions. These rules deal with certain of the same subjects covered by existing §§ 569a.4 through 569a.13, governing receivers for State-chartered institutions appointed under section 406(c)(2) NHA, 12 U.S.C. 1729(c)(2), and §§549.2 through 549.8 governing receivers for Federal associations. They also address many other subjects not covered in the existing regulations, which were last codified in the 1970's. As revised, the regulations would deal with numerous substantive issues that require resolution by the Board and which it may resolve in the exercise of its plenary authority to issue legislative receivership and liquidation regulations under section 5(d)(11) HOLA, 12 U.S.C. 1464(d)(11), made applicable to non-federal institutions for which the Bank Board has appointed the FSLIC as receiver by section 406(c)(3)(A) NHA, 12 U.S.C. 1729(c)(3)(A).

Section 569c.2 Scope.

This regulation would recite the source of the Board's authority to establish these rules and regulations under section 5(d)(11) HOLA and section 406(c)(3) NHA. This regulation would also establish that any receiver for a receivership subject to the Part 569c rules shall have all of the powers granted by section 5 HOLA and section 406 NHA.

Section 569c.5 Appointment Not Cause for Termination of Executory Contract or Interest in Property.

In its experience with receiverships for insured institutions, the FSLIC has increasingly been confronted with executory contracts or unexpired leases which provide for the termination or modification of the association's rights upon the insolvency of the institution or the appointment of a receiver or conservator for the association. The FSLIC has also encountered contractual provisions providing for the forfeiture, modification, or termination of an association's interest in property upon the insolvency of the association or the appointment of a receiver or conservator. These provisions, expressly designed to impose extraordinary losses or burdens on the receivership at the expense of other creditors and the FSLIC, are inconsistent with the fair and equitable treatment of all persons having interests in or dealings with a receiver, are contrary to public policy, and are of dubious legality. Accordingly,

the Board has determined to exercise its substantive rulemaking authority under section 5(d)(11) HOLA to eliminate by rule the inequity which would result from attempts to enforce such provisions against a receiver.

Section 569c.5(a) would provide that an executory contract or unexpired lease could not be terminated or modified and no right or obligation under the contract or lease could be terminated or modified upon or at any time after the appointment of the receiver solely because of a provision in the contract or lease that is conditioned on the insolvency or financial condition of the association at any time before the appointment of the receiver, or taking possession by the receiver, or the appointment of a custodian or conservator prior to such an appointment of the receiver. An exception to this general prohibition against the enforcement of such remedies "triggered" by insolvency or receivership appointments is set forth in § 569c.5(b), which would apply if applicable law excuses a party, other than the association, to such contract or lease from accepting performance from or rendering performance to the receiver or to an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment or rights or delegation of duties. Another exception would apply for contracts to extend financial accommodations to the association.

Section 596.c.5(c) would provide that any property, wherever located, in which an association, as of the appointment of a receiver, has a legal or equitable interest, is property of the receivership estate. The regulation would further provide that any other party to whom the receiver transfers such property shall receive such title as the receiver itself possesses, notwithstanding any provision that restricts or conditions transfer of such interest by the association or that is conditioned on the insolvency or financial condition of the association or on the appointment of a receiver, conservator, or custodian, and effects or gives an option to effect a forfeiture, modification, or termination of the association's interest in the property.

Section 569.6 Powers and Duties as Receiver.

This proposed rule is based upon and would continue many of the provisions of existing § 596a.6 with respect to the powers and duties of a receiver. A number of significant revisions, however, would be made.

Section 569.6(b)(1) has been added to make clear that the receiver has the same rights and powers to avoid transfers of property of the association or any obligation incurred by the association that are avoidable by: (1) A creditor who extends credit to the association and who obtains a judicial lien on all property of the association on which such lien could have been obtained; (2) a creditor who extends credit to the association and obtains an execution against the association that is returned unsatisfied; (3) a bona fide purchaser of real property from the association; and (4) an equity receiver. In determining the existence of such avoidance power by persons in the indicated categories, the receiver may look to applicable law to determine the right of avoidance or other modes of attack available to such person as against a creditor claiming a superior right in the property of the receivership.

The operation and effect of § 596c.6(b)(1) may be illustrated by the following examples, which are by no means all inclusive. Under this regulation, the receiver may avoid unperfected or improperly perfected security interests under the Uniform Commercial Code. The receiver may also defeat alleged consignors or finance lessors whose interests have not been perfected in accordance with the provisions of the Uniform Commercial Code. The receiver's status as a bona fide purchaser of real estate under § 569c.6(b)(1)(c) would permit it to avoid mortgages unrecorded on the date of appointment of the receiver, and, depending upon applicable State or Federal law, other real transfers which have not been perfected as of the date of default.

Section 569c.6(d) sets forth in regulatory form the receiver's option to accelerate or perform under a collateralized debt obligation of the institution in receivership. This would codify positions set forth in published correspondence of General Counsel.

Section 596c.6(f)(3) would grant the FSLIC as receiver the power to reject or repudiate any lease or executory contract of the association. A conservator is granted similar power to reject or repudiate leases or executory contracts "which the conservator considers burdensome" under Section 548.2(k). The power to reject leases and executory contracts is an important, traditional power of the receiver, which authorizes the termination of agreements by which the receivership might otherwise be bound. The proposed regulations do not attempt to define the term "executory contracts." In defining and applying the executory contract provision, the receiver would seek guidance from analogous treatment of contracts in court decisions under 11 U.S.C. 365. In general, such decisions have used the so-called "Countryman" definition:

> A contract under which the obligations of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other.

The receiver would be expected by the Board to look to developing case law under 11 U.S.C. 365, however, in which the Countryman definition has not always been followed exactly, in the interests of fairness to all creditors.

The receiver must cure a default arising from nonpayment or nonperformance by the association in order to assume an executory contract or unexpired lease in default.

The proposed regulation would require the receiver to give notice of its rejection or repudiation of a lease or contract within ninety days of the appointment of the receiver. During the period in which a determination is being made whether to reject or repudiate a lease or a contract, the receiver may be required to take action consistent with enforcement of the contract in order to preserve its rights to the value of the agreement. The provision for a ninety day period within which the receiver may reject or repudiate any lease or contract would mean that no actions taken by the receiver with respect to the lease or executory contract prior to the expiration of this period could be presumed, or deemed, to constitute an assumption of the lease or executory contract. Similarly, the regulatory would expressly provide that, prior to the receiver's notification of its rejection or repudiation of any lease or executory contract, rejection or repudiation of the lease or executory contract may not be presumed or claimed by a party to such lease or contract. These rules would provide the necessary flexibility to enable the receiver to make an informed determination whether particular leases or contracts should be rejected or repudiated.

In the event that the receiver determines to reject or repudiate a lease or executory contract, § 596c.11(c) provides that any claim arising from the rejection or repudiation will constitute a general unsecured claim accruing and becoming unconditionally fixed on or before the date of default. No such claim will be treated as an administrative expense of the receiver entitled to priority under § 596c.11(a).

In the event that the receiver should determine not to accelerate an association's obligations under a

secured borrowing or other security arrangement, thereby affirming the contract, the receiver would not thereafter treat contractural requirements such as additional collateral transfers (after "marking to market") as subject to repudiation.

The cumbersome sales procedures set forth in existing § 569a.6(c)(3), which must be satisfied before the receiver may dispose of any significant assets, would be eliminated. These restrictions, and the other asset disposition procedures imposed by the existing regulation, unnecessarily burden the receiver's ability to deal with receivership assets in the best interests of the receivership.

Section 569c.6(i) would provide specific authorization for the receiver to contract for the services of a manager, managers, or management company to administer the receivership or to contract with other receivers or entities for the services of a manager, managers, or management company to administer the receivership, or to pay or share the costs of such a contract or contracts from the assets of the association in receivership. Given the number of savings and loan associations for which the FSLIC has been appointed receiver in recent years and the volume and complexity of asset workout problems with which it has become involved, FSLIC has on occasion found it necessary to seek the services of outside managers or management companies to perform various receivership functions. Although the authority to enter into such contracts exists under the present regulations, the significance of such agreements warrants the provision of separate explicit authority dealing with this subject.

Section 569c.7 Claims Procedure; Section 569c.8 Secured Claims; Section 569c.9 Appeal Procedure.

Existing §§ 549.4 and 569a.7–569a.8 deal with the presentation of creditor claims to the receiver. The presentation of claims by depositors is covered in §§ 549.5, 549.5–1 and 569a.9. The proposed rules in §§ 569c.7 through 569c.9 would codify existing procedures and provide uniform and complete procedures for the presentation and determination of claims, as well as for appeals from claims determinations.

The expanded treatment of the claims process in §§ 569c.7 through 569c.9 is extremely important in that the claims process is one of the most critical aspects of a Board appointed receivership. The importance of the claims procedure is related to the nature of a receivership established pursuant to the Board's exercise of its authority under Federal law to appoint a receiver. The Board has independent authority to appoint a receiver *ex parte*, without notice and without the involvement of any court. Section 5(d)(6)(A) HOLA, 12 U.S.C. 1464(d)(6)(A); Section 406(c) NHA 12 U.S.C. 1729(c); *Biscayne Federal Savings & Loan Association v. Federal Home Loan Bank Board*, 720 F.2d 1499, 1503 (11th Cir. 1983). The resulting receivership is a statutory receivership, subject only to the regulation of the Board, and not to the regulation of any court. Congress specifically provided for this exclusive regulation of the receivership by the Board in Section 406(d) NHA in which the FSLIC is granted authority to:

> carry on the business of and to collect all obligations to the insured institutions, to settle, compromise, or release claims in favor of or against the insured institutions, and to do all other things that may be necessary in connection therewith, subject only to the regulation of the Federal Home Loan Bank Board.

In *North Mississippi Savings & Loan Association v. Hudspeth*, 756 F.2d 1096, 1101, (5th Cir. 1985) (*cert. pet. pending*), the Court recognized that the legislative history of the Bank Protection Act of 1968 confined that the FSLIC's authority "[i]n carrying out its receivership responsibilities . . . would be subject only to the regulation of the Federal Home Loan Bank Board. . . ."

In addition to the specific statutory direction that FSLIC receiverships shall be subject only to the regulation of the Board, Congress expressly excluded courts from involvement with the affairs of the receivership. Section 5(d)(6)(C) HOLA, 12 U.S.C. 1464(d)(6)(C), made applicable to non-federal associations by section 406(c)(3) NHA, 12 U.S.C. 1729(c)(3), provides, among other things, that:

> . . . no court may . . . except at the instance of the Board, restrain or affect the exercise of powers or functions of a . . . receiver.

The breadth of the section 5(d)(6)(C) prohibition was emphasized by the court in *First Savings & Loan Association v. First Federal Savings and Loan Association*, 547 F. Supp. 988 (D. Haw. 1982), when it observed that:

> . . . it can be said without any fear of dispute that Section 1464(d)(6)(C) . . . makes it absolutely clear that no suit can be entertained and no relief affecting the powers and functions of a receiver may be sought or accorded other than [a challenge to the receivership appointment itself] under the provisions of § 1464(d)(6)(A) . . .

547 F. Supp. at 994.

The consequence of the Board's exclusive regulatory authority over FSLIC receiverships and the prohibition of court involvement in such receiverships is that the courts lack jurisdiction to consider claims against the receivership or any other complaints seeking relief of any type against the receivership prior to final agency action. The absence of jurisdiction to consider such claims or complaints was explained by the District Court in *North Mississippi Savings & Loan Association v. Hudspeth*, W.C. 83–193–NK–P, slip op. (N.D. Miss. March 12, 1984). In that case, the FSLIC was appointed receiver for North Mississippi after North Mississippi had filed suit to void a contract for personal services with defendant Hudspeth. Hudspeth had filed a counterclaim asserting the validity of the contract and seeking a declaratory judgment for money damages. After the receivership appointment, the FSLIC as receiver notified Hudspeth that all such contracts had been terminated and asserted that the Court lacked subject matter jurisdiction over the dispute because the Bank Board had exclusive jurisdiction over the conduct of the receiver. The court agreed, stating:

> As we have already observed, questions regarding FSLIC's termination of a contract or its power to do so as receiver should be addressed to the FHLBB, because original jurisdiction over the conduct of FSLIC or the conservator of New North lies with FHLBB. 12 U.S.C. § 1464(d)(6)(C) provides in part, that "no court may . . ., except at the instance of the Board (FHLBB), restrain or affect the exercise of powers or functions of a conservator or receiver." Rather than asserting his counterclaim, defendant first should have taken steps to present his grievances to FHLBB for an administrative determination. Upon FHLBB's failure to grant defendant's desired relief, judicial review is available under § 10 of the Administrative Procedures Act, 5 U.S.C. §§ 701, 706.

In affirming the District Court, the Fifth Circuit held that Hudspeth's claim was required to be decided through the administrative process, reasoning that "Congress wanted the FSLIC to be able to act quickly and decisively in reorganizing, operating, or dissolving a failed institution and intended that FSLIC's ability to accomplish these goals not be interfered with by other judicial or regulatory authorities." *North Mississippi Savings & Loan Association v. Hudspeth*, 756 F.2d 1096, 1101 (5th Cir. 1985). *Accord, Norwood Federal Savings & Loan Association v. California Heritage Bank*, Civil No. 85–0792, E, slip op. (S.D. Cal. August 12, 1985); *FSLIC v. Forde*, CV 85–774–WMB, slip op. (C.D. Cal. September 13, 1985); *Glen Ridge Condominiums, Ltd. et al. v. FSLIC*, CA No. 3–85–1709–R, slip op. (N.D. Tex., September 27, 1985); *Manning S&LA v.*

FHLBB, Case No. 783 C 757 slip op. (N.D. Ill., January 4, 1984).

Under these precedents, courts may not interfere with any receivership function, including the disposition of receivership assets and resolutions of claims against the receivership estate. Thus, courts may not grant injunctions against the foreclosure of receivership assets, or liens or attachments against receivership property. See, *e.g. Glen Ridge, supra.*

All claims against a receiver, including those that arise during the pendency of the receivership, must be presented to the receiver for administrative determination. *See, e.g., Manning S&LA v. FSLIC, supra; FSLIC v. Forde, supra.*

Because all claims against the receivership must be resolved administratively, it is important that an efficient and effective claims procedure be available to creditors in published form. Sections 569c.7 and 569c.9 would replace the published procedures now located separately in various sections of Parts 549 and Part 569a.

Sections 569c.7 (a) and (b) provide for notification to creditors and depositors to present their claims on forms prescribed by the receiver. Section 569c.7(c) authorizes the receiver to approve or wholly or partly disallow any claim, including any claim to security, preference or priority. Claimants would be notified of the disallowance of their claims and the reasons therefor by written notification mailed to their last address as shown on the books of the association. Section 569c.7 does not purport to be an automatic stay of foreclosure or liquidation by a secured creditor, but all creditors are generally subject to the claims process.

The FSLIC's experience indicates that many claims can be described and presented without difficulty by submitting a simple claim form. In most cases, the information provided on such a form is adequate to enable the receiver to reach a determination. However, in some cases involving more complex claims, a substantial amount of additional information is necessary in order to establish a complete record on the basis of which to reach a determination concerning a claim. Therefore, § 569c.7(c)(2) provides that the receiver may require submission of additional evidence in written form. In such event, the receiver would compile such a written record as it determined, in its discretion and subject to procedures prescribed by the Director of FSLIC with the concurrence of the General Counsel, would be sufficient to provide a reasonable basis for allowing or disallowing the claim or resolving the dispute. In the event that the receiver denied a claim in whole or part, the receiver would file a report with its determination, which would include findings on the issues raised and considered. This report would become a part of the record. The receiver would retain discretion to set limitations concerning the time, scope and size of submissions of written evidence or other material. In the event that the receiver's determination rested on a material fact not appearing in the evidence in the record, an interested party would be entitled, on timely request, to an opportunity to show the contrary.

Section 569c.7(c)(4) would codify the receiver's power, on principles of equitable subordination, to subordinate for purposes of distribution all or part of any allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest or to refuse to recognize any lien securing an equitably subordinated claim. This regulation would make it clear that common law principles of equitable subordination established in a long line of court decisions are applicable to receiverships covered by the section 569c regulations. *See, e.g., Pepper v. Litton*, 308 U.S. 295 (1939) and *Taylor v. Standard Gas & Electric Co.*, 306 U.S. 307 (1939). This regulation would make available to the receiver powers similar to those granted by section 510(c) of the Bankruptcy Code, 11 U.S.C. 510(c). The regulation would both permit the receiver to subordinate claims and to refuse to recognize liens securing equitably subordinated claims. The power to refuse to recognize liens is essential in order to render effective the receiver's power to subordinate claims.

Under the principles of equitable subordination the receiver would ordinarily subordinate claims only in situations in which it determined that inequitable conduct has occurred. No attempt is made to define the type of misconduct which may result in the subordination of the claims. Rather, such determinations would be made by the receiver on a case-by-case basis, subject to the Board's supervisory authority. With respect to any claim for which equitable subordination was being considered, the receiver would determine whether, notwithstanding the apparent legal validity of the claim, the conduct of the claimant in relation to other creditors is or was such that it would be unjust or unfair to permit the claimant to share pro rata with other claimants of equal status. In the exercise of the powers granted by § 569c.7(c)(4), it can be anticipated that it would be the claims of directors and officers and other insiders with respect to an association that would receive particularly close attention.

Section 569c.8 would deal separately with a number of important legal questions concerning the treatment of secured claims in a receivership governed by the section 569c regulations. Existing §§ 569a.8(b), 549.4(b) and 569a.7(a)(2) address to some extent the treatment of secured claims but do not do so comprehensively and do not consider certain issues that experience indicates should be resolved by the Board in the exercise of its substantive rulemaking authority under section 5(d)(11) HOLA.

Section 569c.8(c) would continue the general rule set forth in existing § 569a.7(a)(2) that recognizes claims to security to the extent that, under the laws of the state, territory, or other political unit in which the principal office of the association is located, such creditor claim is secured by, or constitutes a lien on, assets or property of any kind of the association or in which the association has an interest. Section 569c.8(a) would provide that such a claim is secured only to the extent of the value of the property or such creditor's interest in the receivership's interest in the property, and is unsecured to the extent that such value is less than the amount of the allowed claim. In recognition of the fact that the receiver may incur costs or expenses to preserve or dispose of property securing claims, § 569c.8(e) would provide that the receiver may recover from such property such costs and expenses to the extent of any benefit to the holder of the secured claims.

In addition to the principal amount of a secured creditor's claim, the claimant may seek to recover interest or other charges. The extent to which such interest or charges may be recovered is described in § 569c.8 (b) and (d). In essence, the regulation would provide that contractually determined interest, including interest on ordinary interest in the event of a failure to pay principal or interest when due, could be recovered if the value of the property, after the receiver's recovery of its expenses and costs with respect to the property, were greater than the principal amount of the claim.

Section 569c.8(d)(2) would impose limitations on the allowance of prepayment penalties or fees sought to be recovered from a receiver by secured claimants and also contemplates the possibility of the receiver's receipt of a discount when prepaying the principal

amount of an obligation of the association, which discount would be equal to the present value of the gain attributable to the claimant's opportunity to reinvest the funds at higher interest rates. With respect to prepayment penalties, § 569c.8(d)(2)(a) provides that a claim against a receiver based on a prepayment penalty or fee shall be allowed if and only if the claim is based on a written contract that provides in substance that such prepayment penalty or fee shall not exceed the present value of the loss attributable to lower interest rates available for reinvestment upon prepayment. This limitation is imposed so that the creditor of an institution in receivership will recover a prepayment penalty only in those situations where the creditor will suffer an actual financial loss as a result of the prepayment. The clearest example of such loss would be the loss suffered under certain reinvestiment conditions by a Federal Home Loan Bank having long term obligations outstanding at the time of prepayment. The proposed rule would allow penalty payments to meet such losses, but would prevent a creditor from filing a claim against the receivership that would result in a windfall to the creditor to the detriment of the other creditors of the estate. The regulation thus furthers the underlying premise of the distribution regulations, which attempt to treat all creditors similarly situated in a similar fashion.

With respect to prepayments which result in finanical benefits to claimants, § 569c.8(d)(2)(b) contemplates that a contract that provides a prepayment penalty that is to be honored by a receiver shall also provide that prepayment of the principal amount of an obligation of a receiver shall be discounted by the present value of the gain attributable to higher interest rates available for reinvestment. Again, the purpose of this provision is to prevent any gains, in the nature of windfalls, resulting from an election by the receiver to prepay an obligation. The amount saved by the receiver as a result of this provision would be available for distribution to other creditors of the estate and would further the purpose of treating all creditors similarly situated in a similar fashion.

Except for interest and prepayment penalties or fees satisfying the standards set forth in § 569c.8(d) (1) and (2), the receiver would not be permitted to allow any claim for prepayment or other penalties for liquidated damages under an express prohibition set forth in § 569.8(d)(3). The regulation would also provide that no unsecured claim for such prepayment or other penalties or liquidated damages would be allowed by the receiver.

These proposed regulations would not affect prepayment arrangements not involving a receiver.

Section 569c-8(f)(1) would remove any uncertainty concerning the effect on the rights of a secured creditor of an association of having made or renewed a loan or advance to an association when it was insolvent or close to insolvency. The regulation would specifically provide that a claim or security interest of a secured creditor shall not be disallowed or impaired solely because of such fact.

Subparagraph (2) of § 569c.8(f) would allow a secured creditor that perfected its lien only after an association's publicly available condition report discloses net worth of 2% or less of liabilities to be deemed by the receiver to have perfected its lien as of the entering into of the security agreement if it perfected within 60 days of the date of availability of the association's report; provided, however, that the "relation back" cannot supersede a lien attached and perfected prior to the actual date on which such secured creditor perfects.

Section 569c.8(g) relates to the contractual right to liquidate a repurchase agreement or reverse repurchase agreement by a "repo participant," as such term is defined in 11 U.S.C. 101. Subject to the limitations set forth therein, this provision attempts to provide repo participants with rights similar to the rights repo participants would have in the event of the bankruptcy of the other party to a repurchase agreement. As such, reference should be made to applicable provisions of the Bankruptcy Code and in particular to section 362(b)(7), section 559, and section 741 of title 11. This proposal reflects the Board's recognition of the sensitive nature of the securities market as it relates to repurchase agreements. The regulation would provide for the prompt liquidation of such contracts in a commercially reasonable manner, provided that the receiver does not have any reason to believe that the agreement involves fraud or other extraordinary circumstances or would interfere with the discretion of the receiver to administer assets and liabilities of the receivership.

The Board proposes to issue a special regulation, § 569c.8-1, concerning the status of Federal Home Loan Banks ("Banks") as secured creditors. In view of the unique position of the Banks as principal lenders and lenders of last resort to the thrift industry, and the supervisory roles of selected Bank officers, it is the Board's position that the Board's uniform rules for the rights of secured creditors in receiverships should address and distinguish certain matters in which the Banks merit particular treatment. Federal Home Loan Bank loan security agreements, usually termed "Advances Agreements", often specify the law of the state in which the Bank is located as the law pursuant to which it shall be determined that a security interest is perfected. In view of the non-discriminatory lending activity of each Bank within a District that includes more than one state, the authority to acquire advances from other Banks, and the multi-state activities of Bank members, the proposed regulation requires the receiver to recognize the validity of a "choice of laws" provision. In addition, the proposed regulation makes it clear that the receiver's power to subordinate claims under principles of equitable subordination cannot be applied to the Banks because of or related to or rising from the responsibility for supervisory and regulatory matters pursuant to authority conferred upon them by the Board and the FSLIC.

Section 569c.9 would provide a detailed procedure by which a claimant could appeal an allowance or disallowance of a claim by the receiver. The Director FSLIC could take final action on the appeal, with the concurrence of the General Counsel, in which case the Director FSLIC would provide the claimant with a statement of reasons for such final action. The Director FSLIC would also be empowered to submit the appeal for reconsideration to the Board. The Board would review the appeal, the written record of the receiver, and any recommendation of the Director FSLIC. The Board could also permit the claimant to provide further explanation or argument in support of the request and could, in its own discretion, entertain oral argument. Notice of the final determination by the Board would be given to the claimant. In the event that the decision of the Director FSLIC or of the Board rested on a material fact not appearing in the evidence in the record, an interested party would be entitled, on timely request, to show the contrary.

All claims against FSLIC receiverships would be submitted and determined in accordance with the procedures outlined in the regulations. Only after final action on such claims is judicial review available, pursuant to the Administrative Procedure Act, and such

review is limited to the record established through the claims process.

Section 569c.10 Participations, Servicing.

It has now become a common practice for insured savings and loan associations to sell or purchase participation interests in mortgage loans. Although these transactions are often handled on an informal basis with documentation that does not address all of the legal issues presented by the relationship, the parties to a participation transaction ordinarily intend that the arrangement be characterized as a sale of an interest in the loan by the "lead" lender to the participant. Occasionally, transactions resembling ordinary loan participations will be arranged for financing purposes without the intention of selling an interest in the underlying loan to the institution providing the financing. In these limited circumstances, the parties may intend to create the relationship of a debtor and creditor, rather than that of a purchaser and seller. With this one exception, however, most participation transactions in which insured savings and loan associations become involved constitute sales of interests in mortgage loans, and the parties intend that the participants be characterized as owners of their interests, and not as creditors of the "lead" lender.

Upon the appointment of a receiver for an insured institution, the treatment of loan participations becomes extremely important. If the participants are owners of interests in specific loans, they are entitled to such interests and the recognition of this entitlement provides no basis for complaint by other creditors of the receivership. If the "participants" are not owners, but are merely creditors of the receivership, no entitlement to ownership of the specific interest in the underlying loan may be recognized without preferring such creditors over other creditors of the institution.

The existing receivership regulations do not address the status of loan participations in a receivership for an insured savings and loan association. The failure to address this issue could lead to disputes among participants, other creditors of an institution, and the FSLIC as the institution's receiver. Uncertainty about the treatment of loan participations could be compounded by the existence of a number of decisions involving ordinary bankruptcies, Chapter 11 proceedings, or FDIC receiverships in which the characterization of loan participations as involving debtor/creditor or seller/purchaser relationships was discussed. This topic has also received significant attention in legal periodicals, many of which set forth arguments advanced by bankruptcy trustees that participations should be viewed as loans, rather than purchases. *See* W. Homer Drake & Kyle R. Weems, *Mortgage Loan Participations: The Trustee's Attack*, 52 Am Bankr. L. J. 23 (1978); Kenneth M. Lapine, *Loan Participations and the Savings & Loan Association: A Sleeping Giant Stirs*, 11 Akron L. R. 457 (1978); William C. Tompsett, *Interbank Relations in Loan Participation Agreements: From Structure Workout*, 101 Banking L. J. 31 (1984); Hutchins, *What Exactly is a Loan Participation?*, 9 Rut. Cam. L. J. 447 (1978); David B. Simpson, *Loan Participations: Pitfalls for Participants*, 31 Bus. Law. 1977 (1976).

The position that the relationship between a lead lender and a participant should be characterized as that of a debtor and a creditor was adopted by the court in *In Re Alda Commercial Corporation*, 327 F. Supp. 1315 (S.D. N.Y. 1971), in which a referee in bankruptcy for the Alda Corporation took the position that two individuals who agreed to be " joint venturers" with Alda and to obtain "undivided fractional interests" in certain loans made by Alda were merely creditors of the corporation. The district court adopted the referee's position, concluding that the individuals were unsecured investors in Alda's business and had no right to the collateral securing the loans in which they were granted an "undivided fractional interest."

The bankruptcy trustees for two mortgage companies relied on the *Alda* decision to support their argument that the lead-participant relationship was that a debtor-creditor in *In Re Hamilton Mortgage Co.*, Bankr. Case No. BK–1–70–264 (E.D. Tenn. 1971), and *In Re Fidelity Mortgage Co.*, Bankr. Case No. J77–00412 (S.D. Miss. 1977). The Chapter XI trustee in *Hamilton Mortgage* informed 27 insured savings and loan associations, among others, which had purchased participation interests in mortgage loans originated by the mortgage company that they were not owners of the loans, but were mere lenders. No decision concerning the validity of this position was reached because the matter was settled. However, in *Fidelity Mortgage*, the court entered an order in favor of the trustee, indicating that an assignment of an interest in loans secured by an interest in real property would have to meet all of the tests applicable to the perfection of such real property interest under Mississippi law in order to be recognized. The uncertainty created by these two cases was partially resolved by the adoption of new Section 541(d) of the Bankruptcy Code, which was designed to "make certain that secondary mortgage market sales as they are currently structured are not subject to challenge by bankruptcy trustees." *See, In Re Adana Mortgage Bankers, Inc.*, 7 B.C.D. 1085, 1094–1095 (N.D. Ga. 1980).

Judicial recognition that loan participants are owners of partial interests in loans, rather than creditors of the lead lender, has often been based on the decision in *Federal Deposit Insurance Corporation v. Mademoiselle of California*, 379 F.2d 660 (9th Cir. 1957), involving a lead lender, the San Francisco National Bank, for which the FDIC was appointed receiver. The borrower on the underlying loan set off the balance in its commercial account with the lead lender against the outstanding balance on the loan. A participant in the loan asserted a preferred claim to its share of the offset. Although the court denied the participant's right to do so, it recognized that:

> . . . A direct recovery against the receiver in preference to the general pro rata distribution of assets is authorized in situations where the facts are such that the court must say in equity that the property is not that of the bank but of the claimant.

379 F.2d at 664–665.

In order for the participant to meet its burden of proof, however, the participant was required by the court to identify "a specific fund or payment in the possession of the receiver" cognizable in equity as the participant's own property. The court concluded that the offset did not constitute such a specific fund or payment. The *Mademoiselle* case was followed in two recent cases arising out of the insolvency of the Penn Square Bank: *Chase Manhattan Bank, N.A. v. Federal Deposit Insurance Corporation*, 554 F. Supp. 251 (W.D. Okla. 1983), and *Hibernia National Bank v. Federal Deposit Insurance Corporation*, 733 F.2d 1403 (10th Cir. 1984). In each case, the courts denied a participant a share of offsets taken by borrowers on the underlying loan on the ground that such offsets did not consititute a "specific fund or payment" in the possession of the receiver. Both decisions, however, reaffirm a participant's right to assert a preferred claim in situations where there is a specific fund or payment held by the receiver with respect to the loans.

As a result of the controversy reflected by these decisions and by the discussions of loan participations by

legal commentators, the Board has concluded that it should exercise its authority pursuant to section 5(d)(11) HOLA to establish definitive guidelines concerning the treatment of mortgage participation interests by the FSLIC as receiver for insured institutions. Section 569c.10 would address this legal issue and would adopt the well recognized position in the savings and loan industry that the relationship between a lead lender and participant is that of a purchaser and a seller of an interest in the underlying loan. This general rule would be made applicable to all ordinary, non-recourse mortgage participations involving no obligation by the lead lender or its receiver to repurchase the participant's interest. Section 569c.10(a) would establish this general rule by providing that "mortgage participation interests sold or serviced for holders of such interests by the association are not and shall not be deemed by the receiver to be assets or interests of the association or the receivership."

Section 569c.10 would contain a specific proviso that would except from the general rule any sale or other agreement providing for recourse or repurchase of the participation interest. A provision requiring an association to repurchase a participant's interest may be an indication that a transaction was entered into for financing purposes and does not constitiute a sale. In recognition that in certain limited circumstances an insured institution may enter into a transaction intending that it be treated, not as an ordinary loan participation, but rather as a financing transaction in which a debtor/creditor relationship is created, § 569c.10(a) would reserve for the receiver the right to determine whether an ageement to repurchase a mortgage participation interest should be classified as a financing transaction or part of a financing transaction.

New § 569c.10(b) would deal with situations in which a savings a loan association sells a 100% interest in a loan, but retains legal title to service or supervise the servicing of the loan. The regulation would provide that, under this circumstance, the loan "becomes property of the estate only to the extent of the association's or the receiver's legal title to such property, but not to the extent of any equitable interest in such property that the receiver does not hold."

Section 569c.10 would address the principal legal issue concerning the characterization of non-recourse loan participations and would remove any uncertainty about the treatment of such participations in most circumstances. Various other legal questions that may be presented by provisions in participation agreements are addressed by other sections of the regulations and the enforceability of specific provisions may be affected by such regulations. For example, Section 569c.5 would prevent parties to a participation agreement from attempting to enforce against the receiver a provision providing for the termination or modification of the arrangement as a result of the insolvency of the institution or the appointment of a receiver or conservator.

Section 569c.11 Priorities.

Section 569c.11 would provide a uniform schedule of priorities for unsecured claims applicable to all FSLIC receiverships. Prior regulations included a priority of claims provision in § 569a.7 applicable to a State-chartered association but did not expressly address in detail the priority of claims in receiverships of Federal associations.

The new § 569c.11 priority schedule would establish that the claims of depositors of the association are entitled to the same priority as the claims of any other general creditors, except when State law provides a higher priority for depositors in State-chartered associations, in which case such higher priority would be recognized. Several categories of claims, in addition to administrative expenses of the receiver, would be accorded priority over claims of general creditors and depositors including:

Administrative expenses of the association, provided that such expenses were incurred within thirty days prior to the receiver's taking possession and were incurred for service's actually provided by accountants, attorneys, appraisers, or examiners that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the association, and

Claims for wages and salaries, including vacation, severance, sick leave pay, and contributions to employee benefit plans earned by an employee of the association within thirty days prior to the appointment of the receiver, up to a maximum of $2,000 per person, and

Claims of governmental units for unpaid taxes.

