12-17-86
Vol. 51 No. 242
Pages 45101-45292

# federal register

Wednesday
December 17, 1986

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# Rules and Regulations

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DEPARTMENT OF AGRICULTURE

**Animal and Plant Health Inspection Service**

**9 CFR Part 94**

**[Docket No. 86-111]**

## Declare Belgium Free of African Swine Fever

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations concerning importation of pork and pork products into the United States by removing Belgium from the list of countries where African swine fever exists. African swine fever has been eradicated in Belgium. Belgium's change in disease status will remove certain restrictions on the importation of pork and pork products from Belgium into the United States. For example, Belgian pork processing establishments seeking to export to the United States will be able to use pork of Belgian origin. However, because Belgium has not been declared free of rinderpest and foot-and-mouth disease, hog cholera, and swine vesicular disease, we will continue to restrict the importation of pork and pork products from Belgium because of these diseases. Thus, pork and pork products from Belgium still must be heat treated or cured as a condition of importation into the United States.

**EFFECTIVE DATE:** December 17, 1986.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mark P. Dulin, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 805, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-8499.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in 9 CFR Part 94 restrict the importation of certain animals and animal products into the United States to prevent the introduction of various diseases, including African swine fever (ASF).

Section 94.8 of the regulations restricts the importation of pork and pork products into the United States from listed countries where ASF exists or the Administrator of the Animal and Plant Health Inspection Service has reason to believe the disease exists because of the following factors:

1. When a country allows the importation of host animals, pork or pork products or vectors of the disease from a country affected with African swine fever under conditions less stringent than those prescribed for importing host animals, pork or pork products or vectors of the disease into the United States from a country affected with African swine fever; or
2. When a country allows the movement or use of African swine fever virus or cultures under conditions less stringent than those prescribed for similar movements or use into or within the United States; or
3. The proximity of a country to another country or countries with known outbreaks of African swine fever; or
4. A country's lack of disease detection, control or reporting system capable of detecting or controlling the disease and reporting it to the United States in time to allow this country to take appropriate action to prevent the introduction of African swine fever into this country; or
5. Any other fact of circumstance found to exist which constitutes a risk of introduction of the disease into the United States.

Section 94.8 restricts the importation of pork and pork products from listed countries into the United States by requiring that they be cooked or heated sufficiently to destroy organisms capable of spreading ASF.

Belgium was added to the list of countries in § 94.8 on March 12, 1985 [50 FR 10752-10753], after an outbreak of ASF was reported on March 8, 1985. Belgium immediately began an eradication program that included slaughtering swine confirmed or suspected of having ASF and cleaning and disinfecting the farms and buildings housing these swine. No case of ASF in Belgium has been diagnosed since May 22, 1985.

In a document published in the **Federal Register** on August 25, 1986 [51 FR 30221-30222], we proposed to amend the regulations in § 94.8 by removing Belgium from the list of countries where African swine fever exists or is reasonably believed to exist. Comments on the proposal were solicited for 60 days, ending on October 24, 1986.

We received 60 comments from importers, retailers, and private individuals. All but one of the comments supported the proposal. The single objection is discussed below.

Based on the reasons given in the proposal and in this document, we are adopting the provisions of the proposal as a final rule.

### Comment

One commenter asserted that there is reason to believe ASF exists in Belgium because of factors 1 and 3 (above), and that, therefore, Belgium should not be removed from the list of countries in § 94.8. The commenter based his assertion on his belief that Belgium "permits travelers to carry pork products from infected countries under conditions less stringent than travelers from Spain or Portugal entering the U.S.," and that Belgium's proximity to Spain, Portugal, and Italy would result in a great deal of travel between Belgium and these ASF-affected countries.

While it is true Belgium's proximity to Spain, Portugal, and Italy means that many travelers enter Belgium from these countries, we believe Belgium has adequate measures in effect to control the importation of pork and pork products from these countries.

Belgium prohibits the importation, either in commercial shipments or small quantities, of fresh pork and pork products from all but two countries listed in § 94.8 as having ASF. These countries are The Netherlands and Italy. The Netherlands was added to the list of countries in § 94.8 after an outbreak of ASF was reported on April 1, 1986. That outbreak was immediately contained and eradicated, and The Netherlands has had no subsequent cases of ASF. ASF exists in Italy only on the island of Sardinia. The movement of fresh pork and pork products from Sardinia to mainland Italy and to other countries in

the European Economic Community, which includes Belgium, is prohibited.

Furthermore, as a result of Belgium's recent experience with ASF, Belgium has intensified a program to educate tourists and farmers about the dangers of bringing fresh pork and pork products from countries with ASF and has stepped up inspection of luggage at border crossings and airports.

Despite these precautions, we recognize that it still may be possible for a tourist to bring a piece of fresh pork into Belgium from a country with ASF. Should this pork come into contract with swine and an outbreak of ASF occur, however, Belgium has the capability to rapidly detect and diagnose the disease and would immediately notify other countries. We would be able to stop any shipments of pork or pork products from Belgium that could introduce ASF into the United States.

In summary, based on information furnished by Belgium and our review of Belgium's eradication and reporting methods, we have determined that there is no reason to believe that ASF exists in Belgium. We are therefore removing Belgium from the list of countries in which ASF exists or is reasonably believed to exist.

**Effect of This Rule**

Pork and pork products from Belgium will no longer be subject to the restrictions in § 94.8. These restrictions include a requirement that processing establishments shipping pork to the United States obtain all pork or pork products from countries recognized by the United States as being free of African swine fever. However, because Belgium has not been declared free of rinderpest and foot-and-mouth disease, hog cholera, and swine vesicular disease, pork and pork products imported into the United State from Belgium would remain subject to the provisions in Part 94 imposed because of these diseases. These provisions include the requirement that pork and pork products from Belgium be heat treated or cured as a condition of importation into the United States.

**Effect Date**

This rule is made effective on the date of publication in the **Federal Register.** This rule relieves certain restrictions that we have found to be unnecessary. Accordingly, prompt action should be taken to remove these restrictions.

**Paperwork Reduction Act**

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.).*

**Executive Order 12291 and Regulatory Flexibility Act**

This rule has been reviewed in conformance with Executive Order 12291 and has been determined not to be a major rule. The Department has determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rule, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The addition of Belgium in 1985 to the list of countries affected with ASF prevented processing plants using Belgian pork from shipping pork or pork products to the United States in accordance with § 94.8(a)(3). Very few importers or retailers in the United States were affected by this prohibition. Those that were affected now can receive pork and pork products from processing plants using Belgian pork. However, the amount of Belgian pork that will be imported into the United States as a result of this rule will be insignificant compared to the total amount of pork and pork products imported into the United States.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

**List of Subjects in 9 CFR Part 94**

African swine fever, Animal disease, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Rinderpest, Swine vesicular disease.

## PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA; PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, 9 CFR Part 94 is amended as follows:

1. The authority citation for Part 94 continues to read as follows:

**Authority:** 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 94.8 [Amended]**

2. The introductory paragraph in § 94.8 is amended by removing "Belgium."

Done in Washington, DC, this 15th day of December, 1986.

J.K. Atwell,

*Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.*

[FR Doc. 86-28370 Filed 12-16-86; 8:45 am]

BILLING CODE 3410-34-M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

### Small Business Size Standards

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** This publication makes final an interim rule, published April 7, 1986, which notified the public of a change in the Small Business Administration's (SBA's) interpretation of the time at which size eligibility is determined for purposes of SBA's section 8(a) program. In order to provide procuring agencies and section 8(a) participants greater certainty in determining a section 8(a) concern's size relative to a particular contract, this rule requires a section 8(a) firm to certify its size at the time it submits its initial bid or offer which includes price to the procuring agency for a specific contract. Size eligibility will be determined as of the date of such a self-certification. However, under this rule, a size certification is effective only if SBA has previously accepted the procurement for the section 8(a) program.

**DATE:** This rule is effective on December 17, 1986.

**FOR FURTHER INFORMATION CONTACT:** David R. Kohler, Associate General Counsel for General Law, (202) 653–6660.

**SUPPLEMENTARY INFORMATION:** *General.* In order to be eligible to participate in SBA's section 8(a) program, SBA's regulations, 13 CFR 121.4(g), require an applicant concern to qualify as a small business concern as defined for purposes of Government procurement in § 121.2 of the regulations. The particular size standard to be applied is based on the primary industry classification of the applicant concern. In addition, in order to be eligible for a section 8(a) award of a particular Government procurement, the concern must certify to SBA that it is a small business for the purposes of performing that contract. Prior to the interim final rule published April 7, 1986, 51 FR 11705, SBA had interpreted § 121.4(d) of its regulations to require a section 8(a) concern to be small both at the time of its self-certification and at the time of contract award in order to be eligible for a specific section 8(a) contract award. SBA's prior interpretation prohibited a section 8(a) award from occurring where a section 8(a) concern exceeded the size standard for that procurement between the date of its certification and the date of contract award. SBA's interpretation was based, in part, on a desire to prevent potential abuse of the section 8(a) program by firms ready to leave the program because of their increased size.

The interim final rule and this final rule refine SBA's former regulations to eliminate the possible hardship that section 8(a) firms which have grown naturally might have incurred, while at the same time preserving SBA's ability to prevent a section 8(a) award from occurring where an increase in size is the result of merger or acquisition. This rule requires a section 8(a) firm to certify that it is a small business, under applicable SBA size standards, for the purpose of performing a specific Government contract at the time it submits to the procuring agency its initial bid or offer which includes price. SBA has amended § 121.4(g)(2)(i) to make clear that such certification must relate to one or more specific SIC Codes. However, such certification will only be effective if SBA has already notified the procuring agency in writing that it has accepted the procurement for the section 8(a) program in support of the approved business plan of that section 8(a) concern. An 8(a) firm which goes directly to a procuring agency to negotiate for a particular contract cannot claim that it certified its size at a point in time before SBA officially accepts the procurement for the 8(a) program. Any certification which occurs prior to SBA's official acceptance of the procurement for the 8(a) program will have no effect.

This final rule also adopts the verification procedure for size certifications established by the interim final rule. The verification of size status will be based on financial statements and other materials relating to the number of employees of the firm which SBA possesses or should possess in the concern's business plan file. Where SBA has verified that a selected section 8(a) firm is small for a particular procurement, changes in the concern's size after certification and before award, which are due to natural growth as opposed to merger or acquisition, will not affect the firm's size status as it relates to that procurement.

In addition this final rule amends § 121.4(d) of SBA's regulations to clarify that its provisions apply to all SBA's financial programs except the section 8(a) program.

**Public Comment**

SBA received 5 comment letters from the general public and 2 from other agencies. One commenter suggested that SBA clarify the term "date of (contract) award" found in § 121.4(g)(ii)(B). SBA wishes to make clear that the term "date of (contract) award" means the date of the last signature of the three parties to a section 8(a) contract: SBA, the buying activity and the section 8(a) contractor.

Two commenters expressed their concern about how the new regulation would apply to firms that had already begun negotiating contracts, but had not yet finalized them. Such firms will not be adversely affected by this new regulation. SBA's prior interpretation of the time of size eligibility rule for the section 8(a) program required 8(a) concerns to be small both at the time of their self-certification and at the time of contract award. This rule requires 8(a) firms to be small at the time of their self-certification only (provided that the self-certification accompanied the concern's initial offer which included price and SBA had officially accepted the requirement for the 8(a) program). Any 8(a) firm which would have been considered small under SBA's prior interpretation of its size regulations will be considered small under this new regulation since the effect of the new regulation is to eliminate the second look at the size of the 8(a) firm at the date of award (except for firms which have merged with or been acquired by another firm between the date of the certification and the date of award). SBA wishes to make clear that any firm which has certified itself to be small for a procurement which was accepted by SBA for the 8(a) program prior to the effective date of the interim final rule is not required to certify its size again unless its size increases by acquisition or merger. Its previous certification will be considered valid. However, if a concern certified itself to be small prior to submitting its initial price proposal or before SBA accepted the procurement for the 8(a) program, it will be required to make an additional certification as to its size. Again, such a firm will not be adversely affected by the new rule since it would have been required to be small at the date of award under the old rule.

One commenter asked SBA to consider applying the concept of natural growth to small business set-asides. That idea has been referred to the appropriate SBA office for consideration.

The General Services Administration suggested that SBA require a certification from an official of the section 8(a) concern stating that the firm had no formal plans to affect its size status by merger or acquisition. While SBA has not adopted this suggestion, § 121.4(g)(2)(B)(1) has been amended to require a section 8(a) concern, which becomes affiliated with another concern after certifying itself to be small but prior to award, to notify SBA of its affiliation with another firm. The amended subparagraph also notes that failure by the section 8(a) participant to notify SBA of any affiliation with another firm could result in the firm's termination from the program under Title 13 of the Code of Federal Regulations, § 124.112(a)(25).

**Compliance with Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) and the Paperwork Reduction Act (44 U.S.C. Chapter 35)**

SBA certifies that this rule does not constitute a major rule for the purpose of Executive Order 12291. It is procedural in nature, and in and of itself does not impose costs upon the businesses which might be affected by it, nor is it likely to have an annual economic effect of $100 million or more. In addition, this regulation is not likely to result in a major increase in costs or prices or have a significant adverse effect on the United States economy.

SBA also certifies that this regulation will not have a significant economic impact on a substantial number of small businesses. SBA acknowledges that this regulation could have a significant economic impact on the small number of firms which exceed their size standard by merger or acquisition each year. The regulation may also have a significant

economic effect on another small number of firms which grow to exceed their size standard between the time a buying activity identifies them for the procurement and the time that their initial proposal including price is submitted. Otherwise, the vast majority of section 8(a) program participants would not be economically affected by this regulation.

Moreover, this rule imposes no new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

**List of Subjects in 13 CFR Part 121**

Small business, Small business size standards.

**PART 121—[AMENDED]**

Accordingly, pursuant to the authority contained in secs. 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6), Part 121 of 13 CFR is amended as follows:

1. The authority citation for Part 121 continues to read as follows:

**Authority:** Secs. 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6).

2. § 121.4, paragraph (d) is revised to read as follows:

**§ 121.4 Small business for financial programs.**

* * * * *

(d) Except for firms participating in the section 8(a) program, the concern's size status may be determined at the SBA District Office, the SBA Regional Office, or by any other SBA office appropriately designated. This determination may be made at the time of application for assistance. The concern's size eligibility for assistance in determined as of the date of its application or self-certification as small by the concern. Subsequent changes in size will not affect a firm's size status. Size status and size eligibility for the section 8(a) program is determined pursuant to subsection (g) of this section.

* * * * *

3. Paragraph (i)–(ii) are added to § 121.4(g)(2) to read as follows:

(g) * * *

(2) * * *

(i) After SBA has notified a procuring agency in writing that it has accepted a procurement for the 8(a) program in support of the approved business plan of a particular 8(a) concern, the 8(a) concern shall certify that it is a small business for the purpose of performing that particular contract (by certifying that it is small for a particular SIC Code of Codes) at the time it submits it initial bid of offer including price to the procuring agency for that contract. A copy of the 8(a) concern's bid or offer, including its self-certification as to size, shall be provided to the appropriate SBA district office upon submission to the procuring agency.

(ii) The SBA district office involved with the procurement shall verify, within 30 days of its receipt of the selected 8(a) concern's self-certification of size, if possible, that the selected concern is small.

(A) In verifying the selected 8(a) concern's size, SBA will review the annual financial statements and other relevant material regarding the number of employees submitted by the concern to SBA pursuant to these regulations. Such financial statements and materials should be present in the 8(a) concern's business plan file. Verification cannot occur unless these financial statements and materials are available to and reviewed by SBA.

(B) Where SBA verifies that the selected 8(a) concern is small for a particular procurement, subsequent changes in size up to the date of award, except those due to affiliation with another business concern, will not affect the firm's size status as it relates to that procurement.

(*1*) Where the selected 8(a) concern has become affiliated with another business concern between the date of its certification and the date of award, the concern must notify SBA of its affiliation and must recertify its size status. SBA must verify that new certification, before award can occur.

(*2*) Failure to notify SBA of its affiliation may result in the firm's termination from the program under § 124.112(a)(25) of these regulations.

(*3*) An award of an 8(a) contract will be voidable where the selected 8(a) concern does not recertify its size status upon becoming affiliated.

(C) SBA may, in its discretion, request a formal size determination with the SBA regional office serving the geographical area in which the principal office of the selected 8(a) concern is located.

(D) Where SBA cannot verify that the selected 8(a) concern is small for a particular procurement, the conern will be ineligible for that procurement, unless a formal size determination is made in favor of the 8(a) concern.

(*1*) The selected 8(a) concern may request a formal size determination with the SBA regional office serving the geographical area in which the principal office of the 8(a) concern is located within 5 working days of its receipt of SBA's denial of verification. Such request shall include any information or documentation deemed relevant by the 8(a) concern regarding its size.

(*2*) Where the selected 8(a) concern does not timely request a formal size determination, SBA may accept the procurement in support of another 8(a) concern, or may return the procurement from the 8(a) program, as appropriate.

(*3*) After receipt of a request for a formal size determination, the relevant regional office will determine the size status of the selected 8(a) concern as it relates to the particular contract at issue, and will notify the SBA district office and the selected 8(a) concern of this decision by certified mail, return receipt requested, within 10 working days, if possible. In making a size determination, the procedures of § 121.8 shall apply, where appropriate.

(*4*) An appeal of this determination may be made by the selected 8(a) concern to SBA's Office of Hearings and Appeals, following the procedures of § 121.11 of this Part.

* * * * *

Dated: November 17, 1986.

**Charles L. Heatherly,**

*Acting Administrator.*

[FR Doc. 86–28193 Filed 12–16–86; 8:45 am]

BILLING CODE 8025–01–M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 558**

## New Animal Drugs for Use in Animal Feeds; Monensin and Bacitracin Methylene Disalicylate

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by A. L. Laboratories, Inc., providing for safe and effective use of certain Type C broiler feeds manufactured by combining separately approved monensin and bacitracin methylene disalicylate (MD) Type A articles. The Type C broiler feeds are used for improved feed efficiency and as an aid in the prevention of coccidiosis caused by the six major *Eimeria* species.

**EFFECTIVE DATE:** December 17, 1986.

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

**SUPPLEMENTARY INFORMATION:** A. L. Laboratories, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 138–456 providing for combining separately approved monensin and bacitracin methylene disalicylate Type A articles to make Type C broiler feeds. The Type C feeds contain: monensin at 110 grams per ton and bacitracin methylene disalicylate at 4 to 50 grams per ton. The feeds are used for improved feed efficiency and as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.* The NADA is approved and the regulations for monensin (21 CFR 558.355) are amended by revising paragraph (b)(11) and by adding paragraph (f)(1)(xxiv). The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

**Authority:** Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.355 is amended by revising paragraph (b)(11) and by adding paragraph (f)(1) (xxiv) to read as follows:

**§ 558.355 Monensin.**

* * * * *

(b) * * *

(11) To 046573: paragraph (f)(1) (xviii), (xix), (xxiii), and (xxiv) of this section.

* * * * *

(f) * * *

(1) * * *

(xxiv) *Amount per ton.* Monensin, 110 grams, plus bacitracin methylene disalicylate, 4 to 50 grams.

(*a*) *Indications for use.* For improved feed efficiency; as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. maxima, E. brunetti,* and *E. mivati.*

(*b*) *Limitations.* Do not feed to laying chickens; feed continuously as the sole ration; in the absence of coccidiosis, the use of monensin with no withdrawal period may limit feed intake resulting in reduced weight gain; as monensin sodium provided by No. 000986 in § 510.600(c) of this chapter; as bacitracin methylene disalicylate provided by No. 046573 in § 510.600(c) of this chapter.

* * * * *

Dated: December 8, 1986.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 86–28202 Filed 12–16–86; 8:45 am]

BILLING CODE 4160–01–M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

### Income Tax; Percentage To Be Used by Foreign Life Insurance Companies in Computing Income Tax for the Taxable Year 1985 and Estimated Tax for the Taxable Year 1986

**AGENCY:** Department of the Treasury, Internal Revenue Service.

**ACTION:** Proclamation.

**SUMMARY:** This proclamation announces the percentage to be used to compute the income tax liability of foreign corporations carrying on life insurance business in the United States.

**EFFECTIVE DATE:** March 15, 1986.

**FOR FURTHER INFORMATION CONTACT:** Mr. Hudson Milner, Office of Tax Analysis, U.S. Treasury Department, Washington, DC 20220, (202–566–2705), not a toll free call.

**SUPPLEMENTARY INFORMATION:** This proclamation, issued each year by the Secretary of the Treasury, announces the percentage to be used to compute the income tax liability of foreign corporations carrying on life insurance business in the United States.

Proclamation

For purposes of computing the 1985 income tax of foreign corporations carrying on a life insurance business, a percentage of 17.8 shall be used in determining the "minimum figure" under section 813. The same percentage shall be used for purposes of computing the estimated tax and the installment payments of estimated tax for the taxable year 1986. No additions to tax shall be made because of any underpayment of estimated tax for the taxable year 1986 which results solely from the use of this percentage.

This proclamation is issued without notice and public procedure because the public cannot effectively participate in the determination of the percentage. It is computed from information contained in income tax returns that are not open to the public. The proclamation was not published prior to its effective date because the percentage is computed on the basis of data which was not then available.

**J. Roger Mentz,**

*Assistant Secretary (Tax Policy).*

December 11, 1986.

[FR Doc. 86–28259 Filed 12–16–86; 8:45 am]

BILLING CODE 4830–01–M

### 26 CFR Parts 1 and 602

**[T.D. 8109]**

### Income Taxes: Original Issue Discount Reporting Requirements of Brokers

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to reporting requirements for original issue discount debt instruments. The temporary regulations are necessary to provide brokers and other middlemen who hold original issue discount debt instruments as nominees with the immediate guidance needed to meet the reporting requirements. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

**EFFECTIVE DATE:** The regulations are effective on January 1, 1986.

**FOR FURTHER INFORMATION CONTACT:** Susan T. Baker of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111

Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (LR–2–86) (202–566–3829, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains temporary regulations amending the original issue discount reporting requirements under section 6049 of the Internal Revenue Code of 1954 for brokers and other middlemen who hold certain original issue discount debt instruments as nominees. The temporary regulations provided in this document will remain in effect until superseded by final regulations on this subject.

**Explanation of Provisions**

Section 1.6049–5(c) provides that, in determining whether a debt instrument has original issue discount and the amount of such discount which is includible in the income of the holder, a payor who is not an issuer may rely on the Internal Revenue Service's publication of publicly traded original issue discount debt instruments (Publication 1212, List of Publicly Offered Discount Instruments).

The temporary regulations amend the existing reporting requirements to require reporting of original issue discount on CDs held by a broker or other middleman as nominee. The Service believes that brokers or middlemen are able to compute the necessary original issue discount from information readily available to them. The reporting requirements are effective beginning in calendar year 1986 for brokers and other middlemen holding CDs on or after June 1, 1986, if the CDs were sold by the broker or middleman to the owner (whether sold for the broker's account or as an agent of the issuer). The reporting requirements are effective beginning in calendar year 1987 for brokers and other middlemen holding as nominees on or after January 1, 1986, all CDs regardless of the manner of sale to the owner.

**Questions Reserved**

The temporary regulations do not address the reporting requirements under section 6049 with respect to stripped bonds and coupons. The Service is considering applying the new rules applicable to CDs to stripped bonds and coupons and would welcome comments on this issue.

**Regulatory Flexibility Act**

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Non-applicability of Executive Order 12291**

The Commissioner of Internal Revenue Service has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

**Paperwork Reduction Act**

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB (control no. 1545–0117).

**Drafting Information**

The principal author of these regulations is Theresa E. Bearman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

**List of Subjects**

*26 CFR Parts 1.6001–1—1.6109–2*

Income taxes, Administration and procedure, Filing requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations.**

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

**PART 1—[AMENDED]**

**Paragraph 1.** The authority citation for Part 1 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805. * * *
Section 1.6049–5T also issued under 26 U.S.C. 6049.

**Par. 2.** New § 1.6049–5T is added immediately after § 1.6049–5 to read as follows:

**§ 1.6049–5T Reporting by brokers of interest and original issue discount on and after January 1, 1986 (temporary).**

For purposes of § 1.6049–5 (c), relating to original issue discount treated as interest subject to reporting, on and after January 1, 1986, a payor who is a broker or middleman holding as a nominee—

(a) A bank certificate of deposit (without regard to whether the broker or middleman sold the certificate of deposit to the owner), or

(b) Any other original issue discount debt instrument that is specified by the Commissioner,

must determine whether that obligation is one that was issued at a discount and the amount of discount that is includible in the income of the owner. However, before January 1, 1987, reporting is required only with respect to certificates of deposit (or any such other obligations) held by a broker or middleman as a nominee on or after June 1, 1986, that were sold by the broker or middleman (whether for the broker's account or as an agent of the issuer) to the owner. The preceding two sentences do not apply to certificates of deposit (or any such other obligations) held on or after January 1, 1986, but disposed of before June 1, 1986; reporting requirements with respect to such certificates of deposit (or any other such obligations) shall be determined under the provisions of § 1.6049–5 (c) as in effect immediately prior to publication of this § 1.6049–5T.

**PART 602—[AMENDED]**

**Par. 3.** The authority citation for Part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**Par. 4.** Section 602.101 (c) is amended by inserting the following in the appropriate places in the table: "§ 1.6049–5 (c) . . . . 1545–0117".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

**Roscoe L. Egger, Jr.,**

*Commissioner of Internal Revenue.*

Approved: December 2, 1986.

**J. Roger Mentz,**

*Assistant Secretary of the Treasury.*

[FR Doc. 86–28166 Filed 12–12–86; 11:30 am]

BILLING CODE 4830–01–M

26 CFR Part 31

[T.D. 8112]

## Employment Taxes and Collection of Income Tax at Source; Submission of Certain Withholding Exemption Certificates and Entitlement to Additional Withholding Exemption

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations that relate to the submission of witholding exemption certificates when the total number of withholding exemptions claimed on the certificate exceeds 10, and to the requirements that an employee must meet to be entitled to the additional withholding exemption in respect of the standard deduction. The temporary rules modify the withholding rules as appropriate to take into account changes made by the Tax Reform Act of 1986. In addition, the temporary regulations set forth in this document serve as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

**EFFECTIVE DATE:** These regulations are effective with respect to Forms W–4 received after November 30, 1986.

**FOR FURTHER INFORMATION CONTACT:** Laura Ann M. Lauritzen of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3459, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains temporary regulations under section 3402 of the Internal Revenue Code of 1986 that detail the circumstances under which an employer must submit an Employee's Withholding Allowance Certificate and those under which an employee may claim an additional withholding exemption. The Tax Reform Act of 1986 increased the amount of each withholding exemption. It also modified or eliminated a number of deductions and credits which an employee previously could take into account in determining the number of withholding allowances the employee was entitled to claim on the withholding exemption certificate. The temporary regulations provided by this document will remain in effect until superseded by final regulations on this project.