The regulation would establish several new categories of claims which would be accorded priority after claims of general creditors and depositors including:

All claims other than those which have accrued and become unconditionally fixed on or before the date of default, including claims for interest after the date of default on claims of creditors or depositors. Any claims based on an agreement for accelerated, stipulated, or liquidated damages, which claim did not accrue prior to the date of default, would be considered as not having accrued and become unconditionally fixed on or before the date of default.

Claims that have been subordinated in whole or in part to general creditor claims, which shall be given the priority specified in the written instruments that evidence such claims. Claims by holders of mutual certificates or non-withdrawable accounts, including stock, which shall have priority in accordance with the terms of the written instruments that evidence such claims.

Section 569c.11(b) would specifically address the right of all general creditors and depositors to receive interest after the date of default if a surplus is available and would provide that this interest be paid at rates adjusted monthly to reflect the average rate for U.S. Treasury Bills with maturities of not more than 91 days during the preceding three months. The right of depositors to receive post-default interest from surplus has long been recognized and was specifically upheld in *Lanigan v. Apollo Savings*, 52 Ill.2d 342, 353 (1972). The new uniform rate of interest will avoid any uncertainty about the rate to be paid and will eliminate disputes about the possible applicability of State law concerning interest due to creditors or depositors under certain circumstances.

Section 569c.11(c) complements §§ 569c.6(e)(3) and 548.2(l) with respect to the rejection or repudiation of executory contracts. The regulation would make clear that any claim arising from the rejection or repudiation of an executory contract or lease would constitute a general unsecured claim deemed to have arisen on or before the date of default. No such claim would be an administrative expense of the receiver entitled to priority under § 569.c.11(a).

Section 569.11(d) would set forth the general rule that claims shall be paid in full, or provision for their payment shall be made, in accordance with the priorities of claims, and that claims of a lesser priority will not be paid before claims of a higher priority. In the event that funds are insufficient to pay all claims of a category or class in full, distribution to claimants in such category or class shall be made *pro rata*. The regulation would establish an exception to this strict rule for situations in which distributions to claimants in one or more of the first five priority categories are necessary to conduct the receivership and the receiver determines that adequate funds exist or will be recovered during the receivership to pay in full all claims of any higher priority.

The FSLIC's experience as receiver for numerous saving and loan associations indicates that this flexibility is essential in order to perform the functions of the receivership efficiently for the benefit of all interested parties. Under the terms of the exception, advance payment to particular creditors would never be made under circumstances in which any other creditor with a higher priority will ultimately fail to receive payment in full.

Section 569c.11(e) would recognize the right of the depositors of a mutual association to receive any surplus remaining after payment of all claims in full plus interest, pursuant to § 569c.11(b). The regulation would also provide that such surplus would be distributed to depositors in proportion to the balance of their accounts as of the date of default.

Section 569c.12 Audits.

This section is based upon existing §§ 569a.10 and 549.6(b) requiring annual audits of the receiverships. The regulation provides for such audits to be performed by an independent Certified Public Accountant unless otherwise directed by the Director FSLIC. The regulation also provides that the expense of the audit shall be paid from the assets of the association in receivership.

Section 569c.13 Reports; Accounting Practices.

This regulation is based on existing §§ 569a.11 and 549.6(c). The new regulation would require annual reports as of September 30 of each year to the Board, on forms prescribed by the Board or the receiver. Other reports may from time to time be required by the Board or the Director FSLIC. Each of these reports would be made available for public inspection. Apart from the reports required by the regulations, no other reports would be required of the FSLIC as receiver.

Section 569c.14 Final Discharge and Release of Receiver.

This regulation is based on existing §§ 569c.12 and 549.7. The regulation provides for the filing of a final report at the time the receiver recommends final distribution of the assets of an institution or at such other time as the receiver shall be relieved of its duties. Section 569c.14(b) provides for a final audit and for the approval or disapproval by the Board of the receiver's accounts. In the event that such accounts are approved, the receiver shall be given a complete and final discharge and release.

Section 569c.15 Purchase and Assumption Transaction.

A receivership of an insured institution is often immediately followed by a "purchase and assumption" transaction—one of the alternatives specifically made available to the FSLIC and the FDIC to deal with the default of an insured savings and loan association or a bank. The benefits of such transactions have been discussed in numerous court decisions upholding the authority of the FSLIC and the FDIC to enter into such arrangements in a variety of circumstances. *See FDIC* v. *Merchants National Bank*, 725 F.2d 634 (11th Cir. 1984), *cert denied*, 105 S.Ct. 114 (1984); *Washington Federal Savings and Loan Association* v. *Federal Home Loan Bank Board*, 526 F. Supp. 343 (N.D. Ohio 1981); *Gunter* v. *Hutcheson*, 674 F.2d 862 (11th Cir. 1982), *cert denied*, 459 U.S. 826 (1982).

Because of the important differences between a receivership followed by a purchase and assumption transaction and a liquidating receivership accompanied by the payment of insurance on depositors' accounts, existing § 569a.13 specifically addresses purchase and assumption transactions and provides that certain requirements of the general receivership regulations do not apply to receiverships for institutions that become the subject of a purchase and assumption transaction. Section 569c.15 would continue to address and recognize the unique characteristics of receiverships followed by purchase and assumption transactions and it sets forth certain special rules applicable to such transactions.

Section 569c.15(a) defines a "purchase and assumption" transaction as a receivership proceeding in which the creditor liabilities of an association, not including obligations to holders of subordinated debt of the association, are fully assumed by another insured institution, a bank the deposits of which are insured by the FDIC, or by the FSLIC in its corporate capacity, promptly following the receiver's taking possession of the association. Section 569c.15(b) provides that the new claims procedures and priority rules set forth in §§ 569c.7, 569c.8, 569c.9, and 569c.11 shall not apply to the FSLIC as receiver for an association that becomes the subject of a purchase and assumption transaction. Given the fact that a purchase and assumption transaction will provide for the assumption of creditor and depositor obligations of the association, the detailed claims procedures prescribed by the new receivership regulations are unnecessary. However, § 569c.15(d) provides that, in the event that a claim is filed against the receiver after a purchase and assumption transaction, the receiver shall follow the procedures set forth in § 569c.7 with respect to determining the validity of the claim, and a claimant may request reconsideration pursuant to the appeal procedure set forth in § 569c.9. Section 569c.15(b) would also provide for the Board's establishment by order or resolution of other powers and duties for the FSLIC as receiver for an association that becomes the subject of a purchase and assumption transaction, which powers and duties may deal with any claims issues that may arise.

Section 569c.15(c) protects the Board's authority to provide for a purchase and assumption transaction by providing that no right of a secured creditor to liquidate security or of any party to terminate a contract or lease with the association shall arise as a result of the appointment of a receiver for the association. This regulation complements and expands the effect of § 569c.5 in order to assure that purchase and assumption transactions are not frustrated by efforts of secured creditors or other contracting parties to enforce remedial provisions under their contracts or arrangements with the association in receivership.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (1980), the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in the supplementary information regarding the proposal.

2. *Small institutions to which the proposed rule would apply.* The proposed rule would apply to all institutions the accounts of which are insured by the FSLIC or that are chartered by the Board.

3. *Impact of the proposed rule on small institutions.* The proposal will affect all insured associations equally and will not have an adverse impact on small institutions. The proposed rule would not have a disproportionate impact on small institutions, since the appointment of a receiver or conservator pursuant to the proposed rule would continue to be a function of the institution's net worth, business practices, and compliance with the law, not the size of the institution. Further, the proposal would not involve any significant new reporting or compliance

costs that could impose a disproportionate burden on small institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that may duplicate, overlap, or conflict with this proposal. The appointment of the Federal Deposit Insurance Corporation as receiver of certain federal savings banks is addressed, very briefly, by certain provisions of the Federal Deposit Insurance Act.

5. *Alternatives to the proposed rule.* There are no alternatives that would have less impact on small institutions, consistent with the intended result, the concerns expressed in the supplementary information set forth above, and the existing statutory requirements concerning receiverships and conservatorships.

List of Subjects

12 CFR Parts 547, 548, 549 and 569a

Savings and loan associations.

12 CFR Part 563

Bank deposit insurance, Investments, Savings and loan associations, Reporting and recordkeeping requirements.

12 CFR Part 569b

Savings and loan associations.

12 CFR Part 569c

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby proposes to amend Part 563, revise Parts 547, 548, 549, Subchapter C, Chapter V, and Part 569a, Subchapter D, Chapter V, and to add Parts 569b, 569c, Subchapter D, Chapter V of Title 12 *Code of Federal Regulations*, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

1. Revise Part 547 as follows:

PART 547—APPOINTMENT OF CONSERVATORS AND RECEIVERS

Sec.

547.1 Grounds for appointment of conservator or receiver.
547.2 Appointment of conservator or receiver.
547.3 Appointment on other bases.
547.4 Notice of appointment.
547.5 Action for removal of conservator or receiver.
547.6 Receiver for a Federal association or a savings bank.
547.7 Possession by conservator or receiver.
547.8 Surrender of possession by conservator or receiver.

Authority: Sec. 5, 48 Stat. 132, as amended, 12 U.S.C. 1464, Reorg. Plan No. 3 of 1947.

§ 547.1 Grounds for appointment of conservator or receiver.

(a) The grounds for the appointment of a conservator or receiver for a Federal association shall consist of any one or more of the following:

(1) Insolvency of the Federal association, in that its assets are less than its obligations to its creditors and others, including its members; for the purposes of this Part 547, "members" means holders of withdrawable accounts;

(2) Substantial dissipation of assets or earnings due to any violation or violations of law, rules, or regulations, or to any unsafe or unsound practice or practices;

(3) The association is in an unsafe or unsound condition to transact business;

(4) Willful violation of a "cease-and-desist order which has become final," as that term is defined in subsection (d) of section 5 of the Act;

(5) The concealment of books, papers, records, or assets of the association or refusal to submit books, papers, records, or affairs of the association for inspection to any examiner or to any lawful agent of the Board.

(b) In addition to other bases on which the Board may determine that an association is in an unsafe or unsound condition to transact business, pursuant to section 5(b)(1)(D) of the Act, any Federal association which, except as authorized in writing by the Board, fails to make full payment of any withdrawal when due shall be deemed to be in an unsafe or unsound condition to transact business within the meaning of paragraph (a)(3) of this section. Rules and procedures prescribed by a Federal association's charter or by regulation with respect to the payment of withdrawals in the event an association does not pay all withdrawals in full shall not, for purposes of said section 5(b)(1)(D), of section 5(d)(6)(A)(iii) of the Act, or of said paragraph (a)(3), be deemed to be such an authorization in writing.

§ 547.2 Appointment of conservator or receiver.

If, in the opinion of the Board, a ground exists for the appointment of a conservator or receiver for a Federal association as set forth in § 547.1, the Board may appoint ex parte and without notice a conservator or receiver for the association.

§ 547.3 Appointment on other bases.

The Board may, without any requirement of notice, hearing, or other action, appoint a conservator or receiver for a Federal association in the event that—

(a) The association, by resolution of its board of directors or of its members, consents to such appointment, or

(b) The association is removed from membership in any Federal Home Loan Bank or its status as an institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation is terminated.

§ 547.4 Notice of appointment.

If the Board appoints a conservator or receiver under this Part, the Secretary to the Board shall mail a certified copy of the Board's action to the association's address as it appears on the Board's records, and notice of the appointment shall be filed immediately for publication in the **Federal Register**

§ 547.5 Action for removal of conservator or receiver.

If a conservator or receiver for a Federal association is appointed pursuant to § 547.2, the association may, within thirty (30) days thereafter, bring an action in the United States District Court for the judicial district in which the home office of such association is located, or in the United States District Court for the District of Columbia, for an order requiring the Board to remove such conservator or receiver. Notwithstanding other provisions of this Part, the board of directors of an association for which a conservator or receiver has been appointed by the Board may meet following the appointment and may authorize the filing of an action in the name of the association seeking an order requiring the Board to remove the conservator or receiver. No such action in the name of the association may be instituted without the authorization of the board of directors of the association.

§ 547.6 Receiver for a Federal association or a savings bank.

Except as provided in the second sentence of this § 547.6, the Board shall appoint only the Federal Savings and Loan Insurance Corporation as receiver for a Federal association and such appointment shall be for the purpose of liquidation. The Board shall appoint only the Federal Deposit Insurance Corporation as receiver for a Federal association that is a federal savings bank chartered pursuant to subsection (o) of section 5 of the Act, if the deposits of such savings bank are insured by the Federal Deposit Insurance Corporation as of the time of appointment.

§ 547.7 Possession by conservator or receiver.

(a) A receiver shall take possession of the Federal association in accordance with the procedures of Part 569c of the rules and regulations of the Federal Savings and Loan Insurance Corporation.

(b) A conservator shall take possession of the Federal association in accordance with the terms of the appointment and, at the time of demanding possession, shall notify the officer or employee of the association, if any, who shall be in the home office of the association and appears to be in charge of such office, of the action of the Board. If no officer or employee of the association is present in the home office, notice shall be given to the officer or employee, if any, who shall be in and appears to be in charge of executive officer quarters or the management office of the association.

(c) A conservator shall have all of the powers of the association, its members, its officers and directors, or any of them. A receiver, by operation of law and without any conveyance or other instrument, act, or deed shall succeed to all the rights, titles, powers, and privileges of the Federal association and shall succeed to the rights, powers, and privileges of its members, its officers and directors, or any of them. The association's members, stockholders, or directors, or any of them, shall not thereafter, except as hereinafter expressly provided, have or exercise any such rights, powers, or privileges, or act in connection with any assets or property of any nature of the association. A conservator shall furnish bond in form and amount and with surety acceptable to the Director. The Board may, at any time—

(1) Direct the conservator or receiver to place the Federal association in the hands of its previous or a newly constituted management;

(2) Provide for a meeting or meetings of the members or stockholders for any purpose, including, without being limited to, the election of directors or an increase in the number of directors, or both, or the election of a new board of directors; and

(3) Provide for a meeting or meetings of the directors for any purpose, including, without being limited to, the filling of vacancies on the board of directors, the removal of officers, and the election of new officers, or for any of such purposes.

Any such meeting of members, stockholders, or directors may, as provided by the Board, be supervised or conducted by a representative of the Board. The Board may, without any requirement of notice, hearing, or other action, replace a conservator with another conservator or with a receiver.

§ 547.8 Surrender of possession by conservator or receiver.

(a) *To the association.* In the event the Board shall restore a Federal association that is in the hands of a conservator or receiver to its management, such action, except as the Board may otherwise provide, shall restore the rights, powers, and privileges of its members, stockholders, officers, and directors. The return of a Federal association to its management from the possession of a receiver shall, by operation of law and without any conveyance or other instrument, act, or deed, vest in such Federal association title to all property held by the receiver in its capacity as receiver for such association as of the date determined by the Board.

(b) *To a receiver.* If a conservator is in possession of a Federal association at the time of the appointment of a receiver for such association, such conservator shall, as may be required by the Board, surrender possession of such association to such receiver.

(c) The removal of a conservator or receiver, placement of an association under its previous or new management, or replacement of a conservator by a receiver shall not impair the validity of the exercise of powers or functions of a conservator or receiver, and no action of or transaction effected by such receiver or conservator shall be void or voidable by reason of the removal.

PART 548—POWERS OF CONSERVATOR AND CONDUCT OF CONSERVATORSHIPS

2. Revise Part 548 as follows:

Sec.

548.1 Procedure upon taking possession.
548.2 Powers and duties of conservator.
548.3 Payments on accounts.
548.4 Inventory; examinations and audits, and costs thereof; accounting practices.
548.5 Final discharge and release of conservator.
548.6 Inspection of reports.
548.7 Delegation by conservator.

Authority: Sec. 5, 48 Stat. 132, as amended, 12 U.S.C. 1464, Reorg. Plan No. 3 of 1947.

§ 548.1 Procedure upon taking possession.

Upon taking possession of a Federal association, the conservator shall forthwith:

(a) Notify, by written notice served personally or by certified mail, telegraph, or machine readable transmission, all banks, trust companies and all other individuals, partnerships, corporations, and associations known to such conservator to be holding or in possession of any assets of such association.

(b) File with the Secretary to the Board a statement (1) that the conservator has taken possession of such Federal association and (2) of the time of such taking of possession; and such statement shall be conclusive evidence of such taking of possession and of the time of such taking of possession, and

(c) Post a notice in substantially the following form on the door of the home office of such association:

_____ Federal Savings and Loan Association

XXX, _____, _____, is in the possession and charge of the undersigned as conservator under appointment by the Federal Home Loan Bank Board.

_____

(Conservator)

_____

(Date)

§ 548.2 Powers and duties of conservator.

The conservator, subject to the direction and supervision of the Director, shall, after taking possession of the association, take such action within authority granted by statute, regulation, or order of the Board as may be necessary to conserve the assets of the association. The conservator shall forthwith, as conservator, in the name of the association, or in the name of both, collect all obligations and money due the association, and do all things desirable or expedient in the discretion of the conservator to carry on business of the association to an extent consistent with the appointment and to preserve and conserve the assets and property of every nature of such association, but shall not declare, credit, pay, or distribute dividends on stock, except with the approval of the Board or of the Director. The conservator:

(a) May exercise all the rights and powers of such association;

(b) May, with the approval of the Board or of the Director, pay off and discharge any taxes, assessments, liens, claims, or charges of any nature against the association or the conservator or any assets or property of any nature of such association;

(c) May pay any sum the conservator deems necessary or advisable:

(1) For or in connection with the preservation, maintenance, conservation, protection or salvage of any asset or property of such association, or

(2) With the approval of the Board or the Director, for or in connection with the remodeling, repair, rehabilitation or improvement not necessary for such preservation, maintenance, conservation, protection, or salvage of any asset or property of such association;

(d) May, with the approval of the Board or the Director:

(1) Pay any sum the conservator deems necessary or advisable to preserve, conserve, or protect any asset or property on which the association or the conservator has a lien or in which the association or the conserv ator has an interest of value; or

(2) Pay off and discharge any taxes, assessments, liens, claims, or charges of any nature against any asset or property on which the association or conservator has a lien or in which the association or the conservator has an interest of value;

(e) May, under the direction and supervision of the General Counsel of the Board, institute, prosecute, maintain, defend, intervene, and otherwise participate in any and all actions, suits or other legal proceedings by and against the conservator or association or in which the conservator, the association, or its creditors or members, or any of them, shall have an interest, and in every way to represent such association, its members and creditors;

(f)(1) May, with the approval of the Director, employ such assistants and employees as the conservator may deem necessary for the proper administration of the conservatorship, and shall by bond cover all such assistants and employees in form satisfactory to such conservator and to the Director, the cost of the same and the cost of the conservator's bond to be paid out of the assets of the association in the possession of the conservator; and

(2) Shall employ any attorney or attorneys designated by the General Counsel of the Board, in connection with litigation or othewise to give legal advice and assistance, for the conservatorship generally or in particular instances, and pay retainers and compensation of such attorney or attorneys, together with all expenses, including, but not limited to, the costs and expenses of any litigation, as approved by the General Counsel or an attorney of the Office of the General Counsel designated by the General Counsel, out of the assets of the association;

(g) May execute, acknowledge, and deliver any and all deeds, contracts, leases, assignments, bills of sale, releases, extensions, satisfactions, and other instruments necessary or proper for any purposes, including, but not limited to, the effectuation or termination of any sale, lease, or transfer of real, personal, or mixed property; and any deed or other instrument executed pursuant to the authority hereby given shall be as valid and effectual for all purposes as if the same had been executed, as the act and deed of the association or otherwise, by the officers of such association by authority of its board of directors;

(h) Close such bank accounts and open such additional bank accounts for the association as the conservator shall deem advisable, but no account shall be retained or opened in a bank or association that is not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, other than a Federal Home Loan Bank, except with the approval of the Board;

(i)(1) May, with the approval of the Board or the Director, sell for cash any mortgage, deed of trust, chose in action, bond, note, contract, judgment or decree, or share or certificate of share of stock or debt, owing to such association, at not less than the actual amount owing the association thereon or the face or par value thereof, and

(2) May, with the approval of the Board, or on terms and conditions approved by the Board, sell for cash or on terms, or exchange or otherwise dispose of, at less than the amount owing the association thereon or the face or par value thereof, in whole or in part, any mortgage, deed of trust, chose in action, bond, note, contract, judgment or decree, share or certificate of share of stock or debt, owing to such association, *provided*, however, that such sale, exchange, or disposal may be made by the conservator, if approved by the Director, at an amount not less than market value as established by appraisal or other evidence satisfactory to the Director;

(j)(1) May lease on a month to month basis, or for a term of not to exceed one year, any asset or property of the association, and

(2) May, with the approval of the Board, or on terms and conditions approved by the Board, sell for cash or on terms, lease for a period of more than one year, exchange or otherwise dispose of, in whole or in part, any or all of the assets and property of the association, real, personal, and mixed, tangible and intangible, of any nature;

(k) May, with the approval of the Board or the Director, or on terms and conditions approved by the Board or the Director, surrender, abandon, and release any choses in action, or other assets or property of any nature, whether the subject of pending litigation or not, and reject or repudiate any lease or executory contract which the conservator considers burdensome;

(l) May, with the approval of the Board or the Director or on terms and conditions approved by the Board, settle, compromise, or obtain the release of, for cash or other consideration, claims and demands against or in favor of such association or the conservator;

(m) May, with the approval of the Board or the Director, borrow money in any amount and from any source and in any manner, and execute, acknowledge, and deliver notes, certificates, and other evidence of indebtedness therefor and secure the repayment thereof by the mortgage, pledge, assignment in trust, or hypothecation of any or all of the property, whether real, personal, or mixed, of such association, and such borrowing may be for any purpose, including but not limited to, protecting or preserving the assets in the conservator's possession, paying creditor obligations, providing for the expense of administration, or aiding in the reopening or reorganization of such association;

(n) May pay out of the assets of the conservatorship all costs and expenses of the conservatorship, including the salary and expenses of the conservator as approved by the Director, and all costs of carrying out or exercising the rights, powers, privileges, and duties of the conservator, all as determined by the conservator, except as otherwise provided herein; and

(o) May do such things, and have such rights, powers, privileges, immunities, and duties, whether or not otherwise granted in these rules and regulations, as shall be authorized, directed, conferred, or imposed from time to time in specific cases by order of the Board or by amendment of these rules and regulations.

For the purposes of this section, assets and property, including, but not limited to, any mortgage, deed of trust, chose in action, bond, note, contract, judgment or decree, share or certificate of share of stock, debt, or interest in property of the association, shall include any such asset or property of the conservator.

§ 548.3 Payments on Accounts.

The conservator shall not accept any deposits or payments on accounts, except as the Board shall direct by order, which order or orders shall be posted in a conspicuous place in the principal office of the conservator for conducting the affairs of the association, and such deposits or payments shall be accepted only in accordance with such order or orders.

§ 548.4 Inventory; examinations and audits, and costs thereof; accounting practices.

(a) *Inventory.* As soon as practicable after taking possession, the conservator shall make an inventory of the assets of such association as of the date of taking possession, showing the value as carried on the books of the association and the security therefor, if any, and including a brief description of each such asset and such security. Assets may be listed in such groups or classes as shall, to the satisfaction of the Director, afford information as to their character and book value, and the inventory shall include a record of the creditor and account liabilities of the association. One copy of such inventory shall be filed promptly with the Secretary to the Board, one copy with the Director, and one copy shall, during the conservatorship, be retained in the principal office of the association.

(b) *Examinations and audits, and costs thereof.* Each Federal association for which a conservator has been appointed may be examined or audited (with appraisals when deemed advisable by the Board or the Director) by the Office of Examinations and Supervision of the Board, as directed by the Board. The cost of examinations, including office analysis thereof, audits, and any appraisals made in connection therewith, shall be paid from the assets of the association unless otherwise ordered by the Board.

(c) *Accounting practices; reports.* The conservator shall follow such accounting practices as may, from time to time, be prescribed by the Director. The conservator shall make such reports as may be required by the Board or the Director.

§ 548.5 Final discharge and release of conservator.

(a) *Final report.* At such time as the conservator shall be relieved of duties, the conservator shall file with the Board a detailed report in form satisfactory to the Board.

(b) *Final discharge.* Unless otherwise directed by the Board, upon the completion of the duties of the conservator or at such time as the conservator shall be otherwise relieved of duties, an examination and audit may be directed by the Board in connection with the final report of the conservator. The accounts of the conservator shall be approved or disapproved by the Board, and, if approved, the conservator shall thereupon be completely and finally released.

§ 548.6 Inspection of reports.

All inventories, statements, and reports of the conservator shall be in at least three copies unless otherwise directed by the Board or the Director. One copy shall be filed with the Secretary to the Board, one copy with the Director, and each of the inventories, statements, and reports shall constitute permanent records of each conservatorship open for inspection at such times and on such conditions as may be from time to time directed by the Board or, in the absence of such directions, whenever the office of the Secretary to the Board shall be open for business.

§ 548.7 Delegation by conservator.

The conservator may delegate to such person as the conservator may designate any or all of the powers and authorities vested in the conservator by or under §§ 548.2, 548.3 and 548.4.

3. Revise Part 549 as follows:

PART 549—CONDUCT OF RECEIVERSHIPS

Sec.

549.1 Federal Savings and Loan Insurance Corporation as Receiver.

549.2 Federal Deposit Insurance Corporation as Receiver.

Authority: Sec. 5, 48 Stat. 132, as amended, 12 U.S.C. 1464, Reorg. Plan No. 3 of 1947.

§ 549.1 Federal Savings and Loan Insurance Corporation as receiver.

The receivership of a Federal association or federal savings bank for which the Board has appointed the Federal Savings and Loan Insurance Corporation as receiver shall be conducted pursuant to the rules and regulations of the Board in Part 569c of the Rules and Regulations of the Federal Savings and Loan Insurance Corporation.

§ 549.2 Federal Deposit Insurance Corporation as receiver.

The receivership of a federal savings bank chartered under section 5(o) of the Act, the deposits of which are insured by the Federal Deposit Insurance Corporation at the time of the appointment of a receiver, shall be conducted by the Federal Deposit Insurance Corporation as the receiver appointed by the Board. The Federal Deposit Insurance Corporation as receiver shall have the powers granted by section 5(d)(6) of the Act to the Federal Savings and Loan Insurance Corporation as receiver of a Federal association and shall conduct the receivership of such federal savings bank pursuant to the rules and regulations of the Board in Part 569c of the Rules and Regulations of the Federal Savings and Loan Insurance Corporation and pursuant to section 12(a) of the Federal Deposit Insurance Act, 12 U.S.C. 1822(a).

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

4. The authority citation for Part 563 would continue to read as follows:

Authority: Secs. 401–405, 48 Stat. 1255–1260, as amended; 12 U.S.C. 1724–1728, Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp.

5. A new § 563.8–3 shall be added, to read as follows:

§ 563.8–3 Compliance with receivership rules.

Any security issued by an insured institution for borrowing and any agreement or arrangement entered into by an insured institution for borrowing from any source whatsoever and any payment obligation of such institution shall be consistent with the rules and regulations of the Corporation in Part 569c concerning rights and claims of secured and unsecured creditors in receivership.

6. A new sentence shall be added at the end of section 563.39(a), to read as follows:

§ 563.39 Employment contracts.

(a) *General.* * * * The making of an employment contract would also constitute an unsafe and unsound practice if such contract provides for a bonus, severance pay, or other compensation that is paid in anticipation of, or that is any way related to, the appointment of a receiver or a conservator for the institution, provision of assistance under section 406(f) of the National Housing Act, the approval of a supervisory merger, or a determination that the institution is in default, insolvent, or in an unsafe or unsound condition to transact business.

* * * * *

7. Revise Part 569a as follows:

PART 569a—RULES FOR SECTION 406(c)(1) OF THE NATIONAL HOUSING ACT

Sec.

569a.1 Definitions

569a.2 Appointment of the Corporation as receiver or custodian under state law

569a.3 Appointment of another receiver or custodian under state law

569a.4 Appointment of conservator or receiver under section 406(c)(1)(B)

569a.5 Conduct of receivership under section 406(c)(1)(B)

Sec.

569a.6 Conduct of conservatorship under section 406(c)(1)(B)
569a.7 Notice of appointment under section 406(c)(1)(B).
569a.8 Action for removal of receiver or conservator.

Authority. Sec. 5, 48 Stat. 132 as amended; 12 U.S.C. 1464; sec. 402, 406, 48 Stat. 1251, 1259, as amended; 12 U.S.C. 1725, 1729; Reorg. Plan No. 3 of 1947.

§ 569a.1 Definitions.

As used in this Part—

(a) "Agent" means the Director FSLIC, a Principal Supervisory Agent of the Board, an agent designated by the Board pursuant to §§ 501.10 or 501.11 of this chapter or otherwise, or an officer or employee of the Corporation designated by the Director FSLIC to act as an Agent under Parts 569a, and 569b, or 569c of this chapter.

(b) "Board" means the Federal Home Loan Bank Board;

(c) "Corporation" means the Federal Savings and Loan Insurance Corporation;

(d) "default" means an adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured institution for the purpose of liquidation;

(e) "Director FSLIC" means the Director or Deputy Director, Office of the Federal Savings and Loan Insurance Corporation;

(f) "Federal association" means a Federal savings and loan association or a federal savings bank chartered by the Board under section 5 of HOLA;

(g) "HOLA" means the Home Owners' Loan Act of 1933, as amended;

(h) "NHA" means Title IV of the National Housing Act of 1934, as amended;

(i) "Secretary" means the Secretary to the Board; and

(j) "Special Representative" means an officer, employee, or agent of the Board or the Corporation designated by the Board or the Director FSLIC or pursuant to an order or resolution of the Board.

§ 569a.2 Appointment of the Corporation as receiver or custodian under state law.

(a) In the event an insured institution other than a Federal association is in default, the Corporation shall accept appointment as conservator, receiver, or other legal custodian for the purpose of liquidation from the court or other public authority having the power of appointment. Notice of such appointment by a court or other public authority may be delivered to an Agent or given by certified mail to the Secretary or the Director FSLIC. Acceptance of appointment by the Corporation shall be effective as provided by an order or resolution of the Board. The Corporation shall not accept appointment as co-receiver.

(b) If the Corporation is appointed as conservator, receiver, or other legal custodian for an insured institution other than a Federal association pursuant to paragraph (a) of this section, it shall have the authority conferred upon the Corporation by section 406(b)(1) of NHA with respect to Federal associations and the authority conferred upon a conservator, receiver, or other legal custodian by or under state law. The Corporation as receiver shall take possession of such institution in default and conduct the receivership in accordance with the requirements and authority of the law under which the institution was chartered, unless the Corporation is thereafter appointed as conservator or receiver by the Board pursuant to section 406(c)(1)(B) or 406(c)(2) of the NHA, in which case it shall conduct the receivership in accordance with the requirements of HOLA, NHA and the applicable sections of these regulations.

(c) Notice of appointment shall be filed by the Secretary for publication in the **Federal Register.**

§ 569a.3 Appointment of another receiver or custodian under state law.

If a conservator, receiver, or other legal custodian, not the Corporation, is appointed for the purpose of liquidating an insured institution other than a Federal association, the Corporation may bid for and purchase any or all of the assets of such institution. The Corporation may bid for and purchase any or all of the assets of such institution at market value without further action or approval by the Board, if such bid and purchase are approved, and market value determined, by the Director FSLIC, who may act and execute documents of bid and purchase on behalf of the Corporation in implementing this sentence.

§ 569a.4 Appointment of conservator or receiver under § 406(c)(1)(B)

(a) Pursuant to section 406(c)(1)(B) of NHA, in the event that the Board determines that any of the grounds specified in section 5(d)(6)(A) (i) (ii), or (iii) of HOLA exist with respect to an insured institution other than a Federal association, the Board shall have exclusive power and jurisdiction to appoint the Corporation as sole conservator or receiver of such institution. Any such appointment of a receiver shall be for the purpose of liquidation. Any such appointment of a conservator shall not be for the purpose of liquidation.

(b) Except as provided in paragraph (c) of this section, the authority to appoint the Corporation as sole conservator or receiver pursuant to paragraph (a) of this section shall not be exercised without the written approval of the State official having jurisdiction over the state-chartered insured institution that the grounds specified by the Board for such exercise exist; and the Corporation as sole conservator or receiver appointed by the Board pursuant to paragraph (a) of this section shall not exercise or implement its authority pursuant to such appointment by the Board unless such written approval is received by an Agent or the conditions of paragraph (c) of this section have been satisfied.

(c) Notwithstanding the absence of the written approval of a State official required pursuant to paragraph (b) of this section, the Corporation as sole conservator or receiver appointed by the Board pursuant to paragraph (a) of this section may exercise and implement its authority as conservator or receiver if—

(1) Ninety (90) days have passed since receipt by the State of the Board's determination that a ground exists or grounds exist for the exercise of its authority under paragraph (a) of this section, the Board has responded in writing to the State's written reasons, if any, for withholding approval, and the Board has confirmed or reauthorized the appointment of the Corporation as sole conservator or receiver by unanimous vote of the Board, or

(2) The Corporation has been appointed conservator, receiver, or other legal custodian pursuant to § 569a.2 and section 406(c)(1)(A) of NHA.

(d) The State shall be deemed to have received the Board's determination pursuant to the first sentence of paragraph (c) of this section upon the delivery of an order or resolution of the Board setting forth such determination to the State official having jurisdiction over the state-chartered insured institution, a deputy of such official, any supervisor of such official, or any person authorized or apparently authorized to sign for receipt of mail or other deliveries to such official, deputy, or supervisor.