### Explanation of Provisions

Section 3402(f)(2) of the Code provides that an employee must furnish his or her employer with a withholding exemption certificate claiming a number of withholding exemptions, which may in no event exceed the number to which the employee is entitled. In an attempt to ensure that employees do not claim an excessive number of withholding exemptions, current § 31.3402(f) (2)-1(g) provides that an employer must submit to the Internal Revenue Service a copy of any withholding exemption certificate if the total number of withholding exemptions claimed on the certificate exceeds 14. Since the Tax Reform Act of 1986 increased the amount of each withholding exemption and eliminated or limited a number of the deductions and credits previously used in determining the number of withholding allowances to which an employee was entitled, in some cases the number of withholding exemptions that an employee is entitled to claim has been reduced. To reflect these changes, these temporary regulations amend the regulations relating to withholding exemption certificates to require employers to submit to the Service a copy of any Form W–4 (Employee's Withholding Allowance Certificate) on which an employee claims more than 10 exemptions.

Section 31.3402 (f)(1)–1(e) provides that an employee may claim an additional withholding exemption if certain requirements are met. Since the Tax Reform Act of 1986 replaced the zero bracket allowance with the standard deduction and to ensure that withholding more closely matches tax liabilities, these temporary regulations amend the regulation relating to this additional withholding exemption to reflect the new law.

### Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

### Regulatory Flexibility Analysis

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

### Drafting Information

The principal author of these temporary regulations is Laura Ann M. Lauritzen of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

### List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

### Adoption of Amendments to the Regulations

## PART 31—[AMENDED]

Accordingly, 26 CFR Part 31 is amended as follows:

**Paragraph 1.** The authority for Part 31 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805. * * *

Section 31.3402(f)(1)–1T also issued under 26 U.S.C. 3402(m). * * *

**Par. 2.** New § 31.32(f)(1)–1T is added immediately after § 31.3402(f)(1)–1 to read as follows:

**§ 31.3402(f)(1)–1T Additional withholding exemption to which an employee is entitled in respect of the standard deduction. (temporary)**

After November 30, 1986, an employee is entitled to one additional withholding exemption unless:

(a) The employee is married (as determined under section 143) and the employee's spouse is an employee receiving wages subject to withholding, or

(b) The employee has withholding exemption certificates in effect with respect to more than one employer.

These restrictions do not apply if the combined wages of the employee and the spouse (if any) from other than one employer is less than the amount specified in the instructions to Form W–4 (Employee's Withholding Allowance Certificate).

**Par. 3.** New § 31.3402(f)(2)–1T is added immediately after § 31.3402(f)(2)–1 to read as follows:

**§ 31.3402(f)(2)–1T Submission of certain withholding certificates. (temporary)**

(a) *General rule.* With respect to withholding exemption certificates received after November 30, 1986, an employer shall submit, in accordance with paragraph (g)(3) of § 31.3402(f)(2)–1,

a copy of any withholding exemption certificate, together with a copy of any written statement received from the employee in support of the claims made on the certificate, which is received from the employee during the reporting period (even if the certificate is not in effect at the end of the quarter) if the employee is employed by that employer on the last day of the reporting period and if—

(1) The total number of withholding exemptions (within the meaning of section 3402(f)(1) and the regulations thereunder) claimed on the certificate exceeds 10, or

(2) The certificate indicates that the employee claims a status exempting the employee from withholding, and the exception provided by paragraph (g)(2) of § 31.3402(f)(2)–1 does not apply.

(b) *Cross reference.* For additional rules regarding the requirement to submit withholding exemption certificates, see paragraph (g)(2) through (6) of § 31.3402(f)(2)–1.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Approved: December 5, 1986.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

**J. Roger Mentz,**

*Assistant Secretary of the Treasury.*

[FR Doc. 86–28264 Filed 12–12–86; 4:15 pm]

BILLING CODE 4830–01–M

## Office of the Secretary

## 31 CFR Part 103

## Amendment to the Bank Secrecy Act Regarding the Granting of Exemptions to the Reporting Requirements by Banks

**AGENCY:** Office of the Secretary, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Anti-Drug Abuse Act, Pub. L. No. 99–570, which the President signed into law on October 27, 1986, sets forth a number of statutory provisions relating to the fight against money laundering and drug trafficking. These provisions include an amendment to the Bank Secrecy Act that requires a financial institution to obtain from a customer who wishes to be placed on its exemption list, a signed statement, describing why transactions with that customer qualify for exemptions from the Bank Secrecy Act reporting requirements for large cash transactions. This final rule merely incorporates that statutory requirement into the regulations that implement the Bank Secrecy Act.

**EFFECTIVE DATE:** December 17, 1986.

**FOR FURTHER INFORMATION CONTACT:** Jonathan J. Rusch, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 566–8022.

**SUPPLEMENTARY INFORMATION:** The Bank Secrecy Act, Pub. L. No. 91–508 (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951 *et seq.* and 31 U.S.C. 5311 *et seq.*), empowers the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, and regulatory matters. The Secretary also has the authority to prescribe appropriate exemptions from these reporting requirements. Treasury regulations implementing the Act, 31 CFR Part 103, require a variety of financial institutions to file reports of large currency transactions. The present regulations also permit banks to exempt the deposit and withdrawal transactions of certain customers from the reporting requirements and to apply to Treasury for special exemptions for other customers.

Subtitle H of Title I of the Anti-Drug Abuse Act of 1986, the "Money Laundering Control Act of 1986," contains amendments to, among other statutes, the Bank Secrecy Act. Section 1356 of Subtitle H makes several substantive changes in 31 U.S.C. 5318. The statutory authority of the Secretary to prescribe exemptions from the reporting requirements is substantively unchanged, but renumbered as section 5318(a)(5). Among the new additions to section 5318, effective upon enactment, is new section 5318(f):

(f) No person shall qualify for an exemption under subsection (a)(5) unless the relevant financial institution prepares and maintains a statement which—

(1) describes in detail the reasons why such person is qualified for such exemption; and

(2) contains the signature of such person.

Pursuant to present Treasury regulations, the only financial institutions eligible to grant exemptions are banks as defined in 31 CFR 103.11. This final rule does not extend to other financial institutions the authority to grant exemptions.

Present Treasury regulations, at 31 CFR 103.22, state the circumstances under which banks may exempt the currency transactions of certain customers from the reporting requirements. Exemptions that banks may not unilaterally grant under the regulations may be authorized by the Secretary upon application by the bank. The present regulations require neither a detailed statement of reasons for the exemption, nor a signed statement by the customer seeking the exemption.

The revised regulation below will require that for all exemptions granted after October 27, 1986, the effective date of section 1356 of the Anti-Drug Abuse Act of 1986, the financial institution must prepare a detailed statement of reasons, signed by the customer. The statement must explain why the exemption is sought, and what transactions and amounts of transactions are covered by the exemption, and state certain identifying information concerning the customer that the current regulations already require. The signature of the customer, which should also indicate the signer's title and position, will attest to the accuracy of the information concerning the nature of the customer's business. Once the statement is signed, the customer may be held liable under 18 U.S.C. 1001 if he has provided false information on the statement. The regulation requires a statement by the customer attesting that the information provided is true and correct to the best of the customer's knowledge and belief, and that this information will be read and relied upon by the Government. Banks should not merely adopt without question the information a customer provides regarding usual amounts of cash transactions, but should independently evaluate the customer's account activity to determine proper exemption amounts. This evaluation should include a review of past cash transactions for their frequency and the dollars amounts of the type of cash transactions to be exempted.

Treasury will not issue a model or prescribed form for the customer's signed statement. Accordingly, each bank may develop its own format for the required statement so long as it includes all of the categories of information specified in the revised regulation, and the attestation statement signed by the customer. Each bank will retain this statement as long as the exemption remains in effect, and for a period of five years following the removal of the customer from the exempt list. When a bank requests authority for a special exemption from Treasury, a copy of the

statement signed by the customer must accompany the request. The revised regulation also includes the new address for requesting such exemptions.

By Notice of Proposed Rulemaking, 51 FR 30233, August 25, 1986, Treasury proposed certain amendments to the Bank Secrecy Act regulations with a 90-day comment period to end on November 24, 1986. The comment period has now been extended to December 24, 1986. The proposed amendments included amendments to 31 CFR 103.22 (d) and (e) that would require banks to obtain signed statements from their customers on a Treasury-prescribed form, attesting to the basis for their exemption from the currency transaction reporting requirements. The passage of section 1356 of the Anti-Drug Abuse Act and the promulgation of this final rule supersede the proposed revision to 31 CFR 103.22 (d) and (e). As a consequence, commenters should no longer direct comments to this aspect of the proposed rulemaking. Treasury will continue to receive comments on the remainder of the proposed regulations until December 24, 1986.

Finally, the Office of Financial Enforcement welcomes any written comments or questions from banks concerning their experiences in implementing this regulation. Please direct your written comments to the Office of Financial Enforcement at the address listed above.

**Applicability of Notice and Effective Date Requirements**

Because this amendment merely conforms the present regulations to a recent statutory change, and because that statutory change was effective upon signature, for such good cause found, notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and a delayed effective date pursuant to 5 U.S.C. 553(d)(3) are impracticable and unnecessary.

**Executive Order 12291**

This rule is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States based-enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

**Regulatory Flexibility Act**

This document is not subject to the provision of the Regulatory Flexibility Act, 5 U.S.C. 603 and 604. That Act does not apply to any regulation (such as this) for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or by any other statute.

**Paperwork Reduction Act**

The information collection requirements mandated by this final rule have been reviewed and approved by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act. (OMB Control No. 1505–0063.)

**Drafting Information**

The principal author of this document is the Office of the Assistant General Counsel (Enforcement), Department of the Treasury. However, personnel from other offices participated in its development.

**List of Subjects in 31 CFR Part 103**

Authority Delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

For the reasons set forth in the preamble, 31 CFR Part 103 is amended to read as follows:

## PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 is revised to read as follows:

**Authority:** Sec. 21 of the Federal Deposit Insurance Act, Pub. L. No. 91–508, Title I, 84 Stat. 1114, 1116 (12 U.S.C. 1829b, 1951–1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. No. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5324).

2. Section 103.22 paragraphs (d), (e), and (f) are redesignated as paragraphs (e), (f), and (g) respectively; newly redesignated paragraph (e) is revised; new by redesignated paragraph (g) is amended by changing "paragraph (e)" to "paragraph (f)" and a new paragraph (d) is added to read as follows:

**§ 103.22 Reports of currency transactions.**

* * * * *

(d) After October 27, 1986, a bank may not place any customer on its exempt list without first preparing a written statement, signed by the customer, describing the customary conduct of the lawful domestic business of that customer and a detailed statement of reasons why such person is qualified for an exemption. The statement shall include the name, address, nature of business, taxpayer identification number, and account number of the customer being exempted. The signature, including the title and position of the person signing, will attest to the accuracy of the information concerning the name, address, nature of business, and tax identification number of the customer. Immediately above the signature line, the following statement shall appear: "The information contained above is true and correct to the best of my knowledge and belief. I understand that this information will be read and relied upon by the Government." The bank shall indicate in this statement whether the exemption covers withdrawals, deposits, or both, as well as the dollar limit of the exemption for both deposits and withdrawals. The bank also shall indicate whether the exemption is limited to certain types of deposits and withdrawals (*e.g.*, withdrawals for payroll purposes). In each instance, the exempted transactions must be in amounts that the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the lawful domestic business of that customer. The bank is responsible for independently verifying the activity of the account and determining applicable dollar limits for exempted deposits or withdrawals. The bank must retain each statement that it obtains pursuant to this subparagraph as long as the customer is on the exempt list, and for a period of five years following removal of the customer from the bank's exempt list.

(Approved by the Office of Management and Budget Control under Control No. 1505–0063)

(e) A bank may apply to the Commissioner of Internal Revenue for additional authority to grant an exemption to the reporting requirement, not otherwise permitted under paragraph (b), if the bank believes that circumstances warrant such an exemption. Such requests shall be addressed to: Chief, Currency and Banking Reports Branch, Exemption Review Staff, IRS Data Center, Post Office Box 32063, Detroit, Michigan 48232, and must be accompanied by a statement of the circumstances that warrant special exemption treatment and a copy of the statement signed by the customer required by paragraph (d).

* * * * *

Dated: December 2, 1986.

**Francis A. Keating, II,**

*Assistant Secretary (Enforcement).*

[FR Doc. 86-28239 Filed 12-16-86; 8:45 am]

BILLING CODE 4810-25-M

## DEPARTMENT OF DEFENSE

### Defense Intelligence Agency

### 32 CFR Part 292a

**[DIA Reg. 12-12]**

### Defense Intelligence Agency Privacy Program

**AGENCY:** Defense Intelligence Agency (DIA), DoD.

**ACTION:** Final Rule Amendment.

**SUMMARY:** The Defense Intelligence Agency (DIA) is amending its rules by revising the subject title of this part and to permit the specific exemption from certain provisions of the Privacy Act for two agency record systems established under the Privacy Act by publishing two exemption rules.

**EFFECTIVE DATE:** December 17, 1986.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Helen Shuford, Administrative and Management Services Division (RTS-1), Defense Intelligence Agency, Washington, DC 20301-6111. Telephone: (202) 373-4291, Autovon: 242-3913.

**SUPPLEMENTARY INFORMATION:** On August 27, 1986 at 51 FR 30510, the DIA published a proposed rulemaking amendment revising the subject title of this part and adding two new specific exemption rules for exempted systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a) to accommodate a new exempted record system identified as LDIA 0275, entitled: "DoD Hotline Referrals," and an existing record system LDIA 0800, entitled: "Operation Record System." Exemption from certain provisions of the Privacy Act is required for these record systems to protect the information contained therein from access and to protect the identity of sources who furnish information to the Government under an express promise that the identity of the source will be held in confidence.

No comments were received from the proposed rulemaking amendment at 51 FR 30510 published on August 27, 1986, and therefore the rule amendment is adopted as final by the DIA.

The DIA has determined that this final rulemaking amendment is not a major rule as defined by E.O. 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 90-354), and does not contain reporting or recordkeeping requirements under criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

**List of Subjects in 32 CFR Part 292a**

Privacy.

### PART 292a—[AMENDED]

Accordingly, 32 CFR Part 292a is amended as follows:

1. The authority citation for Part 292a continues to read as follows:

**Authority:** Privacy Act of 1974 (Pub. L. 93-579, section 3 (f) and (k) of 5 U.S.C. 552a).

2. The CFR Title of Part 292a is revised to read: "Defense Intelligence Agency Privacy Program".

3. Section 292a.15 Specific exemptions is amended by adding the following after exemption rule ID-LDIA 0271 and before exemption rule ID-LDIA 0660:

**§ 292a.15 Specific exemptions. [Amended]**

* * * * *

ID-LDIA 0275

**SYSTEM NAME:**

DoD Hotline Referrals.

**EXEMPTION:**

Parts of this record system may be exempt from the following portions of Title 5, U.S.C.; section 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

**AUTHORITY:**

5 U.S.C. 552a: (k)(2), (k)(5), and (k)(7).

**REASON:**

The reasons for asserting these exemptions are to insure that informants can report instances of fraud and mismanagement without fear of reprisal or unauthorized disclosure of their identity. The execution of this function requires that information be provided in a free and open manner without fear of retribution of harassment in order to facilitate a just, thorough and timely resolution of the case. These records are privileged Director, DIA, documents and the information contained therein is not routinely released or disclosed to anyone.

* * * * *

Add the following rule at the end after exemption rule LDIA 0600:

* * * * *

ID-LDIA 0800

**SYSTEM NAME:**

Operation Record System.

**EXEMPTION:**

Parts of this record system may be exempt from the following portions of Title 5, U.S.C.; section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(45)(H), and (e)(4)(I).

**AUTHORITY:**

5 U.S.C. 552a (k)(2), (k)(5), and (k)(7).

**REASON:**

The reasons for asserting these exemptions are to insure the integrity of ongoing foreign intelligence collection and/or training activities conducted by the Defense Intelligence Agency and the Department of Defense. The execution of these functions requires that information in response to national level intelligence requirements be provided in a free and open manner without fear of retribution or unauthorized disclosure. Disclosures from this system can jeopardize sensitive sources and methodology.

* * * * *

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

December 11, 1986.

[FR Doc. 86-28229 Filed 12-16-86; 8:45 am]

BILLING CODE 3810-01-M

## LIBRARY OF CONGRESS

### Copyright Office

### 37 CFR Part 201

**[Docket No. RM 86-6A]**

### Compulsory License for Cable Systems

**AGENCY:** Library of Congress, Copyright Office.

**ACTION:** Final regulations.

**SUMMARY:** The Copyright Office of the Library of Congress is issuing a final regulation amending 37 CFR 201.17 pending appeal of the decision of the District Court of the District of Columbia in *Cablevision Company* v. *Motion Picture Association of America, Inc., et al.*, 231 U.S.P.Q. 203 (D.D.C. 1986). These regulations implement portions of section 111 of the Copyright Act of 1976, Title 17 of the United States Code. That section prescribes conditions under which cable systems may obtain a compulsory license to retransmit copyrighted works, including the filing of periodic Statements of Account and the periodic payment of copyright royalties. The amendments confirm new reporting and recordkeeping requirements issued on an interim basis on August 25, 1986 for cable systems that file Statements of Account.

**EFFECTIVE DATE:** December 17, 1986.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, Copyright Office, Library of Congress,

Washington, DC 20559, Telephone (202) 287–8380.

**SUPPLEMENTARY INFORMATION:** Section 111(c) of the Copyright Act of 1976 establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. The compulsory license is subject to various conditions, including the requirements that cable systems comply with the provisions regarding the filing of Statements of Account and deposit of statutory royalty fees under 111(d)(2).

On July 31, 1986, the U.S. District Court for the District of Columbia in the *Cablevision* cases [1] invalidated the Copyright Office's regulation defining "gross receipts" yet did not specify an alternative method for calculating royalties to be paid. Pending the appeal of the decision, the Office issued an interim regulation on August 25, 1986 [51 FR 30214] establishing new reporting and recordkeeping requirements for cable systems that file Statements of Account.

The two part interim regulation requires that a cable system filing a Statement of Account for the first accounting period of 1986 and thereafter must declare to the Copyright office whether it allocated gross receipts in calculating its royalty fee for the relevant accounting period, and if it has allocated, must also report the figure for gross receipts as calculated under the Office's definition in 37 CFR 201.17(b)(1). The other part of the regulation requires a cable system that allocates gross receipts in determining its royalty fee for a particular accounting period to maintain detailed records that describe each step of the method followed by the system operator in computing the gross receipts reported in the Statement of Account. A written explanation of the method of allocation utilized by the system must also be maintained. Additionally, the regulation provides that the Copyright Office may require cable systems to report the information maintained in those records at any time within a five year period following the relevant Statement of Account filing deadline.

The regulations were issued on an emergency basis and took effect immediately because of the then imminence of the August 29, 1986 filing deadline for the first half of the 1986 accounting period, and because they were necessary to the orderly functioning of the cable compulsory license. The Office, however, requested public comment before issuing the regulations in final form. The Office considered the comments both with respect to retroactive and prospective change in the reporting and record-keeping requirements. Five comments were received, including reply comments by the Motion Picture Association of America (MPAA) and the National Cable Television Association (NCTA). For the reasons given below, the Copyright Office has decided to confirm the regulations issued in interim form with two minor changes.

**1. Reporting requirement**

The National Cable Television Association (NCTA) asserted that the reporting requirement imposes unnecessary and unreasonable paperwork burdens on both cable systems and the Copyright Office. It is impossible, they maintain, to determine whether cable systems have submitted correct royalty payments until the resolution of the litigation, thus a present computation of "gross receipts" is not needed. It is enough for cable systems to maintain records regarding "gross receipts" computations, and after resolution of the appeal, they can use their records to complete supplemental Statements of Account.

Tele-Communications, Inc. (T.C.I.) also questioned why there is a present need for a Declaration of Gross Receipts form when, after the resolution of the allocation question, systems will still need to file supplemental reports. They stated that the form will be particularly burdensome for 1986/1 because cable operators will be required to expend effort and incur administrative expense to review statements in mid-accounting period. T.C.I. also suggested submitting the Declaration of Gross Receipts form for the 1986/1 accounting period concurrently with a cable system's Statement of Account and Declaration of Gross Receipts form for the 1986/2 period, and extending the 30-day period for the return of the form. NCTA suggested suspending the period.

The following organizations filed a joint comment as "Copyright Owners": The Motion Picture Association of America, Inc.; Joint Sports Claimants; National Association of Broadcasters; Public Broadcasting Service; American Society of Composers, Authors, and Publishers; Broadcast Music, Inc.; SESAC, Inc.; and Old Time Gospel Hour. They supported the recordkeeping and reporting requirements of the interim regulation, but in addition they urged the Office to impose additional reporting requirements such as the number of channels on each tier, the broadcast signals on each tier, the monthly subscription charge for each tier, etc. As justification for these proposals, the Copyright Owners contended that this additional information is substantially similar to the information that the cable systems will have to maintain to satisfy the recordkeeping requirement of the interim regulation. Furthermore, they alleged that reporting the information on a contemporaneous basis to the Copyright Office would provide uniformity of reporting, make the information more accessible to interested parties in a central location, and avoid delays in information-gathering.

The Copyright Office believes that the reporting requirements of the interim regulation place a minimal burden on cable systems, and are an essential measure for the efficient and fair administration of the cable compulsory license. Pending the appeal in *Cablevision* cases, it is crucial for the Office to receive some information now about practices in reporting gross receipts and to have records prepared that will be a source of information for possible evaluation at the conclusion of the appeal.

The Copyright Office has concluded that the minimal reporting requirement imposed by the interim regulation is modest and reasonable. We must reject the arguments of the cable system operators that the filing of a simple one-page Declaration requiring responses to a maximum of two questions is in any way burdensome. Nor is it burdensome to calculate the gross receipts in accordance with the definition in 37 CFR 201.17(b)(1). Cable system operators are familiar with this regulation and many have applied it in reporting gross receipts for several years.

The Office has also rejected the request of copyright owners to add to the reporting requirement. While the information identified by the copyright owners may be required at a later time, in this period of uncertainty, the Office is not prepared to add to the reporting requirement. The information identified by the copyright owners will be most relevant if 37 CFR 201.17(b)(1) is again held invalid on appeal. The Office would then expect that the cable systems, in conformity with the recordkeeping requirement of 37 CFR 201.17(k), will be in a position to report essentially the same information as that identified by copyright owners in their comment—for example: For each tier or service package which includes one or more secondary transmissions, the number of channels on the tier, the identity of the broadcast signals, the monthly subscription charge for each

[1] Cablevision Company v. Motion Picture Association of America, Inc., et al., 231 U.S.P.Q. 203 (D.D.C. 1986), hereafter the *Cablevision* cases.

tier, the number of subscribers to the tier on the last day of the accounting period, the gross receipts for the tier, and the identify of the nonbroadcast services.

On the other hand, if the "gross receipts" regulation is held valid on appeal, the information already reported on the Declaration of Gross Receipts should be adequate for the Office to begin the administrative steps leading to collection of any underpayments of royalties. The Office has therefore decided to rely on the recordkeeping requirement for information that would be needed primarily if the gross receipts regulation is held invalid.

In response to the request of TCI for a delay in filing the Declaration of Gross Receipts for accounting period 1986g7/1, the Office has decided to extend the period for filing this Declaration to December 31, 1986.

**2. Recordkeeping requirement**

With reference to the recordkeeping requirement, NCTA and TCI responded that the recordkeeping regulation is sufficient. TCI however asserted that the rationale for a five year recordkeeping requirement was not articulated in the interim regulation. They suggested that it would be more appropriate to require record retention for each accounting period only so long as the interim regulations are in effect.

The Copyright Office believes that its recordkeeping regulation is adequate and not excessive. Thorough recordkeeping is essential to the Office's ultimate evaluation of the methods used by cable systems to allocate gross receipts. However, because it is uncertain how long the judicial appeal process and, if necessary, any rulemaking proceeding will take, we have conservatively estimated five years as the maximum period required for retention of records. It is far better for both the Office and cable system operators to eliminate or shorten that time period if the process is concluded sooner that anticipated, than to extend the period at a later time.

Additionally, NCTA and TCI expressed concern that 37 CFR 201.17(k)(2)(ii) may require systems to submit actual records. They concede that the Copyright Office has the authority to require recordkeeping, but question whether the Office can compel the production of records and documents.

The Copyright Office has the authority under section 111 to require reasonable recordkeeping necessary for the efficient and fair administration of the compulsory license. Because of the potential for confusion engendered by the lack of an approved system for the calculation of gross receipts, there is increased need for adequate information about calculation of gross receipts for post-appeal evaluation by the Office. The regulation was intended to require the production of the information contained in cable systems' records and documents rather than the actual "records" themselves. We have amended the final regulation to make this clear.

**3. Request for Refunds Based on Allocation of Gross Receipts**

NCTA requested that the Copyright Office address the question of refunds for royalty payments made prior to the *Cablevision* decision. It suggested that after the allocation issues have been resolved, the Office should announce the establishment of a reasonable period for all refund requests. MPAA replies that there are no legal nor equitable grounds for retroactive refunds.

The Office is cognizant that the refund issue poses problems for both cable systems and copyright owners, and pledges that if refunds are necessary, the orderly processing will begin following resolution of the *Cablevision* appeal. We believe, however, that it is premature to consider the issue of retroactive refunds before there is any final resolution of the appeal.

**4. Distribution of Declaration Without Public Comment**

NCTA objected to the Office's distribution of the Declaration of Gross Receipts form prior to the evaluation of any public comment.

The regulations are procedural, rather than substantive, and as such required no public comment. Moreover, faced with the emergency situation created by the court's decision in *Cablevision*, the Office had to act promptly. Public comment was desired, however, and has been considered, both as a guide to future accounting periods, and could have resulted in an adjustment of the requirement for accounting period 1986–1. In fact, the Office has made an adjustment by extending the filing date for the Declaration for 1986–1.

* * * * *

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (Title 5 Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[2]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined that the regulations will have no significant impact on small businesses.