(e) The Board's appointment and the exercise thereof pursuant to section 406(c)(1)(B) of NHA and this section 569a.4 shall be ex parte and without notice.

§ 569a.5 Conduct of receivership under section 406(c)(1)(B).

The Corporation as sole receiver of an insured institution other than a Federal association appointed by the Board pursuant to section 569a.4 shall take possession of the institution and conduct the receivership pursuant to the rules and regulations of Part 569c of this chapter. The Corporation as receiver shall also have the authority conferred upon the Corporation by section 406(b)(1) of NHA with respect to Federal associations.

§ 569a.6 Conduct of conservatorship under § 406(c)((1)(B).

The Corporation as sole conservator of an insured institution other than a Federal association appointed by the Board pursuant to § 569a.4 shall take possession of the institution and conduct the conservatorship pursuant to § 547.7 (b) and (c) and Part 548 of this chapter as if the institution were a Federal association, provided, however, that the Special Representative of the Corporation as sole conservator of such institution shall have and exercise all of the rights, powers, and duties of a conservator of a Federal association in said § 547.7 (b) and (c) and Part 548 of this chapter.

§ 569a.7 Notice of appointment under section 406(c)(1)(B).

Upon satisfaction of the conditions for the exercise of the Board's appointment authority pursuant to paragraph (b) or paragraph (c) of § 569a.4, the Secretary shall mail a certified copy of the order or resolution of appointment by certified mail to the address of the institution as its shall appear on the records of the Board or the Corporation, and to the State official having jurisdiction over such state-chartered insured institution. The Secretary shall also file notice of the appointment of the Corporation as sole receiver or conservator pursuant to section 406(c)(1)(B) of NHA for publication in the **Federal Register.**

§ 569a.8 Action for removal of receiver or conservator.

(a) If a conservator or receiver for an insured institution is appointed pursuant to section 406(c)(1)(B) of NHA, the institution may, within 30 days thereafter, bring an action in the United States District Court for the judicial district in which the home office of such association is located, or in the United States District Court for the District of Columbia, for an order requiring the Board to remove such conservator or receiver. Notwithstanding the provisions of Part 569c, the board of directors of an institution for which a conservator or receiver has been appointed by the Board may meet following the appointment and may authorize the filing of an action in the name of the institution seeking an order requiring the Board to remove the conservator or receiver. No such action in the name of the association may be instituted without the authorization of the board of directors of the association.

(b) The removal of a conservator or receiver appointed pursuant to section 406(c)(1)(B) of NHA shall not impair the validity of the exercise of the powers or functions of the conservator or receiver, and no action of or transaction effected by such conservator or receiver shall be void or voidable by reason of the removal.

8. Add Part 569b as follows:

PART 569b—RECEIVERSHIPS UNDER SECTION 406(c)(2) OF THE NATIONAL HOUSING ACT

Sec.

569b.1 Definitions
569b.2 Grounds for appointment of receiver
569b.3 Appointment of receiver
569b.4 Notice of Appointment
569b.5 Action for removal of receiver

Authority: Sec. 5, 48 Stat. 132 as amended; 12 U.S.C. 1464; secs. 402, 406, 48 Stat. 1251, 1259, as amended; 12 U.S.C. 1725, 1729; Reorg. Plan No. 3 of 1947.

§ 569b.1 Definitions.

As used in this Part—

(a) The definitions set forth in § 569a.1 shall apply; and

(b) "State" means a state, the Commonwealth of Puerto Rico, a territory or possession, or any place subject to the jurisidiction of the United States.

§ 569b.2 Grounds for appointment of receiver.

(a) In the event the Board determines:

(1) That (i) a conservator, receiver, or other legal custodian (whether or not the Corporation) has been or is hereafter appointed for an insured institution which is not a Federal association other than by the Board (whether or not such institution is in default) and that the appointment of such conservator, receiver, or custodian, or any combination thereof, has been outstanding for a period of at least fifteen (15) consecutive days, or (ii) an insured institution (other than a Federal association) has been closed by or under the laws of any State;

(2) That one or more of the grounds specified in paragraph (6)(A) of section 5(d) of the HOLA, existed with respect to such institution at the time a conservator, receiver, or other legal custodian was appointed, or at the time such institution was closed, or exists thereafter during the appointment of the conservator, receiver, or other legal custodian or while the institution is closed; and

(3) That one or more of the holders of withdrawable accounts in such institution is unable to obtain a withdrawal of his or her account, in whole or in part;

the Board shall have exclusive power and jurisdiction to appoint the Corporation as sole receiver for such institution.

(b) For the purposes of paragraph (a) of this section, a determination that an insured institution has been closed by or under the laws of a State is deemed to be a determination that one or more of the holders of withdrawable accounts in such institution is unable to obtain a withdrawal of his or her account in whole or in part. The determination described in paragraph (a)(3) of this section must be made independently, however, as a ground for appointment of a receiver pursuant to section 406(c)(2) of NHA and paragraph (a) of this § 569b.2 if the Board makes the determination described in paragraph (a)(1)(i) of this section and does not make the determination described in paragraph (a)(1)(ii) of this section.

(c) In determining that an insured institution has been closed by or under the laws of any State, the Board may rely upon the order or action of such State, court of competent jurisdiction, or public authority authorized pursuant to state law closing or directing the closing of such institution, taking possession of such institution for the purpose of liquidation, directing the taking of possession of such institution for the purpose of liquidation, or ordering the liquidation of or liquidating such institution. Such order or action shall be sufficient ground for such determination of the Board notwithstanding a ruling or determination by approriate authority invalidating such order or action subsequent to the determination of the Board, and without regard to the duration of a closing.

§ 569b.3 Appointment of receiver.

If the Board makes the determinations specified in § 569b.2, the Board will by order appoint the Corporation as sole receiver for such insured institution for the purpose of liquidation, and such appointment may be ex parte and without notice.

§ 569b.4 Notice of appointment.

In the event that the Board appoints a receiver for an insured institution pursuant to § 569b.3, the Secretary shall

mail a certified copy of the order or resolution of appointment by certified mail to the address of the institution as it shall appear on the records of the Board, to any supervisory or regulatory authority to which such institution was theretofore subject, to any previous conservator, receiver, or other legal custodian of any such insured institution, and to any court or other authority to which such previous conservator, receiver, or custodian is subject. Notice of such appointment shall be filed forthwith for publication in the **Federal Register.**

§ 569b.5 Action for removal of receiver.

(a) If a conservator or receiver for an insured institution is appointed pursuant to section 406(c)(2) of NHA, the institution may, within 30 days thereafter, bring an action in the United States District Court for the judicial district in which the home office of such association is located, or in the United States District Court for the District of Columbia, for an order requiring the Board to remove such conservator or receiver. Notwithstanding the provisions of Part 569c, the board of directors of an association for which a conservator or receiver has been appointed by the Board may meet following the appointment and may authorize the filing of an action in the name of the association seeking an order requiring the Board to remove the conservator or receiver. No such action in the name of the association may be instituted without the authorization of the board of directors of the association.

(b) The removal of a receiver appointed pursuant to section 406(c)(2) of NHA shall not impair the validity of the exercise of the powers or functions of the receiver, and no action of or transaction effected by such receiver shall be void or voidable by reason of the removal.

9. Add Part 569 as follows:

PART 569C—RECEIVERSHIP RULES

Sec.

569c.1 Definitions.
569c.2 Scope.
569c.3 Possession by receiver.
569c.4 Procedure on taking possession.
569c.5 Appointment not cause for termination of executory contract or interest in property.
569c.6 Powers and duties of receiver.
569c.7 Claims procedure.
569c.8 Secured claims.
569c.8–1 Federal Home Loan Banks as secured creditors.
569c.9 Appeal procedure.
569c.10 Participations, servicing.
569c.11 Priorities.
569c.12 Audits.
569c.13 Reports; accounting policies.
569c.14 Final discharge and release of receiver.
569c.15 Purchase and assumption transaction.

Authority: Sec. 5, 48 Stat. 132 as amended, 12 U.S.C. 1464; secs. 402, 406, 48 Stat. 1251, 1259, as amended; 12 U.S.C. 1725, 1729; Reorg. Plan No. 3 of 1947.

§ 569c.1 Definitions.

As used in this Part—

(a) The definitions set forth in § 569a.1 shall apply, except that, with respect to a federal savings bank for which the Board has appointed the Federal Deposit Insurance Corporation ("FDIC") as receiver: "Corporation" means the FDIC; and "Director FSLIC" means the Board of Directors, FDIC, the Director or Deputy Director, Division of Liquidation, FDIC, or an officer of the FDIC authorized to act for the FDIC for the purposes of this Part.

(b) "Association" means an insured institution, including a Federal association, for which the Board has appointed the Corporation as receiver;

(c) "Depositor" means the holder of a withdrawable account or accounts in an association;

(d) "General Counsel" means the General Counsel to the Board or an attorney of the Office of the General Counsel designated by the General Counsel; except that, with respect to a federal savings bank for which the Board has appointed the FDIC as receiver, "General Counsel" shall mean the General Counsel to the FDIC or an attorney designated by the General Counsel to the FDIC; and

(e) "Publish" means publish in an English language newspaper of general circulation in the city or county in which an association's principal office is located; but for an association having its principal office in a city or county in which a substantial portion of its depositors reside who read and speak a language other than English, and at least one newspaper of general circulation in such city or county is printed in such other language, "publish" means publish not only in such an English language newspaper, but also in such a newspaper printed in such other language.

§ 569c.2 Scope

The rules and regulations of this Part are issued pursuant to the power granted to the Board by section 5(d)(11) of HOLA and section 406(c)(3) of NHA to make rules and regulations for the liquidation and dissolution of associations, for associations in receivership, and for the conduct of receiverships; and such rules and regulations apply to all associations. A receiver shall have all powers granted by section 5 of HOLA and section 406 of NHA.

§ 569c.3 Possession by receiver

(a) *Possession of an association not in custody.* The Corporation as receiver appointed by the Board for an association not in the Custody of an official of the association's chartering or licensing authority or other judicial or administrative authority shall take possession of the association in accordance with the terms of appointment by the Board and, at that time, shall give notice of the Board's appointment to an officer or employee of the association, if any, who appears to be in charge of the home office of the association.

(b) *Possession of an association in previous custody.* The Corporation shall take possession of an association that is in or under the custody of its chartering or licensing authority or other judicial or administrative authority in accordance with the terms of appointment of the Board and, at that time, shall give notice of the Board's appointment to the conservator, receiver, or custodian of such association or the representative of such conservator, receiver, or custodian, or to an officer or employee of the association, if any, who appears to be in charge of the home office of the association. The Corporation as receiver shall serve such conservator, receiver, or custodian of the association's chartering, licensing, judicial, or administrative authority, with the Board's order or resolution by leaving a copy of said order or resolution at the principal office of the association or by handing a copy of said order or resolution to such previous conservator, receiver, or custodian of such an association or to an officer or employee of the association or of such previous receiver, or custodian who shall be in the principal office of the association and appears to be in charge of such office. The Corporation as receiver shall thereafter promptly notify in writing by certified mail the court or other public authority having jurisdiction over such previous conservator, receiver, or custodian and any supervisory or regulatory authority to which the association was theretofore subject of its possession of the association.

(c) Immediately upon taking possesion of any association, the Corporation as receiver shall take possession of and title to books, records, and assets of every description of such association to which such association has rights of possession and title and of all offices

and other facilities of such association. The Corporation as receiver, by operation of law and without any conveyance or other instrument, act, or deed, shall succeed to (1) all the rights, the titles, powers, and privileges of the association, and of its stockholders, members, holders of checking or savings accounts and nonwithdrawable accounts, its officers and directors, or any of them with respect to the association and its assets, and (2) title to the books, records, and assets of every description of any previous conservator, receiver, or other legal custodian of such association appointed under the law of the association's chartering or licensing authority. Such stockholders, members, holders of checking or savings accounts and nonwithdrawable accounts, officers or directors, or any of them, or any such previous conservator, receiver, or other legal custodian shall not thereafter have or exercise any such rights, powers, or privileges or act in connection with any asset or property of any nature of the association. All contracts or arrangements for employment or compensation of officers, employees, consultants, and advisers of the association shall terminate as of the date of default.

§ 569c.4 Procedure on taking possession

Upon taking possession as provided in § 569c.3, the receiver shall forthwith:

(a) Post a notice in substantially the following form on the door of the principal and other officers of such insured institution:

The [Name of association] is in the hands of the Federal Savings and Loan Insurance Corporation [or Federal Deposit Insurance Corporation] as Receiver under appointment by the Federal Home Loan Bank Board pursuant to law.

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION [OR FEDERAL DEPOSIT INSURANCE CORPORATION] AS RECEIVER

[Date]

(b) File with the Secretary a statement that it has taken possession of such association and of the time of such taking of possession; and such statement shall be conclusive evidence of such taking of possession and of the time of such taking of possession; and

(c) Notify, by certified mail, telegraph, or machine readable transmission all banks, trust companies, and all other individuals, partnerships, corporations, and associations, known to the receiver to be holding or in possession of any assets of such association that the Corporation as receiver has succeeded to all the rights, titles, powers, and privileges of such association, and to the titles of any previous conservator, receiver, or other legal custodian of such association appointed under the law of its chartering or licensing authority.

§ 569c.5 Appointment not cause for termination of executory contract or interest in property.

(a) Notwithstanding a provision in an executory contract or unexpired lease, an executory contract or unexpired lease of the association may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the appointment of the receiver solely because of a provision in such contract or lease that is conditioned on:

(1) The insolvency or financial condition of the association; or

(2) The appointment of or taking possession by the receiver or of a custodian or conservator prior to such appointment of the receiver.

(b) Paragraph (a) of this section does not apply to an executory contract or unexpired lease of the association, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—(1) applicable law excuses a party, other than the association, to such contract or lease from accepting performance from or rendering performance to the receiver or to an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; or—(2) such contract is a contract to make a loan or extend other debt financing or financial accommodations, to or for the benefit of the association, or to issue a security of the association.

(c) Any property, wherever located, in which an association, as of the appointment of receiver, has a legal or equitable interest, is property of the receivership to the extent of such legal or equitable interest, and any other party to which the receiver transfers such property shall receive such title as the receiver itself possesses, notwithstanding any provision that restricts or conditions transfer of such interest by the association or that is conditioned on the insolvency or financial condition of the association or on the appointment of a receiver, conservator, or custodian, and effects or gives an option to effect a forfeiture, modification, or the termination of the association's interest in property.

§ 569c.6 Powers and duties as receiver.

(a) *Inventory.* As soon as practicable after taking possession, the receiver shall inventory the assets of such association as of the date of taking possession, showing the value as carried on the books of the association, and the security therefor, if any, a brief description of the assets and any security, and a record of the association's creditor and account liabilities. The Director FSLIC may direct that such inventory shall be made by an independent Certified Public Accountant and may direct that an audit be made by such independent Certified Public Accountant. One copy of such inventory shall be filed promptly with the Secretary, and one copy shall be retained in the principal office for liquidation of the association, so long as such office is maintained.

(b)(1) The receiver shall have the rights and powers of or may avoid any transfer of property of the association or any obligation incurred by the association that is avoidable by:

(i) A creditor that extends credit to the association immediately prior to the appointment of the receiver, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor or lien exists;

(ii) A creditor that extends credit to the association, immediately prior to the appointment of the receiver and obtains, at such time and with respect to such credit, an execution against the association that is returned unsatisfied at such time, whether or not such a creditor exists;

(iii) A bona fide purchaser of real property other than fixtures from the association, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer immediately prior to the appointment of the receiver, whether or not such a purchaser exists; or

(iv) An equity receiver.

(2) The receiver may avoid any transfer of an interest of the association in property or any obligation incurred by the association that is voidable under applicable law by a creditor holding an unsecured claim that is allowable by the receiver.

(c) *General.* The receiver shall collect all obligations and money due such association and may:

(1) To the extent consistent with its appointment, do all things desirable or expedient in its discretion to carry on the business of the association and to preserve and conserve the assets and property of every nature of the association;

(2) Exercise all rights and powers of the association, including, but not

limited to, any rights and powers under any mortgage, deed of trust, chose in action, option, collateral note, contract, judgment or decree, share or certificate of share of stock, or instrument of any nature;

(3) Institute, prosecute, maintain, defend, intervene and otherwise participate in any and all actions, suits, or other legal proceedings by and against the receiver or the association or in which the receiver, the association, or its creditors or members, or any of them, shall have an interest, and in every way to represent the association, its members and creditors, subject to the direction of the General Counsel;

(4) Employ on a salary or fee basis such persons as in the judgment of the receiver are necessary or desirable to carry out its responsibilities and functions, including appraisers and Certified Public Accountants, purchase insurance to indemnify such persons, and pay the costs out of the assets of the receivership;

(5) Employ or retain any attorney or attorneys designated by, or acceptable to, the General Counsel in connection with litigation or otherwise to give legal advice and assistance, for the receivership generally or in particular instances, and pay compensation and retainers of such attorney or attorneys, together with all expenses, including, but not limited to, the costs and expenses of any litigation, as approved by the General Counsel, out of the assets of such receivership;

(6) Execute, acknowledge, and deliver any and all deeds, contracts, leases, assignments, bills of sale, releases, extensions, satisfactions, and other instruments necessary or proper for any purposes, including, but not limited to the effectuation, termination, or modification of any sale, lease, or transfer of real, personal or mixed property, or that shall be necessary or proper to liquidate or carry on the business of the association as authorized in paragraph (c)(1) of this section; and any deed or other instrument executed pursuant to the authority hereby given shall be as valid and effectual for all purposes as if the same had been executed as the act and deed of the association; and

(7) Do such things, and have such rights, powers, privileges, immunities, and duties, whether or not otherwise granted in the rules and regulations of this Part 569c, as shall be authorized directed, conferred, or imposed from time to time by the Board.

(d) *Collateralized Obligation Option.* The receiver may at its option, (1) satisfy prior to maturity, or cause liquidation of collateral to satisfy prior to maturity, outstanding principal and interest due on a collateralized obligation issued by the association or (2) elect to continue to perform according to the terms of the association's collateralized obligation. The receiver shall make its election within a reasonable time following the taking of possession of the association, and if the receiver elects to continue performance, it shall cure any material default occurring because of failure to make payment or perform, and not occurring because of provisions and conditions such as those referred to in § 569c.5(a) or (c), in effect as of the receiver's election to continue performance. The receiver may release its interest in collateral in return for a discharge and release from the lender or a trustee for the purchaser or purchasers of the association's collateralized debt if the receiver determines that the proceeds of the collateral upon liquidation would not meet in full the claims of the secured party or parties for principal and contractual interest recoverable pursuant to § 569c.8(b).

(e) *Expenditure of funds of the receivership.* The receiver shall have power to:

(1) Pay all costs and expenses of the receivership as determined by the receiver;

(2) Pay off and discharge taxes and liens;

(3) Pay out and expend such sums as the receiver shall deem necessary or advisable for or in connection with the preservation, maintenance, conservation, protection, remodeling, repair, rehabilitation, or improvement of any asset or property of any nature of the association of the receiver;

(4) Pay out and expend such sums as the receiver shall deem necessary or advisable for or in connection with the preservation, maintenance, conservation, or protection of, or pay off and discharge any taxes, assessments, liens, claims or charges of any nature against, any asset or property of any nature on which the association or the receiver has a lien by way of mortgage, deed of trust, pledge, or otherwise, or in which the association or receiver has an interest of value of any nature; and

(5) Settle, compromise, or obtain the release of, for cash or other consideration, claims and demands against the association or the receiver.

(6) Indemnify employees and agents of the receivership, from the assets of the association, against liabilities incurred in the good faith performance of their duties.

(f) *Assets, claims, and contracts.* The receiver shall have power to:

(1) Sell for cash or on terms, exchange, or otherwise dispose of, in whole or in part, any or all of the assets and property of the association, real, personal and mixed, tangible and intangible, of any nature, including any mortgage, deed of trust, chose in action, bond, note, contract, judgment, or decree, share or certificate of share of stock or debt, owing to the assocation or the receiver;

(2) Surrender, abandon, and release any choses in action, or other assets or property of any nature, whether the subject of pending litigation or not, and settle, compromise, modify, or release, for cash or other consideration, claims and demands in favor of the association or the receiver; and

(3) Reject or repudiate any unexpired lease or executory contract of the association; notice of such rejection or repudiation shall be given by the receiver within ninety (90) days of the appointment of the receiver, and prior to such notice, rejection or repudiation of a lease or executory contract may not be presumed or claimed by any party to such lease or contract. If there has been a default in an executory contract or unexpired lease of the association occurring because of failue to make payment or perform, and not occurring because of provisions and conditions such as those referred to in § 569c.5 (a) or (c), the receiver shall not assume such contract or lease unless it cures such default.

(g) *Investment of funds.* The receiver shall have the power to deposit the monies and funds of the receivership in any bank or banks insured by the Federal Deposit Insurance Corporation, in any insured institution within the State in which the association is located that offers checking accounts, or in any Federal Home Loan Bank, and may invest such monies or funds in certificates of deposit having a maturity not to exceed two (2) years in any bank or banks insured by the Federal Deposit Insurance Corportion or in an insured institution or institutions. The receiver shall have power to invest any funds not currently needed for transacting the business of the receivership or the payment of liquidating dividends in Government obligations with a period remaining to maturity of not more than two (2) years from the date of investment. The receiver shall have no power to make loans except for loans to facilitate the sale of any real estate owned and loans that it deems necessary to protect investments or the security for investments.

(h) *Borrowing.* With the approval of the Director FSLIC and on terms and

conditions approved by the Director FSLIC, the receiver may borrow money in any amount and from any source and in any manner, and execute, acknowledge and deliver notes, certificates, and other evidence of indebtedness therefor and secure the repayment thereof by the mortgage, pledge, assignment in trust, or hypothecation of any or all of the property, whether real, personal, or mixed, tangible or intangible, of any nature of such association or the receiver, and such borrowing may be for the any purpose, including, but not limited to, facilitating liquidation, carrying on the business of the association, protection or preserving the assets in its possession, declaring and paying dividends to members and creditors, and providing for the expense of administration and liquidation.

(i) In addition to and without limitation of the receiver's authority under other provisions of this section 569c.6, the receiver may with the approval of the Board contract for the services of a manager or managers or management company to administer the receivership and may contract with other receivers or entities for the services of a manager, managers, or management company to administer the receivership estate, and pay or share the cost of such contract or contracts from the assets of the association. A receiver may agree to share office space, facilities, and employees with another receiver or receivers, provided that the administrative rights, interest, and obligations of the receiver are clearly identified or ascertainable.

§ 569c.7 Claims procedure.

(a) *Claims of creditors other than depositors.* (1) The receiver shall promptly publish a notice to all creditors of the association other than depositors to present claims with proof thereof to the receiver on forms prescribed by the receiver on or before a date specified in such notice. The date specified in such notice shall be at least ninety (90) days after the date of the first publication of such notice (Sundays and holidays included). Such notice shall be similarly published on dates approximately one (1) month and two (2) months after the date of such first publication. The receiver shall mail a similar notice to any such creditor shown to be such on the books of the association at the last address of such creditor on the books of the association.

(b) *Claims of depositors.* (1) Following settlement of insurance by the Corporation, the receiver shall furnish to each depositor a certificate setting forth the amount of the depositor's account or accounts for which payment of insurance was not made by the Corporation. Such certificate shall evidence the depositor's claim against the receivership for such amount, which shall be discharged to the extent permitted under this Part. No such certificate shall be furnished by the receiver unless the depositor has first surrendered to the receiver such evidence of the ownership of the account as the depositor may have or, in case of loss of such evidence, the depositor has agreed that the receiver shall be entitled to the surrender of such evidence if it is thereafter recovered, but this requirement shall not be applicable in cases in which such evidence has been surrendered to the Corporation in connection with payment of insurance of account.

(2) Within a reasonable time following settlement by the Corporation of a substantial amount of depositor claims for insurance, the receiver shall also publish notice to all depositors that have not filed claims or settled insurance with the Corporation, or have uninsured deposits, to present claims to the receiver, with proof thereof, by the date specified in the notice, which date shall be three (3) years after the date of default of the association. Such notice shall be republished on dates approximately one (1) and two (2) years following the date of first publication and again approximately one (1) month before the date for presentation of claims specified in the first notice. Notice shall also be mailed to a depositor described in the first sentence of this paragraph (b)(2) at the last address shown on the books of the association. Claims filed after such specified date shall be disallowed by the receiver, except as the Director FSLIC or the Board may thereafter approve them for whole or partial payment from the association's assets remaining undistributed at the time of approval. The receiver shall not defer declaration of payment of liquidating dividends by reason of any unfiled depositor claim, and shall not reserve shares of any liquidating dividend for payment of an unfiled depositor claim. Notice of the declaration of a liquidating dividend shall be mailed to a depositor described in the first sentence of this paragraph (b)(2) at the last address shown on the books of the association; no such non-claimant depositor, however, shall have any right to share in, or recapture any portion of, a liquidating dividend declared before filing of a claim, nor shall such depositor acquire a right greater than the right of any other depositor or subrogee of a depositor to share in proportion to the amount of a depositor's allowed claim in the assets of the association remaining or realized after the payment of a liquidating dividend.

(3) When insurance is paid to a depositor, transfer of the depositor's claim to the Corporation and the subrogation of the Corporation to the extent provided by law shall be noted on the books of the receivership.

(4) *Special Rule for the FDIC.* The provisions of paragraph (b)(2) of this section shall not apply to depositor claims against an association for which the Board has appointed the Federal Deposit Insurance Corporation as receiver, and such depositor claims shall be noticed pursuant to the Federal Deposit Insurance Act and rules or procedures of the FDIC.

(c) *Receiver's determination of claims.* (1) The receiver shall approve any seasonably filed claim that is proved to its satisfaction. The receiver may wholly or partly disallow any claim not proved or certified, including any claim to security, preference, or priority, and shall notify the claimant of the disallowance and the reason therefor by mailing such notice to the last address of the claimant shown on the books of the association, which mailed notice shall be deemed sufficient for the purpose.

(2) Pursuant to procedures prescribed by the Director FSLIC with the concurrence of the General Counsel, the receiver may require submission of evidence in written form in support of a claim, and by interested parties in the event of a dispute concerning a claim against or asset of the receivership. The receiver shall compile such written record of a claim or dispute as the receiver, within its discretion, but subject to the procedures prescribed by the Director FSLIC with the concurrence of the General Counsel, deems sufficient to provide a reasonable basis for allowing or disallowing a claim or resolving a dispute ("administrative record"). If the receiver disallows a claim in whole or in part, the receiver shall file a report with its determination, which shall include findings on the issues raised and considered and shall be made part of the record. In requiring the submission of written evidence or other material in addition to a standard proof of claim, the receiver may set such limitations of time, scope, and size as the receiver deems reasonable in the circumstances and under prescribed produres, and may refuse to include in the record submissions or portions of submissions not in compliance with such limitations or requirements.

(3) If the receiver's determination rests on official notice of a material fact not appearing in the evidence in the record, an interested party shall be entitled, on timely request, to an opportunity to show the contrary.

(4) *Subordination.* Notwithstanding other provisions of this Part 569c, except as provided in § 569c.8–1, the receiver may, in accordance with procedures prescribed by the Director FSLIC with the concurrence of the General Counsel, under principles of equitable subordination (i) subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest or (ii) refuse to recognize any lien securing such equitably subordinated claim.

(d) *Filing by receiver.* From time to time, and in any event following expiration of a period for filing claims, the receiver shall file with the Director FSLIC a list of allowed and disallowed claims and copies of any written record developed by the receiver in connection with a claim or dispute not handled on the basis of as standard proof of claim. A disallowed claim may be allowed by the Director FSLIC for good cause, set forth in writing by the Director FSLIC.

(e) Allowed claims other than secured claims shall be paid by the receiver in liquidating dividends declared from time to time by the Director FSLIC or by the receiver pursuant to authorization by the Director FSLIC, to the extent that funds are available.

§ 569c.8 Secured claims.

(a) An allowed claim of a creditor secured by a lien on property of the association or in which the association has an interest is secured to the extent of the lesser of (1) the value of the property or such creditor's interest in the receivership's interest in the property or (2) the amount of the allowed claim. Such allowed claim is unsecured to the extent that such value is less than the amount of the allowed claim.

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under paragraph (e) of this section, is greater than the amount of such claim, the claim of a secured creditor, if valid, shall be allowed for the amount of principal owing, for contractually determined interest to the date of payment, and for reasonable fees, costs, or charges provided under the agreement under which such claim arose if in accordance with paragraph (d) of this section.

(c) The claim to security shall be recognized by the receiver to the extent that, under the laws of the state, territory, or other political unit in which the principal office of the association is located, such creditor claim is secured by, or constitutes a lien on, assets or property of any kind of the association or in which the association has an interest.

(d) (1) Allowance of contractually determined interest may include, to the extent provided for by written contract, interest on ordinary interest in the event of a failure to pay principal or interest when due.

(2) The receiver may allow a claim for prepayment penalty or fee upon the payment of a secured claim if and only if made pursuant to a written contract that provides in substance that (i) such prepayment penalty or fee, if paid by a receiver, shall not exceed the present value of the loss attributable to lower interest rates available for reinvestment prepayment, and (ii) prepayment of the principal amount of the obligation by a receiver shall be discounted by the present value of the gain attributable to higher interest rates available for reinvestment.

(3) Except as provided in paragraphs (d) (1) and (2) of this section, the receiver shall not allow any claim for prepayment or other penalties or liquidated damages; and no unsecured claim for such prepayment or other penalties or liquidated damages shall be allowed by the receiver.

(e) The receiver may recover from property securing an allowed secured claim the reasonably necessary costs and expenses of preserving or disposing of such property to the extent of any benefit to the holder of such claims.

(f) (1) The claim or security interest of a secured creditor shall not be disallowerd or impaired solely because such creditor extended or renewed a loan or advance to the association when the association was insolvent or close to insolvency.

(2) In the event that a creditor has advanced funds to the association under a security agreement and:

(i) The association reported net worth equal to or less than two percent (2%) of liabilities on a regular periodic report to the Board that is disclosable to the public under Board procedures;

(ii) Such report was the first such report disclosable to the public made by the association following the later of [the effective date of this regulation] or the date the association last published such a report showing net worth exceeding the amount described in paragraph (f)(2)(i) of this section;

(iii) Such creditor perfected its security interest not later than sixty (60) days following the date on which such report was authorized for public disclosure; and

(iv) Such creditor perfected its security interest prior to the date of default of the association;

the receiver shall deem the date of perfection to be the date upon which such creditor's security interest attached; *provided,* however, that such creditor's secured claim shall be subordinate to a claim secured by a valid security interest in the same property that was perfected prior to such time as a security interest was actually perfected by the secured creditor meeting the conditions specified in paragraph (f)(2)(i)–(iv) of this section.

(g) In the absence of fraud or other similarly extraordinary circumstances, and to the extent consistent with its discretion to administer assets and liabilities of the receivership, the receiver shall not object to the exercise of a contractual right by a "repo participant", as defined in section 101 of title 11, United States Code, (1) to cause the liquidation of a repurchase agreement as defined in section 101 of Title 11, United States Code or (2) to set off any mutual debt and claim under or in connection with a repurchase agreement that constitutes a setoff of a claim against the association for a margin payment as defined in section 741(5) of title 11, United States Code, or settlement payment as defined in section 741(8), of title 11, United States Code, arising out of a "securities contract", as defined in section 741(7) of title 11, United States Code; *provided,* that any liquidation of a repurchase agreement shall be accomplished in a commercially reasonable manner and any excess received by a repo participant over the stated repurchase price, including interest, if any, and reasonable cost of liquidation, shall be paid to the receiver.

§ 569c.8–1 Federal Home Loan Banks as Secured Creditors.

(a) Notwithstanding other provisions in this Part, including, but not limited to §§ 569c.7(c)(4) and 569c.8(c), and any provision of state law that may be made applicable by these regulations to a security interest in property of the association, the security interest of a Federal Home Loan Bank or its assignee in property of an association or any affiliate thereof shall not be enjoined or stayed from enforcement, or avoided, subordinated, or otherwise impaired upon the appointment of a conservator, receiver, or other legal custodian with respect to such association because such security interest attached and was perfected in accordance with state law

selected by the terms of the Federal Home Loan Bank's loan security agreement or because of or related to or arising from the responsibility of the Federal Home Loan Bank or any officer, employee, or agent thereof for a function of the Board or the Corporation, including any supervisory, regulatory, or examination function, authorized or assigned by the Board or the Corporation or because of any information furnished to any such Bank or any officer, employee, or agent thereof in connection with any such function.

(b) A Federal Home Loan Bank's right to require, when deemed necessary for its protection, deposits of additional collateral or substitutions of security by a Bank member borrowing from such Bank pursuant to section 10(d) of the Federal Home Loan Bank Act shall not be affected or diminished by any provision of state law that may be applicable to a security interest in property of the member under these regulations.

§ 569c.9 Appeal Procedure.

(a) *Appeal.*—(1) *Time for filing.* Within sixty (60) days of mailing of the notice of determination by the Receiver that a claim has been disallowed in whole or in part ("initial determination"), such claimant may appeal the initial determination by filing with the Director FSLIC a written appeal.

(2) *Burden of Proof.* Upon appeal of an initial determination, the burden of proof to establish entitlement to allowance of a claim shall rest solely upon the appellant.