**List of Subjects in 37 CFR Part 201**

Cable television, Cable compulsory license, Copyright Office.

**Final Regulations**

**PART 201—[AMENDED]**

In consideration of the foregoing, Part 201 of 37 CFR, Chapter II is amended in the manner set forth below.

1. The authority citation for Part 201 continues to read as follows:

**Authority:** Sec. 702, 90 Stat. 2541; 17 U.S.C. 702.

* * * * *

2. Paragraph (k) to § 201.17 is revised to read as follows:

**§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.**

* * * * *

(k) *Additional declaration of gross receipts.* (1) Every cable system subject to compulsory licensing under section 111 of Title 17 of the United States Code must complete and submit a "Declaration of Gross Receipts" on a form prepared by the Copyright Office. For the first accounting period of 1986, the "Declaration of Gross Receipts" shall be received in the Copyright Office by December 31, 1986. For subsequent accounting periods the declaration shall be received in the Copyright Office no later than the relevant filing deadline for Statements of Account.

(2) Any cable system that excludes from gross receipts those revenues allegedly attributable to nonbroadcast signals when these are offered for a single price in combination with

[2] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits). [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

broadcast signals subject to compulsory licensing under section 111 of Title 17 of the United States Code must:

(i) Prepare adequate and detailed records that describe each step of the method used to determine gross receipts as reported in the Statements of Account;

(ii) Prepare a complete, written explanation of the method of allocation used to exclude certain receipts;

(iii) Maintain the records and explanation required by paragraph (k)(2)(i) and (ii) of this section for at least five years from the filing deadline for the relevant accounting period, and report the information in the records and submit an explanation of the method of allocation within 30 days of a request from the Copyright Office for this information; and

(iv) Calculate the gross receipts for the "basic service of providing secondary transmissions of primary broadcast transmitters" in accordance with paragraph (b)(1) of this section and declare the amount on the "Declaration of Gross Receipts" form.

* * * * *

Dated: December 4, 1986.

**Ralph Oman,**

*Register of Copyrights.*

Approved:

**Daniel J. Boorstin,**

*The Librarian of Congress.*

[FR Doc. 86-28248 Filed 12-16-86; 8:45 am]

BILLING CODE 1410-08-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[PP 6F3330/R861; FRL-3128-6]**

### Pesticide Tolerance for Metalaxyl

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a tolerance for the combined residues of the fungicide metalaxyl and its metabolites in or on the raw agricultural commodity asparagus. This regulation, to establish a maximum permissible level of residues of metalaxyl in or on asparagus, was requested in a petition by Ciba-Geigy Corp.

**EFFECTIVE DATE:** Effective on December 17, 1986.

**ADDRESS:** Written objections, identified by the document control number [PP 6F3330/R861] may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M-3708, 401 M St. SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Lois A. Rossi, Acting Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460

Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703 557-1900).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of March 5, 1986 (51 FR 7628), which announced that Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, submitted pesticide petition 6F3330 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide metalaxyl [*N*-(2,6dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl) alanine, methyl ester, each expressed as metalaxyl, in or on the asparagus at 7.0 parts per million (ppm).

There were no comments received in response to the notice of filing.

The data submitted in this petition and other relevant material have been evaluated. The scientific data considered in support of this tolerance include:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 12.5 milligram/kilogram body weight/day (mg/kg bwt/day) 250 ppm).

2. A teratology study in rats with a NOEL of 400 mg/kg bwt (highest dose tested). Metalaxyl was not teratogenic, even in the presence of maternal toxicity.

3. A teratology study in rabbits with a NOEL of 300 mg/kg bwt (highest dose tested). Metalaxyl was not teratogenic, even in the presence of maternal toxicity.

4. A *Salmonella* mutagenicity study that was negative for reverse mutations with and without mammalian microsome activation.

5. A mouse dominant lethal study that was negative for mutagenicity.

6. A 3-generation rat reproduction study with a NOEL of 62.5 mg/kg bwt/day (1250 ppm).

7. A 6-month dog feeding study with a NOEL of 6.3 mg/kg bwt (250 ppm).

8. A 2-year rat chronic feeding/oncogenic study with no compound-related oncogenic effects under the conditions of the study at dietary levels up to 1250 ppm. The NOEL is 12.5 mg/kg bwt/day (250 ppm) based upon slight increases in liver weight to body weight ratios at 1,250 ppm.

9. A 2-year mouse oncogenic study with no compound-related oncogenic effects under the conditions of the study at dietary levels up to 1,250 ppm.

The acceptable daily intake (ADI), based on the 6-month dog feeding study (NOEL of 6.3 mg/kg bwt/day) and a hundredfold safety factor, is calculated to be 0.060 mg/kg/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 3.8 mg/day. This tolerance and the established tolerances result in a theoretical maximum residue contribution (TMRC) of 0.0051 mg/day (1.5-kg diet) for a 60-kg human and utilize 8.5 percent of the ADI.

The nature of the residue is adequately understood and analytical methodology is available in the Pesticide Analytical Manual II (PAM II) for enforcement purposes. The PAM II method involves gas-liquid chromatography (GLC) with alkali flame ionization detection (AFID), and with mass spectrometry for samples that show interference in the GLC/AFID. A newer analytical method which involves capillary gas chromatography using a nitrogen/phosphorus detector operating in the nitrogen-specific mode will be included in PAM II.

Because of the long lead-time from establishing this tolerance to publication of the enforcement methodology in the PAM II, the newer analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from:

By mail: William Grosse, Chief, Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703 557-2613).

The pesticide is considered useful for the purpose for which the tolerance is sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerance will protect the public health. Therefore, the tolerance established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk at the address given

above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

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

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 5, 1986.

**Edwin F. Tinsworth,**

*Acting Director, Office of Pesticide Programs.*

## PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

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

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

2. Section 180.408 is amended by adding and alphabetically inserting the following commodity, to read as follows:

**§ 180.408 Metalaxyl: tolerances for residues.**

(a) * * *

| Commodities | Parts per million |
|---|---|
| * * * * * | |
| Asparagus | 7.0 |
| * * * * * | |

[FR Doc. 86-28155 Filed 12-16-86; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 180**

**[OPP-300122A; FRL-3126-4]**

## Revocation of Dodecachlorooctahydro-1,3,4-metheno-2H-cyclobuta[cd]pentalene Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document (1) revokes all existing tolerances for residues of the insecticide dodecachlorooctahydro-1,3,4-metheno-2*H*-cyclobuta[cd]pentalene (dechlorane; mirex) in or on the commodities listed in 40 CFR 180.251, and (2) lists EPA's recommendations to the Food and Drug Administration (FDA) and the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA) regarding existing action levels for residues of this chemical. This rule was initiated by the Environmental Protection Agency to remove pesticide tolerances for which related registered uses have been cancelled.

**EFFECTIVE DATE:** Effective on December 17, 1986.

**ADDRESS:** Written objections, identified by the document control number [OPP-300122A], may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. 3708 (A-110), 401 M St. SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Patricia Critchlow, Registration Division (TS-767), Environmental Protection Agency, 401 M St. 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 issued a notice, published in the **Federal Register** of March 20, 1985 (50 FR 11184), which proposed the revocation of the tolerances listed in 40 CFR 180.251 for residues of the insecticide mirex in the fat of meat from cattle, goats, hogs, horses, poultry, and sheep; milk fat; eggs; and in or on "all raw agricultural commodities."

The March 20 **Federal Register** notice also discussed EPA's intended recommendations to FDA and FSIS regarding retention of existing action levels in fish and in livestock, poultry, and rabbits which may contain unavoidable residues of the pesticide because of environmental contamination. Because unavoidable residues of mirex had been found to occur in fish at levels above the established tolerance for residues in "all raw agricultural commodities," an action level of 0.1 ppm for residues of mirex in fish was established by FDA, based on EPA's recommendation, and published in the **Federal Register** of April 7, 1978 (43 FR 14736).

Based on available monitoring data, the Agency recommends that FDA retain the current action level of 0.1 ppm for residues of mirex in fish, and that FSIS retain the current action level of 0.1 ppm for residues of mirex in the fat, meat, and meat byproducts of cattle, goats, horses, sheep, swine, poultry, and rabbits (fat basis). The commodity definition for the FSIS action level, as it appeared in the proposed rule, has been modified as indicated herein.

Since no findings of mirex residues have been reported in other raw agricultural commodities, the Agency recommends that no action levels be established to replace the tolerances of 0.1 ppm for residues of mirex in milk fat and in eggs and the 0.01 ppm tolerance for residues in or on "all raw agricultural commodities."

No requests for referral to an advisory committee were received. However, two interested persons submitted comments regarding the proposed revocation action.

The National Food Processors Association and the Pineapple Growers Association of Hawaii indicated their opposition to EPA's revocation of the existing tolerances for residues of persistent pesticides such as mirex before such residues have fully dissipated from the environment. These organizations also expressed concern that the setting of replacement action levels may not be legal under the recent decision of the United States Court of Appeals for the District of Columbia in *Community Nutrition Institute (CNI) v. Young*, 757 F. 2d 354 (D.C. Cir. 1985).

Since EPA did not indicate that it intended to recommend replacing the revoked tolerance with action levels, it is assumed that the commenters were concerned about the existing action levels which EPA has recommended be retained. With regard to the Court of Appeals decision in the CNI case, the Agency notes that the Supreme Court has recently reversed the Court of Appeals decision. The Court gave deference to FDA's interpretation that the Federal Food, Drug, and Cosmetic Act provides flexibility to set action levels under section 402(a) rather than promulgate tolerances by formal rulemaking pursuant to section 406. The Agency also notes that it does not interpret section 406 as applying to residues of pesticide chemicals in food; rather, sections 402(a)(2)(B), 402(a)(2)(C),

408, and 409 govern the issue of whether food bearing such residues is adulterated.

In order to eliminate any implied sanctioning of the use of pesticides whose registrations have been cancelled for food safety reasons and of the presence of residues in food and feed commodities from such use, EPA considers it appropriate to revoke tolerances for residues of such pesticides. In the case of mirex, EPA has not recommended that EPA and FSIS establish any new action levels to replace the tolerances which have been proposed for revocation. The tolerances for residues in livestock and poultry have co-existed with FSIS' action levels in various livestock animals, poultry, and rabbits; EPA's revocation of the tolerances merely removes the redundancy. The action level in fish is an established level, not a recommended replacement level; there was no established tolerance for residues in fish to be revoked. The only commodities in which residues of mirex are still expected to occur are livestock, including poultry, and fish.

The National Food Processors Association (NFPA) also stated that action levels do not provide sufficient legal protection to food producers (but did not specify in what manner) and further indicated that NFPA also opposed the 1982 policy statement (47 FR 42956, September 29, 1982) which describes EPA's policy on the revocation of tolerances for cancelled pesticides and the replacement of those tolerances with action levels for unavoidable residues of these pesticides. The basis for their opposition was that the setting and revising of action levels does not afford the public the same hearing rights and procedural protections provided for tolerance rulemaking actions under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA).

EPA believes that its procedures regarding the recommendation of replacement action levels afford adequate legal protection to food producers. As a matter of policy, the Agency will provide notice and the opportunity to comment on recommended action levels at the proposal stage of a tolerance revocation action. When a determination is reached to further decrease action levels, the Agency will publish a notice in the **Federal Register** of that determination and provide an opportunity to comment before making its final recommendations on action levels to FDA or USDA.

The Pineapple Growers Association of Hawaii (PGAH) also indicated concern that no replacement action levels have been recommended for Mirex although, according to PGAH, there are existing limited supplies of Mirex Harvester Ant Bait 300, a product which the 1976 cancellation order allowed to be used until supplies were exhausted; these supplies have been used very sparingly since the 1976 cancellation order in order to maximize the allowable time for use. The cancellation order provided that stocks of Mirex Harvester Ant Bait 300, registered for use against certain ants on Hawaiian pineapples and existing on December 1, 1977, might be sold and used for that purpose until supplies were exhausted, except that aerial application was not allowed after December 31, 1977.

EPA has determined that there are only very small quantities of Mirex Harvester Ant Bait 300 still available for use (maximum of 800 pounds of formulated product, equivalent to 2.4 pounds of active ingredient); it is estimated that the product will be depleted within the next year. In addition, residues resulting from use on pineapples would be expected to be below the level of analytical detectability. As stated previously, no findings of mirex residues have been reported in pineapples or in any raw agricultural commodities other than livestock, including poultry, and fish; therefore, the Agency proposes that no action levels should be established to replace the tolerances in milk fat, eggs, or in or on "all raw agricultural commodities," which would include pineapples.

Based on the information considered by the Agency and discussed in detail in the March 20, 1985, proposal and in this final rule, the Agency is hereby revoking all existing tolerances in 40 CFR 180.251 for residues of mirex in the fat of meat of cattle, goats, hogs, horses, poultry, and sheep; milk fat; eggs; and in or on all raw agricultural commodities.

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

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of the revocation of tolerance for this chemical. This analysis is available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

### Executive Order 12291

As explained in the proposal published on March 20, 1985, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the revocation of these tolerances will not cause adverse economic impacts on significant portions of U.S. enterprises. Since the tolerance level for residues in fat of meat proposed for revocation is the same as FSIS' current action level which is being recommended to be retained, the primary impact from this revocation would be a change from an "acceptable" level to an "unavoidable" level of residues.

### Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the March 20, 1985, proposal.

### List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 3, 1986.

**J.A. Moore,**

*Assistant Administrator for Pesticides and Toxic Substances.*

## PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

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

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

### § 180.251 [Removed]

2. Section 180.251 is removed.

[FR Doc. 86–27837 Filed 12–16–86; 8:45 am]
BILLING CODE 6560–50–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

[Docket No. FEMA 6739]

### Flood Insurance; Suspension of Community Eligibility; Massachusetts et al.

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** This rule lists communities, where the the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

**EFFECTIVE DATES:** The third date ("Susp.") listed in the column.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended.) This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

### List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

1. The authority citation for Part 44 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No.3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

**§ 64.6 List of eligible communities.**

| State and location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Special flood hazard areas identified | Date [1] |
|---|---|---|---|---|
| **Region I** | | | | |
| Massachusetts: Hanson, town of, Plymouth County. | 250267B | Apr. 3, 1975, Emerg.; Jan. 20, 1982, Reg.; Dec. 18, 1986 Susp | Nov. 8, 1974, Jan. 20, 1982 and Dec. 18, 1986. | Dec. 18, 1986. |
| **Region IV** | | | | |
| Kentucky: Corbin, city of, Whitley County | 210227B | Aug. 16, 1976, Emerg.; Dec. 18, 1986, Reg.; Dec. 18, 1986, Susp | June 14, 1974, Feb. 20, 1976, and Dec. 18, 1986. | Do. |
| **Region V** | | | | |
| Minnesota: | | | | |
| Morton, city of, Renville County | 270399B | July 3, 1974, Emerg.; Dec. 18, 1986, Reg.; Dec. 18, 1986, Susp | Jan. 9, 1974, June 11, 1976, and Dec. 18, 1986. | Do. |
| Belle Plaine, city of, Scott County | 270429B | Sept. 25, 1974, Emerg.; Dec. 18, 1986, Reg.; Dec. 18, 1986, Susp | Mar. 8, 1974, June 4, 1976, and Dec. 18, 1986. | Do. |
| Ohio: | | | | |

| State and location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Special flood hazard areas identified | Date [1] |
|---|---|---|---|---|
| Coshocton, city of, Coshocton County | 390089B | July 24, 1975, Emerg.; Dec. 18, 1986, Reg.; Dec. 18, 1986 Susp. | Jan. 23, 1974, May 21, 1976, and Dec. 18, 1986. | Do. |
| Gnadenhutten, village of, Tuscarawas County. | 390613A | Sept. 10, 1975, Emerg.; Dec. 18, 1986, Reg.; Dec. 18, 1986, Susp. | July 30, 1976, and Dec. 18, 1986 | Do. |
| Dennison, village of, Tuscarawas County. | 390542C | July 11, 1975, Emerg.; Dec. 18, 1986, Reg.; Dec. 18, 1986, Susp. | May 28, 1976, Mar. 30, 1979, and Dec. 18, 1986. | Do. |
| Reading, city of, Hamilton County | 390234C | Aug. 27, 1975, Emerg.; Dec. 18, 1986, Reg.; Dec. 18, 1986, Susp. | Apr. 16, 1976, May 18, 1979, and Dec. 18, 1986. | Do. |
| **Region VI** | | | | |
| Texas: Waller County, unincorporated areas. | 480640B | Mar. 13, 1975, Emerg.; Dec. 18, 1986, Reg.; Dec. 18, 1986, Susp. | Aug. 23, 1977 and Dec. 18, 1986 | Do. |
| **Region VIII** | | | | |
| Colorado: | | | | |
| Colorado Springs, city of, El Paso County. | 080060B | Mar. 30, 1973, Emerg.; Dec. 18, 1986, Reg.; Dec. 18, 1986, Susp. | Feb. 1, 1974, Apr. 4, 1978, and Dec. 18, 1986. | Do. |
| El Paso, County, unincorporated areas | 080059B | Mar. 9, 1973, Emerg.; Dec. 18, 1986, Reg.; Dec. 18, 1986, Susp. | Dec. 27, 1974, Aug. 2, 1977, and Dec. 18, 1986. | Do. |
| **Minimal Conversions** | | | | |
| **Region III** | | | | |
| Pennsylvania: | | | | |
| Hovey, township of, Armstrong County | 422299A | Apr. 7, 1976, Emerg.; Nov. 1, 1986, Reg.; Dec. 18, 1986, Susp. | Jan. 24, 1975 and Nov. 1, 1986 | Do. |
| Perry, township of, Lawrence County | 421796B | July 24, 1975, Emerg.; Nov. 1, 1986, Reg.; Dec. 18, 1986, Susp. | Jan. 10, 1975, Jan. 18, 1980, and Nov. 1, 1986. | Do. |
| Rayburn, township of, Armstrong County. | 421314A | May 10, 1976, Emerg.; Nov. 1, 1986, Reg.; Dec. 18, 1986, Susp. | Feb. 21, 1975 and Nov. 1, 1986 | Do. |
| Slippery Rock, township of, Lawrence County. | 422466B | Mar. 1, 1977, Emerg.; Nov. 1, 1986, Reg.; Dec. 18, 1986 Susp. | Apr. 14, 1978 and Nov. 1, 1986 | Do. |
| Greene, township of, Erie County | 421364A | Feb. 13, 1976, Emerg.; Dec. 1, 1986, Reg.; Dec. 18, 1986, Susp. | Dec. 1, 1986 | Dec. 1, 1987. |
| **Region VIII** | | | | |
| Montana: Treasure County, unincorporated areas. | 300170 | Mar. 22, 1979, Emerg.; Dec. 18, 1986, Reg.; Dec. 18, 1986, Susp. | Dec. 18, 1986 | Dec. 18, 1987. |
| **Region III** | | | | |
| Pennsylvania: Southwest Greensburg, borough of, Westmoreland County. | 420901C | June 30, 1976, Emerg.; Nov. 19, 1986, Reg.; Jan. 2, 1987, Susp. | Feb. 1, 1974, Sept. 26, 1975, June 30, 1976, and Nov. 19, 1986. | Nov. 19, 1986. |
| **Region IV** | | | | |
| Kentucky: Shepherdsville, city of, Bullitt County. | 210026D | June 7, 1976, Emerg.; Jan. 2, 1987, Reg.; Jan. 2, 1987, Susp. | May 24, 1974, March 5, 1976, June 15, 1979, Oct. 16, 1984, and Jan. 2, 1987. | Jan. 2, 1987. |
| **Minimal Conversions** | | | | |
| **Region III** | | | | |
| Pennsylvania: | | | | |
| Bell, township of, Westmoreland County. | 422185C | May 28, 1982, Emerg.; Jan. 1, 1987, Reg.; Jan. 1, 1987, Susp. | Sept. 13, 1974, Sept. 24, 1976, Feb. 13, 1981, and Jan. 1, 1987. | Jan. 1, 1987. |
| Cherrytree, township of, Venango County. | 422530A | Mar. 8, 1977, Emerg.; Jan. 1, 1987, Reg.; Jan. 1, 1987, Susp. | Jan. 10, 1975 and Jan. 1, 1987 | Do. |
| Henry Clay, township of, Fayette County. | 421628B | Sept. 21, 1976, Emerg.; Jan. 1, 1987, Reg.; Jan. 1, 1987, Susp. | Dec. 6, 1974, Feb. 1, 1980, and Jan 1, 1986. | Do. |
| Polk, borough of, Venago County | 420838C | July 10, 1975, Emerg.; Jan. 1, 1987, Reg.; Jan. 1, 1987, Susp. | June 4, 1976 July 20, 1979, and Jan. 1, 1986. | Do. |
| Fairview, township of, Mercer County | 421865A | Dec. 23, 1977, Emerg.; Jan. 1, 1987, Reg.; Jan. 1, 1987, Susp. | Nov. 29, 1974 and Jan. 1, 1987 | Do. |
| Stewart, township of, Fayette County | 421640B | Jan. 14, 1976, Emerg.; Jan. 1, 1987, Reg.; Jan. 1, 1987, Susp. | Dec. 13, 1974, Mar. 14, 1980, and Jan. 1, 1987. | Do. |
| Vanderbilt, borough of, Fayette County | 421620A | Mar. 1, 1977, Emerg.; Jan. 1, 1987, Reg.; Jan. 1, 1987, Susp. | Jan. 31, 1975 and Jan. 1, 1987 | Do. |
| Wharton, township of, Fayette County | 421640B | Nov. 19, 1975, Emerg.; Jan. 1, 1987, Reg.; Jan. 1, 1987, Susp. | Jan. 24, 1975, May. 2, 1980, and Jan. 1, 1987. | Do. |
| Mineral, township of, Venango County | 422536B | May 9, 1979, Emerg.; Jan. 1, 1987, Reg.; Jan. 1, 1987, Susp. | Jan. 31, 1975, May 25, 1979, and Jan. 1, 1987. | Do. |

[1] Date certain Federal assistance no longer available in special flood hazard areas.
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: December 11, 1986.

Harold T. Duryee,

*Administrator, Federal Insurance Administration.*

[FR Doc. 86-28217 Filed 12-16-86; 8:45 am]

BILLING CODE 6718-03-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## 45 CFR Part 31

## Referral of Debts to IRS for Tax Refund Offset; Implementing the Deficit Reduction Act

**AGENCY:** Department of Health and Human Services.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** Section 2653 of the Deficit Reduction Act (the Act) authorizes the Secretary of the Treasury to offset the income tax refund due an individual taxpayer who has a delinquent debt obligation to the Federal Government when other collection efforts have failed to recover the amount due. This rule implements the provisions of the Act for reporting an individual debtor to the Internal Revenue Service (IRS) so that an offset against an income tax refund can be effectuated. The procedure contains safeguards for the debtor, while enhancing the Department's ability to collect delinquent debts.

**DATES:** Effective date of rule December 17, 1986. Written comments concerning this final rule must be received on or before January 16, 1987.

**ADDRESS:** Written comments concerning this final rulemaking may be mailed or delivered to William D. Yancey, Department of Health and Human Services, Room 745–D, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. The public may see the written comments received in Room 745–D from

9 a.m. to 5:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Alan M. Levit, (202) 245–6201.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 2653 of the Deficit Reduction Act (31 U.S.C. 3720A) authorizes the Secretary of the Treasury to offset the income tax refund due a taxpayer who has a delinquent debt obligation to the Federal Government when other collection efforts have failed to recover the amount due. The purpose of the Act is to improve the ability of the government to collect money owed it while adding certain notice requirements and other protections applicable to the government's relationship to the debtor. This rule implements section 2653 of the Act.

The statute directs any Federal agency that is owed a past due, legally enforceable debt by a named person to notify the Secretary of the Treasury in accordance with regulations issued by the Department of Treasury (Treasury) at 26 CFR 301.6402–6T. Before a Federal agency may give such notice, however, it must first: (1) Notify the debtor that the agency proposes to refer the debt for a tax refund deduction; (2) give the debtor 60 calendar days from the date of the Department's Notice of Intent to present evidence that all or part of the debt is past due or legally enforceable; (3) consider all evidence the debtor presents before determining that a part or all of the debt is not past due or not leagly enforceable; and (4) satisfy any other conditions that the Secretary of the Treasury may prescribe to assure that the agency's determination is valid and that the agency has made reasonable efforts to obtain payment of the debt. This program for offsets against tax refunds is currently limited to individual taxpayers for a period beginning on January 1, 1986 and ending December 31, 1987.

The rule provides that before the Department of Health and Human Services (HHS) will refer a debt to Treasury (through IRS), notice of that intention will be sent to the debtor. This notice will inform the debtor of the nature and amount of the debt, that unless the debt is repaid within 60 calendar days from the date of the Department's Notice of Intent, HHS intends to collect the debt by requesting the IRS to offset any tax refund payable to the debtor, that the debtor has a right to a review within HHS, by a hearing officer designated by the Departmental Claims Officer, of HHS's determination of the debt, and that the debtor has a right to inspect and copy HHS's records related to the debt.

The rule establishes procedures for the debtor who seeks a review of HHS's determination or who wishes to review HHS's records. It also provides procedures for the application of funds recovered through the offset, and sets out HHS's intention to renew its request to the IRS the following year if a tax refund is insufficient in one tax year to satisfy the amount of the debt. A request for review will suspend HHS's request to the IRS.

IRS provides in 26 CFR 301.6402–6T(b)(7) that it will not accept debts from a Federal agency that are less than $25.00, exclusive of interest and other charges.

**Other Matters**

This rule describes procedures the HHS will utilize for administrative determination and reconsideration regarding the amount and enforceability of a debt owed to the Department preliminary to resorting to further procedures authorized by statute and regulations issued by the Secretary of the Treasury. Pursuant to the Agreement between the IRS and HHS regarding the Department's participation in the IRS Pilot Tax Refund Offset Program for 1987, the Department is required to have effective agency regulations regarding referral of debts to IRS for tax refund offset in place prior to execution of the agreement. HHS had determined that a situation exists which warrants publication of this interim rule without prior opportunity for public comment. This action is necessary to insure the Department's ability to participate in the 1987 Pilot IRS Tax Refund Offset Program.

Further, pursuant to the administrative procedures of 5 U.S.C. 553, it has been determined that this rule is entirely procedural in nature, and is not subject to the notice and public comment procedures under section 553(b)(A). However, the Department would wish to allow written comments concerning this interim rule in accordance with Departmental policy. Written comments will be solicited for 30 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

These procedures are being codified in the Department's regulations for general information and are pursuant to statutory requirements regarding publication of rules of procedure in the **Federal Register.** 5 U.S.C. 552(a)(1)(C). However, the procedures described in the rule will be utilized before the effective date of the regulation with respect to persons who are provided actual notice of the procedures through the notices required under the procedures. See 5 U.S.C. 552(a)(1).