(3) *Content of appeal.* Any appeal must include:

(i) A clear and concise statement of the facts and issues on which the appeal is based;

(ii) A clear and concise statement of the alleged factual and legal errors in the initial determination, including citations to applicable statutes, regulations, and legal authority, and to the administrative record;

(iii) One copy of the administrative record, or the relevant portions of the record that support the appeal;

(iv) In the event that the appeal is based on facts not available for consideration by the Receiver at the time of the issuance of the initial determination, a separate identification and statement of all such facts relied upon by the appellant.

(4) *Procedure for review of appeal.* (i) Within sixty (60) days of the date of the Director FSLIC's receipt of an appeal based upon facts that were allegedly not available for consideration by the Receiver, the Director may request in writing that the appellant submit additional information and records relating to the appeal. If additional information is requested by the Director FSLIC, the appellant shall have forty-five (45) days from the date of issuance of such written request to provide such additional information. The additional information will become part of the record on appeal. Failure by the appellant to provide such additional information within the forty-five (45) day time limit may result in denial of the appeal.

(ii) Within sixty (60) days of the date of the Director FSLIC's receipt of an appeal, upon reasonable notice to the appellant, the Director FSLIC may consider as part of the record on appeal facts not previously available to the Receiver for consideration at the time of the initial determination. Such notice shall include a summary of such facts not previously available to the Receiver; and the appellant may examine the record evidencing such facts. The appellant may, within forty-five (45) days from the date of the mailing of such notice, provide a written response concerning such additional facts to the Director FSLIC. Appellant's written response will become part of the record on appeal.

(iii) The appeal will be deemed to be complete upon the Director FSLIC's receipt of all additional facts, information, and responses, if any, included in the record on appeal as provided for by paragraphs (a)(4)(i) and (a)(4)(ii) of this section.

(5) *Failure to file appeal results in waiver.* (i) If a claimant does not file an appeal within the time provided under this section, any objection by the claimant to the initial determination is waived. A timely appeal filed with the Director FSLIC in accordance with the provisions of this section shall be mandatory to establish judicial review of an initial determination.

(ii) If a claimant does not object to a part of an initial determination in its appeal within the time permitted under this section, that part of the initial determination shall not be the subject of an appeal and shall be deemed to have been affirmed.

(b) *Determination on appeal.*—(1) *Issuance of decision.* Within 180 days from the date the record on appeal is deemed complete, based upon a review of the administrative record and the appellant's submissions in support of the appeal, the Director FSLIC shall issue a decision on the merits of the appeal with the concurrence of the General Counsel, determining the extent of the appellant's entitlement to allowance of the claim on appeal or any portion thereof; or alternatively, within 30 days from the date of receipt of a complete appeal, the Director FSLIC, in the Director FSLIC's sole discretion, shall submit the appeal to the Board, *provided* that an appeal may be submitted to the Board at a later date with the concurrence of the General Counsel.

(2) *Decision in writing.* A determination of the appeal by the Director FSLIC on appeal shall be provided to the appellant in writing, stating the reasons for the determination, and shall constitute final agency action for purposes of securing judicial review of a determination.

(3) *Satisfaction of claim certificate.* If the Director FSLIC determines that the appellant is entitled to allowance of the claim or any portion thereof, upon payment (or other affirmative allowance) of such claim or portion thereof, the appellant shall promptly execute and deliver to the Director FSLIC, a "Satisfaction of Claim" certification provided in connection with the determination. In the event that the Director FSLIC determines that the appellant is entitled only to a portion of the claim, the "Satisfaction of Claim" certificate shall specify that portion of the claim to which the appellant has been determined by the Director FSLIC to be entitled. A claim or any portion thereof not specifically allowed on appeal shall be deemed to be denied and such denial shall constitute final agency action for purposes of securing judicial review of a determination.

(4) *Denial of claim.* Unless the Director FSLIC submits an appeal to the Board, as provided in paragraph (b)(2) of this section, failure by the Director FSLIC to issue a determination on an appeal of a claim within the 180 day period provided for under paragraph(b)(1) of this section shall be deemed to be affirmation of the initial determination of such claim for purposes of securing judicial review of a determination.

(c) If an appeal is submitted to the Board, the Board shall review the request, the administrative record of the appeal, and any recommendation of the Director FSLIC. The Board may in its sole discretion permit the appellant to provide further written explanation or argument in support of the request and may, in its sole discretion, entertain oral argument. Notice of the final determination by the Board shall be given to the appellant.

(d) If the decision of the Director FSLIC or of the Board rests on official notice of a material fact not appearing in the evidence in the record, an interested

party is entitled, on timely request, to show the contrary.

(e) The claims procedures of §§569c.7 and 569c.9 apply also to claims arising against the receiver following the appointment of the receiver.

§569c.10 Participations, servicing.

(a) Mortgage participation interests sold or serviced for holders of such interests by the association and not and shall not be deemed by the receiver to be assets or interests of the association or the receivership, *provided* that any such sale or other agreement does not provide for recourse or repurchase of any such mortgage participation interest by the association or the reveiver. The receiver reserves its right to determine whether an agreement of the association to repurchase a mortgage participation interest should be classified as a financing transaction or part of a financing transaction.

(b) Property in which the receiver or the assocaition holds only legal title and not an equitable interest, such as a mortgage loan secured by real property, or an interest in such a mortgage loan, sold by the association but as to which the association or receiver retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the receivership only to the extent of the association's or the receiver's legal title to such property, but not to the extent of any equitable interest in such property that the receiver does not hold.

§ 569c.11 Priorities.

(a) Unsecured claims against the estate of the association that are proved to the satisfaction of the receiver shall have priority in the following order:

(1) Administrative expenses of the receiver, including the costs, expenses, and debts of the receiver;

(2) Administrative expenses of the association, *provided* that such expenses were incurred within thirty (30) days prior to the receiver's taking possession; and such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, or examiners that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the association;

(3) Claims for wages and salaries, including vacation, severance, sick leave pay, and contributions to employee benefit plans earned by an employee of the association within thirty (30) days prior to the appointment of the receiver, up to a maximum of two thousand dollars ($2,000) per person;

(4) Claims of governmental units for unpaid taxes; but no other claim of a governmental unit shall have a priority higher than that of a general creditor under the fifth category below;

(5) All claims for withdrawable accounts, including those of the Corporation as subrogee or transferee, and all other claims, whether liquidated or unliquidated, which have accrued and become unconditionally fixed on or before the date of default, except as provided in succeeding paragraphs of this section, *provided*, however, that if the association is chartered and was operated under the laws of a state that provides a priority for holders of withdrawable accounts over general creditors, such priority within this fifth category shall be observed by the receiver;

(6) All claims other than those which have accrued and become unconditionally fixed on or before the date of default, including claims for interest after the date of default on claims of the fifth category; any claim based on an agreement for accelerated, stipulated, or liquidated damages, which claim did not accrue prior to the date of default, shall be considered as not having accrued and become unconditionally fixed on or before the date of default.

(7) Claims that have been subordinated in whole or in part to general creditor claims, which shall be given the priority specified in the written instruments that evidence such claims;

(8) Claims by holders of mutual capital certificates or nonwithdrawable accounts, including stock, which shall have priority within this eighth category in accordance with the terms of the written instruments that evidence such claims.

(b) Interest after the date of default on claims of the fifth category shall be at a rate or rates adjusted monthly to reflect the average rate for U.S. Treasury bills with maturities of not more than ninety one (91) days during the preceding three (3) months.

(c) If the rejection or repudiation of an unexpired lease or executory contract pursuant to § 569.6(e)(3) gives rise to a claim for damages, such claim, if allowed, shall be classified as a claim that has accrued and become unconditionally fixed on or before the date of default, and not as an administrative expense of the receiver.

(d) All unsecured claims of any category or class or priority described in paragraphs (a)(1) through (a)(8) of this section shall be paid in full, or provision made for such payment, before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a category or class in full, distribution to claimants in such category or class shall be made pro rata. Notwithstanding anything to the contrary herein, the receiver may, at any time, and from time to time, prior to the payment in full of all claims of a category or class with higher priority, make such distributions to claimants in priority categories described in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) of this section as the receiver believes are reasonably necessary to conduct the receivership, *provided* that the receiver determines that adequate funds exist or will be recovered during the receivership to pay in full all claims of any higher priority.

(e) If the association is in mutual form, and a surplus remains after making distribution in full of allowed claims as set forth in paragraphs (a) and (b) of this section, such surplus shall be distributed to the depositors in proportion to their accounts as of the date of default.

§ 569c.12 Audits.

Each association for which a receiver has been appointed shall be audited at least annually by an independent Certified Public Accountant unless otherwise directed by the Director FSLIC, and one copy of such audit shall be filed with the Secretary, and one copy retained in the principal office for liquidation of the association so long as such office is maintained. The expense of the audit shall be paid from the assets of the association.

§ 569c.13 Reports; accounting practices.

The receiver may, from time to time, prescribe the accounting practices to be followed. The receiver shall make an annual report of its affairs as of September 30 of each year to the Board, on forms prescribed by the Board or the receiver, and such other reports as may be from time to time required by the Board on the Director FSLIC. One copy of a report required by this section shall be filed with the Secretary, one copy shall be retained by the Corporation, and one copy shall be retained in the principal office for the liquidation of the association so long as such office is maintained. Each report shall be available for public inspection.

§ 569c.14 Final discharge and release of receiver.

(a) *Final Report.* At such time as the receiver shall recommend a final distribution of the assets or at such time as the receiver shall be otherwise relieved of its duties, the receiver shall file with the Board a report in form satisfactory to the Board.

(b) *Final discharge.* Upon the final liquidation of the receivership, or the completion of the duties of the receiver or at such time as the receiver shall be otherwise relieved of its duties, the receiver shall have an audit made of the association, either by an independent Certified Public Accountant or as otherwise directed by the Director FSLIC, and such audit shall be filed with the Secretary. The accounts of the receiver shall thereupon be approved or disapproved by the Board and, if approved, the receiver shall be given a complete and final discharge and release.

§ 569c.15 Purchase and assumption transaction.

(a) A "purchase and assumption" transaction is a receivership proceeding in which the creditor liabilities of an association, not including obligations to holders of subordinated debt of the association, are fully assumed by another insured institution, a bank the deposits of which are insured by the FDIC, or the Corporation in its corporate capacity and not as conservator, receiver, or legal custodian, promptly following the receiver's taking possession of the association.

(b) The provisions of § 563c.5(b)(2) and requirements of §§ 569c.7, 569c.8, 569c.9, 569c.11, 569c.12, and 569c.13 shall not apply to the Corporation as receiver for an association that becomes the subject of a purchase and assumption transaction. In such case, the Corporation as receiver shall have the powers and duties prescribed by order or resolution of the Board.

(c) In a purchase and assumption transaction, the receiver may acquire and assume any and all assets and liabilities of the association, as directed by the Board, and assign and transfer any and all such assets and liabilities; and no right of a secured creditor to liquidate security or of any party to terminate a contract or lease with the association shall arise as a result of the appointment of the receiver for the association.

(d) Notwithstanding the provisions of paragraph (a) of this section, if a claim is filed against the receiver following the consummation of a purchase and assumption transaction, the receiver shall follow the procedures set forth in § 569c.7 with respect to determining the validity of such claim, and a claimant may request reconsideration pursuant to the Appeal Procedure of § 569c.9.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-27923 Filed 11-26-85; 8:45 am]

BILLING CODE 6720-01-M

Federal Register

Wednesday
November 27, 1985

Part IV

Environmental Protection Agency

40 CFR Part 155

Pesticide Registration Standards; Docketing and Public Participation Procedures; Final Rule

40 CFR Parts 154, 162, and 172

Special Reviews of Pesticides; Criteria and Procedures; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 155

[OPP-30090A; PH FRL 2908-5]

Pesticide Registration Standards; Docketing and Public Participation Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes procedures that provide specific opportunities for public participation in the development of pesticide Registration Standards. The procedures establish and provide for the maintenance of a docket for each Registration Standard, which is indexed and made available for public inspection. The procedures also provide for publication in the **Federal Register** of an annual schedule of Registration Standards under development, and announcements of the availability of dockets and Registration Standards. EPA believes that these procedures will promote public awareness of, and stimulate public participation in, the Agency's decisionmaking process for pesticide Registration Standards.

DATE: This rule will become effective after 60 days of continuous Congressional session from the date of promulgation as provided in FIFRA sec. 25(a)(4). After that period has elapsed, the Agency will issue for publication in the **Federal Register** a notice announcing the effective date of this rule.

FOR FURTHER INFORMATION CONTACT:
By mail:
Jean M. Frane, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 1114, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, 703-557-0944.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA must register all pesticides shipped in commerce. Moreover, EPA must reregister previously registered pesticide products that have not been evaluated according to the standards in FIFRA sec. 3(c)(5). EPA accomplishes this reevaluation through its Registration Standards process.

EPA issued a proposal to institute procedures intended to increase public awareness of and opportunity for participation in Agency decisions made in its pesticide Registration Standards process. This proposal was published in the **Federal Register** of March 28, 1985 (50 FR 12208). The preamble to the proposal described briefly the Congressional mandate requiring EPA to review existing pesticide registrations and the Registration Standards process the Agency has chosen to accomplish that task. A more detailed description of the Registration Standards process may be found in the preamble to the Agency's proposed Pesticide Registration and Classification Procedures, published in the **Federal Register** of September 26, 1984 (49 FR 37921). Also on March 28, 1985, EPA issued in the **Federal Register** a separate proposal (50 FR 12188) to revise the criteria and procedures for its special review process. That proposal contained parallel procedures intended to expand the opportunity for public participation in the Agency's special review process.

Because the proposals contained certain procedures common to both the Registration Standards and special review processes (the public docket and meeting procedures), the Agency stated that it would consider comments received on both proposals in establishing its final rules on both proposals. Accordingly, the public docket and meeting procedures in this rule reflect consideration of pertinent comments that were received in connection with the special review proposal.

With respect to pesticide Registration Standards, the Agency proposed to establish Part 155, containing the following procedures for public participation:

1. Publish in the **Federal Register** each year a schedule of all Registration Standards under development, and request comment and information on the pesticides in the schedule.

2. Establish for each Registration Standard under development a public docket, which would be indexed and made available for public inspection. The Agency would also maintain a mailing list of persons interested in receiving copies of the indices for Registration Standards, and would provide such persons with those indices, updated quarterly.

3. Institute meeting procedures to ensure that all interested persons are afforded equal and open access to the Agency concerning Registration Standards under development.

4. Upon issuance of a Registration Standard, publish a notice of availability of the Standard. Before issuing a notice of availability for a Registration Standard for which the Agency has determined that it possesses a substantially complete chronic health and teratology data base, the Agency would provide opportunity for public comment.

In response to its proposal on Registration Standards, the Agency received 5 comments. In addition, 14 comments were received on the companion special review proposal, some of which pertained to the public docket and meeting procedures common to both proposals. These comments are addressed in the following unit of this preamble.

II. Comments on the Proposal

All commenters expressed support for the docketing and participation procedures. The comments generally reflected a need for clarification of some points of the proposal or of the procedures in general, but did not suggest that the Agency's proposed approach should be modified significantly. One commenter addressed a number of concerns with the Registration Standards process itself, and suggested Agency actions that he believed would improve the process. These comments are not relevant to the public participation procedures, and are not addressed here.

A. The Schedule

The Agency proposed in § 155.25 to issue in the fall of each year a schedule of Registration Standards under development. One commenter requested that the final rule specify the approximate time when the schedule would be published in the **Federal Register.** Since Registration Standard schedules are developed on a Federal fiscal year basis, the schedule notice will normally be published in the **Federal Register** during the first quarter of the Federal fiscal year (October through December). The Agency cannot be more specific than this, and does not believe that additional language in the rule to this effect would be useful.

B. Meetings

Section 155.30 described procedures for meetings with persons outside of Government and how such meetings would be recorded by a meeting memorandum, which (purged of claimed CBI) would be placed in the public docket. In § 155.30(b) the Agency stated that it might decline to meet with persons who attempt to circumvent the public docket procedures by making excessive claims of CBI. Two commenters focussed on this statement, with essentially opposing views on how

the Agency should exercise its prerogative to decline to meet. One commenter urged the Agency to interpret its authority cautiously, so that no truly interested parties are deprived of access. The other urged a very broad interpretation, asserting that any claim of CBI concerning health and safety data should be grounds for refusal to meet.

As stated in the preamble, the Agency maintains an open access policy, and will make every effort to accommodate persons having an interest in a Registration Standard under development. Obviously the Agency's decision to meet, or to decline to meet, is dependent upon the Agency's resources and schedules, the identity of persons requesting the meeting, the nature of the person's interest, and the topic of discussion. Certain discussions will include information that is protected from disclosure under FIFRA section 10(d)(1). Other discussions may include information for which a claim of confidentiality may be made under FIFRA section 10(b). If claims of confidentiality are made for health and safety data, the Agency may, nonetheless, through procedures established in 40 CFR Part 2, determine that the information is not entitled to confidential treatment. If this determination is made, or if no claims are made for health and safety data, the Agency will not treat discussions of health and safety data as confidential, and will disclose them to the public.

EPA recognizes the inherent conflict that exists between its desire for increased public participation and its statutory mandate to protect legitimate confidential business information. The Agency must judge when claims of CBI become so onerous that they interfere with the efficiency of meetings or so excessive that they threaten the credibility of the docketing procedures. However, EPA believes that it is unreasonable and simplistic to adopt a posture that any claim of CBI should be cause to decline to meet. To do so would seriously jeopardize the Agency's ability to gain information essential to its decisionmaking and would negate the open access policy the Agency has pledged.

No change in the final rule has been made because of these comments.

C. The Docket

Proposed § 155.32(a) indicated that a docket would be created upon publication of the Registration Standards schedule notice, or earlier if the Agency believed it appropriate or if documents were generated which should be made available through the public docket. Two commenters commented on the linkage of the schedule notice with the creation of the docket. Both commenters urged that the Agency create the docket at an earlier stage of the Registration Standards process, or alternatively that the docket include materials pertinent to the Registration Standard that are received prior to the creation of the docket. The commenter's apparent concern is that the Agency, in specifying a date (the publication of the schedule) when a docket has been created, will use this date routinely (or arbitrarily) to exclude from the docket materials generated before that date.

The Agency notes that any specific date the Agency established for the creation of a docket might result in the same concern being expressed by commenters. The difficulty arises because the Registration Standards process is a continuing one which a single notice can capture only momentarily.

The Agency has no intention of building inflexibility into its docket system based upon the date the docket is created. The Agency's purpose in establishing a docket system is to increase the public's awareness of and participation in the process, not to decrease it by excluding relevant information. For this reason, § 155.32(a) noted specifically that the Agency would create a docket at an earlier time than the schedule notice if necessary.

For administrative purposes the Agency must establish some date when the docket will be created. Linking the creation of the docket to the issuance of the schedule notice was not intended to imply that the schedule notice is the sole critical point in the process where a docket should be created. Rather, the annual schedule provides a convenient reference point for the Agency and the public alike.

The Agency believes it efficient and reasonable to create a docket for a Registration Standard: (1) When there is a likelihood that the Agency will be receiving or generating information pertinent to the Registration Standard under development; and (2) at a point when the docket will be a useful stimulus for public participation. It would be inefficient for the Agency to create a docket at a point in the process that the Agency would neither be receiving nor generating documents or reaching conclusions bearing on a regulatory decision of which the public should be aware.

In terms of the Registration Standards process, the Agency has decided to create a docket when it begins review of data on a pesticide. This is commonly referred to as Phase II (see the Agency's discussion of the process in its September 26, 1984, proposal). At this point no specific Agency actions are taken, and no public notice is given. During Phase II, the Agency reviews available data on a pesticide, which may result in the generation of documents that should be included in a docket. Therefore, at the beginning of Phase II, a docket will be created and will be open to the public. After the effective date of this rule, dockets will be automatically and continuously created as pesticides enter Phase II of the Registration Standards process.

The compendium of indices of Registration Standard dockets which the Agency will distribute each quarter will reflect each new docket as it is created, even if the pesticide reaches Phase II before it is listed in an annual schedule notice. Morever, the annual schedule notice will list all standards under development during the upcoming year, including some standards not scheduled for issuance until the following year. Publication of the schedule notice and the accompanying request for submission of comments and information will itself necessitate the creation of a docket for each listed pesticide, even if the pesticide has not yet reached Phase II. Thus, after an initial transition period, the overlap of schedule notices from year to year should provide ample notice of docket creation.

As clarification, § 155.32(a) has been revised to reflect the creation of the docket at the time when data review is begun, or when the schedule is published, whichever is earlier. The Agency reiterates that it may include information in the docket that was generated or received before the creation of the docket.

One commenter noted the provision in § 155.32 that if the Agency notifies a registrant privately that a pesticide may exceed risk criteria leading to a special review (the so-called "Grassley-Allen notification," see § 154.21), all subsequent communications and documents pertaining to that possible special review will be placed in a separate pre-special review docket. The pre-special review docket would be closed to the public until the Agency decides to proceed with a special review or publishes its proposed decision not to start a special review. The commenter urged the Agency to include pre-special review documents in the Registration Standard docket unless they pertained specifically to the special review criteria.

The purpose of the Grassley-Allen notification is to inform the registrant of

the basis for the Agency's determination, and to permit the registrant to dispute the validity of the Agency's conclusion that the pesticide exceeds the risk criteria. The Agency's experience is that documents and communications submitted in response to the Grassley-Allen notification pertain to the special review criteria and must therefore be included only in the special review docket. Accordingly, the Agency has not revised the final rule.

Section 155.32(c) described the contents of the docket index. One commenter requested that the index include a list of all **Federal Register** notices concerning availability of the docket. The Agency intends to index all items in the docket, including any **Federal Register** notice pertaining to the Registration Standard and its availability. Section 155.32(c) specifies that the index will include a list of "each document" in the docket, which would include **Federal Register** notices.

Section 155.32(d)(1) described the availability of the docket and index to the public for inspection and copying. In this respect, a commenter to the special review rule requested that the docket be made available by mail to interested persons, because procedures under the Freedom of Information Act (FOIA) take too long and persons who do not reside in the Washington, DC, area would therefore be unable to participate.

The Agency disagrees that FOIA procedures will consume an inordinate amount of time for materials in the public docket. One reason that FOIA procedures may seem unduly protracted is that documents responsive to a FOIA request may contain confidential business information (CBI) which must be purged before the documents can be publicly disclosed or released to a requester. A second reason is that requested materials must often be obtained from a number of Agency records located in different areas; the compilation of a voluminous request may thus delay response.

In the case of a public docket, neither situation will arise. Material in the docket will have been purged of claimed CBI, and may be released without notice to any person. Further, it will be located in the central location. Thus a FOIA request for docket materials can be fulfilled rapidly. The only limitation upon release of materials is that persons may be required to comply with FIFRA sec. 10(g) multi-national affirmation procedures. As described in § 155.32(d)(2), the Agency will maintain a mailing list for dockets and will distribute indices to dockets (both Registration Standard and special review) to persons on the mailing list.

Finally, § 155.32 defined the scope of materials to be placed in the docket as those involving meetings and communications with "persons outside of Government." Two commenters suggested that the Agency expand the coverage of docket materials to include materials and communications from other Federal agencies, State and local government entities, or from members of Congress and their staffs.

EPA declines to modify the rule as suggested by the commenters. The Agency's decisionmaking process relies on free and unlimited consultation with other Government agencies, States, and local authorities. To include such consultations in the public docket could interfere with or compromise the Agency's pre-decisional deliberative process. The majority of meetings and communications with other Federal agencies, and with State and local government personnel, are deliberative in nature. As such, they are excluded at Agency discretion from disclosure to the public under the Freedom of Information Act. The Agency does not believe it prudent to obligate itself to broad and all-inclusive disclosure, through a public docket, of information or materials that it might not disclose under FOIA.

EPA emphasizes that this decision is not intended to, and does not, preclude the Agency from including such materials in the docket when appropriate. For example, communications between EPA and members of Congress are typically not deliberative and are therefore routinely disclosed to the public upon request. The Agency anticipates that such communications would be placed in Registration Standard dockets. In addition, EPA may include communications from Federal agencies or State and local government personnel. If a State or Federal Agency assumes an advocacy role with respect to a particular pesticide, meetings and communications with the EPA on a Registration Standard under development would be less likely to be deliberative in nature. The Agency might decide to consider such communications as equivalent to communications with a "person outside of government," and include them in the public docket.

D. Publication in the Federal Register

EPA proposed in § 155.34 to issue in the **Federal Register** notices of availability of Registration Standards, and to offer opportunity for comment on a proposed Registration Standard for which the Agency had a substantially complete chronic health effects data base. Chronic health effects data were defined in paragraph (a)(2) to include chronic feeding, oncogenicity, reproduction, and teratology studies. Two commenters requested definition of the term "substantially complete." One suggested that the Agency define it to mean "at least one study in four or more separate chronic effects testing categories." The second commenter, while expressing concern at the lack of definition, acknowledged the difficulty of arriving at a definition that would be broadly applicable. This commenter favored an ad hoc approach, in which the Agency would explain in the **Federal Register** notice of proposed issuance its basis for the determination that the data base was "substantially complete," in terms of the studies available and the reasons for not requiring others.

The Agency agrees with the second commenter that a rigorous definition (such as that proposed by the first commenter setting out types and numbers of studies comprising a "substantially complete" data base) is not feasible. Given the number of chronic studies that may be required and the varied circumstances in which they are required, the Agency prefers to make its determinations case-by-case. The Agency must determine as part of its Registration Standard review whether it possesses a "substantially complete" set of data. Therefore, EPA has not defined the term more specifically in the final rule.

In response to the comments, however, the final rule has been revised to more properly characterize the studies included. A teratology study is not, from a scientific standpoint, a "chronic" study (although it is commonly referred to as such). A chronic study is one in which the period of exposure is typically long-term (over a significant portion of the lifespan of the test animal). On the other hand, a teratology study is a unique type of test designed to demonstrate the presence or absence of a particular endpoint of concern (teratogenicity). The period of exposure for such a study is the relatively short time during gestation when teratogenic effects may be expressed. The language in § 155.34 now reflects this distinction.

EPA notes that possession of a substantially complete chronic health and teratology data base does not influence the scheduling or sequence of Registration Standards, but triggers a requirement for notice and comment before issuance of the Standard that is not offered when the Agency has a less complete data base. Initial scheduling of Registration Standard reviews is done according to a pesticide's use pattern:

for example, pesticides which are used on food are given priority. The majority of "first-round" chemicals do not have a complete data base, not only in the health effects area, but also with respect to ecological effects, environmental fate and exposure. The resulting Registration Standard requires registrants to complete the data base to enable the Agency to make required risk determinations. Since the Agency is generally not able to make significant regulatory decisions at this point, the Standard will be issued with only a notice of availability.

When the Agency determines that it has a comprehensive data base in all areas (not limited to health effects data), and when the Agency is prepared to reevaluate the pesticide based on this new information, it schedules a "second-round" review of the pesticide. Second-round reviews will be included in the annual schedule of Registration Standards under development. During this review, the Agency draws conclusions about adverse effects and risks of the pesticide and makes regulatory decisions. The Registration Standard that results from a second-round review will generally be based on a "substantially complete" chronic health and teratology data base.

When the Agency proposes regulatory actions for a pesticide, based on a substantially complete chronic health and teratology data base, public comment is desirable and useful, and the Agency will, in accordance with § 155.34(c), issue a notice in the Federal Register inviting comment before issuing its Registration Standard. As the Registration Standard program progresses, such notices will be issued for significantly more "first-round" Standards because the data base will have been completed before the Agency begins its data review.

III. Statutory Review Requirements

As required by FIFRA sec. 25(a), a copy of this final rule was provided to the Secretary of Agriculture, the House Committee on Agriculture, and the Senate Committee on Agriculture, Nutrition and Forestry. The Secretary of Agriculture had no objection to the final rule. No comments were received from either Committee of Congress. The FIFRA Scientific Advisory Panel waived its review of this rule.

IV. Regulatory Review Requirements

The Agency's proposed rule was reviewed under the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. *et seq.*) and it was determined that it would not have a significant impact on a substantial number of small businesses, small governments, or small organizations. Comments received on the proposal have not changed the Agency's determination in this respect.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*) under OMB Control Number 2070-0057. This rule has been submitted to the OMB for approval as required by Executive Order 12291.

List of Subjects in 40 CFR Part 155

Pesticides and pests, Administrative practice and procedure, Confidential business information.

Dated: Novembr 19, 1985.

A. James Barnes,

Acting Administrator.

Therefore, Title 40, Chapter I, of the Code of Federal Regulations is amended by adding new Part 155, consisting at this time of Subpart B, to read as follows:

PART 155—REGISTRATION STANDARDS

Subpart A—[Reserved]

Subpart B—Docketing and Public Participation Procedures

Sec.

155.23 Definitions.
155.25 Schedule.
155.27 Agency review of data.
155.30 Meetings and communications.
155.32 Public docket.
155.34 Notice of availability.

Authority: 7 U.S.C. 136 through 136y.

Subpart A—[Reserved]

Subpart B—Docketing and Public Participation Procedures

§ 155.23 Definitions.

For the purposes of this part, "confidential business information" means trade secrets or confidential commercial or financial information under FIFRA sec. 10(b) or 5 U.S.C. 552(b)(3) or (4).

§ 155.25 Schedule.

EPA will issue annually in the Federal Register a notice listing the pesticides (or groups of pesticides) for which Registration Standards are currently being developed. The list will include pesticides for which a Registration Standard is scheduled for issuance within the next year, and the approximate sequence of issuance. The list may also include pesticides for which a Registration Standard will be under development during the upcoming year, but which are not scheduled for issuance until the succeeding year. The notice will invite comment and submission of information on the individual pesticides on the list.

§ 155.27 Agency review of data.

EPA will independently (or using the services of disinterested contractors or consultants) review available data in preparation for the development of a Registration Standard, and will be responsible for the drafting of the Registration Standard based on such data reviews. The Agency will not permit registrants to prepare, or assist in the preparation of, data reviews or other Registration Standard documents. The Agency may, however, meet with registrants to discuss its pending reviews, decisions, or documents, in accordance with the meeting procedures in § 155.30, and the docketing procedures in § 155.32.

§ 155.30 Meetings and communications.

EPA personnel may, upon their own initiative or upon request of any interested person or party, meet or communicate with persons or parties outside of government concerning a Registration Standard under development. Such meetings or communications will conform to the following policies and procedures:

(a) *Purpose.* Meetings and communications may be for the purpose of receiving and considering information, exchanging views, exploring factual and substantive positions, discussing regulatory options or for any other purpose deemed appropriate by the Agency in its deliberations concerning development of a Registration Standard. The Agency will not commit to take any particular action concerning a Registration Standard under development during discussions with any person or party outside of government. The Agency will make its final administrative decision on a wholly independent basis, and in accordance with law.

(b) *Meetings with persons or parties outside of government.* Requests by responsible persons or parties outside of government to meet with Agency personnel concerning a Registration Standard under development should be directed in writing to the Registration Division. Reasonable requests will ordinarily be granted on a timely basis. EPA will decide the time and place of such meetings, and the Agency personnel who will attend. EPA may decline to meet with persons or parties who assert unreasonable claims of confidential business information for the purpose of circumventing the docketing

procedures in § 155.32. EPA may also decline to meet if the number or frequency of meetings would delay unduly the issuance of the Registration Standard. Further, no person or party outside government will be accorded special or preferential access to Agency pesticide decisionmaking or to the Agency's decisional process.

(c) *Information submitted to the Agency concerning a Registration Standard under development.* (1) Information, comments, data, or other written material submitted to the Agency at any time concerning a Registration Standard under development may be claimed by the submitter to be confidential business information. The burden of identifying claimed confidential business information rests with the submitter, or, in meetings, with the participants from outside of government who wish to assert a claim of confidentiality.

(2) To assert a claim of confidentiality for all or any part of a written submission concerning a Registration Standard under development, the submitter must furnish three copies of the material. Two copies must be complete, with claimed confidential business information clearly marked in the text. Items in the document that are claimed confidential should be numbered consecutively throughout the document. The third copy must have the claimed confidential business information excised from the text without closing up or paraphrasing the remaining text. The deletions should be consecutively numbered to correspond to the numbering of the complete copies. Each copy must be marked on the cover as to whether it contains claimed confidential business information.

(3) Any written material received by the Agency that is not marked as confidential will be deemed to be nonconfidential, and may be made available through the public docket or otherwise disclosed without prior notice to the submitter.

(d) *Memorandum of meeting.* For each meeting with a person or party outside of government, the Agency will prepare, based on notes taken at the meeting, a memorandum of the meeting. The memorandum will be prepared within 10 working days of the meeting and will include all of the following information:

(1) The date and time of the meeting.

(2) The name of the person who requested the meeting.

(3) The names and affiliations of the participants.

(4) The subject matter of the meeting.

(5) A full and accurate description of all significant positions taken, facts presented, and arguments made by each participant (except that any discussion of claimed confidential business information will be identified in meeting notes, and referenced in the memorandum).

(6) Identification of all documents, proposals, or other materials (other than information claimed to be confidential business information) distributed or exchanged at the meeting.

(7) The name of the person who prepared the memorandum.

(Approved by the Office of Management and Budget under control number 2070-0057.)

§ 155.32 Public docket.

(a) *When created.* (1) A docket will be created for each Registration Standard under development when the Agency begins review of data for the Registration Standard or upon publication of the notice described in § 155.25 setting out the list and sequence of Registration Standards, whichever is earlier. The Agency will announce in its annual schedule notice the dockets that are available for Registration Standards under development.