**E.O. 12291**

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

**Regulatory Flexibility Act**

In accordance with the provisions of section 605(b) of the Regulatory Flexibility Act, at 5 U.S.C. 603, the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities such as would require the development of a regulatory impact analysis. The Department recognizes that there may be increased costs to individuals as a result of this rule. However, such increases are imposed *only if* an individual is late in making payments to the Department. In addition, these procedures are mandated by section 2653 of the Deficit Reduction Act.

**Reporting and Recordkeeping Requirements**

This interim final regulation contains no reporting and recordkeeping requirements which are subject to the Paperwork Reduction Act of 1980.

**List of Subjects in 45 CFR Part 31**

Administrative practice and procedure, Claims.

Dated: November 18, 1986.

Approved:
Otis R. Bowen,
*Secretary.*

Accordingly, we hereby amend 45 CFR Chapter I by adding a new Part 31 to read as follows:

## PART 31—REFERRAL OF DEBT TO IRS FOR TAX REFUND OFFSET

Sec.
31.1 Scope.
31.2 Notice Requirements Before Offset.
31.3 Review Within the Department of a Determination that an Amount is Past Due and Legally Enforceable.
31.4 Determination of the Hearing Officer.
31.5 Review of Departmental Records Related to the Debt.
31.6 Stay of Offset.
31.7 Application of Offset Funds: Single Debt.
31.8 Application of Offset Funds: Multiple Debts.
31.9 Application of Offset Funds: Tax Refund Insufficient to Cover Amount of Debt.
31.10 Time Limitation for Notifying the IRS to Request Offset of Tax Refunds Due.
31.11 Correspondence With the Department.

Authority: 31 U.S.C. 3711, 3716, 3718; Section 2653 of the Deficit Reduction Act (31 U.S.C. 3720A); and 26 CFR 301.6402–6T.

### § 31.1 Scope.

(a) The standards set forth in §§ 31.1 through 31.11 are the Department's procedures for requesting the Internal Revenue Service (IRS) to offset tax refunds due taxpayers who have a past due debt obligation to the Department. These procedures are authorized by the Deficit Reduction Act of 1984 (31 U.S.C. 3720A), as implemented by regulation at 26 CFR 301.6402–6T, and apply to the collection of debts as authorized by common law, by 31 U.S.C. 3716, or under other statutory authority.

(b) The Secretary will use the IRS tax refund offset to collect claims which are liquidated or certain in amount, past due and legally enforceable, and which are eligible for tax refund offset under regulations issued by the Secretary of the Treasury.

(c) The Secretary will not report debts to the IRS except for the purpose of using the offset procedures described in §§ 31.1 through 31.11. Debts of less than $25.00, exclusive of interest and other charges, will not be reported.

(d) If not legally enforceable because of the lapse of the statute of limitations but otherwise valid, the debt will be reported to the IRS as a discharged debt on Form 1099G. (Form 1099G is an information return which Government agencies file with the IRS to report discharged debt, and the discharged amount is considered as income to the taxpayer.) (See § 31.9.)

### § 31.2 Notice Requirements Before Offset.

A request for reduction of an IRS tax refund will be made only after the Secretary makes a determination that an amount is owed and past due and provides the debtor with 60 calendar days written notice. The Department's Notice of Intent to Collect by IRS Tax Refund Offset (Notice of Intent) will state:

(a) The nature and amount of the debt;

(b) That unless the debt is repaid within 60 calendar days from the date of the Department's Notice of Intent, the Secretary intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as refunds of Federal taxes paid by an amount equal to the amount of the debt and all acccumulated interest and other charges;

(c) That the debtor has a right to obtain review within the Department of the Secretary's initial determination that the debt is past due and legally enforceable (*See* Section 31.3); and

(d) That the debtor has a right to inspect and copy departmental records related to the debt as determined by the Secretary and will be informed as to where and when the inspection and copying can be done after the Department receives notice from the debtor that inspection and copying are requested (*See* Section 31.5).

### § 31.3 Review Within the Department of a Determination that an Amount is Past Due and Legally Enforceable.

(a) *Notification by Debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past due or not legally enforceable. To exercise this right, the debtor shall send a letter notifying the HHS Departmental Claims Officer that the debtor intends to present evidence to a designated hearing officer. The letter must be received by the HHS Departmental Claims Officer within 60 calendar days from the date of the Department's Notice of Intent.

(b) *Submission of Evidence.* The debtor may submit evidence showing that all or part of the debt is not past due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the notification and evidence within 60 calendar days will result in an automatic referral of the debt to the IRS without further action by the HHS Departmental Claims Officer. Evidence submitted by a debtor who has requested prior review of a claim under 45 CFR Part 30 will not be reconsidered unless such evidence raises a new defense not considered in connection with such prior review.

(c) *Review of the Record.* After a timely submission of evidence by the debtor, the Departmental Claims Officer will submit such evidence to a designated hearing officer, who will review all material related to the debt which is in the possession of the Department. The hearing officer shall make a determination based upon a review of the written record, except that the hearing officer may order an oral hearing if the officer finds that:

(1) An applicable statute authorizes or requires the Secretary to consider waiver of the indebtedness and the waiver determination turns on credibility or veracity; or

(2) The question of indebtedness cannot be resolved by review of the documentary evidence.

### § 31.4 Determination of the Hearing Officer.

(a) Following the hearing or the review of the record, the hearing officer shall issue a written decision which includes the supporting rationale for the decision. The decision of the hearing officer concerning whether a debt or part of a debt is past due and legally enforceable is the final agency decision with respect to the past due status and enforceability of the debt.

(b) Copies of the hearing officer's decision will be distributed to the Departmental Claims Officer, the Department's Office of the Assistant Secretary for Management and Budget, the debtor, and the debtor's attorney or other representative, if any.

(c) If the hearing officer's decision affirms that all or part of the debt is past due and legally enforceable, the Secretary will notify the IRS after the hearing officer's determination has been issued under paragraph (a) of this section and a copy of the determination is received by the Department's Office of the Assistant Secretary for Management and Budget. No referral will be made to the IRS if review of the debt by the hearing officer reverses the initial decision that the debt is past due and legally enforceable.

### § 31.5 Review of Departmental Records Related to the Debt.

(a) *Notification by Debtor.* A debtor who intends to inspect or copy departmental records related to the debt as determined by the Secretary must send a letter to the Secretary stating the debtor's intention. The letter must be received by the Secretary within 60 calendar days from the date of the Department's Notice of Intent.

(b) *Secretary's Response.* In response to timely notification by the debtor as

described in paragraph (a) of this section, the Secretary will notify the debtor of the location and time when the debtor may inspect or copy departmental records related to the debt.

**§ 31.6 Stay of Offset.**

If the debtor timely notifies the Secretary that the debtor is exercising a right described in § 31.3(a) and timely submits evidence pursuant to § 31.3(b), any notice to the IRS will be stayed until the issuance of a written decision by the hearing officer which determines that a debt or part of a debt is past due and legally enforceable.

**§ 31.7 Application of Offset Funds: Single Debt.**

If the debtor does not timely notify the the Secretary that the debtor is exercising a right described in § 31.3, the Secretary will notify the IRS of the debt 60 calendar days from the date of the Department's Notice of Intent, and will request that the amount of the debt be offset against any amount payable by the IRS as refund of Federal taxes paid. Normally, recovered funds will be applied first to any special charges provided for in HHS regulations or contracts, then to interest, and finally, to the principal owed by the debtor.

**§ 31.8 Application of Offset Funds: Multiple Debts.**

The Secretary will use the procedures set out in § 31.7 for the offset of multiple debts. However, when collecting on multiple debts the Secretary will apply the recovered amounts against the debts in the order in which the debts accrued.

**§ 31.9 Application of Offset Funds: Tax Refund Insufficient to Cover Amount of Debt.**

It a tax refund is insufficient to satisfy a debt in a given tax year, the Secretary will recertify to the IRS on the following year to collect further on the debt. If, in the following year, the debt has become legally unenforceable because of the lapse of the statute of limitations, the debt will be reported to the IRS as a discharged debt in accordance with § 31.1(d).

**§ 31.10 Time Limitation for Notifying the IRS to Request Offset of Tax Refunds Due.**

(a) The Secretary may not initiate offset of tax refunds due to collect a debt for which authority to collect arises under 31 U.S.C. 3716 more than 10 years after the Secretary's right to collect the debt first accrued, unless facts material to the Secretary's right to collect the debt were not known and could not reasonable have been known by the officials of the Department who were responsible for discovering and collecting such debts.

(b) When the debt first accrued is determined according to existing law regarding the accrual of debts. (*See,* for example, 28 U.S.C. 2415.)

**§ 31.11 Correspondence with the Department.**

(a) All correspondence from the debtor to the Secretary concerning the right to review as described in § 31.3 shall be addressed to the appropriate office of the Department at the following locations:

Office of the Secretary . . . HHS Claims Officer, HHS North Building, Room 5362, 330 Independence Avenue, SW., Washington, DC 20201.

Public Health Service . . . PHS Claims Office, Room 18–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Social Security Administration . . . SSA Claims Office, P.O. Box 17042, Baltimore, Maryland 21235.

Health Care Financing Administration . . . HCFA Claims Office, Division of Accounting, P.O. Box 17255, Baltimore, Maryland 21203.

Family Support Administration . . . FSA Claims Office, Switzer Building, Room 2222, 330 C Street, SW., Washington, DC 20201.

Region I . . . Office of the Chief Counsel, John F. Kennedy Federal Building, Room 2407, Boston, Massachusetts 02203.

Region II . . . Office of the Chief Counsel, Jacob K. Javits Federal Building, Room 3908, New York, New York 10278.

Region III . . . Office of the Chief Counsel, 3535 Market Street, Room 9100, P.O. Box 13716, Philadelphia, Pennsylvania 19101.

Region IV . . . Office of the Chief Counsel, 101 Marietta Tower, Room 221, Atlanta, Georgia 30323.

Region V . . . Office of the Chief Counsel, 18th Floor, 300 South Wacker Drive, Chicago, Illinois 60606.

Region VI . . . Office of the Chief Counsel, 1200 Main Tower, Room 1330, Dallas, Texas 75202.

Region VII . . . Office of the Chief Counsel, 601 East 12th Street, Room 535, Kansas City, Missouri 64106.

Region VIII . . . Office of the Chief Counsel, 1961 Stout Street, Room 1106, Denver, Colorado 80294.

Region IX . . . Office of the Chief Counsel, 50 United Nations Plaza, Room 420, San Francisco, California 94102.

Region X . . . Office of the Chief Counsel, 2901 3rd Avenue, Room 580, Seattle, Washington 98121.

(b) All other correspondence shall be addressed to the appropriate office as described in paragraph (a) of this section. All requests for review of Departmental records must be marked: *Attention: Records Inspection Request.*

[FR Doc. 86–28252 Filed 12–16–86; 8:45 am]

BILLING CODE 4150–04–M

# Proposed Rules

Federal Register
Vol. 51, No. 242
Wednesday, December 17, 1986

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1036

**[Docket Nos. AO-179-A49 and AO-179-A49-R01]**

### Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order; Correction

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The decision on proposed amendments to the Eastern Ohio-Western Pennsylvania milk marketing order, published in the **Federal Register** on Tuesday, November 25, 1986 (51 FR 42579) omitted certain material pertaining to the proposed amendatory language for 7 CFR Part 1036. The missing material, as indicated below, should have followed immediately after the signature of the Assistant Secretary for Marketing and Inspection Services, on page 42583 of the described **Federal Register**.

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

**SUPPLEMENTARY INFORMATION:** The following material was omitted from the decision on proposed amendments to the Eastern Ohio-Western Pennsylvania milk order that was issued on November 18, 1986, and published in the **Federal Register** on November 25, 1986 (51 FR 42579). This missing material, as follows, should have appeared immediately after the signature of the Assistant Secretary for Marketing and Inspection Services on page 42583.

**Order [1] Amending the Order Regulating the Handling of Milk in the Eastern Ohio-Western Pennsylvania Marketing Area**

*Findings and Determinations*

The findings and determinations hereinafter set forth supplement those that were made when the 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) *Findings.* Public hearings were held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area. The hearing were held 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 (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearings and the records thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) 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 said marketing area; and the minimum prices specified in the order as hereby 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

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

*Order Relative to Handling*

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Marketing Programs, on September 12, 1986 and published in the **Federal Register** on September 19, 1986 (51 FR 33273), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

## PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. The authority citation for 7 CFR Part 1036 continues to read as follows:

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

2. Section 1036.2 is amended by revising paragraphs (a), (b), (c), and removing (d) to read as follows:

**§ 1036.2 Eastern Ohio-Western Pennsylvania marketing area.**

* * * * *

(a) In the State of Ohio:

(1) The following counties in their entirety:

Ashland, Ashtabula, Belmont, Carroll, Columbiana, Cuyahoga, Geauga, Harrison, Holmes, Jefferson, Lake, Lorain, Mahoning, Medina, Monroe, Portage, Stark, Summit, Trumbull, Tuscarawas, and Wayne.

(2) In Guernsey County: The townships of Londonderry, Millwood, and Oxford.

(b) In the State of Pennsylvania:

(1) The following counties in their entirety:

Allegheny, Armstrong, Beaver, Butler, Crawford, Erie, Fayette, Greene, Lawrence, Mercer, Venango, and Washington.

(2) In Clarion County: The townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby.

(3) Westmoreland County (except the townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair; and, the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward).

(c) In the State of West Virginia, the following counties in their entirety:

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Barbour, Brooke, Doddridge, Hancock, Harrison, Lewis, Marion, Marshall, Monongalia, Ohio, Preston, Randolph, Taylor, Tucker, Tyler, Upshur, and Wetzel.

**§ 1036.50 [Amended]**

3. In paragraph (a) of § 1036.50, the amount "$1.95" is revised to read "$2.00".

4. In § 1036.52, paragraphs (a) and (b) are revised to read as follows:

**§ 1036.52 Plant location adjustments for handlers.**

(a) At a plant in the marketing area or in the State of Pennsylvania, the Class I price for producer milk shall be the Class I price computed pursuant to paragraph (A) of § 1036.50.

(b) At a plant outside the area specified in paragraph (A) of this section, the Class I price shall be adjusted by a reduction of 1.5 cents for each 10 miles or fraction thereof that such plant is from the city hall of the nearest of the following cities: Canton and Cleveland, Ohio; Erie, Pittsburgh, and Uniontown, Pennsylvania; and Clarksburg, West Virginia. Distances applied pursuant to his paragraph shall be the shortest hard-surfaced highway distances as determined by the market administration.

* * * * *

Signed at Washington, DC, on December 12, 1986.

**Karen K. Daring,**

*Deputy Marketing Assistant Secretary, Marketing and Inspection Services.*

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

*Marketing Agreement Regulating the Handling of Milk in the Eastern Ohio-Western Pennsylvania Marketing Area*

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as it set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1036.1 to 1036.122, all inclusive, of the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area (7 CFR Part 1036) which is annexed hereto; and

II. The following provisions:

Section 1036.123 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of May 1986, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Section 1036.124 Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)

(Seal)

By: _____

(Name) (Title)

(Address)

Attest: _____

Date: _____

[FR Doc. 86-28283 Filed 12-16-86; 8:45 am]

BILLING CODE 3410-02-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 30, 40, and 70

### Materials Safety Regulation Review Study Group Report

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Availability of report and request for public comment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is requesting public comment on its receipt of the report developed by the Materials Safety Regulation Review Study Group. This report examines the licensing and inspection program for fuel cycle and materials facilities and presents recommendations for improving the quality of NRC's activities in these areas.

**DATE:** Submit comments by January 16, 1987. Comments received after this date will be considered, if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

**ADDRESSES:** Mail comments or suggestions to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 1717 H. Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Richard E. Cunningham, Director, Division of Fuel Cycle and Materials Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427-4485.

**SUPPLEMENTARY INFORMATION:** The nuclear materials regulatory program has grown since 1946 when radionuclides were first used outside of Federal installations under Atomic Energy Commission permits. The program has grown from limited uses by a few licensees to a multitude of medical, industrial, and academic uses by 22,000 licensees nationwide. This regulatory program has undergone several reviews in the last twenty years to ensure its effectiveness.

In May 1986, the NRC contracted for the reports of the following five individuals who, because of their backgrounds, could provide important individual insights on the NRC's current materials regulatory program:

Dr. Clifford V. Smith, Jr., former Director, Office of Nuclear Material Safety and Safeguards, NRC, currently Chancellor, University of Wisconsin, Milwaukee.

Mr. Edson G. Case, former Deputy Director, Office of Nuclear Reactor Regulations, NRC, now retired.

Mr. Thomas F. Engelheart, former Deputy Executive Legal Director, NRC, now retired.

Mr. Ralph G. Page, former Chief, Uranuim Fuel Licensing Branch, NMSS, NRC, now retired.

Dr. John M. Googin, currently Senior Staff Consultant, Development Division, Oak Ridge Y-12 Facility, Martin-Marietta Energy Systems, Oak Ridge, Tennessee.

The NRC management's main interest in this review was to obtain from these individuals insights and recommendations which might improve the efficiency and effectiveness of the materials regulatory program for health and safety and environmental protection. After the group made a series of site and state visits and met together on several occasions, the review was completed, and a summary group report was provided to the NRC on October 24, 1986 by the Chairperson, Dr. Clifford V. Smith, Jr. This report contains 22 recommendations which would impact the NRC materials licensing and inspection programs.

As part of its consideration of these 22 recommendations for making changes in its materials licensing and inspection programs, the staff is making this report available to the public for review and comment. This is intended to provide an

opportunity for the public to consider the report and express views on the substance of the report before the staff utilizes the recommendations of the group in preparing a proposal for the Commission. It will also provide the public with an opportunity to comment on the circumstances of the preparation and receipt of the report as they are affected by the requirements of the Federal Advisory Committee Act. The staff will consider any timely comments it receives in response to this notice.

The staff is also interested in receiving any additional recommendations which may improve the efficiency and effectiveness of the materials licensing and inspection program.

Dated at Bethesda, MD, this 11th day of December 1986.

For the Nuclear Regulatory Commission.

**Victor Stello, Jr.,**

*Executive Director for Operations.*

The report, as received by the NRC in October, follows:

**Report of the Materials Safety Regulation Study Group to the U.S. Nuclear Regulatory Commission**

October, 1986.

*Acknowledgment*

The Materials Safety Regulation Review Study Group wishes to acknowledge the enthusiastic and dedicated assistance provided by all employees of the NRC staff with whom it came in contact as well as state officials and industries visited. Specifically, the Study Group would like to thank the NRC employees in Regions I, II, III and IV, the radiological health employees in the states of Oklahoma and South Carolina, the officials of Kerr-McGee and Westinghouse and New England Nuclear, as well as NRC headquarters personnel.

*Executive Summary*

The Materials Safety Regulation Review Study Group (Study Group) was established by the Executive Director for Operations of the U.S. Nuclear Regulatory Commission in May, 1986. Under the charter of the Study Group each of the five members independently reviewed the activities related to safety of the licensing and inspection program for fuel cycle and materials facilities under the jurisdiction of the U.S. Nuclear Regulatory Commission and provided recommendations to the other members for editing and submittal to the Executive Director for Operations.

The members of the Study Group are Edson G. Case, retired Deputy Director, Office of Nuclear Reactor Regulation, NRC; Thomas F. Engelhardt, retired Deputy Director, Office of Executive Legal Director, NRC; John M. Googin, Senior Staff Consultant, Development Division Y-12, Martin Marietta Energy Systems, Inc.; Ralph G. Page, retired Chief, Uranium Fuel Licensing Branch, Office of Nuclear Materials Safety and Safeguards, NRC; and Clifford V. Smith, Jr., Chairman, Chancellor, University of Wisconsin-Milwaukee.

The Study Group first convened in June in Washington, DC in the office of Nuclear Material Safety and Safeguards. At that time, the Study Group was briefed by NRC Headquarters officials on the scope of NRC fuel cycle and materials issues facing the agency. The Headquarters staff also informed the Study Group of studies currently under way to deal with certain of the issues that the Study Group was asked to review. The Study Group then visited the NRC regional offices in Regions I–King of Prussia, Pennsylvania; II–Atlanta, Georgia; III–Chicago, Illinois; and Region IV–Dallas, Texas. The Study Group also visited with the state health department officials concerned with nuclear matters in the State of Oklahoma (a non-Agreement State), and the State of South Carolina (an Agreement State). Further, the group visited the uranium hexaflouride conversion facility of Kerr-McGee's Sequoyah Fuels Corporation at Sequoyah, Oklahoma; the fuel fabrication facility of Westinghouse Corporation in Columbia, South Carolina; and the radiopharmaceutical production facilities of the New England Nuclear Company in Boston, Massachusetts. During the visits to the regional offices, the Study Group conferred with the regional administrator and his senior managers, the branch chiefs of the areas that the Study Group was concerned with, as well as many of the staff. Upon completion of the field visits, the Study Group met again in Washington, D.C. to discuss with headquarters personnel come of the concerns that had been raised during its field visits.

The recommendations and discussion, therefore, that are presented in this report are based on our visits to the various entities mentioned before, as well as in depth discussion among the members of the Study Group.

It is the conclusion of the Study Group that, if the recommendations set forth herein are implemented, the NRC's regulatory program for fuel cycle and materials will be substantially improved. However, the Study Group wishes to make clear that its recommendations should not be taken to infer that the Offices of Nuclear Materials Safety and Safeguards, Inspection and Enforcement and Nuclear Regulatory Research are not performing their functions well and are not aware of some of the problems that the Study Group is highlighting, or that the public is not being adequately protected against hazards incident to the use of radioactive materials regulated by the NRC.

**Recommendation #1**

We recommend that the NRC reach a decision on an expedited basis concerning the scope of NRC regulatory authority for chemically hazardous substances that are used in or incident to the processing of licensed material. We further recommend that upon reaching a decision regarding this matter the NRC promptly develop memoranda of understanding with federal and state agencies that share regulatory responsibilities at locations where NRC licensed materials are possessed or used, to assure that there are no regulatory implementation gaps and that the overall health and safety of the public will be fully protected. The memoranda should specify the involved agencies authorities and responsibilities and be made available to the states and all other interested parties. The memoranda should also be made available to the public via an appropriate explanatory press announcement concerning the scope of NRC responsibilities and those of the other involved governmental agencies.

*Discussion*

The incident at the Sequoyah Fuels Corporation facility in January 1986, focused attention on the lack of clarity regarding NRC's authority and responsibility to regulate non-radiological hazardous substances such as chemically hazardous substances that are used in or incident to the processing of NRC licensed material. It also made clear the existence of a regulatory implementation gap between the responsibilities for the NRC and those of other Federal and State agencies.

Prior to the incident the only guidance available to the NRC staff regarding NRC authority and responsibility for non-radiological hazards was found in an October 10, 1984 memorandum from the Office of the Executive Legal Director to the Office of Nuclear Regulatory Research. That memorandum reached the conclusion that the Atomic Energy Act provided authority for the NRC to regulate non-radiological hazards when they were related to the use of source, byproduct and special

nuclear materials. The content of that memorandum was not widely circulated to the NRC staff nor was it incorporated into an NRC regulation or formal staff guidance. In part, this may have been due to the ambiguous nature of the advice and to the narrow issue to which the memorandum was addressed. As a consequence, the materials licensing and inspection staffs at Headquarters and in the regions were continuing to operate under the general impression that NRC authority and responsibility at mixed use facilities were limited to those matters involving radiological safety.

Subsequent to the Sequoyah incident the issue of NRC authority and responsibility for non-radiological hazards at mixed use licensed facilities has received substantial attention. The Lessons Learned Group in its report of May 29, 1986, to the Executive Director for Operations, highlighted this issue and the issue of the regulatory implementation gap in responsibility among the various regulatory agencies having an interest in the Sequoyah facility. More recently, the General Counsel transmitted to the Commission a paper, dated September 23, 1986, analyzing the jurisdictional issues associated with non-radiological hazards.

Our review and our discussions with NRC staff members, and state and licensee representatives supports our concern that there exists at present a serious regulatory implementation gap at NRC licensed facilities which possess or use non-radiological hazardous materials in connection with NRC licensed materials. For the most part it is unclear whether at such facilities the NRC has exclusive or shared authority and responsibility for protecting the public health and safety.

The Study Group recommends that memoranda of understanding should be executed between the NRC and other Federal and State agencies regarding safety responsibility at these mixed use facilities. The memoranda might be structured along the lines of the existing Memorandum of Understanding between the NRC and the Mine Safety and Health Administration published in 45 CFR Part 1315 on June 14, 1980. Until the NRC clarifies the scope of its authority and the appropriate memoranda of understanding are consummated, the regulatory implementation gap continues to exist and the prospects of incidents adversely impacting on the public health and safety are ever present. For that reason we are recommending expeditious action by NRC and to clarify the scope of its regulatory authority and responsibility for these mixed-use facilities.

When the NRC acts to clarify its regulatory authority and responsibility over the mixed use facilities discussed above, it is essential that the decision be promptly implemented. Expedited efforts should be undertaken to negotiate new or revised memoranda of understanding with the necessary Federal and State agencies to assure that the scope and limits of authority and responsibility of the NRC and these other agencies are clear and, most importantly, understood by the agencies involved. It is essential tht these memoranda deal in a coordinted fashion with the totality of these mixed-use facilities to assure that the public health and safety is fully protected.

As these memoranda are executed, they should be broadly disseminated to representatives of the States, the press and the public so that the information is generally available regarding the nature of the shared Federal-State authority and responsibility for protecting the health and safety of the public.

Under the present procedures memoranda of understanding are not widely disseminated. As a consequence, few are aware of their existence or content. This in turn has led members of the public and their representatives to hold NRC responsible for all incidents that occur at an NRC licensed facility regardless of whether they involved radiological or non-radiological materials or were considered industrial accidents. We believe that the broadest public dissemenation of these memoranda and an explanation of their content will serve to educate the public regarding the shared nature of regulatory authority and responsibility over mixed use NRC licensed facilities.