(2) If the Agency notifies registrants privately in accordance with 40 CFR 154.21 that one or more risk criteria set forth in 40 CFR 154.7 (leading to a special review) may have been exceeded, that notification and any subsequent communications concerning that notification will be placed in a separate docket pertaining to possible special review in accordance with the provisions of § 154.15.

(b) *Contents of docket.* The docket will contain, within the time frames indicated, all of the following documents and information (except that information claimed to be confidential business information will not be included):

(1) An index of its contents (refer to paragraph (c) of this section).

(2) A copy of each comment received in response to the notice described in § 155.25 that pertains to a pesticide for which the notice indicated a Registration Standard was under development (within 10 working days after receipt by the Agency, or 15 working days if the submitter has asserted a confidential business information claim concerning the material).

(3) A copy of each memorandum of a meeting between the Agency and persons or parties outside of government, prepared in accordance with § 155.30(d) (within 10 working days after the meeting).

(4) A copy of each document, comment, item of correspondence or other written material concerning the Registration Standard submitted to the Agency by any person or party outside of government, whether in a meeting or separately (within 10 working days after receipt, or 15 working days if the submitter has asserted a confidential business information claim concerning the material).

(5) A copy of each document, proposal, or other item of written material concerning the Registration Standard provided by the Agency to any person or party outside of government (within 15 working days after the item is made available to such person or party).

(6) A copy of the Registration Standard;

(7) With respect to a Registration Standard for which the Agency has determined that a substantially complete chronic health and teratology data base exists, a copy of the **Federal Register** notice concerning availability of a proposed Registration Standard, and a copy of each comment received in response to that notice (within 10 working days after receipt by the Agency, or 15 working days if the submitter has asserted a confidential business information claim concerning the material).

(8) A copy of the **Federal Register** notice announcing the issuance of the Registration Standard (within 10 working days after the publication of the notice).

(c) *Index of the docket.* The Agency will establish and keep current an index to the docket for each Registration Standard. The index will include, but is not limited to:

(1) A list of each meeting between the Agency and any person or party outside of government, containing the date and subject of the meeting, the names of participants and the name of the person requesting the meeting.

(2) A list of each document in the docket by title, source or recipient(s), and the date the document was received or provided by the Agency.

(d) *Availability of docket and indices.* (1) The Agency will make available to the public for inspection and copying the docket and index for any Registration Standard.

(2) The Agency will establish and maintain a mailing list of persons who have specifically requested that they receive indices for Registration Standard dockets. On a quarterly basis, EPA will distribute the indices of new materials placed in the public docket to these persons. Annually, EPA will require that persons on the list renew their requests for inclusion on the list.

(3) The Agency will issue annually in the **Federal Register** (in conjunction with the annual schedule notice specified in

§ 155.25) a notice announcing the availability of docket indices.

(4) Each **Federal Register** notice of availability of a Registration Standard will announce the availability of the docket index for that Standard.

§ 155.34 Notice of availability.

(a) The Agency will issue in the **Federal Register** a notice announcing the issuance and availability of Registration Standard which:

(1) Concerns a previously unregistered active ingredient; or

(2) Concerns a previously registered active ingredient, and the Registration Standard states that registrants will be required (under FIFRA sec. 3(c)(2)(B)) to submit chronic health (including, but not limited to, chronic feeding, oncogenicity and reproduction) or teratology studies.

(b) Interested persons may submit comments concerning any Registration Standard described by paragraph (a) of this section at any time.

(c) The Agency will issue in the **Federal Register** a notice announcing the availability of, and providing opportunity for comment on, each proposed Registration Standard which concerns a previously registered active ingredient for which the Agency has determined that a substantially complete chronic health and teratology data base exists. Following the comment period and issuance of the Registration Standard, the Agency will issue in the **Federal Register** a notice of availability of the Registration Standard.

[FR Doc. 85-28155 Filed 11-26-85; 8:45 am]
BILLING CODE 6560-50-M

---

40 CFR Parts 154, 162, and 172

[OPP-30083A; PH-FRL 2914-6]

Special Reviews of Pesticides; Criteria and Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is issuing new rules governing Special Reviews of pesticides. Special Review is EPA's process for determining whether the use of a pesticide poses unreasonable adverse effects to humans or the environment. The new rules revised both the criteria for initiation of the Special Review process and the procedures for conducting it. The new rules also incorporate new public participation procedures intended to increase public awareness of the Agency's actions under the Special Review process. The revised Special Review rules reflect changes both in the law and in Agency practices and procedures. EPA believes that the revised rules will aid the Agency in the regulation of pesticides that may pose unreasonable adverse effects to humans or the environment.

DATE: This rule will become effective after 60 days of continuous congressional session from the date of promulgation as provided in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) sec. 25(a)(4). After that period has elapsed, the Agency will issue for publication in the **Federal Register** a notice announcing the effective date of this rule.

FOR FURTHER INFORMATION CONTACT: By mail:
Joan Warshawsky, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.
Office location and telephone number: Rm. 711, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-5778).

SUPPLEMENTARY INFORMATION: This Notice consists of six units:

I. Background
II. Special Review Process
III. Response to Comments
A. Proposed Change of the Name
B. Proposed Revisions of Risk Criteria
(1) Why the risk criteria have been changed
(2) Future availability of exposure information
(3) Definition of a validated test
(4) Agency discretion
(5) Specific criteria or proposed criteria
C. Pre-Special Review Procedures
(1) Participants in pre-Special Review
(2) Timing of registrant response
(3) Benefits in pre-Special Review
(4) Discussion of risk reduction measures
(5) Publication of proposed decision not to initiate Special Review
D. Special Review Procedures
(1) Issuance of Notice of Special Review before Notice of Preliminary Determination
(2) Expedited Procedures
(3) Submission of Notice of Final Determination to SAP
(4) Petition to initiate Special Review
(5) Deadlines
E. Scope of Special Review
(1) New active ingredients
(2) Consideration of alternatives
F. Public Participation and Docketing
(1) Definition of "person"
(2) Inclusion of government contacts in docket
(3) Public availability
(4) Confidential business information
(5) Burden on Agency resources
IV. Statutory Review
A. U.S. Department of Agriculture
B. Scientific Advisory Panel
C. Congressional Committees
V. Regulatory Review Requirements
A. Executive Order 12291
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
VI. List of Subjects in 40 CFR Parts 154, 162, and 172.

I. Background

The Agency issued a proposed rule, published in the **Federal Register** of March 27, 1985 (50 FR 12188), to revise both the substantive criteria and the procedures for the Special Review (Rebuttable Presumption Against Registration or RPAR) process. The document proposed to revise the criteria used by the Agency to determine if a use or uses of a pesticide may pose a significant risk to health or the environment. If one or more of these criteria were met or exceeded, the Agency would initiate a Special Review on the pesticide product use or uses in question, leading to an ultimate determination of whether this use or uses may pose unreasonable adverse effects to humans or the environment. The document also proposed to change the name of the RPAR process from "RPAR" to "Special Review." The revisions were intended to respond to the requirements and legislative intent of Congress as expressed in the 1975 and 1978 revisions to FIFRA, and the Agency's own experience gained after more than 8 years of regulating pesticides under the current criteria and procedures.

The Agency also proposed procedures for the establishment of a public docket for each pesticide chemical under Special Review in order to expand the opportunity for public participation in the Special Review process. The intent, background, and application of the docket procedures were discussed in detail in the preamble to the proposed rule.

This final rule sets forth the new criteria developed by the Agency for the initiation of a Special Review. These criteria assure that the determination of whether or not a pesticide poses an unreasonable risk will be based both on the toxic effects associated with the pesticide and the actual or projected exposure of humans and other nontarget organisms to the pesticide. The criteria will also afford the Agency increased flexibility in evaluating actual and potential risk.

The criteria for initiating a Special Review of pesticide uses include: (1) Acute toxicity to humans or domestic animals under § 154.7(a)(1); (2) the potential of adverse chronic effects in humans under § 154.7(a)(2); (3) hazards to nontarget organisms under § 154.7(a)(3); (4) separate criteria for hazards to threatened or endangered

species under § 154.7(a) (4) and (5); an "other adverse effects" criterion which would permit the Agency to initate a Special Review in circumstances where potential risks may not be anticipated by the specific criteria under § 154.7(a)(6). All cross reference to § 162.11 (a) and (b) in 40 CFR have been changed to reflect this rule.

II. Special Review Process

The Special Review process being promulgated in this rule will encompass a number of procedural steps. Each of these steps is briefly described below:

1. *Registrant notification.* When the Agency concludes tentatively that effects data, together with preliminary information on exposure, indicate that a risk criterion may have been met, registrants will receive private notification that the Agency is considering issuing a Notice of Special Review. Issuance of the private notification will be deemed to be the commencement of the pre-Special Review phase of the process. The registrant will have 30 days from receipt of this preliminary notification to dispute in writing the validity of the Agency's conclusions or present in writing any information in response to the risk concerns included in the notification.

2. *Proposed decision not to initiate a Special Review.* If, after notification to the registrants of the Agency's concerns, the Agency tentatively determines that use of the pesticide does not pose a significant risk, a **Federal Register** notice will be issued which explains the Agency's preliminary risk concerns and the basis for the Agency's determination that the use of the pesticide does not pose a significant risk. This notice will also announce the availability of the public docket, which will include the pre-Special Review notification and all written comments, materials, and other information received in response to the notification. The notice will also solicit public comment on the Agency's determination. Following the public comment period, the Agency will make a final decision whether to initiate a Special Review.

3. *Notice of Special Review.* If the Agency determines that a significant risk may be associated with a pesticide use, a Notice of Special Review will be published in the **Federal Register**. This notice will describe the Agency's reasons for the determination of significant risk, the assumptions and data used in the analysis, the nature and strength of the conclusions, and will announce the availability of the pre-Special Review docket. The Notice will also solicit public comment and request additional information on the pesticide.

4. *Current Benefits Review.* If the Agency determines that a pesticide may pose a significant risk and decides to initiate the Special Review process, a Current Benefits Review will also be initiated. Benefits information will not be considered in deciding whether to initiate a Special Review. However, once the Agency has decided to begin a Special Review, preparation of a preliminary benefits profile will assist the Agency in determining if the potential benefits of use are sufficiently great to justify continued use pending a detailed risk/benefit analysis, in identifying potential regulatory options, and in preparing for a more detailed benefits analysis during Special Review.

5. *Public discussions.* After the Notice of Special Review has been issued, the Agency may meet with interested parties to discuss the Agency's risk concerns and available options to reduce the potential risk to health or the environment. A memorandum summarizing the substance of each such meeting will be placed in the public docket.

6. *Risk/benefit evaluation.* The Agency will conduct a comprehensive risk/benefit analysis of each use (or category of uses) of the pesticide which is subject to Special Review. The Agency will evaluate potential risks by considering factors such as the nature of any adverse effect, the magnitude of exposure of humans and other nontarget organisms, and the size of the population at risk. The Agency will also evaluate the benefits of continued use, including the availability, efficacy, and cost of alternative control methods.

7. *Preliminary determination.* If the Agency determines that the registrants are willing voluntarily to amend their registrations in a manner which would reduce the risks associated with continued use to acceptable levels, a Notice of Preliminary Determination will be published in the **Federal Register** describing the Agency's previous risk concerns regarding the pesticide and giving the basis for the Agency's proposed voluntary resolution of these concerns. If the registrants have not offered voluntarily to amend the terms and conditions of registration in a manner which would reduce the risks to an acceptable level, the Agency will issue a Notice of Preliminary Determination setting forth regulatory measures necessary to reduce risks to an acceptable level and a proposed notice of intent to cancel, deny, or reclassify registration implementing these measures. The Agency will issue its preliminary determination for publication in the **Federal Register** and provide an opportunity for public comment.

8. *Review of preliminary determination.* If the Agency proposes to issue a cancellation, denial, or reclassification notice, that proposal will be submitted to the Scientific Advisory Panel (SAP) for comment on the Agency's scientific rationale. At the same time, the Agency will submit the proposed notice to the United States Department of Agriculture (USDA) for comment, especially on the benefits issues and agricultural impacts.

9. *Final Determination.* After evaluating all comments received from the USDA, the SAP, and the public on the proposed action, the Agency will modify the proposal where appropriate prior to issuance as a final action. A Notice of Final Determination will be published in the **Federal Register**, along with a notice of intent to cancel, deny, or reclassify registration if required to implement the determination. Any such notice will become effective by operation of law unless the registrant makes the necessary corrections or a hearing is timely requested by a person adversely affected by the notice.

III. Response to Comments

Comments on the proposed rule were received from 15 sources: 9 registrants, 3 trade associations, 2 environmental groups, and 1 individual. The comments are available for public inspection at the Office of Pesticide Programs Reading Room, Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Several of the comments made suggestions for only minor changes, some of which have been incorporated into the final rule. Other comments were more substantive, however, and they are discussed below along with the Agency's response to each comment.

The following public comments and Agency responses are grouped according to subject matter, and are discussed in the following order: Proposed Change of the Name; Proposed Revisions to the Risk Criteria; Pre-Special Review Procedures; Special Review Procedures; Scope of Special Review; and Public Participation and Docketing.

A. Proposed Change of the Name

The Agency proposed to change the name of its in-depth review of the risks and benefits posed by a pesticide from the term "Rebuttable Presumption Against Registration" (RPAR) to

"Special Reivew." The name change was endorsed by all comments that addressed the issue. The comments agreed with the Agency that the term RPAR was frequently misunderstood by the public, which often interpreted the process to mean that the pesticide in question had already been determined to pose unreasonable risks. The Agency agrees that the term "Special Review" is more reflective of the risk/benefit evaluation the process entails, and has in fact already adopted the new terminology.

B. Proposed Revisions of Risk Criteria

1. Why the Risk Criteria Have Been Changed

The Agency proposed revisions in the risk criteria for initiating a Special Review to assure that determinations concerning the significance of risk are based not only on the toxic effect associated with a pesticide, but also on the likely exposure to the pesticide, and to afford the Agency greater flexibility in making such determinations.

The proposed changes to the risk criteria generated a number of varied comments. Most comments endorsed the Agency's decision to change risk criteria focusing principally on toxicity data to criteria based on the Agency's assessment of the significance of the risk presented by actual or projected exposure. There was general consensus that the revised criteria should also make the Special Review process more efficient and more responsive to issues of genuine concern.

One comment from an environmental group expressed lack of conviction that new criteria are necessary and contended that the Agency did not adequately explain why they are preferable to the current criteria or provide additional flexibility and practicality in determining whether to initiate a Special Review.

Several other comments expressed concern that the risk criteria in the proposed rule are too vague, leaving the Agency too much discretion in determining if a Special Review should be initiated. While one comment was concerned that the vagueness of the criteria will result in Special Reviews rarely being initiated, other comments expressed the opposite belief that too many pesticides will enter the Special Review process. One comment suggested that the increased flexibility resulting from the substitution of the Administrator's judgment for specific quantitative thresholds may be perceived as a way of "gate-keeping," permitting the Agency to limit the number of Special Reviews in the queue rather than initiating Special Reviews based on intrinsic merit and then setting priorities for review. As a partial remedy to the perceived vagueness of the criteria, several comments suggested that certain terms used to describe the criteria be defined with greater specificity, such as "serious," "sufficiently," "significant," "sufficient magnitude," "acceptable level," and "of concern."

The criteria were amended to afford the Agency greater flexibility in evaluating potential risks and to enable the Agency to concentrate available resources on review of those pesticides having greater potential risk. The former criteria included in 40 CFR 162.11(a) required initiation of the Special Review (RPAR) process for any pesticide with acute toxicity exceeding certain specified numerical values or which had induced certain chronic effects at any level. The specificity of these risk criteria did not permit the Agency adequate discretion to consider other factors in evaluating the significance of risk, such as exposure levels or population size. Retention and strict application of these former criteria could prevent the Agency from focusing its resources on pesticides having the most potential for harm to the public or environment.

In contrast, the amended criteria will permit the Agency to evaluate pesticides which may be candidates for Special Review on a case-by-case basis, taking into account all pertinent risk information. The Agency will be able to consider available information concerning exposure levels and the size of the exposed population and to make judgments concerning the weight of the evidence when confroned with conflicting or ambiguous toxicity data. The ultimate decision whether to initiate the Special Review process will reflect the Agency's judgment concerning the significance of the risk. For example, a pesticide may induce oncogenic effects in laboratory animals and therefore satisfy a former criterion for initiation of Special Review. However, if the pesticide is only weakly oncogenic and the exposure potential associated with registered uses is low, the Agency may determine that the risk is not significant enough to warrant devoting Agency resources to a full-scale Special Review of risks and benefits. On the other hand, if the pesticide is a potent oncogen and/or the exposure associated with one or more uses may be substantial, the Agency may conclude that a comprehensive analysis of risks and benefits is necessary and initiate a Special Review.

Some industry comments expressed concern that the Agency's intention to include exposure as a factor in the revised risk criteria was not sufficiently apparent from the criteria themselves. Two comments concluded that some of the risk criteria did not include an exposure component and recommended that they be modified accordingly. Several comments suggested that the Agency add language concerning the role of exposure information in assessing risk taken from the preamble of the proposed rule to the text of the final rule. The Agency believes that all of the proposed criteria would either explicitly or implicitly require consideration of available exposure information. Nevertheless, in response to these comments and to clarify the Agency's intent, the Agency has added additional language to § 154.7 providing that the Agency will consider "available evidence concerning both the adverse effect in question and the magnitude and scope of exposure of humans and nontarget organisms associated with use of the pesticide."

2. Future Availability of Exposure Information

Several comments expressed concern that the proposed rule did not adequately define the kind of exposure data which the Agency will use to determine if a Special Review should be initiated. Some of these comments also noted that the Agency has not established any mechanism to insure that exposure information will be available when the Special Review process is initiated. To remedy this situation, comments suggested amending registration guidelines to require submission of necessary exposure data during the registration process, and calling in exposure data for all potential Special Review chemicals.

During the reregistration process, the Agency may require pursuant to FIFRA section 3(c)(2)(B) that registrants develop and submit exposure data to support continued registration of any use. Although the Agency may initiate a Special Review at any time it determines that a pesticide may pose a significant risk, the Agency expects that the majority of potential Special Review pesticides will be identified during the Agency's systematic review of pesticides in the Registration Standards process. The number of pesticides which ultimately become Special Review candidates does not warrant a general requirement that all applicants and registrants submit each category of exposure data which may ultimately prove useful in determining whether to

initiate a Special Review. In some instances, a registrant may anticipate the Agency's risk concerns and develop and submit exposure information pertinent to a risk determination. If time permits, once a potential candidate for Special Review has been identified, the Agency may require registrants to submit additional exposure data for use in determining whether to initiate a Special Review.

The types of data which the Agency will utilize to evaluate exposure depend on the nature of the potential risk. The studies used to evaluate the residues of a pesticide and its metabolites in agricultural commodities are described in the EPA Pesticide Assessment Guidelines. Various subdivisions of the Guidelines also describe studies which the Agency may require to assess exposure resulting from spray drift or reentry into treated areas. Guidelines for the studies used to monitor exposure to workers involved in pesticide application are in preparation, as are guidelines for studies to assess ground water contamination.

In suggesting that the Agency take additional steps to ensure future availability of exposure information, the comments expressed apprehension that the Agency might otherwise delay issuance of a Special Review and implementation of necessary risk reduction measures pending acquisition of adequate exposure information. The Agency believes that the submitters of these comments may have misconstrued the effect of the Agency's revised risk criteria. In applying the revised criteria, the Agency will consider pertinent exposure information when it is available, but will not necessarily defer initiation of a Special Review in instances when exposure data are not available. However, the Agency would not act without considering potential exposure. In lieu of actual exposure data, the Agency would use estimates or projections of exposure based on other information.

Ideally, the Agency's decision whether to initiate a Special Review will be based in part on actual monitoring data. When monitoring data are not available or inadequate, the Agency will base its exposure assessment on other factors. Depending on the route of exposure in question, the Agency may use information concerning environmental fate, persistence and mobility, dermal or gastrointestinal absorption, use volume, use practices, predicted presence in the food chain, number of people and segments of the population exposed through occupation, diet, or water consumption, and national surveys of chemicals present in human tissue. In estimating applicator exposure, the Agency may also use "surrogate data." Surrogate data are derived from field studies of dermal and inhalation exposure estimated with application of similar chemicals or use of similar application methods.

One comment from an environmental group suggested that "surrogate exposure data" should only be used to raise risk concerns and that actual exposure data for the pesticide in question should be required to support an Agency decision not to initiate a Special Review. The Agency does not believe that the distinction between "actual" and "surrogate" exposure data suggested by the comment is justified. The magnitude of exposure in certian use situations may be largely independent of the specific pesticide used. In such situations, the Agency believes that it is reasonable to base exposure estimates on exposure data from surrogate studies combined with conservative assumptions concerning systemic absoption. In contrast, the Agency seldom uses surrogate data for ecological exposure assessments due to the great complexity of environmental exposure routes.

3. Definition of a Validated Test

FIFRA section 3(c)(8) provides that a decision to initiate a Special Review must be "based on a validated test or other significant evidence raising prudent concerns of unreasonable adverse risks to man or to the environment." The proposed rule included definitions of the terms "validated test" and "other significant evidence" which were derived from the language of the 1978 Conference Report enacting section 3(c)(8). In the preamble to the proposal, the Agency discussed the factors which would be considered by the Agency in applying these definitions and specifically requested comment concerning the adequacy of the definitions.

Comments received concerning the proposed definitions of "validated test" and "other significant evidence" were generally favorable. Two trade associations and two registrants submitted comments explicitly supporting the proposed definitions, describing the definitions as adequate and consistent with congressional intent.

The proposal defined a "validated test" as a test which the Agency determines "to have been conducted and evaluated in a manner consistent with accepted scientific procedures." In the preamble, the Agency noted that it would apply this definition by determining whether a study was conducted in conformity with an acceptable protocol and good laboratory practices and would permit the Agency to make sound scientific judgments. The Agency also noted that a study would not be rejected as a basis for initiation of a Special Review merely because it would not meet applicable requirements if submitted in support of a pesticide registration.

One registrant commented that EPA should not allow a "double standard" by relying on information to trigger a Special Review which would not satisfy applicable guidelines if submitted in support of registration. In response, the Agency notes that under FIFRA, the burden of establishing that a pesticide satisfies the statutory standard for registration rests at all times on the proponent(s) of registration or continued registration. See, e.g., *Industrial Union Dept.* v. *American Petroleum Institute*, 448 U.S. 607, 653 at n. 61 (1980); *Environmental Defense Fund (EDF)* v. *Environmental Protection Agency (EPA)*, 548 F.2d 998, 1004, 1012–1018 (D.C. Cir. 1976); *EDF* v. *EPA* 510 F.2d 1292, 1297, 1302 (D.C. Cir. 1975). The Agency need not demonstrate that a product is not registrable by producing information comparable to that required to support registration. To be sure, Congress intended in enacting section 3(c)(8) that EPA would have a resaonable scientific basis for its risk concerns prior to initiating the public Special Review process. However, the Agency will not disregard information which raises prudent concerns regarding the risks associated with a pesticide merely because the information would not be considered adequate if submitted in support of registration.

In fact, another registrant erroneously concluded from the Agency's general discussion of "good laboratory practices" as a factor in application of the definition of "validated test" that the Agency would automatically reject as a basis for issuance of a Special Review data not conforming to the EPA Good Laboratory Practice Standards (GLP) set forth at 40 CFR Part 160. Noting that the GLP Standards were only recently adopted (in November 1983) and that a number of tests conducted prior to that time may not strictly conform to these Standards, the registrant commented that nonconforming information should be considered to be a "validated test" if otherwise scientifically valid. The Agency agrees with this comment.

4. Agency Discretion

Section 154.7 of the proposed rule provided that the Administrator "may

conduct a Special Review of a pesticide use which satisfies one of the risk criteria. One comment stated that this provision "appears to allow the Agency discretion in a situation where action should be mandatory" and suggested that "may" be replaced with "shall."

The comment has correctly interpreted the effect of the proposed language. The Agency believes that it should retain discretion to decide whether and when to initiate a Special Review. Prior to initiating a Special Review, the Agency may wish to confer with other Federal agencies, States, or local authorities or engage in further factfinding. In lieu of a Special Review, the Agency may elect to issue an immediate notice of intent to suspend, cancel, or deny registration, to issue a stop sale order or take other enforcement action, or to address the hazard in question by rulemaking or other generic administrative action.

For all of the above reasons, the Agency believes that it must have discretion to decide whether and when to conduct a Special Review, and the Agency declines to amend § 154.7 in the manner suggested by the comment. In fact, the Agency has concluded that the language which the Agency proposed for § 154.21(a) could be interpreted to require mandatory initiation of Special Reviews and this section has therefore been revised to conform to the language of § 154.7.

5. Specific Criteria or Proposed Criteria

i. *Mutagenicity.* The Agency proposed a criterion for mutagenicity separate from the other nonacute toxic effects in order to provide substantive guidance as to the general type of evidence concerning mutagenic effects which would cause the Agency to be concerned. The previous criterion indicated that the Agency would initiate a special Review for any pesticide determined to induce mutagenic effects "by multitest evidence." This old criterion could have been interpreted to preclude initiation of a Special Review based on only one mutagenic study, no matter how compelling, and to require a Special Review based on two or more positive mutagenic studies, regardless of the relation of the studies to the likelihood of heritable genetic effects in humans. The revised criterion incorporated in the proposed rule required "a risk of inducing a heritable genetic effects in humans" based either on effects found in one or more appropriate test systems combined with evidence that the substance would reach mammalian germinal cells, or on epidemiologic or other evidence of mutagenic effects in humans.

Several comments submitted by industry expressed concern about the content and interpretation of the proposed criterion for heritable genetic effects. Two comments stated that the term "appropriate test system" was ambiguous and could be interpreted to include valid tests of lesser significance or to preclude the Agency from placing greater emphasis on certain types of tests. One comment stated that the criterion should require evidence of an effect in germinal cells rather than the mere presence of the substance therein, and questioned the consistency of the proposed criterion with the Agency's Proposed Guidelines for Mutagenicity Risk Assessment published in the Federal Register of November 23, 1984 (49 FR 46314). Another comment questioned the significance for assessment of heritable genetic effects of epidemiologic or other evidence of nonheritable mutagenic effects in humans. To remedy these problems, one comment proposed expansion and revision of the proposed criterion and the other two comments favored incorporation of the phase "heritable genetic effects" into the general criterion for other nonacute toxicologic effects.

While the Agency does not necessarily agree with the comments on all of the scientific issues, the comments have raised valid concerns about the interpretation and application of the criterion for heritable genetic effects and its consistency with the Agency's proposed mutagenicity guidelines. Rather than attempting to expand and revise the criterion to address these concerns, the Agency has decided to simply incorporate the phrase "heritable genetic effects" in the general nonacute toxicity criterion set forth at § 154.7(a)(2). As for the Agency's original intention to provide guidance concerning the types of mutagenicity data which the Agency would rely on in deciding to initiate a Special Review, the Agency's proposed mutagenicity guidelines discuss in detail the scientific relevance of particular types of data to the question of whether a substance may cause heritable genetic effects.

ii. *Nontarget adverse reproductive effects.* The proposed rule included a criterion permitting the Agency to initiate a Special Review if use of a pesticide may result in residues in the environment of non-target organism "at levels which equal or exceed concentrations acutely or chronically toxic to such organisms, or which produce adverse reproductive effects in such organisms." One registrant suggested that the Agency modify this criterion to provide that a Special Review will not be initiated if there is "a sufficient margin of safety" between actual or anticipated exposure and toxic levels. This suggestion was apparently predicated on the commenter's conclusion that a Special Review would be triggered by "any adverse effect in a nontarget organism." The Agency notes that this registrant has misconstructed the intent and effect of the proposed criterion. However, the Agency has added an additional phrase to the criterion to clarify its intention that the criterion apply when residues in the environment may be present "at levels" which actually induce adverse reproductive effects in nontarget organisms.

iii. *Endangered species criteria.* The proposed rule included two separate criteria concerning the impact of pesticide use on endangered species. The first of these criteria concerned threats to the continued existence of any endangered or threatened species and the second addressed potential destruction or modification of a designated critical habitat for any endangered or threatened species.

The Agency received two comments submitted by industry concerning the endangered species criteria. One comment suggested inserting the word "significant" before "risk" in the first criterion to allow factors such as the magnitude and duration of exposure and the size of the exposed population to be considered. Another comment suggested that the second criterion concerning critical habitats be deleted because the first criterion is adequate to assure appropriate protection of endangered species.

The Agency's inclusion in the proposal of separate but parallel criteria reflects the language of the Endangered Species Act of 1973. Section 9 of the Act states that the taking of even one member of an endangered species of fish or wildlife is prohibited. Insertion of the word "significant" would imply consideration of population size and therefore would be in violation of the Endangered Species Act. Furthermore, pesticide use which might have an impact on the food source of an endangered species or otherwise adversely affect a critical habitat is also prohibited under this Act. The Agency therefore declines to delete the second criterion.

iv. *Deletion of emergency treatment criterion.* Unlike the prior RPAR regulations, the proposed rule did not include a separate risk criterion concerning lack of an emergency treatment. One comment submitted by an environmental group objected to the

proposed elimination of the separate emergency treatment risk criterion. Although recognizing that hazards may sometimes be controlled through label revisions, packaging or application method alterations, the comment stated that lack of emergency treatment should be explicitly discussed in the proposed acute toxicity criterion.

The Agency's rationale for deleting the criterion concerning lack of an emergency treatment was discussed in detail in the preamble of the proposed rule. The Agency recognizes that the lack of emergency treatment poses a potentially significant risk to health. However, the Agency believes that the risks associated with the lack of emergency treatment are addressed implicitly in the risk criterion for acute toxicity, because it applies to all risks of serious acute injury whether or not they arise from lack of an effective antidote. Accordingly, EPA has not revised the rule to add a separate emergency treatment criterion.

v. *Separate ground water criterion.* The preamble to the proposed rule solicited comments on the appropriateness of establishing a specific criterion for ground water contamination by pesticides and solicited suggested language for such a criterion. The Agency is very concerned about the potential hazards presented by the contamination of ground water with pesticides. Ground water contamination may result in exposure of large populations and is very difficult to clean up. Moreover, the detection of localized pesticide residues in ground water may be an early indicator of more widespread future contamination.

In recognition of these factors, the Agency has considered adoption of a separate ground water criterion for initiation of a Special Review. However, the Agency has concluded that the mere detection of a pesticide in ground water is not a sufficient basis for a Special Review. If a pesticide is found in ground water, the Agency will evaluate known contamination, the likelihood of more extensive contamination in the future, and available data concerning environmental fate and toxicity before determining whether the potential hazard is sufficient to initiate a Special Review. Because the other proposed risk criteria are broad enough in scope to include any and all risks associated with pesticide residues in ground water, the Agency stated in the preamble to the proposed rule its belief that a separate ground water criterion is not necessary. Nevertheless, the Agency requested that the public comment on this issue.

The Agency received 11 comments concerning ground water issues. Nine registrants and trade associations agreed with the Agency that the other proposed criteria provide an adequate basis for initiating a Special Review concerning ground water contamination, although one of these comments also proposed specific language for a ground water criterion. Seven of these comments also explicitly endorsed the Agency's position that the presence of a pesticide in ground water should not by itself be sufficient to initiate a Special Review. One environmental group suggested that the Agency adopt a criterion providing for issuance of a Special Review if a pesticide "has been detected in ground water as the result of use in accordance with the product label." The remaining comment noted that evaluation of pesticide exposure resulting from ground water contamination involves different assumptions than evaluation of other routes of exposure, and recommended that the Agency evaluate the need for and substance of a ground water criterion on an ongoing basis and adopt one later "if justified by emerging data and exposure."

One comment stated that the Agency should issue a health advisory concerning permissible levels to provide guidance to State and local authorities whenever a pesticide has been detected in ground water. Several comments suggested that the Agency use existing standards and advisories to assess the significance of the risk posed by ground water contamination. One registrant stated that Maximum Permissible Levels in ground water should be established for all pesticides and that a Special Review should be initiated "only if these levels are routinely exceeded."

The Agency will from time to time establish Pesticide Guidance Levels for pesticides which have been found in drinking water and may do so for those which are likely to be found in drinking water. These advisory levels are intended to assist State and local authorities in responding to particular instances of contamination. They are not mandatory or formal Federal standards. Formal Federal standards for pesticides in drinking water are established when the Agency sets maximum contaminant levels (MCL's) or recommended maximum contaminant levels (RCML's) pursuant to the provisions of the Safe Drinking Water Act. The Agency will not necessarily limit the initiation of Special Reviews to those instances where guidance levels or MCL's are routinely exceeded, nor will it foreclose the possibility of initiating a Special Review in response to a single finding of ground water contamination. In each instance, the Agency will evaluate all of the circumstances, including the known extent of contamination, environmental fate and transport data, and the toxicologic significance of potential residues, in deciding whether or not a pesticide poses a significant risk and should be subject to a Special Review.

C. Pre-Special Review Procedures

1. Participants in Pre-Special Review

Section 154.21 provides for preliminary notification of registrants and applicants when the Agency has determined that the criteria for issuance of a Special Review may have been met, and affords registrants and applicants an opportunity to respond to the notification prior to issuance of a Special Review. In the proposal, the Agency discussed the legislative history of FIFRA section 3(c)(8), which directs the Agency to notifiy affected registrants of RPAR concerns by "private communication," in order to "ameliorate the indictment-like characteristics of the RPAR process." The Agency does not believe that Congress intended the Agency to involve parties other than affected registrants or applicants in pre-Special Review discussions or otherwise to publicize its risk concerns during these discussions.