**Recommendation #2**

We recommend that NRC strengthen and expedite the issuance of an emergency preparedness rule for fuel cycle and materials licensees possessing or using large quantities of hazardous radioactive materials. The rule should include performance type requirements for emergency preparedness rather than simply requiring licensees to submit brief descriptions of their emergency response capability. Both radiological and chemical releases should be considered in developing the required on-site and off-site emergency plans unless the licensee can demonstrate that an uncontrolled on-site chemical release could have no significant adverse safety effects on the licensed activities at the site.

*Discussion*

The NRC has been grappling with a regulation concerning emergency preparedness at fuel cycle licensees and materials licensees possessing or using large quantities of hazardous radioactive material since 1981. The more difficult issues appear to be related to the need for and scope of off-site emergency planning and related jurisdictional issues. The Study Group believes that the Sequoyah incident has provided an appropriate example of the magnitude of releases of hazardous materials that should be considered in the development of NRC-required emergency plans—both on-site and off-site—for these facilities. We further agree with the Sequoyah Lessons Learned Group that the incident demonstrated a number of deficiencies in the pre-incident emergency preparedness measures at Sequoyah that should be corrected. To avoid similar problems at other facilities, we recommend that the emergency preparedness rule include performance-type requirements covering the kinds of deficiencies that were discovered at Sequoyah. Performance-type requirements should be considered with respect to the following: capability for detecting, assessing and responding promptly to hazardous releases; a system to alert workers and affected members of the public to such releases; public notices concerning the emergency alert system and actions the public might be asked to take; and development of emergency plans in coordination with local authorities. Also, we recommend that NRC consider whether the proposed threshold for soluble uranium exposure, which requires emergency planning and response actions, should be lowered from 2.0 milligrams of uranium.

With regard to potentially, hazardous non-radiological materials used at these types of facilities, the Study Group believes that the philosophy used in power reactor safety reviews should be applied to fuel cycle facilities. Reactor practice is to consider the effects on the licensed activities at the site of uncontrolled on-site releases of each of the hazardous materials present, unless the licensee can demonstrate that the potential effects are minimal or that such releases are of very low probability due to demonstrated design, construction and quality assurance practices. With regard to the potential off-site effects of the uncontrolled release of hazardous non-radioactive materials which would not be present at the site but for the activities licensed by

NRC, the Study Group believes that logically their effects should be considered in the off-site emergency preparedness measures required by NRC, particularly if no other agency has assumed this responsibility.

**Recommendation #3**

We recommend that the ongoing NRC staff review of current general license policies and procedures be given a higher priority with sufficient resources to permit its completion within the next six months. Changes resulting from this staff review should be implemented within twelve months. In conjunction with this review, the NRC should consider: (1) Prohibiting the use of general licenses for devices containing large quantities of byproduct materials; (2) preparing criteria for distinguishing between devices acceptable for general license distribution and those devices which should be specifically licensed; (3) adding requirements on all licenses for distribution of general license devices, except those containing small quantities, to require the manufacturer of the general license device to conduct periodic radiation surveys to determine whether the device is being safely used and to report unsafe conditions to NRC.

*Discussion*

NRC regulations permit the distribution of byproduct materials (radioisotopes) in certain devices on a general license basis without the user of the device needing to apply for a license or needing to demonstrate any qualification to use the device safely. This general licensing depends on safety being engineered into the device and on safety determinations made by NRC in reviewing license applications submitted by the device manufacturers. The purpose of general licensing is to simplify the licensing process and thereby reduce the licensing effort for devices believed to be inherently safe.

There are many thousands of such devices presently in the public domain containing up to several curies of cesium 137, americium 241, cobalt 60, and other radioactive materials. These devices are used for many purposes, including use in level gauges, thickness gauges, density gauges, static elimination devices, analytical instruments and luminous markers.

Since 1984 NRC has been conducting a study of general licensed devices. The study to date indicates that some devices have been abandoned by general licensees, some have been disposed of in unauthorized ways, some have malfunctioned or been involved in accidents that possibly could have caused significant radiation exposures to individuals, and many could not be located and accounted for. The study thus far has principally focused on defining the problem. A next step will be to determine what changes should be made in NRC regulations such as possibly limiting the distribution of general licensed devices and better accountability of the devices permitted to remain under general license. We believe that this study should be completed within the next six months and changes resulting from the study implemented within twelve months.

In connection with the study we recommend that NRC prohibit the use of large quantities of byproduct materials in general licensed devices. Under the provisions of 10 CFR 32.51(a)(2)(iii) and 10 CFR 32.24, devices are evaluated against a limiting criterion for accidental exposure up to 15 rems exposure to the whole body, 200 rems to the extremeties and 50 rems to other body organs. These doses seem high to us and not appropriate for limiting the accidental doses that individuals might receive from general licensed devices. Individuals working with or around such devices will not normally be radiation workers and, accordingly, we recommend that they be prohibited from receiving emergency type doses of these magnitudes. Also, we believe that some of the gauges containing multicurie quantities of cesium 137 and americium 241 could be involved in misuses or accidents that could cause radiation exposures much higher than specified. For example, gauges that are presently general licensed may contain as much as 5 curies of Cesium 137. The unshielded dose rate from this size source is on the order of 1.5 rems per hour at one meter and about 14 rems per hour at one foot away. Accordingly, a dose exceeding 14 rems to the whole body could easily occur in the event of a postulated misuse. In any event, we believe more conservative misuse and accident assumptions should be made when evaluating general license devices.

The Study Group was informed that present NRC licensing procedures for general license devices do not clearly distinguish between devices suitable for general licensing and those requiring a specific license. We recommend that NRC prepare more definitive licensing criteria to provide clear guidance to license applicants, the NRC licensing staff and the public concerning the qualification of a device for general license distribution, including limits on the kinds and quantities of radioactive materials permitted in such devices.

As a final comment, the Study Group believes that periodic radiation surveys should be performed of all general licensed devices permitted in the public domain except devices containing small quantities of radioactive materials. We recommend that this be required as a condition of the specific license issued to the device manufacturer. Also, any noted unsafe conditions should be required to be reported promptly by the device manufacturer to the NRC.

**Recommendation #4**

We recommended that the NRC issue a regulation requiring that individual industrial radiographers must, in addition to completing an NRC approved training program, be certified by the NRC or an Agreement State. The regulation should further provide that failure to follow established procedures by an individual radiographer would constitute a basis for suspension or revocation of the certification. Periodic recertification should also be required.

*Discussion*

A requirement for certification of industrial radiographers was last formally considered by the NRC in June 1985. The Study Group believes that there are two reasons for reconsidering such a requirement; first, deficient training of radiographers may be a contributing cause in overexposure incidents and certification would improve that training, and second, establishing a requirement for NRC certification could result in improved adherence to established safety procedures by individual radiographers and thereby reduce overexposure incidents by providing NRC authority to revoke certifications if safety procedures were willfully disregarded. With regard to the improved training that could result from a NRC certification requirement, there was little doubt expressed by those inside and outside the NRC with whom we discussed this issue that radiographer training would be improved if third-party certification were required by NRC. The major concerns, as expressed by those who commented on the advance notice of rulemaking on this subject issue in 1982, were that most believed the present training program was adequate, that overexposures are not caused by poor training but rather by failure to follow-established procedures, and that the cost of a certification would be unwarranted.

The Study Group believes that in previous considerations of this matter proper weight may not have been given to the capability of a certification program to improve safety by improving adherence to safety procedures. Under the present system, a radiographer

dismissed by a company for failure to follow procedures is free to take a job involving radiography with a nearby less well-intentioned competitor who may encourage a disregarding safety procedures in order to increase production. A certification program would prevent or deter such abuses. Moreover, it would improve accountability for safety by permitting NRC to take action against an individual radiographer if warranted by the facts. When considered in combination with the improved training that would result from certification, the Study Group believes that, on balance, certification of individual radiographers should be required by NRC.

**Recommendation #5**

We recommend that NRC expand its licensing and inspection procedures to ensure a comprehensive review of all facets of fuel cycle and materials licensees possessing or using large quantities of hazardous or radioactive material. The review should cover all aspects important to nuclear safety, radiation safety, process safety, and confinement of hazardous materials. Increased emphasis should be given to conducting comprehensive assessments of such licensees' capability and performance.

*Discussion*

Increased attention should be given by NRC to all facets important to worker safety and confinement of hazardous materials in licensee operations. An integrated review approach is needed. Review is needed of the design, construction, quality control, calibration, maintenance and performance of all systems employed for achieving nuclear safety, radiation safety, process safety and confinement of hazardous materials.

We were told that until the Sequoyah incident, NRC had confined its review primarily to nuclear safety, radiation safety, and confinement of radioaction materials. Our recommendation is that in addition to these reviews, NRC should conduct comprehensive reviews of process safety systems and systems for confinement of all hazardous materials on-site which could affect radiation safety conditions at the plant.

**Recommendation #6**

We recommend that NRC vigorously implement the planned program to conduct comprehensive on-site systematic safety assessments of all fuel cycle and materials licensees possessing or using large quantities of hazardous or radioactive materials.

*Discussion*

The Study Group applauds the effort underway in NRC to conduct on-site systematic safety assessments, e.g., review of fire safety, radiological contingency planning, radiation safety, process controls and process safety, maintenance and other quality controls, and licensee training programs. Assessments will be made not only to confirm the existence of appropriate licensee operating procedures, but also to determine whether the procedures are followed by the licensee to achieve an acceptable level of safety. Region I has taken a lead in this program review.

These reviews will be useful, we believe, in determining whether NRC regulations should be changed and, if so, in what respects, and whether existing licensing and inspection procedures should be expanded.

**Recommendation #7**

We recommend that the NRC give additional emphasis to actively encouraging states which are not now in the Agreement States program to join. We further recommend that the NRC seek legislative authority to require the transfer of responsibility for materials regulation to the states should the additional emphasis prove incapable of accomplishing this transfer to all states within a reasonable period of time.

*Discussion*

For a number of years the Agreement State Program has been successfully administered by NRC, and before that by the Atomic Energy Commission. As a consequence, there are now 27 states that have joined the Program, and a few additional states are preparing to join. Despite this success, it appears that the Program has reached a plateau with respect to attracting the remaining states. Accordingly, we believe that this is an appropriate time for the NRC to reevaluate its approach to encouraging states to join the Agreement State Program.

From our discussions with NRC staff and representatives of Agreement and non-Agreement States, we have concluded that (1) there would be substantial benefits to the NRC if these remaining states were to join the Progam, and (2) all states appear to have the capability or potential capability to effectively handle the regulatory responsibilities of the Program.

The principle benefit accruing to the NRC in attracting more states to the Program is to reduce the number of employees necessary to continue the regulatory responsibilities that would be transferred to the states. This, in turn, would either reduce the total resources needed by NRC to conduct its programmatic activities or make available additional staff and funds to concentrate in those regulatory areas which are considered by the NRC to be of greater importance to the agency's primary mission of protecting the public health and safety.

During the early phases of the implementation of the Agreement State Program, there were substantial questions raised regarding the capability of the states to handle the Program safely. Experience to date indicates, for the most part, that these concerns were not justified. The states that joined the Program have generally shown a willingness and capability to effectively organize their regulatory programs so as to be compatible with NRC requirements. There is little reason to doubt that those states that remain outside of the Program have the capabilities to maintain an equally effective regulatory regime. Moreover, the availability to the states of trained personnel is no longer the serious problem it once was, and the technology available to the states to effectively perform a regulatory role has substantially advanced.

For these reasons, we believe that the NRC should revitalize its Agreement State Program and undertake actively to encourage those states which are not in the Program to join, and to join in the near future. Implementation of this recommendation will involve the NRC staff in an activist role which is not the role which it has been accustomed to in the past. It would also involve the Commissioners in high level State and Congressional contacts which has not been done in the recent past.

Should this effort fail to produce positive results within a reasonable period of time, we believe that the NRC should seek legislative authority to require the remaining states to join the Agreement States Program and to relieve the NRC of responsibility for the continued regulation of the types of materials normally transferred to the states under this Program.

**Recommendation #8**

We recommend that increased attention be given to the quality of NRC licensing reviews and inspections and the adequacy of staffing for these activities. In this connection, we recommend that NRC conduct a comprehensive study of this matter to determine whether present procedures should be strengthened and whether additional staffing may be required.

*Discussion*

Several NRC staff members expressed the belief that NRC has not allocated sufficient staff resources to carry out quality licensing reviews of materials license applications or to conduct quality inspections of materials and fuel cycle licensees. Some individuals stated that their work is judged primarily from the standpoint of numbers of licensing actions taken and numbers of inspections completed, and inadequate attention is given to the quality of their work. They suggested that this is caused in large measure by the heavy emphasis on the quantitative performance criteria contained in performance contracts of NRC Senior Executives and the need to complete specified numbers of licensing actions and inspections to achieve an outstanding performance rating. Also, some believe that the materials program has not received the staff resources that it needs, because NRC focuses most of its attention and allocates almost all its resources for the prevention of low probability/high consequence reactor accidents, and gives little attention and allocates relatively few resources to the prevention of high probability/low consequence materials accidents.

We note tht NRC has allocated on the order of 100 FTE's (full time equivalent staff years) to the materials regulatory program (not including fuel cycle resources). These resources are about equally divided for licensing and inspection activities. Since there are about 7000 NRC materials licenses, this results in about 70 licenses for each allocated FTE. In our visit to an Agreement State (South Carolina), we were told that the State had allocated 13 staff positions for their materials program consisting of 350 materials licenses, and that four new positions had recently been approved. Thus the State has allocated more than twice as many FTE's per license than NRC.

We were informed that the frequency of conducting inspections of materials licensees is mostly determined by applying the allocated inspection resources in the best available manner rather than determined from a studied assessment of the needed frequency and effort required for effective inspection of the various categories of materials licensees. Some specific licensees are never inspected and probably cannot be effectively inspected unless additional inspection resources for the materials program are allocated.

We believe NRC should conduct a comprehensive study of the quality of materials fuel cycle licensing reviews and inspections, and determine whether current procedures should be changed and whether additional resources are needed. Additional FTE's in particular may be needed to permit more inspection of fuel cycle activities.

**Recommendation #9**

We recommend that the NRC use a suitable mix of performance-based regulations and appropriate prescriptive requirements.

*Discussion*

The Study Group was asked to give particular attention to performance versus prescriptive regulation. Performance regulations specify regulatory objectives broadly and permit licensees to establish their own means for achieving compliance. Prescriptive regulations, on the other hand, specify the manner in which the requirements are to be met. Stated another way, performance regulations specify "what" must be achieved and prescriptive requirements specify "how" compliance must be achieved. Present NRC regulations contain a mix of performance and prescriptive requirements. In 10 CFR Part 20, for example, the following are performance-type provisions:

—Make every reasonable effort to maintain radiation exposures and effluents released to unrestricted areas as low as reasonably achievable.
—Conduct needed radiation surveys.
—Provide personnel monitoring equipment to measure radiation doses.
—Secure radioactive materials from unauthorized removal.

The following are examples of 10 CFR Part 20 prescriptive-type requirements:

—Label containers of radioactive materials and post areas where these are located with a specific type of sign.
—Follow prescribed measures for receiving and monitoring packages of radioactive material.
—Maintain detailed radiation exposure records.

Many of the requirements in 10 CFR Part 20 are a mix of performance and prescriptive requirements, for example:

—Maintain radiation doses and effluent concentrations below specified levels, and take prescribed actions if these are exceeded.
—Dispose of radioactive wastes in accordance with prescribed methods and limits.

We believe that both performance-type and prescriptive-type requirements are needed. Ideally, performance-type requirements should be specified for each subset of prescriptive-type requirements, and license applicants should be required to describe how they will meet the performance-type requirements if they propose not to follow the specified prescriptive requirements.

As a general observation, we believe performance-type requirements are more suitable for a license which is highly qualified to operate a large nuclear program and prescriptive-type requirements are more suitable for a licensee which is minimally qualified or who operates a small nuclear program. A suitable mix of requirements is best, we believe, for all programs. From an inspection standpoint, it is much easier for inspectors to determine compliance with prescriptive-type requirements as compared with performance-type requirements. Much more training and higher qualifications are needed by inspectors to determine compliance with performance-type requirements. A licensee is either doing what a prescriptive requirement specifies or is not. Inspection against a performance-type requirement requires the inspector to exercise a great amount of professional judgment in determining compliance.

A licensee may or may not prefer performance-type requirements. On the one hand these provide the licensee wide flexibility in the method of achieving compliance, but on the other hand an NRC inspector may take exception to the licensee's belief that he is in compliance. Whether performance-type requirements are preferable over prescriptive-type requirements may be largely dependent on whether a licensee is willing to implement measures that greatly exceed minimally acceptable performance.

**Recommendation #10**

We recommend the NRC consider the feasibility of utilizing a broad license, similar to that developed with the Air Force, for companies that have extensive and multi-location licensing programs. The successful use of such a license could reduce resource demands on NRC and place more direct responsibility on the broad licensee to achieve and maintain safe operations.

*Discussion*

During our discussions with the NRC staff, the Study Group was informed about a new licensing program recently undertaken with the U.S. Air Force. Under this program, the NRC issued a single materials license to the Air Force covering the materials possessed and used at approximately 100 Air Force installations. The terms of the license

made the Air Force responsible for monitoring and inspecting the possession and use of radioactive materials at the various installations. The NRC maintains regulatory responsibility and control through the exercise of performance overview of the Air Force. We were informed that the program to date has worked well.

We were impressed by the potential of this licensing for application to other NRC licensees that possess and use licensed materials extensively and at multi-locations. It has application to other Federal entities that operate in the same fashion as the Air Force. It also has the potential for being a useful method for licensing large commercial firms that utilize licensed materials at many locations.

The application of this type of licensing introduces a degree of flexibility into the NRC licensing program that is useful to both NRC and the licensees. The NRC benefits by being able to reduce licensing and inspection resources dedicated to these types of licensees. The licensee, on the other hand, would be in a better position to develop coordinated programs for the possession and use of licensed materials at the various locations where they are used. In addition, the licensee is responsible to a single NRC regional office for its total operation rather than to several.

**Recommendation #11**

We recommend that the NRC increase significantly the amount of training provided to its fuel cycle and material licensing and inspection staff as well as its management staff. Such training should include the establishment of a formal technical training program, periodic seminars and periodic meetings between Headquarters and regional office staffs.

*Discussion*

During the Study Group's visits to the regional offices, questions were raised with staff concerning the adequacy of their training. The NRC personnel in the regional offices visited expressed concern about what they considered to be inadequate opportunities for employee training. Both the branch chiefs as well as employees within the branch felt that training was extremely important for them so that they could become more technically competent and thus could do a better job in the licensing and inspection process. They also believed that the whole area of professional training and development needed to be revamped within NRC.

It was pointed out to the Study Group that there is no formal technical training program for new employees coming into the agency. Thus, it appears that in many instances a new NRC employee is given a few guidelines from their supervisor and then is turned loose. This causes great difficulties for the employees during their initial inspection and licensing activities. In many instances they are dealing with counterparts on the industry side who are much more knowledgeable than they are about even NRC requirements. After considering the comments, the Study Group concluded that NRC needs to develop a formal technical training program. Such a program would be best implemented by an individual or group devoting full time to this activity. It should be mandatory that all new NRC employees go through a rigorous training program. A technical training program should be laid out for each employee, funds should be provided for these employees to travel to attend these training programs, as well as professional meetings in which the subject matter discussed is in the realm of the area that they are working in.

The greatest resource that NRC has is its people. To the extent that its employees are well-trained, motivated, and feel that they are developing professionally, the NRC will be able to do a better job. This attitude and this approach to training is the backbone of every major successful corporation in this country. They should be of no less importance of NRC. If NRC wishes to retain and attract competent individuals to carry out the government's important work in this area, then it is extremely important that an adequate and comprehensive training program be instituted throughout the agency.

**Recommendation #12**

We recommend that NRC give serious study and thought to the implementation of the proposed comprehensive revision of 10 CFR Part 10 "Standards for Protection Against Radiation" because of its perceived complexity by the states, the industry and some of the NRC regional staff.

*Discussion*

The Study Group understands the importance of, and endorses, NRC's promulgation of a proposed comprehensive revision to 10 CFR Part 20 "Standards for Protection" to make NRC regulations more consistent with recommendations of the International Commission on Radiological Protection. Notwithstanding, a great deal of concern was expressed to the Study Group concerning the perceived complexity of the proposed rule changes and the increased qualifications needed by licensees to understand and achieve compliance with the new requirements. Accordingly, we recommend that the NRC provide phased implementation over a period of several years before the new requirements come fully into force.

The NRC staff informed us that they plan to prepare Regulatory Guides which will discuss and explain the new requirements for several different categories of licensees. The Study Group strongly supports the preparation of these guides and recommends that these be issued and discussed with licensees before the new requirements come into force. In this connection, we recommend that regional training seminars be held to discuss the guides and answer licensee questions on implementation details.

**Recommendation #13**

We recommend that all NRC fuel cycle licensing and inspection functions, including the Office of Inspection and Enforcement headquarters functions, be performed by a single group under one supervisor at the branch chief level at one location. We recommend that the one location be NRC headquarters. This NRC fuel cycle licensing and inspection group should be provided technical assistance from other NRC technical groups as needed; however, the licensing and inspection group should have overall safety responsibility.

*Discussion*

At present the licensing activities for fuel cycle plants are carried out at NRC headquarters and the inspection activities are carried out at all five regional offices. Region I has inspection responsibility for two plants. Region II has six plants. Region III has two plants. Region IV has one plant and Region V has three plants. During the visits of the Study Group to the four regional offices it became clear that the personnel involved in these activities varied significantly in experience and background. in one regional office a health physicist with no previous experience in fuel cycle operations and lacking a clear understanding of the chemical processes involved was responsible for inspecting the facility. In another regional office a senior inspector who fully understood not only the radiological implications of the plant's activities but also understood the total chemical process inspected the plants. Since there are so few plants, it is the opinion of the Study Group that combining the licensing and inspection functions would result in increased efficiencies and better utilization of

NRC resources as well as improvement in overall NRC regulation and safety.

This concept was discussed by the Study Group with NRC personnel at many of the regional offices, and most indicated that some consolidation should be undertaken, since the NRC resources devoted to this activity were small. In our view and in the view of those with whom we discussed this issue, it makes sense to form a critical mass in one place within the organization charged with the responsibility for licensing and inspection of these facilities. Inasmuch as the licensing activities are already concentrated and carried out by NMSS headquarters, we would recommend that the inspection activities be consolidated within that office at headquarters.

The major point the Study Group wishes to emphasize is that it does not make sense, where so few of these complex plants are currently operating, to have the responsibility for them parceled out on a regional basis. There will probably be very few, if any, of these plants built in the near future. The availability of NRC personnel with broad chemical engineering backgrounds who fully understand the complexities of fuel cycle plants, is very limited. Accordingly, these resources should be consolidated within one organization which is given the undivided responsibility for the health and safety activities of such facilities.

**Recommendation #14**

We recommend that the development of materials regulations, guides and standards be consolidated in NMSS where the majority of the expertise and management interested in such matters lies. Personnel in the Office of Nuclear Regulatory Research now involved with this effort should be transferred to the Office of Nuclear Material Safety and Safeguards.

*Discussion*

The Office of Nuclear Regulatory Research (RES) is assigned responsibility for developing regulations, guides and standards (regulatory documents) for the possession and use of nuclear materials. It is responsible for initiating the development of these regulatory documents as well as responding to requests from the Office of Nuclear Materials Safety and Safeguards (NMSS) for their development.

From our discussion with the RES staff members, it appeared that their management interest and resources are dedicated primarily to matters involving nuclear reactors and that much less of time and effort is devoted to fuel cycle and materials regulation. Moreover, RES had only a limited number of staff with the requisite expertise to develop regulatory documents for materials licensing.

Discussions with NMSS staff members bears out the fact that it is not receiving the support from RES that it deems necessary to effectively perform its function. It appears that regulatory documents are delayed for lengthy periods of time; are unexpectedly suspended; or their need is disputed. This has created delay problems for NMSS.

We believe that the fuel cycle and materials regulatory program warrants more attention than is presently devoted by RES. Thus, we are recommending that the responsibility for developing regulatory documents for fuel cycle and materials be transferred from RES to NMSS. In this way the performance of the task rests with the office having the most interest, expertise, and most importantly, the willingness to assume this additional responsible.

**Recommendation #15**

We recommend, that after successful implementation of Recommendation #13, NRC transfer the balance of the Office of Inspection and Enforcement materials inspection functions to the Office of Nuclear Material Safety and Safeguards. Personnel in the Office of Inspection and Enforcement now involved with this effort should be transferred to the Office of Nuclear Material Safety and Safeguards.

**Discussion**

The Study Group noted that the number of personnel in the headquarters Office of Inspection and Enforcement devoted to materials and fuel cycle inspection activities was very small. In fact, greater than 90% of the Headquarters resources appeared devoted to nuclear reactor inspection activities. It was also noted during our visits to the regional offices, that there was a general widespread complaint about the lack of adequate and timely support and information from Headquarters concerning inspection matters related to materials and fuel cycle facilities. The most likely reason appears to be the small amount of Headquarters resources devoted to these activities.

After due consideration, it appears logical to the Study Group that those few personnel in the headquarters Office of Inspection and Enforcement dealing with materials and fuel cycle inspection functions should to be transferred to the Office of Nuclear Material Safety and Safeguards, where NRC then would have consolidated into one entity the responsibility for and experts concerned with the inspection and licensing activities of materials and fuel cycle activities. The Study Group believes that the same considerations also appear to apply to the organization of the reactor licensing and inspection program.

**Recommendation #16**

We recommend that the NRC regional licensing and inspection staff responsible for materials regulation be combined in one group such that the individual NRC staff members within the group would be trained in and perform both licensing and inspection functions.

*Discussion*

Most of the NRC materials licensing effort was decentralized to the Regions several years ago under the terms of an agreement between the Director, Office of Nuclear Material Safety and Safeguards and each of the Regional Administrators. Under this arrangement, program direction comes from Headquarters, but individual materials licenses are reviewed, issued and inspected from the field. The potential advantages cited for this method of operation at the time it was first implemented included (1) having the license reviewers physically closer to the licensees would promote better communication and understanding between the NRC and its licensees and (2) having the NRC materials license reviewers physically closer to the NRC materials inspectors would likewise facilitate communication and understanding, and thereby improve both the licensing and inspection processes. It appears that all of these advantages are being realized and that the program has been successful.

However, the Study Group observed in its visits and discussions in the Regional Offices that only in Region I are the licensing and inspection staff members responsible for materials regulation combined in one group such that individual staff members within the group can and do perform both licensing and inspection functions interchangeably. We believe that this organizational arrangement is far superior to those of the other Regions since it maximizes the advantage of decentralization of the materials licensing function, facilitates trade-offs between licensing efforts and inspection efforts on individual cases, and improves morale by permitting a wider and more equitable sharing of the out-of-

the-office burdens of inspecting licensees. We recommended that all Regions adopt the Region I type of organization for carrying out their materials licensing and inspection responsibilities.

## OTHER RECOMMENDATIONS

### Recommendation #17

We recommend that NRC revise its regulatory guides for the format and content of license applications for fuel cycle plants to ensure an item by item correlation between Part I (License Conditions) and Part II (Safety Demonstration). A similar license guide is needed for materials licensees possessing or using large quantities of hazardous radioactive materials. A license condition should be developed to cover each item discussed in the demonstration part of the application.

*Discussion*

The NRC staff has prepared and is using regulatory guides to describe a standard format and content for health and safety sections of license renewal applications for uranium fuel fabrication plants (Regulatory Guide 3.52) and uranium hexafluoride production (Regulatory Guide 3.55). The guides consist of two major parts. Part I discusses the commitments that license applicants should make which become binding license conditions and Part II discusses supporting information which demonstrates the applicants' capability to meet the proposed license conditions.

In our discussion of these guides with NRC regional office staff and in our independent review, we noted that there is no item-by-item correlation (and such correlation is needed) between Part I (License Conditions) and Part II (Safety Demonstration) making it difficult to track license commitments and backup supporting information. Perhaps as a result of this confusion, we understand that at least one licensee was cited for noncompliance with a statement contained in Part II (Safety Demonstration) which was not intended to be a license requirement. Irrespective of the cause of this problem, licensees and NRC inspectors would be benefited by clearly distinguishing license requirements and backup supporting information, and revising the standard format and content guides to require an item-by-item correlation of statements in Parts I and II. In this connection, care should be taken to assure that applicant commitments are made for all aspects of operations important to safety, including fire protection, process safety design quality control and maintenance, and hazardous non-radioactive chemicals storage and use.

A similar guide should be prepared for applications to possess and use large amounts of hazardous radioactive materials, such as those used in manufacturing radiopharmaceuticals.

### Recommendation #18

We recommend that NRC prepare Standard Review Plans for fuel cycle and materials licensees possessing or using large quantities of hazardous radioactive materials conforming to the format and content guides discussed in Recommendation #17 above.

*Discussion*

Standard Review Plans are needed to provide appropriate guidance to NRC staff and license applicants concerning the scope and depth of licensing reviews, the adequacy of submitted information called for in the Standard Format and Content guides, and the need for independent validation of information by license reviewers or by third parties (for example, nuclear safety assumptions and criticality calculations, ventilation system capabilities, effluent monitoring and alarm system capabilities, financial commitments for decommissioning, and accuracy of offsite authorities' phone numbers to be called during emergencies.) The Standard Review Plans should be prepared after the Standard Format and Content guides have been revised as recommended in #17 above, and should be organized to permit an item-by-item correlation with those guides. Copies of the Standard Review Plans should be made available also to license applicants and other interested persons.

### Recommendation #19

We recommend that NRC issue major amendments to fuel cycle and materials licensees possessing or using large quantities of hazardous radioactive materials only after the amendments have been discussed jointly by the licensing staff and inspectors with the affected licensee. A clear understanding should be established with the licensee concerning what the new license requires at the time it is issued.

*Discussion*

Applications for new or major amendments to fuel cycle and materials licenses for possession or use of large quantities of hazardous radioactive materials may be quite lengthy and complex in content. Accordingly, we believe it important for the NRC licensing staff, NRC inspectors and license applicants to meet and discuss applicable requirements before these licenses or major amendments thereto are issued. Unless this is done, a licensee may unwittingly fail to comply with a requirement because the licensee did not interpret it the same way NRC did. These meetings should also assure that NRC licensing staff and NRC inspectors interpret license requirements alike or identify where applicable requirements should be changed to reflect the proper intent. For this process to be successful, licensees should participate fully in these meetings describing their understanding of what is required, asking questions to clarify NRC intentions, and requesting changes of wording to reflect proper understandings.

### Recommendation #20

We recommend that NRC inspectors be given more latitude with respect to deciding when not to make a compliance issue of minor items of non-compliance when the intent and spirit of the regulatory requirements have been met.

*Discussion*

We were informed that it is the policy of some, but not all, regional offices to cite licensees for every item of noncompliance regardless of the significance of the matter and whether or not the licensee complied with the intent and spirit of the requirements. In some instances, we were told, the inspectors cite licensees for noncompliance, but inform them that their departure from the requirement was in fact a safety improvement. We believe that citations of this type are not useful and should in most situations be avoided. Such citations are likely to discourage licensees from making appropriate improvements and unduly alarm the public about matters unimportant to safety.

### Recommendation #21

We recommend that NRC maintain a readily available file of interpretations of the regulations which should be maintained for use by the NRC staff.

*Discussion*

We were informed by regional office staff that they had been provided little guidance with respect to the intent and interpretation of NRC regulations and the findings necessary to support compliance or noncompliance with applicable requirements. Additional guidance is apparently needed. Two examples were cited to illustrate regulatory requirements unclear to some of the staff (1) which dose standards in

10 CFR 20.101(a) (i.e., 7.5 rems to the skin of the whole body or 18.75 rems to the hands and forearms) should apply in determining compliance with an exposure dose to the skin of the hands and (2) what constitutes a "permanent" radiographic installation for purpose of determining compliance with 10 CFR 34.29. These and other troublesome requirements should be discussed in writing and appropriate guidance provided to the NRC staff. As these interpretations are given, they should be exchanged between NRC Headquarters and the regional offices, and a complete file of all interpretations maintained available for use by the NRC staff.

**Recommendation #22**

We recommend that communications between NRC headquarters and regional offices and between NRC and licensees be improved.

*Discussion*

We were informed that relatively little information is being exchanged between inspectors in the five regional offices. Although periodic interoffice meetings take place between Branch Chiefs and Section Chiefs, the staff which performs inspections has little opportunity to discuss common problems with their counterparts in other NRC offices. We believe that periodic meetings between the staff who perform similar types of licensing and inspection work should be held, perhaps annually, to discuss and exchange experiences on methods and approaches, problem cases, compliance trends and fixes, and interpretations of troublesome regulations.

We believe that NRC should also hold more regulatory workshops for its licensees. These have been held at relatively infrequent periods in the past. Topics for possible discussion each year might include licensee management responsibilities; methods of achieving compliance with regulations and license requirements; ALARA objectives and programs; radiation safety methods and practices; elements of effective emergency planning; radiation safety facilities, equipment and instruments; radiation safety training programs; and compliance trends.

Finally, we believe that NRC should issue larger numbers of Bulletins and Informational Notices to keep materials licensees better informed on important regulatory matters. Care should be taken that regional office staff are appropriately informed of these before mailing to licensees. We were told that regional office staff sometimes first hear of the issuance of these form licensees who are calling to ask questions about them.

[FR Doc. 86-28269 Filed 12-16-86; 8:45 am]
BILLING CODE 7590-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 602

[LR-144-85]

### Original Issue Discount Reporting Requirements of Brokers; Proposed Rulemaking

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking and cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations concerning the reporting requirements under section 6049 of the Internal Revenue Code of 1954 for original issue discount debt instruments. The temporary regulations also serve as the text for this notice of proposed rulemaking.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by February 17, 1987.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-144-85), 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Susan T. Baker of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (LR-144-85) (202-566-3829, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Background**

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** amend 26 CFR Parts 1 and 602. The final regulations which are proposed to be based on the temporary regulations would amend 26 CFR Parts 1 and 602 to add new regulations under section 6049 of the Internal Revenue Code of 1954 relating to original issue discount reporting requirements as they apply to certain brokers and other middlemen.

**Description of Proposed Regulations**

For a description of the subject matter of these proposed regulations relating to the reporting requirements for brokers and other middlemen under section 6049 of the Internal Revenue Code of 1954, see the description and text of the temporary regulations incorporated in FR Doc. 86-28166 [T.D. 8109] published in the Rules and Regulations portion of this issue of the **Federal Register.**

**Non-applicability of Executive Order 12291**

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

**Regulatory Flexibility Act**

The Internal Revenue Service has concluded that although this document is a notice of proposed rulemaking that solicits public comment, the regulations proposed herein are interpretative and the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required for this rule.

**Drafting Information**

The principal author of these regulations is Theresa E. Bearman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.** The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal

Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Roscoe L. Egger, Jr.,

*Commissioner of Internal Revenue.*

[FR Doc. 86-28167 Filed 12-12-86; 11:30 am]

BILLING CODE 4830-01-M

## 26 CFR Part 31

[LR-144-86]

## Submission of Certain Withholding Exemption Certificates and Entitlement to Additional Withholding Exemption; Proposed Rulemaking

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking by cross reference to temporary regulations.

**SUMMARY:** This document provides proposed regulations that relate to the submission of withholding exemption certificates when the total number of withholding exemptions claimed on a certificate exceeds 10, and to the requirements that an employee must meet to be entitled to the additional withholding exemption in respect of the standard deduction. The proposed rules modify the withholding rules as appropriate to take into account changes made by the Tax Reform Act of 1986.

In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations that relate to the submission of certain withholding certificates and the additional withholding allowance. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by February 17, 1987.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-144-86), Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Laura Ann M. Lauritzen of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3459, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 31 of Title 26 of the Code of Federal Regulations. New §§ 31.3402 (f) (1)-lT and 31.3402 (f) (2)-lT are added to Part 31 of Title 26 of the Code of Federal Regulations. When §§ 31.3402 (f) (1)-lT and 31.3402 (f) (2)-lT are promulgated as final regulations, §§ 31.3402 (f) (1)-(l) (e) and 31.3402 (f) (2)-l (g) (1) will be revised to reflect the new provisions. For the text of the Temporary Regulations, see FR Doc. (T.D.8112) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains this addition to the Employment Taxes and Collection of Income Tax at Source Regulations.

### Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

### Regulatory Flexibility Analysis

It is hereby certified that this rule will not have a significant impact on a substantial number of small entities because the economic and any other secondary or incidental impact flows directly from the underlying statute. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

### Drafting Information

The principal author of these proposed regulations is Laura Ann M. Lauritzen of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, on matters of both substance and style.

### Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Lawrence B. Gibbs,

*Commissioner of Internal Revenue.*

[FR Doc. 86-28265 Filed 12-2-86; 4:15 pm]

BILLING CODE 4830-01-M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 167

[OPP-250074; FRL-3128-9]

## Notification to Secretary of Agriculture of Proposed Rule on Registration of Active Ingredient-Producing Establishments and Submission of Pesticide Reports

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notification to the Secretary of Agriculture.

**SUMMARY:** Notice is given that the Administrator of EPA has forwarded to the Secretary of agriculture a proposed regulation that would require producers of pesticide active ingredients to register their establishments and submit reports to EPA. This action is required by section 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** Claudia R. Goforth, Office of Compliance Monitoring (EN-342), Environmental Protection Agency, Rm. M-2624, 401 M St., SW., Washington, DC 20460, (202-382-7825).

**SUPPLEMENTARY INFORMATION:** Section 25(a)(2)(A) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing with in 30 days after receiving the proposed regulation, the Administrator may sign the proposed regulation for publication in the **Federal Register** anytime after the 30-day period.

As required by FIFRA section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

As required by FIFRA section 25(d), a copy of this proposed regulation has

also been forwarded to the Scientific Advisory Panel.

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 14, 1986.

A.E. Conroy II,

*Director, Office of Compliance Monitoring.*

[FR Doc. 86-28241 Filed 12-16-86; 8:45 am]

BILLING CODE 6560-50-M

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## 40 CFR Part 180

[PP 6E3391/P406; FRL-3127-7]

## Pesticide Tolerances for Cyano(3-Phenoxyphenyl)Methyl-4-Chloro-Alpha-(Methylethyl)Benzeneacetate

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that tolerances be established for residues of the insecticide cyano(3-phenoxyphenyl)-methyl-4-chloro-alpha-(methylethyl)-benzeneacetate in or on the raw agricultural commodities turnip roots and tops. The proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

**DATE:** Comments, identified by the document control number [PP 6E3391/P406], should be received on or before January 16, 1987.

**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, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:**

By mail:

Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716F, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted a pesticide petition 6E3391 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Stations of California, Indiana, North Carolina, Oklahoma and Washington. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(methylethyl)benzeneacetate in or on the raw agricultural commodities turnip tops at 20 parts per million (ppm) and turnip roots at 0.5 ppm.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include:

1. A 13-week rat feeding study with a NOEL of 50 ppm (2.5 milligram (mg)/kilogram (kg) of body weight (bw) per day).

2. An acute oral rat toxicity study with a median lethal dose ($LD_{50}$) of 1 to 3 grams (g)/kg (water vehicle) and 450 mg/kg bw/day (dimethylsulfoxide vehicle).

3. A 90-day dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (12.5 mg/kg/day, highest dose tested).

4. A 90-day rat feeding study with a NOEL of 125 ppm (6.25 mg/kg/day).

5. An 18-month mouse feeding study with a NOEL of less than 100 ppm (15 mg/kg/day) with no oncogenic effects observed under the conditions of the study at dose levels of 100, 300, 1,000 and 3,000 ppm (3,000 ppm being the highest dose level tested in the study).

6. A 24-month mouse feeding study with a NOEL of 10 to 50 ppm (1.5 to 7.5 mg/kg) for males and 50 to 250 ppm for females (7.5 to 37.5 mg/kg/day), no oncogenic effects were noted at dose levels of 10, 50, 250, and 1,250 ppm (1,250 ppm being the highest dose level tested).

7. A 24-month rat feeding study that demonstrated no oncogenic effects at 1,000 ppm (50 mg/kg/day, only level tested, significantly decreased body weight was observed at this dose level).

8. A 2-year rat feeding study with a NOEL of 250 ppm (12.5 mg/kg/day, highest level fed), no oncogenic effects were observed.

9. A three-generation rat reproduction study with a NOEL of 250 ppm (12.5 mg/kg/day, highest level fed).

10. Teratology studies (in mice and rabbits), each negative at 50 mg/kg/day (highest dose tested).

11. The following mutagenicity studies: mouse dominant lethal (negative at 100 mg/kg of bw, which was the highest level fed); mouse host-mediated bioassay (negative at 50 mg/kg of bw, which was the highest level fed); Ames test *in vitro* (negative); and a bone marrow cytogenetic study in Chinese hamster (negative at 25 mg/kg of bw).

Additionally, the following studies assessing neurological effects were performed: a hen study negative at 1.0 g/kg of bw for 5 days repeated at 21 days; a rat (8-day) acute study with a NOEL of 200 mg/kg of bw; a 15-month rat feeding study which resulted in a systemic NOEL of 500 ppm (25 mg/kg/day) and a NOEL of 1,500 ppm (75 mg/kg/day) with respect to nerve damage.

The acceptable daily intake (ADI), based on the 13-week rat feeding study (NOEL of 2.5 mg/kg/day or 50 ppm) and using a 100-fold safety factor, is calculated to be 0.0250 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 1.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing and pending tolerances for a 1.5-kg daily diet is calculated to be 1.28472 mg/day; the current action will increase the TMRC by 0.009375 mg/day (0.73 percent). Published and pending tolerances utilize 85.65 percent of the ADI; the current action will utilize an additional 0.62 percent.

The nature of the residues is adequately understood and an adequate analytical method, electron-capture gas chromatography, is available in Pesticide Analytical Manual, Volume II (PAM-II), for enforcement purposes. There are presently no actions pending against the continued registration of this chemical.

Established meat amd milk tolerances are adequate to cover any secondary residues that may occur from the use of turnips as livestock feed items. Based on

the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, it is proposed that the tolerances 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 any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3391/P406]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: December 3, 1985.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

## PART 180—[AMENDED]

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

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

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

2. Section 180.379(a) is amended by adding and alphabetically inserting the following raw agricultural commodities to read as follows:

**§ 180.379 Cyano (3-phenoxyphenyl)methyl-4-chloro-alpha-(methyl-ethyl)benzeneacetate; tolerances for residues.**

(a) * * *

| Commodities | Parts per million |
|---|---|
| * * * * * * | |
| Turnip roots | 0.5 |
| Turnip tops | 20.0 |
| * * * * * * | |

[FR Doc. 86–28031 Filed 12–16–86; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 180

**[PP 6E3428/P407; FRL–3128–2]**

## Pesticide Tolerance for Magnesium Phosphide

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that a tolerance be established for residues of the fumigant phosphine resulting from the postharvest use of magnesium phosphide in or on the raw agricultural commodity sweet potatoes. The proposed regulation to establish a maximum permissible level for residues of the fumigant in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

**DATE:** Comments, identified by the document control number [PP 6E3428/P407], should be received on or before January 16, 1987.

**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, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:**

By mail:

Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1806).

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 6E3428 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project and the Agricultural Experiment Station of Louisiana.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the fumigant phosphine resulting from the postharvest use of magnesium phosphide in or on the raw agricultural commodity sweet potatoes at 0.01 part per million (ppm). Phosphine gas which is liberated from magnesium phosphide in the presence of moisture is the actual fumigant. Unreacted residues are not expected to result from the proposed use, since magnesium phosphide is not likely to come into direct contact with the raw agricultural commodity.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicity data gaps for magnesium phosphide include chronic feeding, oncogenicity, reproduction, and metabolism studies. The Agency stated in the Registration Standard for Magnesium Phosphide (November 1985) that the requirement for additional human health studies for magnesium phosphide are waived. The Agency concluded that the registered uses of magnesium phosphide will not cause any chronic effects in humans or the environment, provided the label precautions are observed. Residues of phosphine consist of phosphine gas which dissipates with adequate aeration from treated commodities to a level of 0.01 ppm, and irreversibly bound

residues consisting of degradation products are formed from the reaction of phosphine with chemicals in the treated commodities. The bound residues consist of oxyacids of phosphorus and oxidation products of phosphine (oxyphosphorus acids and/or their salts), both of which are considered toxicologically insignificant at the levels found in treated commodities.

An amended Registration Standard for Magnesium Phosphide (October 1986) again indicates that no chronic toxicology or residue chemistry data are required for magnesium phosphide or phosphine gas with respect to potential dietary exposure to these chemicals. Toxicity tests (subchronic inhalation, teratogenicity and mutagenicity) and exposure (monitoring data are required, however, to assess the margins of safety for workers and applicators exposed to phosphine gas.

Until the required toxicology and exposure data are received and reviewed, the Agency is adopting, on an interim basis, a permissible exposure limit (PEL) of 0.3 ppm as set by the Occupational Safety and Health Administration (OSHA). Under this standard, applicators and workers may be exposed to no more than 0.3 ppm phosphine (8-hour time weighted average) and to no more than 0.3 ppm phosphine (maximum concentration) at any time after application.

Since residues of phosphine from the proposed use of magnesium phosphide are considered toxicologically insignificant, and there is no expectation of secondary residues in meat, milk, poultry and eggs, additional data are not required to evaluate the toxicological significance of the proposed tolerance in the human diet.

The acceptable daily intake (ADI) for residues of phosphine in the human diet has not been established since the Agency has waived the requirement for chronic toxicity studies that would form the basis for establishing the ADI for phosphine. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.04122 mg/day. The proposed use will contribute an additional 0.00006 mg/day (a 0.15 percent increase). A food additive tolerance is established for all processed food commodities at 0.01 ppm resulting from post-harvest fumigation with magnesium phosphide.

The nature of the residues is adequately understood and an adequate analytical method, colorimetric detection of phosphine, is available in Pesticide Analytical Manual, Volume II (PAM-II), for enforcement purposes. There are presently no actions pending against the continued registration of this chemical.

Based on the data and information considered, the Agency concludes that the tolerance will 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 any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3428/P407]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: December 3, 1986.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

## PART 180—[AMENDED]

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

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

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

2. Section 180.375(a) is amended by adding and alphabetically inserting the raw agricultural commodity sweet potatoes to read as follows:

**§ 180.375 Magnesium phosphide; tolerances for residues.**

(a) * * *

| Commodities | Parts per million |
|---|---|
| * * * * * | |
| Sweet potatoes | 0.01 |
| * * * * * | |

[FR Doc. 86-28158 Filed 12-16-86; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### 46 CFR Part 382

**[Docket No. R-107]**

### Bulk Preference Cargoes

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Maritime Administration (MARAD) proposes to establish new administrative procedures and methodology for determining fair and reasonable rates for the carriage of full shiploads of dry and liquid bulk preference cargoes on U.S.-flag commercial bulk cargo vessels. This proposed regulation would require operators to submit data on the operating and capital costs of their vessels. Based on this data, fair and reasonable guideline rates would be calculated according to the method explained in the Supplementary Information Section of this regulation. This supplemental proposed rule supersedes the initial proposed rule published in the **Federal Register** on August 6, 1985.

**DATES:** Comments must be received on or before March 17, 1987.

**ADDRESS:** Send original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional ten (10) copies of the comments. All comments will be made available for inspection during normal business hours at this address. Commenters wishing MARAD to acknowledge receipt should enclose self-addressed and stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Arthur B. Sforza, Director, Office of Ship Operating Costs, Maritime Administration, Washington, DC 20590, Tel. (202) 382–6036.

**SUPPLEMENTARY INFORMATION:** Section 901(b)(1) of the Merchant Marine Act (the Act) of 1936, as amended (46 U.S.C. 1241(b)), requires that at least 50 percent of any equipment, materials or commodities purchased by the United States or for the account of any foreign nation without provision for reimbursement, or acquired as the result of funds or credits from the United States, be transported on privately owned U.S.-flag commerical vessels to the extent that such vessels are available at fair and reasonable rates. In 1985, section 901 was amended to exclude certain programs from the application of cargo preference and to raise the U.S.-flag share for certain other programs to 75 percent, phased in over three years.

The Comptroller General in 1955 stated that the term "fair and reasonable rate" did not necessarily mean the going market rate, but would appear to call for reasonable compensation, including a fair profit, for an efficient vessel (Opinion B–95832, Feb. 17, 1955). Upon request, MARAD provides guideline rates to assist agencies in the determination of fair and reasonable rates. Section 901(b)(2) of the Act provides the authority for MARAD (by delegation from the Secretary of Transportation) to issue regulations governing the administration of section 901(b)(1).

MARAD currently uses two separate methods for determining rates for bulk cargoes carried by U.S.-flag vessels. For vessels built in or prior to 1955, guideline rates are calculated for vessels by deadweight categories. There are only a few vessels of that age remaining in service. For vessels built after 1955, rates are calculated separately for each vessel. This proposed rule would eliminate the two-tier system of rate calculation and would result in the calculation of a separate fair and reasonable rate for each vessel.

### Data Submission Requirements

Pursuant to 46 CFR Part 381, Government agencies must comply with section 901(b)(1) and must submit data to MARAD on U.S. and foreign-flag carriage of preference cargoes under their control. The proposed Part 382 would require operators of U.S.-flag commercial bulk cargo vessels to submit specific vessel operating and capital cost data to MARAD for determining fair and reasonable preference cargo guideline rates. It also would include a requirement for operators to submit port and cargo handling costs for completed preference cargo voyages. Data submissions would be required to be submitted not later than April 30 of each year and updated not less often than once every 12 months.

Required information on each vessel would include statistical information on the vessel (e.g., normal operating speed, deadweight tonnage); operating expenses (e.g., wage costs of officers and crews, insurance costs); capital costs (e.g., capitalized costs, interest rates); and port and cargo handling costs (e.g., stevedore costs, canal fees).

MARAD recognizes that a portion of U.S.-flag bulk operators already submit operating data to MARAD under the reporting requirements for other programs administered by the agency. To avoid duplication of information reporting requirements, required data that may already be submitted by an operator in accordance with another MARAD program would suffice for the purposes of this proposed rule. However, the operator shall ensure that all data detailed in this proposal are submitted by April 30 of each year.

Thus far, MARAD has not required all operators participating in the bulk cargo preference trades to submit cost data on an annual basis, and accurate cost data are often unavailable for those operators' vessels. However, a recent General Accounting Office (GAO) report, "Transportation of Public Law 480 Commodities— Efforts Needed to Eliminate Unnecessary Costs" GAO/NSIAD–85–74, included a recommendation that vessel owners be required to certify vessel costs and operating data. In response to that recommendation, MARAD began requesting vessel and voyage data from the owner/operator of each vessel after completion of a preference cargo voyage. This supplemental proposed rule would formalize the submission of required data. Unless operators comply with the information submission requirements, MARAD will be unable to ensure the accuracy of the data which would form the basis of fair and reasonable rate determinations.

Confidential information relating to business or trade, including overhead and operating costs and information of financial condition is generally considered by the courts to be commercial or financial information and thus exempt from public disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552). To claim a FOIA exemption, operators submitting data under this proposed rule would be required to make a claim of exemption at the time the data is submitted. A provision is included in the proposed regulation describing procedures to be followed in asserting a claim of exemption. Data submissions determined by the Secretary, Maritime Administration, to be confidential commercial or financial information not otherwise disclosed to the public would not be disclosed pursuant to a FOIA request by a thrid party. In any event, MARAD would not disclose data submissions until a determination is made that such submissions would not be exempt from disclosure under the FOIA. A provision is included in the proposed regulation under which data would be held in confidence.

### Administrative Procedure

When a shipper agency receives offers from interested U.S.-flag vessel operators to transport preference cargoes, it first selects those offers most responsive to the tender requirements. Those offers are verbally submitted to MARAD with a request that MARAD calculate a guideline rate for each vessel under consideration. MARAD, while giving consideration to the vessel's overall eligibility, calculates guideline rates and requests that the shipper agency advise them of the rates that have been bid by the operators. MARAD then informs the shipper agency whether the rate offered by the eligible carrier is fair and reasonable, i.e., at or below the guideline rate level. If the rate offered exceeds the guideline rate, MARAD tells the shipper agency what the guideline rate is for negotiation purposes. On those occasions when a vessel operator receiving operating subsidy is the apparent low responsive bidder, the shipper agency first asks MARAD for the estimated operating subsidy amount to be paid for the carriage of the preference cargo. This amount is used to augment the bids of subsidized operators so that subsidy may be considered a cost to the Government during the evaluation of bids.