Comments submitted by environmental groups did not object to the private notification concept, so long as private discussions are confined to scientific issues rather than regulatory options and an opportunity for comment is provided if the Agency concludes that a Special Review is not necessary. However, one user group explicitly opposed the private notification procedure and advocated publication of each pre-Special Review notification to enable user groups to approach registrants and offer assistance in defense of registration. While the Agency does not believe that such an approach is legally permissible, nothing in section 3(c)(8) or the final rule would prevent a registrant from itself notifying or seeking assistance from user groups.

Several registrants submitted comments supporting the private notification procedure. However, two of the same registrants also advocated public involvement at other junctures in pre-Special Review, without accounting for the potential inconsistency in these positions. For example, one registrant first stated that no one other than the Agency and the registrant needs to be involved until after issuance of a Special Review, and then later suggested that EPA provide an opportunity for

"registrants, Agency personnel, grower groups, and the public to work together" to develop risk reduction measures to avert issuance of a Special Review. In a similar vein, several registrants suggested that EPA present any decision to initiate a Special Review to public review by the Scientific Advisory Panel (SAP).

The Agency could conceivably devise segmented pre-Special Review procedures which would eliminate the apparent conflict in these suggestions. For example, the Agency could publish each Notice of Special Review as a proposal and submit it for public comment and SAP review prior to issuance. However, the Agency believes that any benefits of such a procedure would be greatly outweighed by the additional delay and expenditure of Agency resources. The Agency agrees with one comment that expressed concern that pre-Special Review could become "overly elaborate" and redundant with the Special Review itself.

The Agency believes that pre-Special Review must be limited in scope and duration. The basic purpose of the private notification procedure is to apprise the affected registrant of the Agency's risk concerns and the substantive rationale for those concerns and afford the registrant reasonable opportunity to clarify the evidence or dispute the Agency's scientific conclusions. This consultation is not intended to be comparable in scope to the full Special Review process which may follow.

2. Timing of Registrant Response

The proposed rule provided for a 30-day comment period following preliminary notification to allow registrants and applicants to prepare and submit a written response. Although one environmental group endorsed this provision, several industry comments stated that 30 days is not enough time to prepare a response. Various comments proposed that the Agency instead afford registrants "not less than" 30 days, 60 days, or 90 days.

Most comments appeared to interpret the 30-day provision as imposing a strict deadline for comment. Under this provision, the Agency is not required to wait more than 30 days before making a decision. However, this provision would not prevent the Agency from affording a registrant more time in appropriate circumstances. In fact, one comment expressed concern about the possibility of lengthy pre-Special Review periods and recommended that the Agency include in the rule a provision requiring the Agency to issue a notice for publication in the **Federal Register** and open the docket for public review if more than 1 year has elapsed since preliminary notification without a decision. The Agency has no intention of permitting the pre-Special Review process to become this protracted.

The Agency believes that 30 days should provide sufficient time in most instances for registrants to prepare an appropriate response. Accordingly, the Agency has not revised the 30-day comment opportunity provision. In those instances where a registrant can demonstrate a legitimate need for additional time, the provision does not prevent the Agency from granting an appropriate extension.

3. Benefits in Pre-Special Review

The traditional purpose of the Special Review process has been to identify pesticides which may pose substantial risks and then to conduct an intensive evaluation of both risks and benefits. The Agency has only limited resources available for intensive scientific analysis and needs to establish priorities by identifying and addressing the most serious risks first. The proposed rule reflected this basic concept.

Although the Agency does not presently consider benefits information in making its decision whether or not to issue a Notice of Special Review, inclusion of benefits in the pre-Special Review determination might in some instances enable the Agency to make a determination that the benefits of continued use are sufficiently large to outweigh any conceivable risk. In such instances, consideration of benefits would avert issuance of an unnecessary Special Review. Although the Agency had concerns about including benefits in the pre-Special Review process, the Agency decided to request comments on the utility and practicality of such a procedure.

Comments received from industry generally favored including benefits analysis in pre-Special Review. Some of these comments qualified their endorsement by indicating that benefits information should be considered when "readily available" or when "adequate data are available." One registrant urged that the Agency provide for "flexibility" but not be "obligated" to consider benefits information. In contrast, comments by environmental groups expressed strong opposition to inclusion of benefits in the pre-Special Review determination. These comments stressed the resultant delays in issuance of a Special Review and the likely inadequacy of the information concerning both benefits and risks which would be available to the Agency at this stage of the process.

The Agency has carefully evaluated all of the comments received concerning the benefits issue. Although the Agency appreciates the interest of some comments in incorporating benefits in the pre-Special Review process, the Agency has nevertheless concluded that there are compelling reasons not to adopt this approach. Some sort of determination that a pesticide poses a potentially significant risk would still be necessary. Otherwise, a Special Review would have to be started on each of the many pesticides which pose relatively modest potential risks but may also have minimal benefits. Consideration of benefits in pre-Special Review could require that this necessary risk determination be made an earlier stage in the process, creating a sort of pre-Special Review. The Agency shares the concern expressed in some comments that pre-Special Review could become too elaborate and come to resemble the Special Review process itself.

Given the constraints imposed by section 3(c)(8), the Agency would be unable to consult during pre-Special Review with users and other non-registrants from whom it often receives significant benefits information. The available information concerning risk may also be insufficient at the time that a potentially significant risk concern is first identified to permit any meaningful balancing of risks and benefits. Finally, and perhaps most significantly, expansion of pre-Special Review to accommodate formal consideration of benefits information would place further demands on Agency resources, with relatively limited prospects for subsequent resource savings, and could considerably delay the initiating of many Special Reviews.

4. Discussion of Risk Reduction Measures

Several industry comments expressed an interest in discussions of potential risk reduction measures during the private pre-Special Review comment period as a means of averting issuance of a Special Review. One registrant suggested that the proposal be revised to accommodate explicitly this possibility. In contrast, one environmental group stated its opposition to any "discussion and development of regulatory options in the non-public pre-Special Review stage."

Section 154.27(d) of the rule states that registrants may propose voluntary changes in the terms and conditions of registration after issuance of a Special Review, and § 154.31(a)(2) explicitly

accommodates the possibility that the Agency may consider such changes a satisfactory basis for conclusion of the Special Review. The rule neither makes provision for, nor precludes submission of proposed risk reduction measures in response to a pre-Special Review notification. In practice, there may be some instances where a registrant proposes changes in his registration, in response to a preliminary notification, which cause the Agency to reconsider issuance of a Special Review (e.g., elimination of a particular use or use practice which is the principal basis for the Agency's risk concerns). However, the Agency wishes to reemphasize its basic position, as stated above, that pre-Special Review discussions should be limited in scope and duration, and the Agency does not expect to routinely use the pre-Special for discussion of regulatory measures to reduce potential risks.

5. Publication of Proposed Decision Not To Initiate Special Review

Preliminary notification under § 154.21 is intended to afford the registrant a private opportunity to persuade the Agency that the pesticide in question does not satisfy the criteria for issuance of a Special Review. Because the public is excluded from this private notification process, the Agency included in the proposal a section providing that the Agency will issue for publication in the **Federal Register** a proposed decision not to initiate a Special Review and provide an opportunity for public comment before deciding not to initiate a Special Review following preliminary notification. The Agency also specifically requested comments on the necessity for the desirability of this provision.

The comments received generally supported this provision. Environmental groups strongly supported it. Two registrants opposed the provision on the grounds that it would "cause undue public concern" or "potential harm" in the marketplace. However, a trade association and other registrants supported the provision on the basis that it "would clarify the record and put relevant issues to rest." The Agency agrees with the latter comments and has retained the provision.

As part of a September 19, 1984 settlement agreement between the parties in *NRDC and AFL–CIO* v. *EPA, et al.*, Civil No. 83–1509, U.S. District Court for the District of Columbia, the Agency agreed to propose language providing that a proposed decision not to start a Special Review published pursuant to § 154.23 would "include a description of the concerns which were the original basis for placement of the pesticide in pre-RPAR status and the Agency's rationale for its proposed decision." The proposed rule stated only that the proposed decision would include the Agency's "supporting reasons." One of the parties to the settlement agreement reguested in its comments that the Agency utilize the language in the agreement. Since this language is more specific and is fully consistent with the Agency's intentions in the proposal, the Agency has revised § 154.23 accordingly.

D. Special Review Procedures

1. Issuance of Notice of Special Review Before Notice of Preliminary Determination

The preamble to the proposed rule posed the question, "Should the Agency omit the Notice of Special Review and, instead, make the first public notice the Notice of Preliminary Determination?" The Agency pointed out that issuance of a Notice of Special Review may raise public concerns over the continued use of a pesticide before the Agency has determined what actions, if any, are necessary to reduce the risks. On the other hand, issuance of a Notice of Special Review provides an opportunity for the submission to the Agency of important decisionmaking information and may conserve Agency resources if the Agency's concerns are resolved through voluntary actions by affected registrants.

Nine comments responding to this question supported continuing the issuance of a Notice of Special Review as the first public notice. Increased opportunity for public participation was the reason cited most frequently for favoring the Notice of Special Review. In addition, environmental groups supported the Notice of Special Review because it provides earlier public notification of potential hazards. Some registrants supported it because it enhances the opportunity for registrants to identify and propose voluntary risk reduction measures.

One registrant noted that the Notice of Special Review may raise public concerns about continued use of a pesticide which may ultimately be determined to be of little or no risk. The commenter suggested that the Agency privately notify "the manufacturers" in lieu of publication of a Notice of Special Review and then move to public notification of Preliminary Determination if further action is warranted.

The preliminary notification procedure set forth in § 154.21 already affords the registrant a private opportunity to dispute the Agency's risk rationale. Since the Agency does not believe it would be appropriate to exclude the public deliberately from any subsequent discussion of regulatory options, a second private notification would serve no useful purpose.

In general, the Agency agrees with the preponderance of the comments that there are sound reasons for issuance of a Notice of Special Review and has therefore retained this procedure in the final rule. However, the Agency also believes that there will be circumstances where the advantages of early public notification and participation are outweighed by the need for expedited action to abate hazards. Accordingly, the Agency has also retained § 154.34, which provides that the Agency may elect to issue a simultaneous Notice of Special Review and Notice of Preliminary Determination. If the Agency utilizes this expedited procedure, the Agency will open the pre-Special Review docket for public inspection no more than 3 months after private notification of the registrants pursuant to § 154.21(a).

2. Expedited Procedures

The proposed rule set forth in § 154.34 certain procedures which the Agency could utilize to expedite administrative action.

The proposed provision gave the Agency discretion to issue a simultaneous Notice of Special Review and a Notice of Preliminary Determination. The proposal also recognized the Agency's statutory authority to initiate cancellation, suspension, or denial proceedings concerning a pesticide or any of its uses without first conducting a Special Review. In the preamble to the proposal, the Agency indicated that it was "specifically interested in receiving comments on the extent to which it should be free to deviate in other ways from the procedures set forth in this proposed regulation."

A registrant and a user group commented on this provision. The registrant stated that it has no objection to the proposed expedited procedures. The user group restated its request that it be given the earliest possible notification of the Agency's intention to initiate the Special Review process. As discussed above, the Agency does not believe that it is consistent with the legislative history of FIFRA section 3(c)(8) to publicize immediately its decision to notify registrants and applicants pursuant to § 154.21 that it may initiate a Special Review. In order to ensure that the public is not excluded

from the Special Review process itself, the Agency will generally make the docket for pre-Special Review available for inspection promptly when it decides to issue a simultaneous Notice of Special Review and Preliminary Determination. Moreover, § 154.34 provides that the Agency must make the docket available no more than 3 months after preliminary notification of the registrant if the Agency decides to issue a simultaneous notice.

Special Review can be a time-consuming process and the Agency believes there will be situations where the public interest in expeditious action to abate hazards will outweigh the advantages of conducting a full Special Review. For this reason, the Agency has retained the language in § 154.34 permitting the Agency to initiate cancellation, suspension, or denial proceedings without conducting any Special Review. For the same reason, the Agency believes that it should be able to initiate cancellation, suspension, or denial proceedings in instances where only a Notice of Special Review has been issued. Although the ability of the Agency to initiate cancellation, suspension, or denial proceedings at any time follows logically from the provision permitting the Agency to avoid the Special Review process in its entirety, the proposed rule did not make explicit provision for this option. Section 154.34 of the final rule has been revised accordingly. The Agency notes that in those instances where the Agency elects to initiate cancellation proceedings without conducting all or part of a Special Review, interested parties would still have an opportunity to comment on the Agency's decision in the context of public review of the notice of intent by the Scientific Advisory Panel.

3. Submission of Notice of Final Determination to SAP

One trade association noted that the proposed rule provided for referral of a proposed cancellation action to USDA and SAP at only a single point in the Special Review process. This comment argued that Agency referral of the preliminary determination to USDA and SAP does not constitute adequate compliance with the referral requirements of the statute, and claimed that FIFRA requires referral of the final Notice of Intent to Cancel to both USDA and SAP before it can be issued. The comment urged the Agency to include a second referral step in the Special Review regulations to require review of the final Notice of Intent to Cancel by USDA and SAP before it is issued. The Agency does not agree that the statute requires review of the final Notice of Intent to Cancel by USDA and SAP. EPA believes that referral of the preliminary determination, including a proposed form of the Notice of Intent to Cancel, generally will suffice.

FIFRA section 6(b) requires the Agency to solicit the comments of USDA on a proposal to cancel the registration of a pesticide before it issues a cancellation notice. FIFRA section 25(d) requires the Agency to solicit the comments of the SAP at the same time it seeks comments from USDA. By its very nature, the document to be referred to USDA and SAP cannot be an actual Notice of Intent to Cancel. Such a notice cannot be properly issued for at least 30 days after the referral takes place (or 60 days if comments are received) and must contain USDA's and SAP's comments on the proposed cancellation, if any, as well as the Agency's response to those comments. Thus, any notice referred to USDA and SAP must be preliminary and may merely propose action to be taken. Recognizing this, the Agency has consistently referred to USDA and SAP documents accurately stating that they are preliminary determinations, rather than stating that they are legally effective final notices. If the substance of a final decision has been referred to SAP and USDA, or if a final decision is a logical outgrowth of what was referred to and the comments received from USDA and SAP, the Agency does not believe any further referral is needed.

The procedures set forth in the proposal give SAP and USDA an opportunity to comment on and influence proposed cancellation decisions at the most meaningful stage in the process, rather than waiting until the end of the Special Review process. Moreover, the proposed procedure is consistent with the statute, which does not require that the proposed cancellation action be referred to USDA and SAP for comment only 60 days before it is issued. Rather, the 60-day period is the minimum required, and the Agency is free to refer the proposal to USDA and SAP at an earlier point in the decisionmaking process when their comments and recommendations can be considered fully and incorporated into the final cancellation decision without undue disruption.

Since the statute does not require it, the Agency is not willing routinely to refer cancellation proposals to USDA and SAP for multiple rounds of comment. The referral process is complex and resource-intensive for all concerned. Moreover, multiple referrals could delay implementation of necessary risk reduction measures. Accordingly, if the Agency were to accept the comment's position, the substantive advantages of early referral to USDA and SAP would be lost.

The Agency believes that referral of the proposed cancellation action at the preliminary determination stage fully satisfies all statutory requirements. Accordingly, the Agency has retained the proposed referral procedures in this final rule.

4. Petition to Initiate Special Review

The proposed rule included a provision at § 154.10 stating that "The Administrator may evaluate a pesticide under the criteria of § 154.7 either on his own initiative, or at the suggestion of any interested person." Two industry comments argued that the language of this section is too "casual" or "vague" and that an interested person should be required to submit a written petition with supporting evidence.

The sole intention of this section is to establish clearly that the Agency may decide to evaluate a pesticide for possible Special Review in response to any communication from a person outside the Agency. It is not intended to place restrictions on the form such a communication may take or to create any substantive rights with respect to subsequent Agenty actions. The Agency notes that it would probably be necessary for a petition to be submitted formally in writing with supporting evidence if the petitioner wishes to create an appropriate record for subsequent review.

5. Deadlines

In the preamble of the proposed rule, the Agency solicited comments on whether the Special Review process is the best administrative means of reviewing pesticides which pose special risk concerns. To determine whether some other administrative mechanism should be considered as an alternative to the current process, the Agency asked if the Special Review process is a fair, effective, and expeditious procedure for the review of pesticides.

Comments generally agreed that the Special Review process is designed to be fair and effective. There were no substantive proposals for another mechanism as an alternative to the current process. Several comments suggested that the process would be more expeditious if additional time limits were set for certain portions of the Special Review process. In particular, some comments suggested that time frames be established for action by the Agency. One comment also suggested

that the Agency impose specific deadlines for public comment on the Notice of Special Review and the Notice of Preliminary Determination.

Another comment stated that it is not desirable for the Agency to sacrifice thoroughness in order to meet deadlines. The Agency strongly agrees with this comment. The Agency seeks to conduct Special Reviews expeditiously, but not at the cost of sacrificing scientifically sound regulatory decisions. The time required for the Agency to complete a particular Special Review is influenced by factors which are unique for each pesticide. These factors include, but are not limited to, the number and nature of use sites and application methods, the nature of the risks of concern, and the completeness of the data bases which may be required for the Agency to make a final regulatory judgment.

Mandatory deadlines for Agency review would unduly reduce the Agency's flexibility in administering the Special Review process. The Agency would be constrained in setting rational priorities for its resources and in its ability to redirect its focus to emerging problems. The Agency might have to consider deferring issuance of some Special Reviews. As noted above, one comment stated that this sort of "gate-keeping" would damage the credibility of the process. Therefore, the Agency declines to establish by rule specific deadlines for Agency action. As for deadlines for comment, the Agency prefers to select appropriate time limits for comment on each Special Review determination on a case-by-case basis.

E. Scope of Special Review

1. New Active Ingredients

In its proposal, the Agency requested comments on two issues involving the relationship between applications for registration of products containing new active ingredients and the Special Review process. These were: (1) Whether and under what circumstances the Agency should register a new active ingredient during the pendency of Special Review, and (2) whether the Agency should omit the Notice of Special Review and go directly to a Notice of Preliminary Determination for new active ingredients.

Rather than directly addressing these two questions, a number of comments instead questioned whether Special Review should be applied to new active ingredients at all. Some industry representatives expressed concerns about the adverse economic impact if potential risks are disclosed prior to registration and delays attributable to Special Review procedures. Although these comments appeared to recognize that a detailed evaluation of risks and benefits would be necessary in instances where new active ingredients may pose significant risks, they questioned the need for a public Special Review in circumstances where the pesticide is not registered and the public is not currently exposed. Rather than a Special Review, these comments suggested that risk concerns about new active ingredients could be addressed as part of the "registration process." In contrast, an environmental group commented that new active ingredients should be subjected to the same Special Review procedure as existing pesticides.

In addition to providing timely information to the public concerning potential hazards, Special Review is also intended as a vehicle for public participation in regulatory decisions. If the Agency were to address its risk concerns for new active ingredients in the context of the "registration process," this could effectively exclude the public from the Agency's decisionmaking process. In instances where a new pesticide does not appear to pose significant risk concerns and the applicant has requested that data submitted in support of his application be received and maintained in confidence, the Agency generally does not disclose such data until after the product has been registered. Accordingly, the procedures utilized by the Agency to process an application for registration of a new active ingredient do not normally provide for substantial public participation.

One industry trade association suggested that the Agency invite public participation at the time that the Agency issues for publication a notice that it has received an application for registration of a new active ingredient pursuant to FIFRA section 3(c)(4) or when it issues for publication a notice that such an application has been approved pursuant to 40 CFR 162.7(d)(3). However, neither of these suggestions offers any opportunity for meaningful public involvement. At the time the initial notice of application is published, the Agency has not had an opportunity to evaluate supporting data and thus could not provide any useful information concerning potential risk concerns. Moreover, it should be readily apparent that permitting public comment after the Agency has already registered a product does not provide for public participation in the Agency's decisionmaking process.

The Special Review process provides an appropriate vehicle for public involvement in difficult risk-benefit decisions concerning new pesticides. In some instances the Agency may simply elect to deny an application for registration of a new active ingredient without conducting a Special Review, and the public will be afforded an opportunity to participate if the applicant requests a denial hearing pursuant to section 3(c)(6). New active ingredients will be most often placed in Special Review in instances where the Agency has determined that the pesticide may pose a significant risk as defined in § 154.7 but has not yet determined whether or not to deny registration. Of course, if an applicant for registration of a new pesticide receives preliminary notification that the Agency is contemplating Special Review, the applicant will have the option of withdrawing his application pending development and submission of additional supporting data.

No comments were received supporting the Agency's suggestion that a new product might sometimes be registered despite unresolved Special Review issues, and several comments explicity opposed the concept. One registrant suggested that the Agency could instead use an emergency exemption pursuant to FIFRA section 18 in sufficiently compelling circumstances. Although the rule does not explicitly prohibit the Agency from registering a product with unresolved risk concerns, the Agency will generally be reluctant to take any action which would permit use of a product before the Agency has completed its evaluation of potential hazards.

Comments received in response to the Agency's suggestion that it might eliminate the Notice of Special Review for new active ingredients and proceed directly to a Notice of Preliminary Determination were supportive. An environmental group commented that the Agency should have discretion to begin with the Notice of Preliminary Determination, because public notification is less important when there is no human or environmental exposure. One registant took the position that new active ingredients should not be subject to Special Review, but added that a Notice of Preliminary Determination should be sufficient in any event "since there is no use experience or data to draw on from the public sector." As noted above, the Agency has retained in the final rule the provision that affords the Agency discretion to combine the Notice of Special review and the Notice of Preliminary Determination in appropriate circumstances. The Agency is particularly likely to utilize this expedited procedure for new active ingredients.

2. Consideration of Alternatives

The Agency stated in the preamble to the proposed rule that it will generally attempt during Special Review to evaluate the risks and benefits of alternatives when necessary information is available and the analysis of alternatives can be completed in a timely fashion. The Agency also noted that information on alternatives will be more readily available in the future because Special Reviews will often arise out of preparation of Registration Standards and Registration Standards will be scheduled by use category pursuant to the "cluster concept."

One comment suggested that the proposed rule be revised to include explicitly the authority to evaluate alternatives. The Agency does not understand why that person thought such explicit authority is necessary unless he was assuming that alternative pesticides would thereby be themselves placed in Special Review. The Agency does not intend to put alternative pesticides in Special Review unless such pesticides themselves pose risk concerns sufficient to meet the applicable criteria. Furthermore, the Agency believes that it has full authority otherwise to consider the risks and benefits of all alternatives during Special Review of a particular pesticide.

One comment suggested that the Agency revise the rule to include "a requirement that available alternatives will be considered in the Special Review process, where doing so will not delay unreasonably the implementation of risk reduction measures." In contrast, another comment noted that evaluation of all alternatives could be very time-consuming and involved for some major crop uses and suggested that the Agency should first determine whether or not alternatives are likely to raise comparable risk issues. The availability of a less hazardous or more efficacious alternative may be a critical factor in some Special Reviews, and the Agency will consider pertinent information concerning risks and benefits of alternatives as part of the Special Review process whenever such information is available and can be evaluated in a timely manner. However, the Agency prefers to make decisions concerning the analysis of alternatives on a case-by-case basis and therefore declines to amend the rule formally to require consideration of alternatives.

F. Public Participation and Docketing

The Agency proposed in § 154.15 to establish a docket designed to provide an expanded opportunity for public participation in the Special Review process. In general, comments indicated favorable reactions to establishment of a public docket.

1. Definition of "Person"

Several comments suggested that the definition of "person" as stated in § 154.3(e) could be interpreted to excluded groups such as trade associations, grower organizations, and governmental bodies from actively participating in the Special Review process. It was not the Agency's intention to exclude the groups cited above and the Agency has amended the rule accordingly.

2. Inclusion of Government Contacts in Docket

The public docket which the Agency will establish for each Special Review pursuant to § 154.15 will include written communications and memoranda summarizing meetings concerning the Special Review. One comment recommended that the Agency also include in the docket communications and contacts with personnel in State and other Federal agencies, and elected officials and their staffs at all levels of government.

EPA declines to modify the rule as suggested by the comment. The Agency's decisionmaking process relies on free and unlimited consultation with other Federal agencies, States, and local authorities. To include such consultations in the public docket could interfere with or compromise the Agency's pre-decisional deliberative process. The majority of meetings and communications with other Federal agencies, and with State and local government personnel, are deliberative in nature. As such, they are excluded at Agency discretion from disclosure to the public under the Freedom of Information Act (FOIA). The Agency does not believe it prudent to obligate itself to broad and all-inclusive disclosure, through a public docket, of information, or materials that it might not disclose under FOIA.

EPA emphasizes that this decision is not intended to, and does not, preclude the Agency from including such materials in the docket when appropriate. For example, communications between the Agency and members of Congress or their staffs seldom are deliberative in character and will generally be included in the public docket. In addition, if a State or Federal agency assumes an advocacy role with respect to a particular Special Review, meetings and communications with the Agency would be less likely to be deliberative in nature and the Agency may elect to include them in the public docket.

3. Public Availability

Section 154.15(e) provides for public access to Special Review dockets. The Agency will distribute docket indices by mail to members of the public who have specifically requested them and will process requests for materials in the public docket under the Freedom of Information Act. One comment complained that the processing of FOIA requests is too slow and requested that the Agency adopt a special procedure to make the docket available by mail to persons interested in Special Reviews who do not reside in the Washington, DC area.

The Agency disagrees that FOIA procedures will consume an inordinate amount of time for materials in the public docket. One reason that FOIA procedures may seem unduly protracted is that documents responsive to an FOIA requests may contain confidential business information (CBI) which must be purged before the documents can be publicly disclosed or released to a requester. A second reason is that requested materials must often be obtained from a number of Agency records located in different areas and the compilation of a voluminous request may thus delay response.

In the case of requests for material in a public docket, neither situation will arise. Material in the docket will have been purged of claimed CBI, and may be released without notice to any person. Further, it will be kept in a central location. Thus, an FOIA request for docket materials can be fulfilled rapidly.

The Agency has, however, clarified the rule by revising § 154.5(e) to state explicity that the public may copy materials contained in the public docket.

4. Confidential Business Information

The proposed rule provided in § 154.15 that information claimed by the submitter to consist of trade secrets of confidential commercial or financial information under FIFRA section 10(b) or 5 U.S.C. 552(b) (3) or (4) (hereinafter "confidential business information" or "CBI") would be deleted from materials pertaining to a Special Review prior to incorporation in the public docket for that Special Review. One comment suggested that the Agency should evaluate each claim and delete from docket materials only that information which the Agency determines is legally entitled to confidential treatment. This suggestion is impracticable.

FIFRA section 10(c) and Agency regulations implementing the Freedom

of Information Act set forth at 40 CFR Part 2 establish procedures which the Agency must follow in making determinations concerning the legitimacy of confidentiality claims. Because of the volume of information submitted to the Agency and claimed as confidential by the submitter, the Agency generally does not initiate these formal procedures unless it receives an FOIA request or it determines that particular information claimed as CBI should be made available to the public. Moreoever, these procedures require that the Agency afford the submitter an opportunity to substantiate its confidentiality claim and at least 30 days advance notice prior to releasing any claimed CBI. In contrast, the Agency's proposed docketing procedures provided that Special Review material excluding claimed CBI would be incorporated in the docket with either 10 or 15 days.

The Agency believes that prompt incorporation of materials in the public docket will enhance public participation. If the Agency receives an FOIA request for excluded information or otherwise decides to evaluate the legitimacy of a particular confidentiality claim, the Agency will employ the procedures established by 40 CFR Part 2 and FIFRA section 10(c) and will incorporate in the public docket any information which it determines is not entitled to confidential treatment.

The Agency recognizes that exclusion of claimed CBI from docket materials offers a potential opportunity for a party to impede the Agency's policy of public disclosure by assertion of frivolous or overly broad confidentiality claims. In such an event, the Agency may elect to require prompt substantiation of claims even though no member of the public has specifically requested the excluded material. Moreover, § 154.27(f) provides that the Agency may decline to meet with any party who it decides has asserted unreasonable CBI claims for the purpose of circumventing the docketing provisions.

The proposed Special Review rule and the proposed rule concerning public participation in development of Registration Standards published in the **Federal Register** on the same day (50 FR 12208) both provided that information claimed by the submitter to consist of trade secrets or confidential commercial or financial information would be excluded from material incorporated in the docket. However, the Special Review rule used the term "confidential business information" to refer to information claimed as confidential under FIFRA section 10(b) or 5 U.S.C. 552(b) (3) or (4), while the Registration Standards rule defined "confidential business information" as information actually consisting of trade secrets or confidential commercial information under these sections. The Agency believes that the latter terminology is less confusing and more consistent with common usage and has therefore revised the final Special Review rule accordingly. The Agency has also incorporated in the final rule at § 154.10(c) specific procedures which submitters must follow in asserting CBI claims.

One comment stated the belief that information on pesticide use volume and use practices is critical in evaluation of exposure and noted that such information may be claimed a CBI by the submitter. The comment recommended that the Agency declare that information on use patterns "shall not be deemed CBI once the Agency has initiated a pre-Special Review assessment." The comment expressed concern that other State and Federal agencies might otherwise not have access to use information to assist them in monitoring efforts.

Classification of information as CBI depends on specific factual determinations and is not a matter of Agency discretion. The Agency has no legal authority to declare that information which satisfies the factual predicate for classification as CBI is not CBI. The Agency does have authority under section 10(d)(2) to decide that "information concerning production, distribution, sale, or inventories of a pesticide that is otherwise entitled to confidential treatment" under section 10(b) will be disclosed in connection with a Special Review proceeding if the Agency "determines that such disclosure is necessary in the public interest." However, any such decision is subject to judicial review.

The Agency believes that a determination that disclosure of CBI is in the public interest should be based on a case-by-case balancing of the likely adverse impacts and the potential benefits of disclosure. The Agency does not believe that it would be responsible to declare that all CBI in any particular category will be disclosed whenever the Agency considers issuance of a Special Review. As for the other concern expressed by the comment, the Agency believes that it may share use information claimed as CBI with other Federal and State agencies so long as adequate precautions are taken to ensure that the information will be maintained in confidence.

In the preamble to the proposed rule, the Agency noted that it may require persons who wish to inspect the docket to execute an affirmation of non-multinational status pursuant to FIFRA section 10(g). Section 10(g) generally prohibits the Agency from knowingly furnishing information submitted to the Agency by an applicant or registrant to any person employed by or representing a multinational business or entity engaged in production, sale, or distribution of pesticides without the consent of the submitter. This provision is intended to constrain the ability of multinational pesticide companies to obtain information developed by other applicants or registrants for submission in support of registration in other countries.

One comment objected to the Agency's statement that it may require persons inspecting a Special Review docket to execute an affirmation of non-multinational status because section 10(g) also authorizes the Agency to disclose information submitted by an applicant or registrant to anyone, if the information is not otherwise exempt from disclosure and "is relevant to the determination by the Administrator with respect to whether a pesticide, or any ingredient of a pesticide, causes unreasonable adverse effects on health or the environment." The Agency agrees that this provision permits the Agency to disclose information submitted by an applicant or registrant to a multinational business or entity if the information is relevant to a Special Review. However, the Agency will evaluate the need for such disclosure and the consistency of disclosure with the intent of section 10(g) on a case-by-case basis, and may require that a person execute an affirmation of non-multinational status, or that a multinational representative provide other assurances in lieu thereof, before inspecting a Special Review docket.

5. Burden on Agency Resources

One comment expressed concern that creation and maintenance of a public docket for each Special Review will be costly in terms of Agency resources. The Agency acknowledges that there will be some additional burden imposed upon its resources by the public docket procedures. However, because the Agency wishes to encourage public access to and participation in the Special Review process, this effort is viewed as a necessary expenditure of resources. In addition, the docket procedures will assist the Agency in responding in a timely manner to requests for Special Review material

submitted under the Freedom of Information Act.

IV. Statutory Review

A. U.S. Department of Agriculture

As required by FIFRA sec. 25(a)(2)(B), a copy of this final regulation was provided to the Secretary of Agriculture for review on October 17. The Department of Agriculture submitted written comments to the Agency on November 13, 1985. Under a court-approved settlement agreement between the parties in *NRDC and AFL-CIO* v. *EPA, et al.*, Civil Number No. 83-1509, U.S. District Court for the District of Columbia, the Agency is obligated to take final action with respect to this regulation by November 19, 1985. Accordingly, it is not practicable to publish the Department of Agriculture's comments and the Agency's response here. Nevertheless, the Agency has decided that it is appropriate to respond to the Department of Agriculture. A copy of these comments and the Agency's response will be placed in the public docket for this rulemaking.

B. Scientific Advisory Panel

The FIFRA Scientific Advisory Panel waived its review of this final rule.

C. Congressional Committees

As required by FIFRA sec. 25(a), a copy of this final rule was provided to the House Committee on Agriculture, and the Senate Committee on Agriculture, Nutrition and Forestry.

V. Regulatory Review 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. EPA has determined that this is not a major regulation as defined by Executive Order 12291. This Rule was submitted to the Office of Management and Budget (OMB) for review, as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (15 U.S.C. 601, Pub. L. 96-354), EPA hereby certifies that this Rule would not have a significant impact on a substantial number of small entities. EPA has concluded that the number of pesticide registrants subject to a particular Special Review would not be increased as a consequence of the promulgation of the revisions proposed here, and that the review criteria and procedures would not have any disproportionate effect on those pesticide registrants that can be classified as small entities under the Act.

C. Paperwork Reduction Act

This Rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects In 40 CFR Parts 154, 162, and 172

Administrative practices and procedures, Intergovernmental relations, Labeling, Packaging and containers, Pesticides and pests, Recordkeeping and the reporting requirements, Research, Special review.

Dated: November 19, 1985.

A. James Barnes,

Acting Administrator.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is hereby amended as follows:

I. By adding Part 154 to read as follows:

PART 154—SPECIAL REVIEW PROCEDURES

Subpart A—General Provisions

Sec.

154.1 Purpose and scope.
154.3 Definitions.
154.5 Burden of persuasion in determinations under this part.
154.7 Criteria for initiation of Special Review.
154.10 Petitions to begin the Special Review process.
154.15 Docket for the Special Review.

Subpart B—Procedures

154.21 Preliminary notification to registrants and applicants for registration.
154.23 Proposed decision not to initiate a Special Review.
154.25 Public announcement of final decision whether to initiate a Special Review.
154.26 Comment opportunity.
154.27 Meetings with interested persons.
154.29 Informal public hearings.
154.31 Notice of Preliminary Determination.
154.33 Notice of Final Determination.
154.34 Expedited procedures.
154.35 Finality of determinations.

Authority: 15 U.S.C. 136a, d, and w.

Subpart A—General Provisions

§ 154.1 Purpose and scope.

(a) *Purpose.* The purpose of the Special Review process is to help the Agency determine whether to initiate procedures to cancel, deny, or reclassify registration of a pesticide product because uses of that product may cause unreasonable adverse effects on the environment, in accordance with sections 3(c)(6) and 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The process is intended to ensure that the Agency assesses risks that may be posed by pesticides, and the benefits of use of those pesticides, in an open and responsive manner. The issuance of a Notice of Special Review means that the Agency has determined that one or more uses of a pesticide may pose significant risks and that, following completion of the Special Review process, the Agency expects to initiate formal proceedings seeking to cancel, deny, reclassify, or require modifications to the registration of the product(s) in question unless it has been shown during the Special Review that the Agency's initial determination was erroneous, that the risks can be reduced to acceptable levels without the need for formal proceedings, or that the benefits of the pesticide's use outweigh the risks. Following completion of the Special Review process, a pesticide in question may be returned to the registration process.

(b) *Scope.* This part sets forth the substantive standards for initiating a Special Review of a pesticide product and the procedures for initiating and conducting the Special Review.

§ 154.3 Definitions.

(a) Except as otherwise defined in this section, terms defined in section 2 of FIFRA shall have the same definitions for purposes of this part.

(b) The term "Act" or "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 et seq.

(c) The term "Administrator" means the Administrator of the Environmental Protection Agency or any officer or employee thereof to whom authority has been delegated to act for the Administrator.

(d) The term "confidential business information" means trade secrets or confidential commercial or financial information under FIFRA section 10(b) or 5 U.S.C. 552(b) (3) or (4).

(e) The term "other significant evidence" means factually significant information that relates to the uses of the pesticide and their adverse risk to man or to the environment but does not include evidence based only on misuse of the pesticide unless such misuse is widespread and commonly recognized practice.

(f) The term "person" means and applicant, registrant, manufacturer, pesticide user, environmental group, labor union, or other individual or group of individuals interested in pesticide regulation.

(g) The term "pesticide use" means a use of a pesticide (discribed in terms of the application site and other applicable identifying factors) that is included in the labeling of a pesticide product which is registered, or for which an application for registration is pending, and the terms and conditions (or proposed terms and conditions) of registration for the use.

(h) "Terms and conditions of registration" means the terms and conditions governing lawful sale, distribution, and use approved in conjunction with registration, including labeling, use classification, composition, and packaging.

(i) The term "validated test" means a test determined by the Agency to have been conducted and evaluated in a manner consistent with accepted scientific procedures.

§ 154.5 Burden of persuasion in determinations under this part.

In making determinations under this Part the Administrator shall be guided by the principle that the burden of persuasion that a pesticide product is entitled to registration or continued registration for any particular use or under any particular set of terms and conditions of registration is always on the proponent(s) of registration.

§ 154.7 Criteria for initiation of Special Review.

(a) The Administrator may conduct a Special Review of a pesticide use if he determines, based on a validated test or other significant evidence, that the use of the pesticide (taking into account the ingredients, impurities, metabolites, and degradation products of the pesticide):

(1) May pose a risk of serious acute injury to humans or domestic animals.

(2) May pose a risk of inducing in humans an oncogenic, heritable genetic, teratogenic, fetotoxic, reproductive effect, or a chronic or delayed toxic effect, which risk is of concern in terms of either the degree of risk to individual humans or the number of humans at some risk, based upon:

(i) Effects demonstrated in humans or experimental animals.

(ii) Known or predicted levels of exposure of various groups of humans.

(iii) The use of appropriate methods of evaluating data and relating such data to human risk.

(3) May result in residues in the environment of nontarget organisms at levels which equal or exceed concentrations acutely or chronically toxic to such organisms, or at levels which produce adverse reproductive effects in such organisms, as determined from tests conducted on representative species or from other appropriate data.

(4) May pose a risk to the continued existence of any endangered or threatened species designated by the Secretary of the Interior or the Secretary of Commerce under the Endangered Species Act of 1973, as amended.

(5) May result in the destruction or other adverse modification of any habitat designated by the Secretary of the Interior or the Secretary of Commerce under the Endangered Species Act as a critical habitat for any endangered or threatened species.

(6) May otherwise pose a risk to humans or to the environment which is of sufficient magnitude to merit a determination whether the use of the pesticide product offers offsetting social, economic, and environmental benefits that justify initial or continued registration.

(b) In making any determination that a pesticide use satisfies one of the criteria for issuance of a Special Review specified by paragraph (a) of this section, the Administrator, shall consider available evidence concerning both the adverse effect in question and the magnitude and scope of exposure of humans and nontarget organisms associated with use of the pesticide.

§ 154.10 Petitions to begin the Special Review process.

The Administrator may evaluate a pesticide use under the criteria of § 154.7 either on his own initiative, or at the suggestion of any interested person.

§ 154.15 Docket for the Special Review.

(a) *Establishment of the docket.* When the Agency first notifies registrants privately that it is considering issuance of a Notice of Special Review for a pesticide, it shall establish a docket concerning that particular pesticide.

(b) *Contents of the docket.* For each pre-Special Review or Special Review, the docket shall contain:

(1) The Notice of Special Review, any Notice of Preliminary Determination, and any Notice of Final Determination.

(2) Any notice issued under §§ 154.21 or 154.23.

(3) Any documents (other than information claimed to be confidential business information) referred to by the Agency in those notices as relied upon by the Agency in reaching its determination.

(4) Copies of all written comments or materials (other than information claimed to be confidential business information) responding to any notice furnished under §§ 154.21 or 154.23 or submitted at any time during the Special Review process by any person outside of government.

(5) Any written response to the Notice of Preliminary Determination from the Secretary of Agriculture or the Scientific Advisory Panel.

(6) A transcript of all public meetings held by the Scientific Advisory Panel or conducted by the Agency for the purpose of gathering information.

(7) A memorandum describing each meeting between Agency personnel and any person or party outside of government which concerns a pending pre-Special Review or Special Review decision. Each such memorandum shall be based on notes taken at the meeting and shall specify the date and time of the meeting, the participants and their affiliations, who requested the meeting, the subject matter of the meeting, and the person who prepared the memorandum. Except for information claimed to be confidential business information, each memorandum shall describe fully and accurately all significant positions taken, arguments made, and facts presented by each participant in the meeting, and shall identify all documents, proposals, or other materials distributed or exchanged at the meeting. Any discussion of claimed confidential business information shall be identified in meeting notes and referenced in the memorandum.

(8) All comments, correspondence, or other materials concerning a pending pre-Special Review or Special Review decision provided to the Agency by a person or party outside of government (other than information claimed to be confidential business information).

(9) All documents, proposals, or other materials concerning a pending pre-Special Review or Special Review decision, provided by the Agency to any person or party outside of government (other than information claimed to be confidential business information).

(c) *Assertion of confidential business information claims.* (1) Information, comments, data, or other written material submitted to the Agency concerning a Special Review may be claimed by the submitter to be confidential business information. The burden of identifying claimed confidential business information rests with the submitter, or, in meetings, with the participants who wish to assert a claim of confidentiality.

(2) To assert a claim of confidentiality for all or any part of a written submission concerning a Special Review, the submitter must furnish three copies of the material. Two copies must be complete, with claimed confidential business information clearly marked in the text. Items in the document that are

claimed confidential should be numbered consecutively throughout the text. The third copy must have the claimed confidential business information excised from the text without closing up or paraphrasing the remaining text. The deletions should be consecutively numbered to correspond to the numbering of the complete copies. Each copy must be marked on the cover as to whether it contains claimed confidential business information.

(3) Any written material concerning a Special Review received by the Agency that is not marked as confidential will be deemed to be nonconfidential, and may be made available through the public docket or otherwise disclosed without prior notice to the submitter.

(d) *Placement of materials in the docket.* Any memorandum identified under paragraph (b)(7) of this section shall be placed in the docket within 10 working days of the subject meeting. Materials identified under paragraph (b)(8) of this section shall be placed in the docket within 10 working days of receipt by the Office of Pesticide Programs, or within 15 working days of receipt by the Office of Pesticide Programs if the submitter has asserted a confidential business information claim concerning the submittal. Materials identified under paragraph (b)(9) of this section shall be placed in the docket within 15 working days of transmittal to such person or party outside of government.

(e) *Index.* The Agency shall prepare and maintain a current index of all materials included in the docket. The index will include a list identifying, for each meeting between Agency personnel and a person or party outside of government for which a memorandum has been prepared, the date, the subject, participants, and person who requested the meeting. The index will also list any document included in the docket by its title, its source, its recipient, and the date it was received or provided by the Agency.

(f) *Access to the docket.* (1)(i) For each chemical in Special Review, the docket shall be available for public inspection and copying and its index kept current and made vailable to the public on request. The docket and index for any pesticide for which the Agency has issued a pre-Special Review notification under § 154.21 will only be made available for public inspection and copying following issuance of a proposed decision not to start a Special Review under § 154.23, a Notice of Special Review under § 154.25(c), or as otherwise specified in § 154.34.

(ii) The docket and index will be available at the Program Management and Support Division, in Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays.

(2) Information contained in the docket shall not be disclosed to the public to the extent that FIFRA or any other statute or regulation (including, but not limited to, 5 U.S.C. 552(b)(3) or (4)) prohibits its disclosure.

(3) The Agency will distribute a compendium of indices for new materials in the public docket by mail, on a monthly basis, to those members of the public who have specifically requested such material. The Agency will announce the availability of docket indices both annually in the **Federal Register** and in each **Federal Register** Notice concerning pre-Special Review or Special Review for specific pesticides. The Agency may also periodically require parties on the mailing list to renew their previous request for such materials.

Subpart B—Procedures

§ 154.21 Preliminary notification to registrants and applicants for registration.

(a) *Preliminary notification.* If the Administrator decides that he may initiate a Special Review of a pesticide use, he shall send written notice by certified mail to the affected registrant(s) and applicant(s) setting forth his decision and a general description of the information which supports it.

(b) *Comment opportunity.* Registrant(s) and applicant(s) will be allowed 30 days from the receipt of notification to respond in writing to dispute the validity of the Agency's conclusions or to present information in response to the notification.

§ 154.23 Proposed decision not to initiate a Special Review.

If the Administrator proposes not to initiate a Special Review after having given notice under § 154.21, he shall issue a proposed decision for publication in the **Federal Register.** The proposal shall include a description of the concerns which were the original basis for placement of the pesticide in pre-Special Review status and the Agency's rationale for its proposed decision, announce the availability of a public docket, and provide a period generally not less than 30 days for submission of comments. A notice under § 154.25(b) may not be published unless it has been preceded by a notice under this section. A proposal under this section shall not be based on the benefits of use of a pesticide product.

§ 154.25 Public announcement of final decision whether to initiate a Special Review.

(a) The Administrator shall evaluate the available information and the comments received in response to the notice under § 154.21 and any notice issued under § 154.23, and shall issue for publication in the **Federal Register** a notice under paragraph (b) or (c) of this section.

(b) If the Administrator determines after having given notice under § 154.21 not to initiate a Special Review, he shall issue his decision for publication in the **Federal Register** with a statement of reasons.

(c) If the Administrator determines after having given notice under § 154.21 that one or more of the risk criteria set forth in § 154.7 have been satisfied, the Agency shall issue a notice for publication in the **Federal Register** which shall include:

(1) Identification of the pesticide uses for which a Special Review has been initiated and an identification of the criteria which have been satisfied.

(2) A brief discussion of the Agency's reasons for determining that the criteria have been satisfied.

(3) A statement indicating that EPA has established a docket for the Special Review, the contents of the docket, the location of the docket, and the times during which the docket will be available for inspection and copying.

(4) An invitation to all interested persons to submit further information concerning the risks and benefits associated with each use of the pesticide subject to the Special Review.

(5) A brief description of the Special Review process and a statement that registrants and applicants bear an affirmative burden of supporting registration of a pesticide product.

(6) A date by which information in response to the Agency's request for further information must be submitted.

(d) In his discretion, the Administrator may request that the Scientific Advisory Panel hold a public meeting to review the scientific issues related to the Special Review.

§ 154.26 Comment opportunity.

After issuance of a Notice of Special Review that applies to a use of a pesticide product (or category of products), any person may submit to the Agency any information, argument, or both, pertinent to:

(a) Whether the use of a pesticide product satisfies any of the § 154.7 risk criteria, with respect to the composition, labeling, packaging, and restrictions on

use of the product as currently registered.

(b) Whether the use of a pesticide product would satisfy any of the §154.7 risk criteria if its composition, labeling, packaging, and restrictions on use were approved in accordance with an application for registration or amended registration pending before the Agency. For further information see § 154.27(b).

(c) Whether any risks posed by the use or proposed use of the product that satisfy the § 154.7 risk criteria are unreasonable, taking into account the economic, social, and environmental costs and benefits of the use of the product.

(d) What regulatory action, if any, the Agency should take with respect to the use of the product.

§ 154.27 Meetings with interested persons.

(a) In the Special Review process, to assure openness and responsiveness, no person or party outside of government will be afforded special or preferential access to Agency Special Review decisionmakers or to the Agency's Special Review process. At the same time, however, Agency personnel are free to meet and otherwise communicate with persons or parties outside of government, including registrants and manufacturers, users, trade unions, environmental groups and other interested persons, to obtain information, exchange views, explore factual and substantive positions, or discuss regulatory options concerning Special Review decisions.

(b) Meetings between EPA and any person or party outside of government will not result in undue delay in reaching Special Review decisions. During such meetings, the Agency will not commit to take any particular action concerning a pending decision. The Agency may receive and consider information and recommendations from persons or parties outside of government; however, the Agency will make the final administrative decision on a wholly independent basis and in accordance with law.

(c) Any interested person may ask to meet with Agency officials to discuss factual information available to the Agency, to present any factual information, to respond to presentations by other persons, or to discuss what regulatory actions should be taken regarding a pesticide which is or may be the subject of a Special Review. If, at its discretion, the Agency holds such meetings with any person outside of government concerning a use of a pesticide product, the Agency will prepare and file in the docket a memorandum of such meeting, meeting the requirements specified in § 154.15(b)(7).

(d) Meetings described in this section may include meetings held after issuance of a Notice of Special Review with any registrant who proposes to change voluntarily the composition, packaging, and labeling, or other terms and conditions of registration of his pesticide product in a way which he believes would reduce the risks of use of the product so that it would no longer meet or exceed the risk criteria of § 154.7. Meetings for this purpose will be most helpful and productive for both registrants and the Agency if they are requested by registrants shortly after the issuance of the Notice of Special Review.

(e) If the Agency meets with any person or party outside of government concerning a pending Special Review decision, the Agency will not issue a final Special Review decision until 30 days after inclusion of a memorandum concerning that meeting in the public docket. During those 30 days, any person or party may submit written comments to the Agency regarding the subject matter of the meeting in question. The Agency may issue a final Special Review decision without allowing this 30-day period if expedited action is necessary to protect public health or the environment, or if the Agency has invited other parties with potentially opposing viewpoints to the meeting in question (e.g., registrants, users, labor, and environmental groups).

(f) The Agency may decline to meet subsequently with any person or party who asserts unreasonable confidential business information claims pursuant to § 154.15(c) for the purpose of circumventing the docketing procedures described in § 154.15(b).

§ 154.29 Informal public hearings.

(a) *Timing.* At any time after issuance of a Notice of Special Review and prior to issuance of a Notice of Final Determination, the Administrator may conduct an informal public hearing to gather relevant information or otherwise assist Agency decisionmaking.

(b) **Federal Register** notice. The Administrator shall issue a notice for publication in the **Federal Register** of any informal public hearing to be held under this section. The notice shall contain the following information:

(1) The time, date, and place of the hearing.

(2) A brief description of the procedures governing participation in the hearing by interested persons.

(3) The issues to be considered at the hearing.

(c) *Transcript.* A verbatim transcript of the hearing shall be prepared and filed in the public docket.

§ 154.31 Notices of Preliminary Determination.

The Administrator shall prepare a Notice of Preliminary Determination after the close of the comment period on a Notice of Special Review.

(a) *Contents of notice.* The Notice of Preliminary Determination shall respond to all significant comments submitted in response to the Notice of Special Review. For each use of a pesticide product that was the subject of the Notice of Special Review, the Notice of Preliminary Determination shall also include, as appropriate:

(1) A determination whether the use satisfies any of the risk criteria set forth in § 154.7, and a discussion of the reasons for the determination.

(2) A determination of whether any changes in the composition, packaging, labeling, or restrictions on use of a pesticide product that were proposed in an application for new or amended registration submitted after issuance of the Notice of Special Review would reduce the risk so that the use no longer would satisfy any of the risk criteria in § 154.7.

(3) If the use satisfies any of the risk criteria set forth in § 154.7, a determination of whether the adverse effects posed by the use are unreasonable, taking into account the economic, social, and environmental costs and benefits of the use of the product, and a discussion of reasons for the determination.

(4) If the use is determined to pose an unreasonable adverse effect, a statement of the regulatory action, if any, which the Agency intends to initiate with respect to the use, and a discussion of the reasons for initiating that regulatory action.

(5) A statement that the Administrator is requesting comments from the Secretary of Agriculture and the Scientific Advisory Panel on the notices and analysis specified in paragraph (b) of this section, and that the notices and analysis are available on request.

(6) Instructions to interested persons on how to submit comments (including the deadline for submission of comments).

(7) The location of the docket under § 154.15 and the times during which the docket will be available for inspection and copying.

(b) *Referral to Secretary of Agriculture and Scientific Advisory Panel.* If the Administrator proposes to cancel, deny, or change the

classification of the registration of a pesticide product which is the subject of a Special Review, or to hold a hearing under FIFRA section 6(b)(2) on whether to take any of those actions, he shall:

(1) Prepare a proposed form of a Notice of Intent to Cancel, a Notice of Intent to Deny Registration, a Notice of Intent to Hold a Hearing, and/or a Notice of Intent to Change Classification, as appropriate.

(2) Prepare an Agricultural Impact Analysis, analyzing the impact of the proposed action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy.

(3) Send the proposed notices and analysis to the Secretary of Agriculture and the Scientific Advisory Panel for comment, as provided by the Act.

(4) Send the Notice of Preliminary Determination and the other notices and analysis prepared under this section to all registrants and applicants for registration of products that are subject to the Special Review.

(c) *Publication.* The Agency shall issue the Notice of Preliminary Determination for publication in the **Federal Register.**

§ 154.33 Notice of Final Determination.

(a) *Publication and notice to registrants and applicants.* The Administrator shall prepare a Notice of Final Determination after the close of the comment period on a Notice of Preliminary Determination. As necessary, the Administrator shall also prepare Notices of Intent to Cancel, Notices of Denial, Notices of Intent to Hold a Hearing under FIFRA section 6(b)(2), or Notices of Intent to Change Classification.

(b) *Contents.* The Notice of Final Determination shall include:

(1) For each pesticide use subject to the Notice of Preliminary Determination, the Agency's final determination with respect to each use, along with a discussion of the reasons for the determination.

(2) Any comments submitted by the Secretary of Agriculture or the Scientific Advisory Panel, and the responses of the Administrator to these comments.

(3) The response of the Administrator to any significant public comments submitted on the Notice of Preliminary Determination.

(4) Instructions to registrants, applicants for registration, and other interested persons concerning the procedures which will be used to implement any regulatory action which the Administrator has decided upon, including instructions concerning how to request hearings, if hearings are available as of right under the Act or have been made available by the Administrator under the Act.

(5) The location of the docket under § 154.15 and the times during which the docket will be available for inspection and copying.

(c) *Publication and notification of registrants and applicants.* The Notice of Final Determination and any Notice of Intent to Cancel, Notice of Denial, Notice of Intent to Hold a Hearing, or Notice of Intent to Change Classification shall be published in the **Federal Register.** If the Administrator issues a Notice of Intent to Cancel, Notice of Denial, Notice of Intent to Hold a Hearing, or Notice of Intent to Change Classification, such notice, along with the Notice of Final Determination, also shall be sent by certified mail to all affected registrants and applicants.

§ 154.34 Expedited procedures.

(a) The Agency may elect to issue a Notice of Special Review and a Notice of Preliminary Determination simultaneously; or, to initiate cancellation, suspension, or denial proceedings concerning a pesticide or any of its uses without first conducting a Special Review or issuing a Notice of Preliminary Determination.

(b) If the Agency elects to issue a simultaneous Notice of Special Review and Notice of Preliminary Determination, the Agency will make the docket for that decision available for public inspection no more than 3 months after the Agency privately notifies the registrant of its risk concerns pursuant to § 154.21(a).

§ 154.35 Finality of determinations.

(a) The Administrator will not approve an application for registration or amended registration of a pesticide product except by use of the procedures specified in paragraph (c) of this section, if:

(1) The application proposes registration of a product for a use which earlier had been the subject of a notice under § 154.21(a);

(2) After the Administrator issued the notice, he determined not to initiate a Special Review, because of a proposal by an applicant for registration or amended registration to change the terms and conditions of registration of the product in a way which would reduce the risk sufficiently to eliminate the need for a Special Review; and

(3) The application for registration or amended registration now proposes that the terms and conditions which served as the basis of the earlier determination be eliminated, or be modified in a way which might increase the risk which was the subject of the notice under § 154.21(a).

(b) The Administrator will not approve an application for registration or amended registration of a pesticide product except by use of the procedures specified in paragraph (c) of this section, if:

(1) The application proposed registration of a product for a use which earlier had been the subject of a Notice of Special Review issued under § 154.25;

(2) After the Administrator issued that Notice, he determined not to issue a notice under FIFRA section 3(c)(6) or 6(b) because of a proposal by an applicant for registration or amended registration to change the terms and conditions of registration of the product in a way which would reduce the risk sufficiently to eliminate the need for issuance of a notice under FIFRA section 3(c)(6) or 6(b); and

(3) The application for registration or amended registration now proposes that the terms and conditions of registration which served as the basis for the earlier determination now be eliminated or be modified in a way which might increase the risk which was the subject of the Notice of Special Review.

(c) An application to which paragraph (a) or (b) of this section applies may not be approved until:

(1) The Administrator issues a notice for publication in the **Federal Register** which describes why the application is subject to the provisions of this section, states that the Administrator proposes to approve the application and his reasons, solicits public comment on whether the application should be approved, and provides a period not less than 30 days for comments to be submitted; and

(2) If any substantive comments are submitted in response to the notice, the Administrator issues a second notice for publication in the **Federal Register** responding to the comments.

PART 162—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

II. In Part 162:

1. The authority citation for Part 162 is revised to read as follows:

Authority: 15 U.S.C. 136d, q, s, v, and w.

§ 162.11 [Amended]

2. In § 162.11 by removing paragraphs (a) and (b) and designating them "[Reserved]."

§ 162.6 [Amended]

3. In § 162.6(b)(5)(ii) by changing the cross reference from § 162.11(a)(3) to § 154.7 of this chapter.

§ 162.43 [Amended]

4. In § 162.43(f)(1)(i)(A)(*2*) by changing the cross reference from § 162.11(a)(3) to § 154.7 of this chapter.

§ 162.45 [Amended]

5. In § 162.45:

a. By changing the cross references in paragraph (d)(1) from § 162.11(a)(3) and § 162.11(a)(1) to § 154.7 of this chapter and § 154.21 of this chapter, respectively.

b. By changing the cross references in paragraph (d)(2) from § 162.11(a)(4) to § 154.5 of this chapter; from § 162.11(a)(4) (i) and (ii) to § 154.23 of this chapter; from § 162.11(a)(5)(i) to § 154.31 of this chapter.

c. By changing the cross reference in paragraph (d)(3)(iii) from § 162.11(a)(5)(ii) to § 154.33 of this chapter.

d. By changing the cross reference in paragraph (d)(4) from § 162.11(a)(5)(iii) to § 154.31 of this chapter.

e. By changing the cross reference in paragraph (d)(5) from § 162.11(a)(5)(iii) of § 154.31 of this chapter.

f. By changing the cross reference in paragraph (d)(6) from § 162.11(a)(6) to § 154.7 of this chapter.

g. By changing the cross reference in paragraph (d)(7) from § 162.11(b) to § 154.33 of this chapter.

6. In § 162.163(b)(2)(ii), by changing the cross reference from § 162.11(a)(3)(ii) to § 154.7(a)(2) of this chapter.

§ 162.165 [Amended]

7. In § 162.165, by removing the text in paragraph (a)(7) and designating the paragraph "[Reserved]."

§ 162.167 [Amended]

8. In § 162.167(b) (1) and (2), by changing the cross references from § 162.11(a)(3)(ii) to § 154.7(a)(2) of this chapter.

PART 172—EXPERIMENTAL USE PERMITS

III. In Part 172:

1. The authority citation for Part 172 continues to read as follows:

Authority: 7 U.S.C. 136c, 136v, and 136w.

§ 172.24 [Amended]

2. In § 172.24(c)(2)(iii), by changing the cross reference from § 162.11 (a) and (b) to "Part 154 of this chapter."

[FR Doc. 85-28156 Filed 11-26-85; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Wednesday
November 27, 1985

Part V

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Petroleum Dry Cleaners; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2903-7]

Standards of Performance for New Stationary Sources; Petroleum Dry Cleaners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Response to Petition for Reconsideration and Final Amendments to Rule.

SUMMARY: After the current standard of performance for petroleum dry cleaners was promulgated on September 21, 1984, the Laundry Cleaning Council (LCC) petitioned EPA to reconsider the standard. The EPA is partially granting the petition for reconsideration of certain aspects of the standard and promulgating appropriate amendments, and denying reconsideration of other aspects.

DATES: Effective November 27, 1985. Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* The docket, Number A–80–2, containing information supporting this action, is available for public inspection and copying between 8:00 a.m. and 4:30 p.m., Monday through Friday, at Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

Background Information Documents (BID's). The BID's for the standard promulgated on September 21, 1984, may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Petroleum Dry Cleaners—Background Information for Proposed Standards" (EPA–450/3–82–012a) and "Petroleum Dry Cleaners—Background Information for Promulgated Standards" (EPA–450/3–82–012b).

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

SUPPLEMENTARY INFORMATION:

Background

On December 14, 1982, under Section 111 of the Clean Air Act, EPA proposed standards of performance to limit emissions of volatile organic compounds (VOC) from new, modified, and reconstructed petroleum dry cleaner facilities. The proposal was preceded by a National Air Pollution Control Techniques Advisory Committee (NAPCTAC) meeting on December 2, 1981. The meeting was open to the public, and each attendee was given an opportunity to comment on the standard recommended for proposal. Opportunity was also provided for a public hearing through notice in the **Federal Register** but no requests for a hearing were received. The public comment period was from December 14, 1982, to February 14, 1983. After the Agency had carefully evaluated the four comment letters received, the Administrator published the final standard in the **Federal Register** on September 21, 1984.

The LCC petitioned the Administrator to reconsider the standard on November 20, 1984, and filed a supplemental petition on March 6, 1985.

Criteria for Review of the Petition for Reconsideration

The standard was promulgated under the procedures in section 307(d) of the Clean Air Act. Section 307(d)(7)(B) provides that EPA shall convene a proceeding to reconsider a rule if a person raising an objection can demonstrate that: (1) It was impracticable to raise such objection during the comment period or that the grounds for such objection arose after the comment period but within the time specified for judicial review [which EPA concludes means within the 60-day time period provided for judicial review under section 307(b), 42 U.S.C. 7607(b)(1)]; and (2) such objection is of central relevance to the outcome of the rule. In EPA's view, such objections are of central relevance only if they provide substantial support for the argument that the standards should be revised. See: Denial of Petition to Revise NSPS for Stationary Gas Turbines, 45 FR 81653, 81654 (December 11, 1980), and decisions cited therein.

Summary of Petition and Responses

As noted above, a petition for reconsideration of the new source performance standard (NSPS) for petroleum dry cleaners was submitted by the LCC on November 20, 1984, and a supplemental petition was submitted on March 6, 1985. The petitions made four principal objections: (1) That petroleum dry cleaners are not a significant source of VOC emissions that cause or contribute to air pollution; (2) that EPA should not use cleaning capacity as the exclusive criterion for the exemption for small dry cleaners; (3) that EPA used improper assumptions to determine the exemption level; and (4) that the solvent recovery dryer required by the NSPS is unsafe. The petitioner was also concerned that the applicability of the standard may be misinterpreted, that the change in format of the exemption level may cause unfair coverage of some dryers installed between proposal and promulgation, and that EPA's preamble discussion of the flammability of petroleum solvent was misleading.

After reviewing the petitions, acquiring additional information, and meeting with the petitioner for additional clarification of the issues, EPA concludes that none of the four principal objections are of central relevance to the outcome of the rule, and that the grounds for several of them arose before the close of the comment period and could have been raised during the comment period. The petitions are, therefore, denied as to these issues. In particular:

(1) Petroleum dry cleaners are significant contributors to air pollution within the meaning of section 111. The EPA judges that its estimates of the impacts of the standards are reasonable and preferable to the estimates suggested by the petitioner.

(2) With regard to the selection of cleaning capacity as the exclusive criterion for the small dry cleaners exemption, EPA has concluded that it is straightforward, verifiable, and not burdensome from a recordkeeping standpoint. In accomplishes the intent of the exemption without the need for alternative criteria.

(3) With regard to the assumptions used by EPA to determine the exemption level, EPA has concluded that they should not be changed and that the petitioner provided no new information to indicate otherwise.

(4) Regarding the safety of the solvent recovery dryer required by the NSPS, EPA has concluded that the new information provided by the petitioner does not support an objection that is of central relevance to the outcome of the rule. The EPA's investigation of this information indicated that it does not provide substantial support that the standard should be revised.

The EPA is adding two clarifications to the regulation and one in this

preamble to respond to the petitioner's concerns about misinterpretation of the applicability of the standard, the potential for unfair coverage of some dryers, and EPA's statement in the preamble to the final rule regarding the flammability of petroleum solvent used by dry cleaners.

Discussion of Objections and Responses

1. Significance of Source Category

Objection

The petitioner contended that an issue that had been raised previously in comments made on the proposed standard had not been adequately resolved. He feels that the dry cleaning industry is not a significant source of emissions and that the need for the standard is in question. The petitioner also referred to a comment, made in early 1983, about the Agency's 5-year projection of affected facilities (1,390 new dryers) and his offer at that time to provide a revised projection based on historical sales data. The petitioner stated that the Agency "disregarded this information" and persisted in the use of anecdotal information that has resulted in overestimates of the number of facilities to be affected by the standard and the emission reduction.

Response

The EPA listed petroleum dry cleaners on the Priority List, 40 CFR 60.16. The Priority List consists of categories of air pollution sources that, in EPA's judgment, cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Of the 59 major source categories on this list, the dry cleaning industry (petroleum and perchloroethylene) source category ranked fifth. The EPA continues to believe that the petroleum dry cleaning industry is a significant source of VOC emissions. The standard would reduce the cumulative nationwide VOC emissions from petroleum dry cleaners through the first 5 years following promulgation by about 22,700 megagrams (25,000 tons) or 41 percent, relative to baseline emissions (i.e., emissions in the absence of the standard). In the fifth year, the VOC emission reduction would be about 7,600 megagrams (8,400 tons).

The Agency has not disregarded the petitioner's previous comment regarding the projection of the number of affected facilities. Rather, Section 2.4 of the BID for the promulgated standard explains that the Agency reevaluated the basis of the projection in the proposal BID (i.e., growth rates and equipment life) and concluded that it was a better basis for the projection than the historic conventional dryer sales data proposed by the petitioner. The EPA recognizes that the projection of the number of affected facilities is not necessarily precise and is subject to some error. However, precision is not critical to the conclusion and the projection is adequate for the purposes of the NSPS rulemaking.

2. Selection of Dryer Capacity as Exemption Criterion

Objection

The petitioner expressed the opinion that the small plant exemption should be based on three alternative criteria: (1) Annual throughput, (2) annual solvent consumption, or (3) total dryer capacity.

Response

The total dryer capacity format for the promulgated exemption was selected through a rational process of identification and comparative evaluation of alternative exemption formats. The goal was to select a format that is easily understood, unambiguous and based on information currently being collected/maintained by the dry cleaning operators. Clothes throughput (i.e., pounds per year of clothes throughput) is clearly the best indicator of the revenues for a given plant and, for this reason, it was considered first as the format for the exemption. However, clothes are not routinely weighed at dry cleaners, and records often are not kept of the quantity of clothes cleaned over a given time period. No incentive, other than potential regulatory requirements, exists for operators to maintain records of pounds of clothes cleaned. Consequently, the clothes throughput format was rejected in favor of the solvent consumption format included in the proposed standard (47 FR 5618).