### Prior Notice of Proposed Rulemaking

On August 6, 1985, an initial Notice of Proposed Rulemaking (NPRM) was published concerning 46 CFR Part 382 (50 FR 31735). That notice contained data submission requirements and a methodology for determining fair and reasonable rates for bulk cargo vessels. Comments were solicited from interested parties and there were nine respondents. Two responses were submitted by operators of both subsidized and non-subsidized vessels,

four by non-subsidized operators, two by other Government agencies, and one by a shipper. The two subsidized operators are the Berger Group and the Falcon Shipping Group. The four non-subsidized operators are OSG Bulk Ships, Inc.; Charrier, Gibson & Associates, Inc.; American Trading Transportation Company; and OMI Corp. The Government agencies that responded are the Agency for International Development and the U.S. Department of Agriculture. The shipper that responded is Cargill.

There were a wide variety of comments submitted on the following issues: use of least squares regression to determine fair and reasonable rates, data submission requirements, calculation of the operating and capital cost components, determination of cargo tons and voyage days, and voyage reduction for scrapping. There were also several miscellaneous comments. In consideration of the scope of the proposed regulation and the diversity of respondents and their comments, MARAD has reevaluated and modified the proposed rule. Because of the nature and scope of the modifications, MARAD is publishing this supplemental proposed rule which would supersede the initial NPRM.

In evaluating the comments received, MARAD recognized that the use of least squares regression to determine fair and reasonable rates was an intricate process that led to a strong degree of contention among the commenters, primarily with regard to the wide variation in costs, inadequate quantity of observations, and definitional and calculational problems. Based on further evaluation, MARAD agrees that the least squares regression analysis methodology has problems and therefore is seeking additional comments on alternative methodologies that would be equitable while favoring employment of efficient tonnage.

The alternative presented in this supplemental proposed rule is a cost based system for guideline rates, which would be based on the vessel's actual or constructed costs. MARAD is concerned, however, that this methodology is not fully consistent with the Comptroller General's Opinion that fair and reasonable rates need not be compensatory for inefficient operators. Therefore, MARAD specifically invites the submission of alternative methodologies.

With regard to the other issues commented upon, MARAD determined the need for further clarification and has provided such in the supplemental proposed rule, as explained below. Data submission requirements have been expanded in view of the recommendations contained in the GAO report, previously cited, which was issued subsequent to the initial notice of proposed rulemaking. Accordingly, this supplemental proposed regulation includes a requirement for the submission of actual port and cargo handling costs relating to completed preference cargo voyages, in conformance with the recommendations contained in the GAO report. The proposed rule would not require the submission of data already reported under other programs administered by MARAD. The method for calculating fair and reasonable rates for vessels that are scrapped at the conclusion of a preference voyage has been clarified. In addition, other minor clarifications have been made. If this supplemental NPRM is finalized, the data submission requirements contained in this regulation would supersede those which were imposed as a result of the GAO recommendations.

**Revised Rate Methodology**

The procedure set forth below would be used to determine the guideline (or fair and reasonable) rate for the carriage of bulk preference cargoes. The cost-based guideline rates would apply only to the waterborne portion of cargo transportation and shall consist of three components: (1) Operating costs, including fuel; (2) capital costs; and (3) port and cargo handling costs.

The cost determination would be based on the data submitted by the operators. The guideline rates would be calculated separately on an ad hoc basis for each eligible vessel. To determine the operating cost component, each vessel's operating costs other than fuel for the year just ended would be divided by the number of vessel operating days for that year. That amount would be added to each vessel's fuel cost for the voyage, determined for operating days at sea and in port, on the basis of the fuel consumption data submitted by the operators and current fuel prices. The number of sea and port days necessary to complete the preference cargo voyage would then be estimated on the basis of charter party terms and the vessel's characteristics. The total sea and port days would be used to determine total operating costs for the voyage.

The capital cost component would consist of an allowance for depreciation and interest, and a reasonable return on investment. Depreciation would be straight-line for 25 years unless the owner purchased the vessel when it was more than 15 years old. In this case, the vessel would be depreciated on a straight-line over not fewer than 10 years. Interest expense would be calculated by assuming that the original vessel indebtedness is 75 percent of the owner's capitalized vessel cost, with level principal payments over a 25-year period. Capitalized improvements would be depreciated straight-line from the date of capitalization over the remainder of the 25-year period. To compute the interest cost, the owner's actual interest rate would be applied to the computed outstanding debt on the vessel. For purposes of determining return on investment, equity would be assumed to be 25 percent of net book value (capitalized costs less depreciation), and working capital would be the dollar amount necessary to cover one-half vessel and voyage expenses for the voyage. The annual depreciation, interest, and return on investment would be divided by 335 days, a normal annual operating period for bulk cargo vessels. The resulting daily capital cost component would be multiplied by the total number of voyage days to determine the capital costs attributable to the voyage.

With respect to the rate of return on investment, MARAD is considering three alternatives: the use of the most recent median return on stockholder's equity for the top 500 corporations as published annually in *Fortune*, the use of the most recent median return on stockholder's equity for a representative cross section of publicly traded transportation industry companies, including maritime, or the use of the 12-month Treasury Bill rate as of January 1 of the year for which fair and reasonable rates are being calculated. MARAD specifically requests comments on the rates of return under consideration and will consider any alternative proposed in the comments.

In the event a vessel owner has defaulted on a vessel financed under Title XI of the Act, the capital cost element would be adjusted as appropriate.

The port and cargo handling cost component would be determined for each vessel based on data submitted by the operators for completed cargo preference voyages in the previous year and other information available to MARAD. The costs would include applicable fees for wharfage and dockage of the vessel, canal tolls, cargo loading and discharging, and all other voyage costs associated with transportation of the preference cargo.

To determine the fair and reasonable rate, the components for daily operating and capital costs would each be multiplied by the estimated number of days necessary to make the voyage, and

the product would be added to the port and cargo handling cost component. A broker's commission equivalent to 2.5 percent of their sum would be added to the total of the three components. The new total would be divided by the cargo tons to determine the fair and reasonable rate.

**Example Calculation**

For purposes of illustrating the proposed method of determining guideline rates, this simplified example assumes a hypothetical voyage between the U.S. Gulf and Egypt using a 50,000 DWT drybulk carrier, built in 1975, to transport 40,000 tons of grain. The following vessel and voyage assumptions are given:

| Vessel | | Voyage | |
|---|---|---|---|
| Capitalized cost | $50,000,000 | Round trip miles. | 13,000 |
| Est. residual value | $1,250,000 | Sea time | 36 days |
| Depreciable value | $48,750,000 | Port time: | |
| Annual depreciation. | $1,950,000 | Load | 5 days |
| Mortgage principal | $37,500,000 | Discharge | 14 days |
| Interest rate (percent). | 8 | Bunker | 1 day |
| Equity | $8,000,000 | Total | 20 days |
| Working/capital (.5 vessel and voy. costs). | $857,800 | Total time | 56 days |
| Estimated return on investment (percent). | 11.5 | Fuel cost | $140/ton |
| Speed (knots) | 15 | Port and cargo charges. | $100,000 |
| Annual operating cost (excluding fuel, previous year). | $6,000,000 | | |
| Operating period (previous year) (days). | 300 | | |
| Fuel consumption: | | | |
| At sea (tons/day). | 90 | | |
| In port (tons/day). | 15 | | |
| Machinery—steam turbine | | | |

*Operating Component*

The vessel's operating costs (except fuel) for the year ended are divided by the number of operating days for that year. That number is multiplied by the estimated number of days for the voyage. The resulting number is then added to the estimated cost of fuel for days at sea and days in port to obtain the total estimated operating cost.

Vessel expense:

$$\frac{\text{annual operating expense}}{\text{operating days}} \times \text{estimated voyage length}$$

$6,000,000 ÷ 300 × 36 = $1,120,000

Fuel expense:

(days at sea × at sea consumption) + (days in port × in port consumption) = total fuel consumption

(total consumption × fuel cost) = total fuel cost

(36 × 90) + (20 × 15) 3,540 tons

3,540 × $140 = $495,600

Total operating cost:

vessel expenses + fuel expense = total estimated operating component

$1,120,000 + $495,600 = $1,615,600

*Capital Component*

The capital component is the sum of the allowances for depreciation, interest, return on equity, and return on working capital.

Depreciation allowance:

daily depreciation rate × voyage days

$1,950,000 ÷ 335 × 56 = $325,970

Interest allowance:

$$\frac{\text{remaining principal} \times \text{interest rate}}{335} \times \text{voyage days}$$

$22,500,000 × .08 ÷ 335 × 56 = $300,895

Return on equity:

$$\frac{\text{equity} \times \text{annual return rate}}{335} \times \text{voyage days}$$

$8,000,000 × .115 ÷ 335 × 56 = $153,791

Return on working capital:

$$\frac{\text{working capital} \times \text{annual return rate}}{335} \times \text{voyage days}$$

$857,800 × .115 × 56 ÷ 335 = $16,490

Total capital cost:

depreciation allowance + interest allowance + return on equity + return on working capital = total est. capital component

$325,970 + $300,895 + $153,791 + $16,490 = $797,146

*Port and cargo Handling Charges*

Port and cargo handling charges are estimated on the basis of charter party terms and are a function of the vessel size, the ports involved, the cargo and various charges assessed on its handling. The costs are assumed to be $100,000 in this example.

*Broker's Commission*

(operating component + capital component + port & cargo charges) × .025 = broker's commission

($1,615,600 + $797,146 + $100,000) × .025 = $62,819

*Guidelines Rate Calculation*

The guideline rate is obtained by adding the operating component, capital component, port and cargo handling charges, brokers commission, and dividing the total by the amount of cargo in tons.

(Operating Component + Capital Component + Port and Cargo Charges) + Broker's Commission)/Cargo in tons

$1,615,600 + $797,146 + $100,000 + $62,819 ÷ 40,000 = $64.39/ton

**E.O. 12291, Statutory and DOT Requirements**

The Maritime Administrator has determined that this regulation is not a major rule as defined in E.O. 12291, but is significant under DOT regulatory policies and procedures due to considerable public interest (46 FR 11034; February 26, 1979). A draft Regulatory Evaluation has been prepared. It will be placed in the docket established for this rule and will be made available for public inspection.

Since this regulation would affect principally ship operators with substantial annual revenues, and Government agencies, MARAD certifies that this rule would not exert a significant economic impact on a substantial number of small entities under Public Law 96–354. It includes an information collection requirement that has been submitted to OMB for review pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). It is estimated that the total amount of time required to submit the required data would be 320 hours.

The total estimated cost to the industry of this rule would be only $3,169.28 (320 hours total (20 respondents × 16 hours to compile data per response)) to prepare the required data. This cost figure is based on the estimate that 90 percent of the time would be for an accountant at $10.06 per hour, and 10 percent for clerical support at $8.50 per hour. (The hourly rates were taken from the Bureau of Labor Statistics, April 1986). To the extent that operators already submit the required data under other programs administered by MARAD, the estimated time and cost required to prepare the data would be less.

Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, Attn: Desk Officer, Department of Transportation. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Department of Transportation, Maritime Administration, as listed under **"ADDRESS."**

**List of Subjects in 46 CFR Part 382**

Agricultural commodities, Cargo vessels, Government procurement, Grant programs—foreign Relations, Loan programs—foreign relations, Water transportation.

Accordingly 46 CFR Chapter II is amended by adding a new Part 382, to read as follows:

## PART 382—DETERMINATION OF FAIR AND REASONABLE RATES FOR THE CARRIAGE OF BULK PREFERENCE CARGOES ON BULK CARGO VESSELS

Sec.



**Authority:** Sec. 901 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241).

### § 382.1 Scope.

Part 382 prescribes regulations applying to the transportation of dry and liquid bulk preference cargoes on U.S.-flag commercial vessels, other than liner vessels, pursuant to section 901 of the Merchant Marine Act, 1936, as amended. These regulations contain the method for calculating fair and reasonable rates and the type of information that must be submitted by operators interested in carrying bulk preference cargoes.

### § 382.2 Data submission.

(a) *General.* The operators are required to submit information listed in paragraphs (b) and (c) of this section to the Director, Office of Ship Operating Costs, Maritime Administration, Washington, DC 20590. Such information shall be submitted not later than April 30 for the previous calendar year and shall be updated not less often than once every 12 months. All submissions shall be certified by the operators and are subject to verification at MARAD's discretion by the Office of the Inspector General, Department of Transportation.

(b) *Required information for each vessel,*

(1) Vessel name;

(2) Vessel DWT;

(3) Date built, rebuilt and/or purchased;

(4) Normal operating speed;

(5) Fuel consumption at normal operating speed, in metric tons per day;

(6) Fuel consumption in port, in metric tons per day;

(7) Total vessel costs capitalized (list and date capitalized improvements separately), and applicable interest rates for indebtedness;

(8) Number of vessel operating days for the year ending December 31;

(9) Number of officers and crew;

(10) Total wage costs of officers and crews for the year ending December 31;

(11) Subsistence costs for the year ending December 31;

(12) Total stores, supplies and expendable equipment expenses for the year ending December 31;

(13) Total maintenance and repair expenses for the year ending December 31; include, as separate items, deductible absorptions under hull and machinery insurance and accrued expenses for biennial drydockings;

(14) Hull and machinery insurance premium costs for the year ending December 31;

(15) Protection and indemnity insurance costs, for the year ending December 31, including premium expenses, personal injury and illness deductible average losses, second seamen's insurance premiums, and supplemental calls;

(16) Other marine risk insurance costs involving the vessel and not properly chargeable to hull and machinery insurance or to protection and indemnity insurance accounts, for the year ending December 31, and

(17) Other vessel expenses for the year ending December 31 which are not properly chargeable to the other expense accounts (detail items of expense).

(c) *Required port and cargo handling information.* The following port and cargo handling costs shall be provided for each cargo preference voyage which terminated during the year ending December 31, identifying the vessel, cargo, dates of voyage, and ports of loading and discharge.

(1) *Port expenses.* Separately list expenses or fees for pilots, tugs, line handlers, wharfage, port charges, fresh water, lighthouse dues, quarantine service, customs charges, shifting expenses, and any other appropriate expenses.

(2) *Cargo expenses.* Separately list expenses or fees for stevedores, elevators, equipment, cleaning of holds or tanks for bulk grain cargoes, and any other appropriate expenses. Specify tonnage loaded and discharged and time utilized.

(3) *Extra cargo expenses.* Separately list expenses or fees for vacuvators and/or cranes, lightening (indicate tons moved and cost per ton), bagging or stacking of cargo at discharge (if specified in charter party), and any other appropriate expenses. Specify time lost for weather, strikes, or work stoppages.

(4) *Canal exenses.* Separately list expenses or fees for agents, tolls (light or loaded), tugs, pilots, lock tenders and boats, and any other appropriate expenses. Indicate waiting time and time of passage.

(d) *Other requirements.* Unless otherwise provided, 46 CFR Part 232, Uniform Financial Reporting Requirements, and 46 CFR Part 272, Maintenance and Repair reporting instructions, are to be used for guidance in submitting cost data. Data requirement stipulated in subparagraphs (b) and (c) above that are not included under those reporting instructions shall be submitted in a similar format. If any data required under subparagraphs (b) and (c) are already submitted to MARAD for other purposes, its submission need not be duplicated to satisfy the requirements of this regulation.

(e) *Confidentiality.* If the data submitted under this rule contains information that the submitter considers to be commercial or financial information and privileged or confidential, or otherwise exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552), the submitter shall assert a claim of exemption at the time the data is submitted. The claim shall made in a letter contained in a sealed envelope marked "Confidential Information," addressed to the Secretary, Maritime Administration. The submitter shall stamp or mark "confidential" on the top of each page containing information claimed to be confidential. In claiming an exemption under FOIA, the submitter must state the basis for such action, including supporting information showing:

(1) That the information claimed to be confidential is a trade secret or commercial or financial information in accordance with statutory and decisional authority, and

(2) That measures have been taken by the submitter of the information to ensure that the information has not been disclosed or otherwise made available to the public, or, if the information has been disclosed or otherwise become available to the public, why such disclosure or availability does not compromise the confidential nature of the information.

In the event of a subsequent request for any portion of the data under the FOIA, those submissions not so claimed by the submitter will be disclosed, and those so claimed will be subject to the initial determination by the Secretary, Maritime Administration. If the Secretary makes a determination unfavorable to the submitter, the submitter will be advised that MARAD will not honor the request for confidentiality at the time of any request

for production of information under the FOIA by third parties.

**§ 382.3 Determination of fair and reasonable rates.**

(a) *Cost components.* Fair and reasonable rates for the carriage of bulk preference cargoes on U.S.-flag bulk commercial vessels shall include an operating cost component, a capital cost component, and a port and cargo handling cost component.

(b) *Operating cost component—(1) General.* A daily operating cost component for each eligible bulk vessel shall be determined on the basis of operating cost data submitted in accordance with § 382.2.

(2) *Items included.* The daily operating cost component shall be determined for operating days at sea and in port and shall include the following expense items as defined in 46 CFR Part 232.

(i) Wages of officers and crews.

(ii) Subsistance of officers and crews.

(iii) Stores, supplies, and expendable equipment.

(iv) Maintenance and repairs not recoverable from insurance.

(v) Hull and machinery insurance.

(vi) Protection and indemnity insurance.

(vii) Other marine risk insurance.

(viii) Fuel.

(ix) Other vessel epenses.

(3) The daily costs for expenses other than fuel shall be determined by dividing the operators annual costs from the previous year by the number of vessels operating days for that year. Daily fuel costs for operating days at sea and in port shall be based on the vessel's rate of fuel consumption and current fuel prices at the regions of loading and discharging cargo.

(c) *Capital component—(1) General.* A daily capital cost component shall be constructed for each vessel based on its capitalized costs.

(2) *Items included.* The daily capital cost component shall include:

(i) *Depreciation.* The owner's actual construction cost, reconstruction cost or purchase cost shall be depreciated in a straight-line basis over 25 years, unless the owner has purchased or reconstructed the vessel when its age was greater than 15 years old. When vessels more than 15 years old are purchased, a depreciation period of 10 years shall be used. When vessels more than 15 years old are reconstructed, MARAD will determine the depreciation period. The residual value of the vessel shall be assumed to be 2.5 percent of total capitalized cost.

(ii) *Interest.*The cost of debt shall be determined by applying the vessel owner's actual interest rate to the outstanding vessel indebtedness. It shall be assumed that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost and that principal payments are made in equal installments over a 25-year period. If an actual interest rate is not available, the prevailing rate of interest for Title XI financing at the time of capitalization shall be used.

(iii) *Return on working capital.* Working capital shall equal the dollar amount necessary to cover one-half the operating costs of the vessel for the voyage. The rate of return shall be based on the most recent median annual after tax rate of return on stockholder's equity for the top 500 corporations as published in *Fortune*, the most recent median return on stockholder's equity for a representative cross section of publicly traded transportation industry companies, including maritime or the 12-month Treasury Bill rate as of January 1 of the year for which fair and reasonable rates are being calculated. (Comments are specifically requested on the rate of return to be used.)

(iv) *Return on equity.* The rate of return on equity shall be determined as in paragraph (c)(2)(iii) of this section. For the purpose of determining equity it shall be assumed that the vessel's constructed net book value less constructed principal outstanding is equity. The constructed net book value shall equal the owner's capitalized cost minus accumulated straight-line depreciation.

(3) *Daily component.* The annual depreciation, interest, and return on equity shall be divided by 335 days, a normal annual operating period for bulk vessels. The daily return on working capital for the voyage shall be added to those elements to determine the daily capital cost component.

(d) *Port and cargo handling cost component.* The port and cargo handling cost component shall be based on information submitted in accordance with § 382.2(c) and shall be determined on the basis of cargo tender terms.

(e) *Determination of voyage days.* The following assumptions shall be made in determining the number of preference cargo voyage days:

(i) The voyage shall be round-trip with the return in ballast, unless it is known that the vessel will be scrapped or sold immediately after discharge of the preference cargo. In this event, only voyage days from the load port to the discharge port shall be included.

(ii) Cargo is loaded and discharged as per charter party terms.

(iii) Total loading and discharge time includes the addition of a 27.3 percent factor to account for Sundays and holidays not worked.

(iv) One extra port day is included at each bunkering port.

(v) Transit time shall be based on the vessel's normal operating speed, and shall include an additional 5 percent to account for weather conditions.

(f) *Determination of cargo carried.* The amount of cargo tonnage used to calculate the rate shall be based on the charter party terms. However, in no case shall less that 70 percent of deadweight be used for rate calculation purposes.

(g) *Broker's commission.* A broker's commission of 2.5 percent shall be added to the sum of the operating cost component, and the capital cost component, and the port and cargo handling cost component.

(h) *Total rate.* The fair and reasonable rate shall be the total of the operating cost component, the capital cost component, the port and cargo handling cost component, and the broker's commission divided by the amount of cargo carried, expressed as cost per ton.

By order of the Maritime Administrator.

Dated: December 12, 1986.

Approved:

**James E. Saari,**

*Secretary.*

[FR Doc. 86-28260 Filed 12-16-86; 8:45 am]

BILLING CODE 4910-81-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### 48 CFR Part PHS 352

### Acquisition Regulation Concerning Human Subjects and Live Vertebrate Animals

**AGENCY:** Public Health Service (PHS), Department of Health and Human Services (HHS).

**ACTION:** Proposed rule.

**SUMMARY:** The Department proposes to amend the Public Health Service Acquisition Regulation (PHSAR), Appendix A to the Department of Health and Human Services Acquisition Regulation (HHSAR), Chapter 3 of Title 48, Code of Federal Regulations, to revise two clauses: "Protection of Human Subjects" and "Care of Live Vertebrate Animals."

**DATE:** Comments must be received by February 2, 1987.

**ADDRESS:** Comments should be mailed to the Contracts Management Branch, Division of Grants and Contracts, Public

Health Service, Room 17A–55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Charleen Kelly (Procurement Analyst), (301) 443–2710.

**SUPPLEMENTARY INFORMATION:** The clause entitled "Protection of Human Subjects" is required in all PHS contracts that involve human subjects. The clause entitled "Care of Live Vertebrate Animals" is required in all PHS contracts that involve research on vertebrate animals. Revisions to these clauses are being proposed to clearly indicate that, upon a contracting officer's determination that a contractor is not in compliance with the requirements and standards specified in each clause, the Government has the right to immediately suspend work and further payments under the contract until the noncompliance is corrected; and if it remains uncorrected, the Government has the right to terminate the contract. The proposed revisions to the clauses ensure that contractors performing work involving human subjects and/or research on vertebrate animals will meet the requirements and standards required.

The Department of Health and Human Services certifies that this document will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.); therefore, no regulatory flexibility analysis has been prepared. This proposed rule does not contain information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.).

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

**List of Subjects in 48 CFR Part PHS 352**

Government procurement.

Accordingly, the Department of Health and Human Services proposes to amend 48 CFR Chapter 3, Appendix A, as set forth below.

Dated: December 12, 1986

**Henry G. Kirschenmann, Jr.,**

*Deputy Assistant Secretary for Procurement, Assistance and Logistics.*

As indicated in the preamble, Appendix A to Chapter 3 of Title 48, Code of Federal Regulations, is amended as shown.

**PART PHS 352—[AMENDED]**

1. The authority citation for Part PHS 352 continues to read as follows:

**Authority:** 5 U.S.C. 301; 40 U.S.C. 486(c).

2. In section PHS 352.280–1(b), the contract clause is amended by adding paragraph (c) as follows, and revising the date in the heading of the clause to read "(OCT 1986)":

**PHS 352.280 [Amended]**

* * * * *

(b) * * *

(c) If at any time during performance of this contract, the Contracting Officer determines, in consultation with the Office for Protection from Research Risks (OPRR), National Institutes of Health (NIH), that the Contractor is not in compliance with any of the requirements and/or standards stated in paragraphs (a) and (b), above, the Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract until the Contractor corrects such noncompliance. Notice of the suspension may be communicated by telephone and confirmed in writing. If the Contractor fails to complete the corrective action within the period of time designated in the Contracting Officer's written notice of suspension, the Contracting Officer may, in consultation with OPRR, NIH, terminate this contract in whole or in part, and the Contractor's name may be removed from the list of those Contractors with approved Department of Health and Human Services Human Subject Assurances.

* * * * *

3. In section PHS 352.280–2(b), the contract clause is amended by adding paragraph (d) after paragraph (c) and before the *Note.* as follows, and revising the date in the heading of the clause to read "(OCT 1986)":

**PHS 352.280–2 [Amended]**

* * * * *

(b) * * *

(d) If at any time during performance of this contract, the Contracting Officer determines, in consultation with the Office for Protection from Research Risks (OPRR), National Institutes of Health (NIH), that the Contractor is not in compliance with any of the requirements and/or standards stated in paragraphs (a) through (c), above, the Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract until the Contractor corrects the noncompliance. Notice of the suspension may be communicated by telephone and confirmed in writing. If the Contractor fails to complete corrective action within the period of time designated in the Contracting Officer's written notice of suspension, the Contracting Officer may, in consultation with OPRR, NIH, terminate this contract in whole or in part, and the Contractor's name may be removed from the list of those Contractors with approved Public Health Service Animal Welfare Assurances.

* * * * *

[FR Doc. 86–28255 Filed 12–16–86; 8:45 am]

**BILLING CODE 4160–17–M**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 611 and 685**

**[Docket No. 60964–6226]**

## Foreign Fishing; Pelagic Fisheries of the Western Pacific Region

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

**ACTION:** Proposed rule.

**SUMMARY:** NOAA reissues and requests comments on this proposed rule to implement the conservation and management measures of the proposed Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). The proposed rule was originally published on September 16, 1986, and the FMP was scheduled to be approved on November 13, 1986; however, in view of the comments received on the size of the proposed area closures, the Western Pacific Fishery Management Council (Council), on November 9, 1986, voted unanimously to amend the FMP to limit the size of the area closed to foreign longline vessels until certain criteria are satisfied. This action has made it necessary to resubmit the FMP for further public review and reissue an amended proposed rule. The intended effect of the proposed rule is to maintain the abundance of pelagic resources within the Exclusive Economic Zone (EEZ) to support commercial and recreational fisheries.

**DATE:** Written comments on the proposed rule and supporting documents must be received on or before January 23, 1987.

**ADDRESSES:** Comments on the FMP, the proposed rule, or the supporting documents should be sent to E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

Copies of the FMP, the environmental assessment (EA), and the regulatory impact review (RIR) are available from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808–523–1368.

**FOR FURTHER INFORMATION CONTACT:** Doyle E. Gates (Administrator, Western Pacific Program Office, Southwest Region, NMFS, Honolulu, Hawaii) 808/955–8831; or Svein Fougner (Chief, Fisheries Management and Analysis Branch, Southwest Region, NMFS,

Terminal Island, California) 213/514–6660.