Solvent consumption is indicative of clothes throughput to the extent that "typical" or average solvent consumption factors (i.e., quantity of solvent used per pound of clothes cleaned) can be determined for the segment of the dry cleaning industry at or near the cutoff level. Typical solvent consumption factors were established in developing the basis for the standard. Moreover, as industry members pointed out at the NAPCTAC meeting in December 1981, records of solvent purchases are generally kept by dry cleaners. For these reasons, solvent consumption was selected as the exemption format for the proposed standard.

Public comments on the proposed standard received from industry representatives who are now being represented by the petitioner (Docket Entry IV-D-3), however, identified total dryer capacity as an alternate exemption criterion and suggested that it be used *instead* of the solvent consumption format. Another commenter on the proposed standards (Docket Entry IV-D-2) identified concerns about the way the solvent consumption exemption criterion would be applied to new plants. In reevaluating the exemption format, the Agency identified a number of advantages to the total dryer capacity format. First, it is easier to understand. The total manufacturers' rated dryer capacity is determined through the summation of the nameplate capacities of the in-service dryers at the particular plant. This procedure requires few or no records and can be repeated with equivalent results at any point in time. A determination of solvent consumption is dependent upon solvent purchase records, which may or may not be complete (depending on accounting procedures, filing accuracy, etc.), and which may vary considerably with time depending on the frequency and quantity of solvent purchases. This is particularly true where bulk solvent is purchased on an infrequent schedule. Additional confusion can result if solvent is purchased for machine cleaning or other purposes than strictly dry cleaning. For these reasons, the dryer capacity format is more straightforward and easily understood. Further, the recordkeeping requirements are less burdensome.

The total dryer capacity format also is more verifiable and, therefore, more easily and fairly enforced. Solvent purchase records were not mandatory in the proposed standard. Rather, the exemption determination was to be made through inspection of solvent purchase records normally maintained by the operators. The dryer capacity is stamped on the equipment nameplate or readily available in manufacturer's literature. No interpretation is required; the capacities for individual dryers are simply summed to determine the total manufacturers' dryer capacity.

The dryer capacity format offers a third advantage. Its derivation does not require the use of an emission factor as did the proposed solvent consumption level. The proposed solvent consumption exemption level was based on an assumed emission factor of 23 pounds solvent loss per 100 pounds of clothes cleaned and the clothes throughput break-even level of 132,170 pounds per year. Considerable adverse comment was received about the selection of this emission factor The

commenters proposed the use of a 30 pound per 100 pound factor. Although the Agency believes that the 23 pound per 100 pound factor is more reasonable than the 30 pound per 100 pound factor (see discussion in promulgation BID, Section 2.3.3, pg 2–9), the selection of the total dryer capacity format eliminates altogether the need to choose an emission factor. The 84-pound dryer capacity exemption is derived directly from the 132,170 pound-per-year clothes throughput break-even level without the use of an emission factor (Docket Entry IV–B–3). Consequently, the total dryer capacity format resolves a concern raised by industry at proposal over the solvent consumption exemption level.

On the basis that the total manufacturers' rated dryer capacity exemption format is more straightforward, more verifiable, less controversial, and less burdensome from a recordkeeping standpoint, the Agency believes it is the optimal format for the small plant exemption. Furthermore, the evolution of the exemption format since 1981 has been responsive to the concerns of industry representatives at each decision point prior to receipt of the petition. Problems of increased recordkeeping and enforcement difficulties exist with the clothes throughput and solvent exemption formats. Weighing these concerns, the Agency concludes it to be unnecessary and inappropriate to change the exemption format to include clothes throughput and solvent consumption criteria.

Objection

The petitioner is concerned that no notice in the proposed rule was given to the possibility of a dryer capacity based exemption and that dry cleaners who purchased new equipment between proposal and promulgation (December 14, 1982, to September 21, 1984) in reliance on the proposed 4,700 gallon-per-year solvent consumption exemption may find that they no longer qualify for the exemption under the promulgated standard.

Response

The Agency agrees that it would be unreasonable to apply the standard to conventional dryers installed in the period between proposal and promulgation (December 14, 1982, to September 21, 1984) in plants with an annual solvent consumption level of less than 4,700 gallons. Such dryers are, therefore, being exempted. The EPA notes that such cases are highly unlikely because the dryer capacity-based exemption is considered equivalent to the solvent consumption limit that was proposed.

3. Assumptions Used To Select Exemption Level

Objection

The petitioner questions the validity of the operating cost assumptions made in deriving the 132,170 pound-per-year clothes throughput break-even level. He stated particular concern over the assumed value of recovered solvent and referred to the actual measured performance data (proposal BID, Table 4–1), which he indicated does not support the performance assumptions used in the economic impact analysis. He asserted a higher break-even number could be calculated based on the measured performance data but did not provide the basis for his assertion.

Response

The operating cost assumptions referred to by the petitioner were included in the proposal BID, and, thus, were available for review and comment during the public comment period after proposal of the standard. The petitioner had opportunity at that time to question their validity but did not. Nevertheless, EPA has reevaluated this aspect of the standard and concluded that even if values suggested by the commenter were used in calculating the break-even level, there would not be a "substantially higher" result as he indicated. The clothes throughput level would be about 144,000 pounds per year instead of 132,000, and the associated dryer capacity would be about 92 pounds instead of 84. Because the calculations are based on assumptions that include "typical" factors, there is naturally a margin of error in the results (see response below). Thus, the break-even level is an approximate point, and plants with throughput levels near the break-even level would have essentially the same financial conditions as would plants at the break-even level.

Objection

The petitioner is concerned that because conventional and recovery dryers are available only in discrete sizes (e.g., 50 and 100 pounds), many plants will have dryer capacity in excess of the 84 pound exemption level while still having an annual clothes throughput of less than the 132,170 pound-per-year break-even level. He offers two examples to illustrate his concern.

Response

The Agency believes that the 84-pound total dryer capacity exemption is sufficient to avoid potential adverse economic impacts on small dry cleaners. The exemption provides a significant margin of protection to account for the concerns raised by the petitioner. First, the 132,170 pound-per-year clothes throughput break-even level, which forms the basis for the 84-pound dryer capacity exemption, is not the level at which adverse economic impacts on small operators are expected. As explained in responding to comments made by the petitioner on the proposed standard (see promulgation BID, section 2.3.3, pg 2–12), the break-even level analysis inherently incorporates a substantial margin of protection against adverse economic impacts. At the break-even level, the additional costs of the solvent recovery dryer are completely offset by its savings. Also, as discussed in the proposal BID (Chap. 9, pg. 9–51) a throughput level even 5,000 pounds of clothes per year less (i.e., 127,170 pounds per year) would have negligible impacts on plant earnings and finances. The break-even analysis also employs several conservative assumptions (including a 5-year amortization period) that contribute to the margin of protection inherent in the 132,170 pound-per-year break-even throughput level. Second, the 84 pound dryer capacity was derived from the 132,170 pounds of clothes per year break-even level using "typical" operating schedule and load factor assumptions. The exemption, therefore, has built in allowances to protect facilities near the exemption level. Most importantly, the 84 pound dryer capacity is based on an assumed 70 percent load factor. The "actual" dryer use level represented by the 84 pound capacity figure is about 59 pounds.

The "margin of protection" in the exemption level discussed above is adequate to avoid adverse economic impacts on the dry cleaners in the examples posed by the petitioner. In the first example, a dry cleaner has one 50-pound dryer that is fully utilized (*i.e.*, 50 pounds of actual capacity utilization). Further, he reasonably expects to increase his actual clothes throughput by 50 percent (*i.e.*, to a total actual capacity utilization of 75 pounds) if the additional dryer capacity is available. Following the purchase of another 50-pound dryer, the total dryer capacity (100 pounds) would exceed the 84-pound exemption level, but the actual capacity utilization would amount to only 75 pounds. The petitioner is concerned that the 75-pound actual clothes throughput level (expressed as "actual" dryer capacity) is below the 84-pound dryer capacity exemption level and that the

dry cleaner would be inappropriately forced by the NSPS to install a recovery dryer rather than a conventional dryer. However, based on the above discussion about the 70 percent load factor assumption made in deriving the 84-pound dryer capacity exemption level, it is clear that the 75-pound "actual" dryer capacity use exceeds the 59-pound "actual" dryer capacity use represented by the 84 pound dryer capacity exemption level. Consequently, the dry cleaner in this example could install a recovery dryer without risk of adverse economic impact (it would, in fact, be financially advantageous), and the exemption level in the NSPS would work as intended.

In the second example, the petitioner describes a dry cleaner with two existing 50-pound dryers; one is used at capacity (*i.e.*, "actual" dryer capacity of 50 pounds), and the other is used as backup in case the primary unit breaks down. The petitioner is concerned that a replacement unit for this plant would be required by the NSPS to be a recovery dryer because the total dryer capacity is greater than 84 pounds. The EPA believes that the dry cleaner in this example could purchase a recovery dryer with little risk of adverse economic impact. There is only a small difference between his actual dryer use of 50 pounds and the 59-pound actual dryer use reflective of the 84-pound dryer capacity exemption level. By using as little as 9 additional pounds actual dryer capactiy (*i.e.*, using 20 percent of the additional dryer capacity), the dry cleaner would incur no increased operating costs. Moreover, the option would be available to use the old dryer as a backup and to derive the cost savings that would occur through use of the new recovery dryer.

Objection

The petitioner alleges that neither the proposed 4,700 gallon per year solvent consumption exemption nor the 84-pound total dryer capacity exemption is a valid indicator that the plant will achieve the 132,170 pounds per year clothes throughput. He points to the fact that a 23 lb/100 lb emission factor was used in lieu of what, in his opinion, is a more appropriate 30 lb/100 lb factor and calculates based on the 30 lb/100 lb factor that a dry cleaner would have to consume 6,100 gallons of solvent per year to clean 132,170 lbs. of clothes. He recommends that the dryer capacity exemption should be about 110 pounds based on the 6,100 gallon-per-year solvent consumption level and the solvent consumption to dryer capacity factor (56 gallons/yr per pound dryer capacity/yr) in Section 60.620(a)(3) of the proposed regulation.

Response

Deriving the total dryer capacity exemption in the fashion proposed by the petitioner requires unnecessary calculations and results in an artificially high exemption level (*i.e.*, the suggested 110 pound level). The petitioner's 6,100 gallon-per-year solvent consumption figure is calculated from the 132,170 pound-per-year clothes throughput break-even level and an emission factor of 30 lb/100 of clothes cleaned. In the responses to comments made on the proposed standard, the Agency expressed its disagreement with the proposed 30 lb/100 lb emission factor and the 6,100 gallon-per-year solvent consumption and instead affirmed the use of the 23 lb/100 lb emission factor and the resultant 4,700 gallon-per-year solvent consumption exemption. Consequently, if the dryer capacity exemption level were to be derived from solvent consumption as proposed by the petitioner, it would be based on the 4,700 gallon per year exemption level included in the proposed standard. However, one of the advantages of the dryer capacity format is that it can be derived directly from the 132,170 pound-per-year clothes throughput break-even level without conversion into solvent consumption. Consequently, the petitioner's concern over the use of 6,100 gallons per year rather than 4,700 gallons-per-year solvent consumption is not relevant since the dryer capacity format in the final standard is not based on solvent consumption. With typical operating schedule (250 days/yr; 9 dryer loads/day) and load factor (70 percent capacity) assumptions, the 132,170 pounds-per-year clothes throughput break-even level is converted directly into the 84 pound total dryer capacity exemption (Docket Entry IV-B-3). This derivation avoids the conversion into solvent consumption by use of an emission factor, as is needed in the petitioner's proposed derviation and results in an 84-pound rather than 110-pound exemption level.

Objection

The petitioner states that the 84 pound dryer capacity exemption level in the standard bears "no rational relationship" to the 132,170 pounds-per-year clothes throughput intended by the Agency.

Response

The 84 pound total manufacturers' dryer capacity exemption is derived directly from the 132,170 pound-per-year clothes throughput level. The derivation, which is documented in Docket Entry IV-B-3 and discussed in the preamble to the standard and Section 2.2 of the promulgation BID, involves assumptions about average or "typical" operating schedules and load factors supplied by industry representatives. These assumptions include a 250 day-per-year operating schedule, 9 dryer loads per day and a 70 percent average capacity utilization load factor, all of which are representative of operations at plants at or near the 132,170 pound-per-year clothes throughput level.

4. Safety of Solvent Recovery Dryers

Objection

The petitioner requested in the March 6, 1985, supplemental petition that EPA take steps to ensure that solvent recovery dryers required by the NSPS are safe to operate and, in the interim, suspend the applicability of the NSPS. This request was based on the petitioner's concern that an explosion of a recovery dryer in February 1985 indicated that such dryers are not yet proven to be safe.

Response

The petitioner had raised the safety issue in comments on the proposed standards, which EPA responded to in the preamble and BID supporting the final standards. The only new information presented in the March 1985 petition was the report of the February 1985 explosion. The EPA has investigated that explosion and remains satisfied that solvent recovery dryers are safe when properly installed and operated in accordance with applicable fire and explosion protection codes. Communications in April 1985 with the dryer manufacturer and with Factory Mutual Research Corporation (Docket Entries VI-D-2 and VI-D-3) indicate that the dryer that exploded was not properly installed and operated. The manufacturer's instructions for explosion venting were apparently not followed and, according to the manufacturer, "the explosion had to result from a spark or flame from a foreign object inside the unit. Ignition otherwise is impossible." Factory Mutual Research also questioned whether the installation of the dryer was proper. Both Factory Mutual and the manufacturer have indicated that their previous conclusion that the dryer is safe when installation and operating instructions are followed is still valid.

5. Other Objections

Objection

The petitioner is concerned that the standard will be misinterpreted to apply to existing equipment (*e.g.*, dryers, filters) in affected plants that propose modifications subject to the standard. He proposed the insertion of the applicability date, December 14, 1982, into sections of the standard to help avoid misinterpretation.

Response

The petroleum dry cleaning standard, as with all NSPS's, applies only to newly constructed, modified and reconstructed affected facilities. A piece of existing equipment constitutes an "existing facility" that is not affected by the standard unless it is "modified" or "reconstructed" as defined in the general provisions applicable to all NSPS's (Reference 40 CFR 60.14 and 60.15, respectively).

The language of § 60.620(b) of the standard which contains the applicability date, was reevaluated in light of the petitioner's concern and found to correctly reflect the meaning intended by the Administrator. However, the insertion of the applicability date (December 14, 1982) in § 60.622(a) and (b), as requested by the petitioner, will not change the meaning of the standard. Moreover, it may help avoid misinterpretation by individuals who are unfamiliar with the Code of Federal Regulations and the language of NSPS's. Consequently, the standard is being clarified by adding specific reference to the applicability date in § 60.622(a) and (b), as requested by the petitioner.

Objection

The petitioner objected to the use of the phrase "highly flammable solvent" in reference to petroleum solvent and contended that the statement creates serious risks of misguided regulation of the dry cleaning industry by State authorities and Federal authorities other than EPA.

Response

Use of the phrase "highly flammable solvent" in reference to petroleum solvent was not meant to imply that an unreasonable fire hazard is associated with the use of petroleum solvent. Rather, it was meant to connote the degree of risk of hazard associated with any "combustible" industrial liquid.

Miscellaneous

Under Executive Order 12291, EPA must Judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. These amendments are not "major" because they do not impose any additional requirements.

These amendments were 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 responses to those comments are available for public inspection at Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M. Street, SW., Washington, DC 20460.

The Administrator certifies that a regulatory flexibility analysis under 5 U.S.C. 601, et seq., is not required for this rulemaking because it does not impose any additional requirements and, thus, will not have a significant impact on a substantial number of small entities.

The Administrator finds, under 5 U.S.C. 553(b)(B), that notice and public procedure on the revisions made by this notice are unnecessary. The revisions are minor and technical.

List of Subjects in 40 CFR Part 60

Air pollution control, Dry cleaning, Industrial launderers, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: November 12, 1985.

A. James Barnes,

Acting Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. In § 60.620 of Subpart JJJ, paragraph (b) is revised to read as follows:

§ 60.620 Applicability and designation of affected facility.

* * * * *

(b) Any facility under paragraph (a) of this section that commences construction or modification after December 14, 1982, is subject to the requirements of this subpart with the following exception. A dryer installed between December 14, 1982, and September 21, 1984, in a plant with an annual solvent consumption level of less than 4,700 gallons, is exempt from the requirements of this subpart.

3. In § 60.622 of Subpart JJJ, paragraphs (a) and (b) are revised to read as follows:

§ 60.622 Standards for volatile organic compounds.

(a) Each affected petroleum solvent dry cleaning dryer that is installed at a petroleum dry cleaning plant after December 14, 1982, shall be a solvent recovery dryer. The solvent recovery dryer(s) shall be properly installed, operated, and maintained.

(b) Each affected petroleum solvent filter that is installed at a petroleum dry cleaning plant after December 14, 1982, shall be a cartridge filter. Cartridge filters shall be drained in their sealed housings for at least 8 hours prior to their removal

* * * * *

[FR Doc. 85-27788 Filed 11-26-85; 8:45 am]

BILLING CODE 6560-50-M

Reader Aids

Federal Register

Vol. 50, No. 229

Wednesday, November 27, 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	275-1184
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 523-5230

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, NOVEMBER

45591-45804 1
45805-45900 4
45901-45984 5
45985-46278 6
46279-46414 7
46415-46626 8
46627-46736 12
46737-47026 13
47027-47200 14
47201-47354 15
47355-47520 18
47521-47702 19
47703-48072 20
48073-48160 21
48161-48370 22
48371-48548 25
48549-48740 26
48741-49026 27

CFR PARTS AFFECTED DURING NOVEMBER

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

Proclamations:
4907 (See EO 12538) 47527
5141 (See EO 12538) 47527
5402 45591
5403 45593
5404 46279
5405 46737
5406 47027
5407 47029
5408 47201
5409 47203
5410 47521
5411 47523
5412 47525
5413 48549

Executive Orders:
12170 (See Notice of November 1, 1985) 45901
12538 47527

Administrative Orders:

Notices:
November 1, 1985 45901

Memorandums:
November 5, 1985 47198

Presidential Determinations:
No. 86-2 of October 29, 1985 48073

5 CFR

Ch. XIV 48741

Proposed Rules:
530 47057-47059
550 48421
630 47060

7 CFR

6 ..... 47703, 47704
27 47706
29 ..... 45805, 45806
273 48741
301 ..... 48161, 48551
371 47205
404 45903
405 45903
408 45903
420 ..... 48162, 48168
421 48168
424 48168
425 48168
432 ..... 48168, 48169
438 48168
442 45903
448 48168
907 48174
981 47707
982 48371
999 45807
1002 45595
1004 45595
1032 46627
1468 47031
1530 ..... 47703, 47704
1736 ..... 47709, 47713
1772 46628
1864 45740
1872 45740
1900 ..... 45740, 45906
1910 45740
1924 45740
1941 45740
1943 45740
1944 48372
1945 ..... 45740, 48175
1950 45740
1951 45740
1955 45740
1960 45740
1962 45740
1965 46415
1980 46415
3015 ..... 47034, 48741

Proposed Rules:
51 47551
70 ..... 45829, 48220
225 45898
318 47551
400 45625
426 46772
928 46773
945 47226
978 48422
989 45627
1007 46441
1124 48776
1421 48094

8 CFR

100 45597
212 47035
287 47205
316a 47355

Proposed Rules:
204 46441

9 CFR

51 47035
71 45985
78 ..... 45808, 45985
85 47346
97 47529
112 46416
318 48075

Proposed Rules:
51 ..... 46077, 48602
71 48602
75 46079
78 48602
80 48602
92 ..... 45918, 48602
94 46443
145 47555

147 47555
307 47060
317 48096
318 ..... 47060, 48096
319 48097
381 ..... 47060, 48096

10 CFR

Ch. I 45597, 47355
2 47716
20 46630
21 46630
73 46630
903 48075

Proposed Rules:

Ch. I 46672
19 45628
21 45628
30 45628
40 45628
50 45628
70 ..... 45628, 48220
71 45628
72 48220
73 ..... 45628, 48220
74 48220
110 45628
962 ..... 45736, 47409
1046 46672

11 CFR

Proposed Rules:

7 47752

12 CFR

Ch. VIII 48372
202 48018
202a 48018
217 48552
227 47036
265 45809
508 48553
543 48725
546 48725
547 48970
548 48970
549 48970
552 48725
561 46739
563 ..... 45968, 46739, 48686–48725, 48970
569a 48970
569b 48970
569c 48970
574 48686
584 48686
589 48686
591 46744
611 ..... 46417, 47043
614 47043
615 ..... 46418, 48553
701 48075
724 48176

Proposed Rules:

210 47752
225 47754
353 47409

13 CFR

121 46418
309 46749

Proposed Rules:

122 47227

14 CFR

21 ..... 46872, 48077
23 ..... 46872, 48077
39 ..... 45598, 45810, 46631, 46750, 47356, 48375, 48376
71 ..... 45718, 45810, 45989, 46281, 46751, 46753, 47044–47046, 47358–47361, 48077, 48178, 48378, 48742–48744
73 ..... 47361, 47363, 48743–48744
75 47047
91 ..... 45599, 46872, 48077
97 ..... 46421, 48179
171 48745

Proposed Rules:

Ch. I 47757
1 48786
27 48786
29 48786
39 ..... 45829, 46444, 46775–46777, 47409, 47411
71 ..... 45830, 46447–46452, 47061, 47062, 48220
75 47062
139 46673
241 47063

15 CFR

370 48745
371 47363
372 48745
373 47363
379 47363
385 47363
386 ..... 47363, 48745
399 47363
923 46422
930 46422

Proposed Rules:

981 48097

16 CFR

13 ..... 45990, 46423, 46753, 46757, 48749
803 46633

Proposed Rules:

13 ..... 46453, 47063, 48789, 48791
259 46300
444 46082
453 46266–46271
1500 46300

17 CFR

33 45811
140 ..... 47530, 47531
200 ..... 45602, 45990, 48379
210 48379
230 48379
239 48379
240 ..... 48180, 48379, 48555
249 46281
275 ..... 46281, 48556

Proposed Rules:

1 ..... 45831, 46674
33 ..... 45831, 46674
145 45833
146 45833
190 ..... 45831, 46674
240 46731

18 CFR

2 45907
157 45907
250 45907
271 46758
282 ..... 47532, 48562
284 ..... 45907–45908, 46424
375 ..... 45907, 47532, 48181
385 48181

Proposed Rules:

1b 47556
154 48221
271 48540

19 CFR

12 47206
175 45812

Proposed Rules:

175 48430
191 45919

20 CFR

416 ..... 46760, 48563

Proposed Rules:

261 48602
404 47758
416 46778

21 CFR

5 47207
73 ..... 45814, 45991, 47532
74 45909
81 45909
82 45909
107 ..... 48078, 48183
172 47367
175 47208
176 ..... 47208, 47209
177 47210
178 ..... 47211, 47212
189 47367
310 46562
430 ..... 47212, 48396
436 ..... 45603, 47212, 48396
440 47367
442 ..... 48078, 48396, 48580
444 47212
446 47212
450 47212
452 47212
455 47212
510 48188
520 ..... 47725, 48188
522 45603
558 ..... 45910, 46282, 47048, 47367, 48189, 48580
1020 46646
1308 45815

Proposed Rules:

201 47558
343 46588
355 46303
357 46594
730 47760
864 48058
870 48156

22 CFR

41 47048
151 47214

Proposed Rules:

41 46085
42 46085
60 46555
61 46555
62 46555
63 46555
64 46555
65 46555

23 CFR

635 46282
658 46425
1204 45815

Proposed Rules:

658 48431

24 CFR

20 45910
27 48190
201 45993
203 45993
232 47726
234 45993
242 47726
251 46763
990 47368

25 CFR

61 46427

26 CFR

1 ..... 45996, 46004, 46006
5 45996
5h 45996
602 ..... 45996, 46004, 46006

Proposed Rules:

1 ..... 46086–46088, 46303, 46306, 46460, 46674
20 46460
25 46460
53 46460
301 47563
602 ..... 46088, 46460

27 CFR

9 ..... 48078, 48083
47 46647

28 CFR

2 46282
17 46388
570 48336

Proposed Rules:

522 48338
524 48338
544 48338
550 48338

29 CFR

1602 48580
1910 48750

Proposed Rules:

541 47696
1910 ..... 48222, 48794
1915 48794
1926 48794
1953 ..... 46460, 46462

30 CFR

256 47377
906 47215
916 47216
917 ..... 47727, 47728
920 47379
925 47218
926 47386
938 45820
946 47368

Proposed Rules:

56 47700
57 47700
75 47702
914 47228
938 47230

943 ..... 47231, 47232
944 47233

31 CFR

103 ..... 46283, 47390
355 46284
545 46726

32 CFR

78 47219
518 47730
644 47731
706 ..... 46435, 48085
883 47048

33 CFR

100 ..... 48086, 48402
117 ..... 46647, 47390
165 ..... 46284, 48403, 48404
Proposed Rules:
117 ..... 46674, 48099
165 ..... 46780, 48434

34 CFR

778 48190
Proposed Rules:
500 48352
501 48352
505 48352
510 48352
514 48352
525 48352
526 48352
537 48352
561 48352
573 48352
574 48352
614 46675

35 CFR

Proposed Rules:
3 48604
61 48604

36 CFR

254 45823
327 46284
902 ..... 45823, 45824
903 45824
905 45824
907 45824
908 45824
Proposed Rules:
903 45841

38 CFR

21 ..... 46763, 48580
36 48406
Proposed Rules:
21 ..... 45629, 47066

39 CFR

111 48581
Proposed Rules:
10 ..... 46307, 46463
111 ..... 47564, 48087
265 47068
310 46464
320 46464

40 CFR

35 ..... 45892, 46648
52 ..... 45603, 45606, 46041, 47731, 48759
60 ..... 46042, 47732, 49022
61 ..... 46042, 46284
62 47734
65 48582–48585
81 ..... 46436, 46649, 46650, 47735, 48759, 48761
141 ..... 46880, 47142
154 48998
155 48998
158 46764
162 ..... 46764, 48998
172 48998
180 ..... 45607, 46043
256 47049
261 48886
271 ..... 46437, 47736, 47740, 48406
280 46602
300 47912
704 47534
712 47538
716 ..... 46295, 47538
717 46766
721 47534
799 48762
Proposed Rules:
Ch. I 48100
52 ..... 45630, 46782, 47069, 47234, 47235, 48612, 48613, 48796, 48798
60 46464
65 46307
81 ..... 45630, 46089
131 48102
141 ..... 46902, 46936, 47025, 47156
142 ..... 46902, 47156
143 47156
147 47761
180 ..... 46103, 47761, 48615, 48799
261 ..... 46468, 47763, 48800, 48911, 48926, 48943
264 47236
265 47236
271 ..... 46734, 47073, 47566, 47567, 48801
302 46468
435 46784
439 45920
440 47982
704 ..... 46090, 46309
716 ..... 46104, 46309, 47765
796 46785
797 48102
798 ..... 46104, 46121
799 ..... 46909, 46104, 46121, 46133, 46785, 47569, 48102, 48803, 48805

42 CFR

412 46651
432 46652
433 46652
435 46652
436 46652
Proposed Rules:
405 48435
435 48102
436 48102
442 45921

43 CFR

4 47222
403 47049
416 47050
1820 46044
2780 46770
4100 45824
Proposed Rules:
4 ..... 47237, 48445, 48446
7 47073

44 CFR

64 ..... 46297, 47540
65 46044
67 46045
Proposed Rules:
67 46143

45 CFR

801 45608
1614 48586
1620 48594

46 CFR

Proposed Rules:
67 47411
172 ..... 46315, 47238
281 48616

47 CFR

0 47050
1 ..... 45608, 47051
2 47050
13 45827
18 47050
21 47051
31 48408
33 48408
42 48408
43 48408
61 47741
63 48191
64 48770
67 47746
68 ..... 47543, 48203
73 ..... 46047, 47051, 47055, 47391, 47408, 48089–48093
74 48596
90 ..... 46048, 47748
97 46048
Proposed Rules:
Ch. I 45841
2 48229
15 ..... 45843, 47412
18 46144
21 45608
22 45843
67 ..... 47765, 47774
73 ..... 47076, 47784, 48106, 48230, 48446, 48806–48808
76 ..... 45843, 47412, 48232, 48235
87 47080

48 CFR

Ch. 24 46572
319 46298
Proposed Rules:
31 ..... 45708, 46470, 48735
47 48332
52 48332
231 47784
235 46796
532 48447
552 48447

49 CFR

Ch. V 46666
1 49614,45728
106 45728
107 45728
171 ..... 45728, 48419
172 ..... 45728, 46053, 48419
173 ..... 45728, 46053–46054, 48419
174 ..... 45728, 46053
175 ..... 45728, 48419
176 ..... 45728, 46053
177 45728
178 45728
190 45728
191 45728
192 45728
193 45728
195 45728
571 ..... 46056, 48772
1002 47224
1033 48211
1144 ..... 46066, 47055
1241 47749
Proposed Rules:
192 ..... 45845, 48809
195 ..... 48809, 48811
212 45917
217 45917
218 45917
219 45917
225 45917
571 46144
574 48107

50 CFR

23 48212
17 45614–45621
204 46068
285 45828
604 47225
650 46069
652 ..... 46072, 46671, 47225
663 45828
671 47549
672 48601
675 ..... 46072, 48601
Proposed Rules:
Ch. II 48236
17 ..... 45632–45638, 45846, 46320, 46797, 48616, 48617
611 ..... 47080, 48236
652 46145
672 ..... 47080, 48236
675 ..... 47080, 48236
681 48108

LIST OF PUBLIC LAWS

Last List November 25, 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).

H.R. 1210/Pub. L. 99-159

National Science, Engineering, and Mathematics Authorization Act of 1986 (Nov. 22, 1985; 99 Stat. 887; 22 pages)
Price: $1.00

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 185 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued. Or, the previous year's full set may be purchased at a reduced price and mailed as a single shipment.

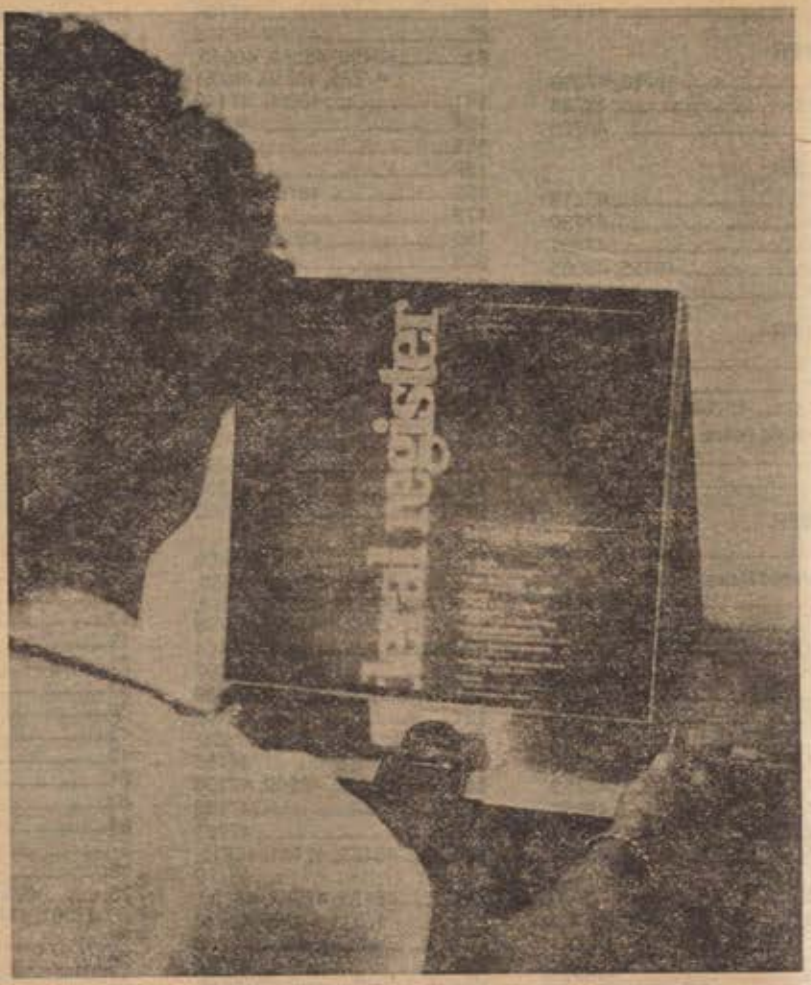
Microfiche Subscription Prices:

Federal Register:

One year: $145 domestic; $181.25 foreign
Six months: $72.50 domestic; $90.65 foreign

Code of Federal Regulations:

Current year (as issued): $185 domestic; $231.25 foreign
Previous year's full set (single shipment): $125 domestic; $156.25 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.

Credit Card Orders Only

Total charges $ _____

Customer's Telephone No's
Area Code Home Area Code Office

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Charge orders may be telephoned to GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

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): $125 domestic; $156.25 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	
_____ Subscriptions	
Special Shipping Charges	
International Handling	
Special Charges	
OPNR	
_____ UPNS	
_____ Balance Due	
_____ Discount	
_____ Refund	

882

(Rev. 7 22 85)