**SUPPLEMENTARY INFORMATION:**

**Background**

The FMP was prepared by the Western Pacific Fishery Management Council (Council) under the authorization of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act). Proposed regulations were published in the **Federal Register** on September 16, 1986 (51 FR 32808) and comments were invited until October 24, 1986. The need for the FMP and a description of the proposed management strategy for conserving the pelagic fisheries were presented in the **Federal Register** on September 16 and are not repeated here. The proposed rule as previously published would have adopted the following management measures: (1) Establish new area closures for foreign longline vessels in the EEZ, (2) eliminate existing quotas on foreign longline catch in the open areas of the EEZ, (3) require foreign longline vessels to submit effort plans and report catch data and fishery interactions with protected species in the EEZ, (4) prohibit the use of drift gill nets in the EEZ, and (5) establish a process to obtain data on the incidental catch of pelagic species in the EEZ by tuna pole-and-line and purse seine vessels.

The above measures still are proposed, but a new measure was submitted for review to the Secretary by the Council on November 9, 1986. This action constitutes an amendment to the FMP and has made it necessary to resubmit the FMP for public comment and Secretarial review and issue a new proposed rule reflecting the required changes.

The new measure approved by the Council retains the non-retention zones of the Preliminary Fishery Management Plan (PMP) until a determination is made by the Regional Director that foreign fishing has resulted or is likely to result in:

(1) Adverse impacts on the catch, effort, gear, or economic performance of domestic vessels in the area(s);

(2) Excessive waste of management unit species in the affected area(s) of the EEZ;

(3) Adverse costs to monitor foreign fishing and enforce the provisions of the FMP if the area(s) remain open; or

(4) Adverse effects on one or more management unit species.

When it is determined that there has been adverse effects from foreign fishing, the determination of the extent of the effect and the action necessary to resolve the problem will be published in the **Federal Register** for a thirty day public review. A non-retention zone in the area of concern may be extended up to the full area closure described in the FMP. The purpose of this provision is to offer foreign longline vessels an opportunity to harvest tuna within the EEZ while retaining the ability to respond to excessive fishing pressure on billfish and other pelagic resources managed by the FMP. The procedure was adopted in view of the fact that foreign longline effort in the EEZ may be highly variable.

*Comments and Responses*

A summary of comments and responses on the FMP and proposed regulations published September 16, 1986, are as follows:

*1. Drift gill netting.* Greenpeace International proposed that the experimental fishing permit authorized by the FMP to allow the use of drift gill nets be prohibited. Greenpeace asserts that drift gill nets are ecologically destructive and that even an experimental fishery using this gear type could serve as the first step in the development of a commercial drift gill net fishery.

NMFS supports the use of an experimental fishing permit for drift gill nets as an effective means to carry out controlled research on new harvest methods. Experimental fishing permits will be available to domestic fishermen only and under specific permit conditions. The use of drift gill nets by foreign vessels in the EEZ is expressly prohibited by the FMP.

*2. Need for the FMP.* The Japan Tuna Association (JTA) questions the overall need for the FMP and argues that the regulations proposed to implement the FMP are more onerous than those now implementing the PMP.

Inasmuch as both the Council and the JTA seek to ease access for foreign longline vessels to the EEZ, it should be noted that the PMP now in place has effectively put a halt to all foreign longline fishing in the EEZ since it went into effect in 1980. The JTA asserts that the FMP will worsen the status quo. On the contrary, the FMP is intended to facilitate access to the EEZ for foreign longline vessels by removing some of the more onerous provisions of the PMP, such as catch quotas and by removing some reporting requirements. Although the FMP establishes new provisions (area closures, effort plans) and leaves others in place, the net effect of the FMP is expected to result in easier access to the EEZ.

In the event that these measures prove unsuccessful, the FMP provides for a full review in five years to evaluate its effectiveness and to consider necessary changes to the management program.

*3. Area closures.* The JTA stated that the area closures established by the FMP are not necessary to prevent gear conflicts and would deny foreign tuna longline vessels a reasonable opportunity to catch tuna in the EEZ. The JTA also notes that there have not been any gear conflicts between U.S. domestic fishermen and foreign tuna longliners under the PMP.

Although there has been no foreign longlining in the EEZ since the PMP went into effect, there is no assurance that this inactivity will continue interminably. It is possible that given the proper circumstances, foreign longline vessels could enter the EEZ in large numbers at any time. With the recent growth in domestic fisheries employing larger vessels with long range capabilities, gear conflicts with foreign longline vessels would pose a serious problem, particularly when such vessels employ longlines 50–60 miles long.

The triggering mechanism proposed by the FMP is necessary to reserve for domestic use those areas of the EEZ most frequented by domestic fishing vessels and to prevent gear conflicts between domestic and foreign fishing vessels operating in the EEZ. The maximum area closures established by the FMP will close off only 25 percent of the EEZ in the western Pacific and leave open to foreign longline vessels the remaining 75 percent of the EEZ. The FMP establishes a proper balance between the need to offer foreign longline vessels a reasonable opportunity to fish for tuna in the EEZ and the need to protect domestic fishery interests.

In view of the fact that the effort expended by longline vessels in the EEZ may be highly variable, the Council has proposed a procedure by which restricted fishing areas are initially small until it is determined that the larger closed areas described in the FMP are necessary. Comments are invited on this new procedure.

*4. Reporting requirements.* The JTA comments that the vessel reporting requirements in the FMP are extremely burdensome and excessively restrictive. JTA states that the filing of a fishing plan two months in advance of entry into the retention zones of the EEZ is unreasonable and unworkable. JTA also notes that the nature of tuna fishing operations requires that longline vessels chase tuna wherever they migrate. In the event that tuna schools enter the EEZ, it would be difficult for vessels to provide seven days advance notice of entry to

the zone. JTA recommends that the reporting requirements be modified to provide for multiple entries and departures from the EEZ without the requirement to file long reports for each entry and departure by the same vessel.

In response to these comments, it should be noted that the vessel reporting requirements of § 611.4 of the Foreign Fishing Regulations require 24 hours advance notice of entry into the EEZ, not seven days. This reporting schedule is clearly more conducive to efficient fishing operations than is the seven day advance notice requirement which exists in the current PMP regulations.

The requirement that foreign longline vessels file effort plans two months prior to entering the EEZ is reasonable and necessary to arrange observer coverage and schedule enforement patrols. Effort plans are required to give expected dates of entry and exit only. The precise dates that fishing will begin and end must be reported to the Coast Guard and NMFS at least 24 hours in advance. These reporting requirements are sufficiently flexible that they should not hinder the operation of foreign longline vessels operating in the EEZ.

*5. Observer requirements.* The JTA asserts that Japanese tuna vessels operating in the EEZ should be exempt from the observer requirements of § 611.8 of the Foreign Fishing Regulations. Foreign longline vessels are subject to observer and other requirements inasmuch as they can reasonably be expected to catch non-tuna species managed by the FMP. The Magnuson Act requires full observer coverage for all foreign vessels fishing in the EEZ. Although the Act authorizes a waiver of this requirement under certain conditions, a blanket waiver for foreign longline vessels is not justifiable. Accordingly, waiver of the observer requirement in foreign longline vessels in the EEZ will be considered only on a case-by-case basis, as would occur under the PMP.

*6. Recordkeeping.* In an effort to simplify the recordkeeping requirements for foreign longline vessels fishing in the EEZ, the recordkeeping requirements described in the proposed regulations published September 16, 1986, are removed in favor of the recordkeeping requirements described in § 611.9 of the Foreign Fishing Regulations. However, to satisfy the data collection needs of the FMP, several data requirements are added at § 611.81(g)(1), in addition to the contents of the daily fishing log described at § 611.9. These additional requirements stipulate that each foreign vessel record for each day (1) the weight and number of each species caught and retained; (2) the number of each species caught and released; (3) the number of each species released alive; and (4) the number of hooks set by type of bait. In addition, the regulations require submission of each vessel's daily catch log to the NMFS Southwest Region Director within 30 days following the completion of fishing.

*7. The U.S. State Department opposed the original FMP.* While recognizing that the Council has resolved many difficult issues, the State Department believes that large area closures are not justified because foreign fishing has not occurred within the EEZ since the Magnuson Act was implemented. Immediate implementation of the area closures is viewed by the State Department as undermining the U.S. international legal position regarding access to tuna stocks by domestic fishermen. In response to this comment, the Council has adopted a new procedure in which non-retention zones may be converted to area closures and expanded as necessary, following a determination by the Regional Director of adverse affects resulting from foreign longline vessels.

*Changes From Proposed Regulations of September 16, 1986*

In § 611.81(g), the requirements for a daily cumulative catch log and quarterly catch report have been removed in favor of the recordkeeping requirements outlined in § 611.9 of the Foreign Fishing Regulations, with the exception of several additional requirements in the contents of the daily fishing log, described at § 611.81(g)(1).

On November 9, 1986, the Council met in Saipan, Commonwealth of the Northern Mariana Islands, and reviewed the comments of the State Department and the Japan Tuna Association. At that meeting, the Council decided to revise the FMP to include an incremental approach to implement its proposed closed areas.

The non-rentention areas of the PMP will remain in effect until adverse impacts result from foreign fishing activity. Closed areas as large as those identified in the FMP can be implemented as needed when criteria established by the Council are met. This change from the original proposed rule, including the criteria to be used, is at § 611.81(i)(2) of the proposed regulations.

*Classification*

Section 304(a)(1)(C)(ii) of the Magnuson Act, as amended, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 30 days of receipt of any amendment to a FMP. At this time the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an environmental assessment as part of the FMP and concluded that there will be no significant impact on the environment as a result of this rule.

The Administrator of NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The present action will not have a cumulative effect on the economy of $100 million or more nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated. The Council prepared a regulatory impact review which concludes that this rule will have the following economic effects.

Domestic fishermen will not be directly affected by the proposed rule but could indirectly benefit from the closure of certain areas in the EEZ to foreign fishing. As a result, the estimated ex-vessel value of commercial fish landings in Hawaii of $17.9 million in 1983 and $29.4 million in 1984 may increase as competition with foreign fishermen in those areas for the management unit species declines. While foreign fishing will be prohibited from certain areas, it is expected that foreign fishermen can recover most if not all losses by relocating in open areas within or outside the EEZ. Foreign fishermen will also benefit from the withdrawal of regulations regarding catch and effort limits on foreign vessels. You may obtain a copy of this review from the address listed above.

This proposed rule is exempt from the review procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 97-453, require the Secretary to publish this proposed rule 30 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a

substantial number of small businesses because the majority of actions in the proposed rule are directed at foreign fishing vessels which are not covered by the Regulatory Flexibility Act. The only action in the proposed rule that affects domestic fishermen directly at this time is the need for fishermen who wish to apply for a permit and to submit information on their operations. At the present time, no domestic drift gill net vessels are operating in the EEZ of the Western Pacific Region, As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0097. Other reporting requirements contained in the rulemaking are approved under OMB Control Numbers 0648–0075 and –0089.

The Council has determined, and the appropriate State and territorial government offices have found, that the measures established in the FMP are consistent to the maximum extent practicable with the approved coastal zone management programs of Hawaii and the territories of American Samoa and Guam.

The Council requested a consultation and biological opinion on the FMP under section 7 of the Endangered Species Act (ESA). NMFS issued a biological opinion on September 17, 1985, which concluded that the FMP is not likely to jeopardize any threatened or endangered species within the FMP's geographical scope. The biological opinion recommended that the FMP provide authority for NMFS to require the submission of reports on fishery interactions with protected species. Reporting requirements to this effect are contained in the proposed rule.

**List of Subjects**

*50 CFR Part 611*

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

*50 CFR Part 685*

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 12, 1986.

**Carmen J. Blondin,**

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

Accordingly, Chapter VI of 50 CFR is proposed to be amended as follows:

**PART 611—[AMENDED]**

1. The authority citation for 50 CFR Part 611 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. Section 611.81 is revised to read as follows:

**§ 611.81 Pacific billfish, oceanic sharks, wahoo, and mahimahi fishery.**

(a) *Purpose*— (1) This section regulates all foreign fishing conducted under a Governing International Fishery Agreement which involves the catching of any species of billfish, oceanic shark, wahoo, or mahimahi (dolphin) in the exclusive economic zone (EEZ) of the United States in the Pacific Ocean, excluding the portion of the EEZ seaward of Alaska.

(b) *Definitions.* For the purposes of this section, these terms have the following meanings:

*Billfish* means broadbill swordfish (*Xiphias gladius*), blue marlin (*Makaira nigricans*), black marlin (*Makaira indica*), striped marlin (*Tetrapturus audax*), sailfish (*Istiophorus platypterus*), and shortbill spearfish (*Tetrapturus angustirostris*).

*Closed area* means that area of the EEZ in which foreign longline vessels subject to this section are prohibited from fishing.

*Drift gill net* means a floating rectangular net with one or more layers of mesh which is set vertically in the water.

*Exclusive economic zone* means the zone established by Presidential Proclamation 5030, dated March 10, 1983, which is a zone contiguous to the territorial sea of the United States.

*Mahimahi* means "dolphin fish" (*Coryphaena hippurus* and *Corypaena equisetis*).

*Non-retention zone* means that area of the EEZ in which all billfish, oceanic sharks, wahoo, mahimahi, and other fish caught by foreign longline vessels in the course of fishing under this section must be returned to the sea in accordance with the requirements of paragraph (k)(5) of this section.

*Oceanic sharks* means sharks of the families Carcharhinidae, Alopiidae, Sphyrnidae, and Lamnidae.

*Regional Director* means the Director of the Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, telephone number: 213–514–6196; or a designee.

*Retention zone* means that area of the EEZ in which foreign longline vessels subject to this section may retain billfish, oceanic sharks, wahoo, and mahimahi to the extent that retention is authorized by this section.

*Wahoo* means fish from the species *Acanthocybium solanderi.*

(c) *Permits.* All foreign longline vessels which intend to fish must have a permit issued under § 611.3.

(d) *Vessel and gear identification.* All permitted vessels subject to this section must comply with the vessel and gear identification requirements of §611.5.

(e) *Observers.* Permitted vessels subject to this section must comply with the observer requirements of §611.8.

(f) *Prohibited species.* The owner or operator of each foreign vessel must minimize its catch or receipt of prohibited species and must report the vessel's activities as prescribed in § 611.11 of the Foreign Fishing Regulations.

(g) *Vessel reporting.* The operator of each foreign fishing vessel must report the vessel's activities as prescribed in § 611.4 and in the formats specified in Appendix B to Subpart A of the Foreign Fishing Regulations.

(h) *Collection and reporting of data.* Permitted vessels subject to this section must comply with the recordkeeping requirements of § 611.9, in addition to the following.

(1) The daily fishing log contents found at § 611.9(e) must contain the following additional information:

(i) The number of each species caught and retained:

(ii) The number of each species caught and released;

(iii) The number of each species released alive; and

(iv) The number of hooks set by type of bait.

(2) Daily fishing logs must be mailed to the Regional Director not later than 30 days following the completion of fishing or must be hand delivered to the NMFS observer aboard the vessel upon his request.

(3) Report of marine mammal and sea turtle incidental catch. Each foreign nation whose permitted vessels fish under this section must submit, through the designated representative, a report of marine mammal and sea turtle incidental catch in the manner prescribed by § 611.4(f)((4) within 60 days of leaving the EEZ in lieu of weekly reports. (Permits issued under this section do not authorize the take and retention of marine mammals and sea turtles in the EEZ).

(4) *Reporting of incidental catch by non-permitted tuna harvesting vessels.* [Reserved].

(i) *Management area groups.* For the purposes of this section, the EEZ of the Pacific Ocean (excluding the EEZ

seaward of Alaska) is divided into two management area groups as follows:

(1) *FMP management area group.* The areas of the EEZ off the coasts of the Hawaiian and Midway Islands, Guam, American Samoa, and U.S. possessions are governed by the provisions of the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) and are designated the FMP Management Area Group.

(2) *PMP management area group.* The areas of the EEZ off the U.S. west coast and the coasts of the Commonwealth of the Northern Mariana Islands are governed by the provisions of the Preliminary Fishery Management Plan for Billfish, Oceanic Sharks, Wahoo, and Mahimahi (PMP) in the Pacific Ocean and are designated the PMP Management Area Group.

(j) *Authorized fishery-FMP Management Area Group.*

(1) *General.* Foreign vessels subject to this section are authorized to fish in the EEZ of the Hawaiian and Midway Islands, Guam, American Samoa, and the U.S. possessions subject to the requirements of this section.

(2) *Zones.* The FMP Management Area Group comprises the following non-retention zones (each of which is measured from the baseline used to measure the U.S. territorial sea) described in Table 1:

TABLE 1.

| Management area | Non-retention zone | Relation zone |
|---|---|---|
| Hawaiian Islands. | (1) Between 12 and 100 miles from the islands of Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, and Oahu of the State of Hawaii.<br>(2) Between 12 and 50 nautical miles from the remaining islands of the State of Hawaii. | (1) Beyond 100 nautical miles from the islands of Hawaii Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, and Oahu of the State of Hawaii.<br>(2) Beyond 50 nautical miles from the remaining islands of the State of Hawaii. |
| Guam | Between 12 and 50 nautical miles from the Guam. | Beyond 50 nautical miles from Guam. |
| American Samoa. | (2) Within a rectangle around the Tutuila and Manua islands of American Samoa bounded by 14° and 15° S. latitude and 168° to 171° W. longitude; and.<br>(1) Within a one degree (1°) square surrounding Swain's Island bounded by 10°33' to 11°33' S. latitude and 170°34' to 171°34' W. longitude. | (1) Areas of the EEZ outside the rectangle bounded by 14° to 15° S. latitude to 170° W. longitude; and 168° to 171° W. longitude; and<br>(2) Areas of the EEZ outside the one-degree (1°) square surrounding Swain's Island. |
| U.S. Possessions. | No foreign fishing is authorized in the EEZ of the Pacific Ocean within 12 nautical miles from the baseline used to measure the U.S. territorial sea. | Beyond 12 nautical miles from shore. |

(3) *Effort plans.* Foreign longline vessels which desire to fish in the fish in the FMP Management Area Group are required to file effort plans two (2) months prior to entering the retention zones of the EEZ for fishing purposes. Effort plans must indicate the dates when fishing is expected to begin and cease and must specify the areas of the EEZ where the vessels intend to operate. Effort plans must be submitted to the Administrator, Western Pacific Program Office, NMFS, 2570 Dole Street, Honolulu, HI 96822, telephone number: 808–955–8831.

(4) *Catch and effort.* There will be no limit on the amount of fishing effort or the catch of billfish, oceanic sharks, mahimahi, and wahoo made by foreign longline vessels in the retention zones described in Table 2 of paragraph (j) of this section.

TABLE 2.

| Management area | Closed area | Retention zone |
|---|---|---|
| Hawaiian Islands. | (1) Within 150 nautical miles of the Main Hawaiian Islands (islands east of 161° W. longitude); and<br>(2) Within 100 nautical miles of the Northwestern Hawaiian Islands including Midway (islands west of 161° W. longitude). | (1) Between 150 and 200 nautical miles off the Main Hawaiian Islands; and<br>(2) Between 100 and 200 nautical miles off the Northwestern Hawaiian Islands |
| Guam [1] | Within 150 nautical miles of Guam. | Between 150 and 200 nautical miles off Guam. |
| American Samoa. | (1) Within a rectangle around the Tutuila and Manua islands of American Samoa bounded by 14° to 15° S. latitude and 168° to 171° W. longitude; and.<br>(2) Within a one-degree (1°) square surrounding Swain's Island bounded by 10°33' to 11°33' S. latitude and 170°34' to 171°35' W. longitude. | (1) Areas of the EEZ outside the rectangle bounded by 14° to 15° S. latitude and 168° to 170° W. longitude; and<br>(2) Areas of the EEZ outside the one-degree (1°) square surrounding Swain's Island. |
| U.S. Possessions. | Within 12 nautical miles of shore. | Between 12 and 200 nautical miles off shore (except Midway Islands). |

[1] The northern boundary of the EEZ off the coast of Guam extends to those points which are equidistant between Guam and the island of Rota in the Commonwealth of the Northern Mariana Islands.

(5) *Determinations.* The Regional Director will determine by the following criteria within 30 days after a request by the Council, whether the zones presented in Table 1 of this section should be converted to closed areas, expanded to larger closed areas, or expanded to the closed areas presented in Table 2 of this section. All or portions of the area closures will be implemented as appropriate when the Regional Director has determined that foreign fishing has resulted in or is likely to result in

(i) Adverse impacts on the catch, effort, gear, or economic performance of domestic vessels in the area(s);

(ii) Excessive waste of management unit species in the affected area(s) of the EEZ;

(iii) Adverse costs to monitor foreign fishing and enforce the provisions of the FMP if the area(s) remains open; or

(iv) Adverse effects on one or more management unit species.

(6) *Factors considered.* Factors that will be considered by the Regional Director in making any determination described in paragraph 5 of this section will include the following:

(i) The current and projected level of domestic fishing and associated catch and landed value of catch in the affected area(s) in the absence of foreign fishing;

(ii) The importance of the area(s) to domestic vessels in terms of catch, effort, catch rates, and landed value of the catch;

(iii) The level of foreign fishing likely to occur if the area(s) were to remain open to foreign fishing;

(iv) The likelihood of gear conflicts or waste of management unit species if foreign fishing were to be permitted; and

(v) Such other factors as the Regional Director determines to be important in making the determination as to area closures.

(7) *Notice of determination.* (i) The Secretary will publish a notice of any proposed determination described in paragraph (j)(5) of this section in the **Federal Register** for public comment, unless the Secretary finds good cause that such notice and public review are impracticable or contrary to the public interest. During the public comment period, the aggregate data upon which the proposed determination is based will be available for public inspection at the Regional Office during business hours.

(ii) If the Secretary determines, for good cause, that a determination described in paragraph (j)(5) of this section must be issued without affording a prior opportunity for public comment, public comments on the notice will be received by the Secretary for a period of 15 days after the effective date of the notice. During any such 15-day period,

the aggregate data upon which the notice was based will be available for public inspection in the office of the Regional Director during business hours.

(iii) Any notice issued under this section will not be effective until 30 days after the publication in the **Federal Register**, unless the Secretary finds and publishes with the notice good cause for an earlier effective date.

(iv) Notices issued under this section will remain in effect until the expiration data stated in the published notice or until rescinded, modified, or superseded.

(v) Nothing contained in this section limits the authority of the Secretary to issue emergency regulations under section 305(e) of the Magnuson Act.

(8) *Drift gill nets.* The use of drift gill nets in the FMP Management Area Group is prohibited.

(k) *Authorized fishery—PMP Management Area Group.*

(1) *General.* Foreign longline vessels subject to this section are authorized to fish in the EEZ of the Northern Mariana Islands and the U.S. west coast beyond 12 miles from the baseline used to measure the U.S. territorial sea, subject to the requirements of this section. Only foreign longline vessels are eligible for permits to fish in the PMP Management Area Group.

(2) *Zones.* The PMP Management Area Group comprises the following non-retention and retention zones (each of which is measured from the baseline used to measure the U.S. territorial sea) described in Table 3:

TABLE 3.

| Management area | Non-retention zone | Retention zone |
|---|---|---|
| West Coast | Between 12 and 100 nautical miles offshore. | Beyond 100 nautical miles. |
| Northern Mariana Islands,[1] Rota, Tinian, Aguijan and Saipan. | Between 12 and 50 nautical miles from Tinian, Aguijan, Rota, and Saipan. | Beyond 50 nautical miles. Beyond 12 nautical miles of the remaining islands Northern of the Mariana Islands. |

Closed areas: Foreign longline vessels subject to paragraph (j) of this section are prohibited from fishing within 12 nautical miles of the U.S. west coast and the Northern Mariana Islands.

[1] The southern boundary of the EEZ off the coast of the Northern Mariana Islands extends to those points which are equidistant between Guam and the island of Rota.

(3) *Total allowable level of foreign fishing (TALFF), joint venture processing (JVP), national allocations, and reserves.*

(i) *TALFF, reserve, and JVP amounts.* The TALFFs, amounts of fish held in reserve, and amounts of JVP are published in the **Federal Register.** Current TALFFs, reserves, and JVPs are also available from the Regional Director.

(ii) *TALFF and national allocations.*

(A) The total amount of each species of billfish, oceanic sharks, wahoo, and mahimahi which may be caught and retained in each area of the PMP Management Area Group by foreign vessels subject to paragraph (k) of this section is limited to the TALFF for each applicable area and to the amount of the applicable national allocation.

(B) No foreign vessels subject to paragraph (k) of this section may catch and retain billfish, oceanic sharks, wahoo, and mahimahi within the non-retention zones set out in the table at paragraph (k)(2) of this section.

(iii) *Determination.*

(A) As soon as practicable after September 1 of each year, and upon receipt of a written request from a foreign nation, the Regional Director, Southwest Region, will determine, for each species for which a reserve has been established, the amount of fish which has been harvested to date by U.S. vessels in each applicable area.

(B) If the Regional Director determines that the amount of fish of a species harvested by vessels of the United States in an area is less than 80 percent of the expected domestic harvest for that species in that area, the Regional Director will apportion to TALFF the entire amount of the reserve for the applicable species in the applicable area. No reserve amounts will be apportioned to TALFF if domestic vessels have harvested 80 percent or more of the expected domestic harvest for that species in the applicable area by the date of this determination.

(iv) *Notice.* The Assistant Administrator for Fisheries, NOAA, will publish in the **Federal Register** a notice of each determination made under paragraph (k)(3)(iii) of this section.

(4) Cancellation of authority to retain.

(i) The authority of a foreign longline vessel to retain an applicable species is cancelled.

(A) When the national allocation for the applicable species is reached; or

(B) At the date and time specified in the notification issued by the Assistant Administrator under paragraph (k)(4)(ii) of this section.

(ii) The Assistant Administrator will determine, on the basis of the information specified in § 611.13, when the TALFF or optimum yield (OY) of a billfish species, oceanic sharks, wahoo, or mahimahi in an area of the PMP Management Area Group will be reached. At least forty-eight hours before the applicable TALFF or OY will be reached, the Assistant Administrator will notify both the affected foreign nation(s) and the designated representative for any affected fishing vessel that authority to retain the applicable species is cancelled.

(iii) Any cancellation under paragraph (k)(4) of this section will remain in effect until a new or increased allocation becomes available.

(iv) The closure provisions of § 611.13 do not apply to foreign longline vessels fishing subject to paragraph (k) of this section.

(5) Prohibited species.

(i) *General.* The following are prohibited species under paragraph (k) of this section.

(A) All species of fish over which the United States exercises exclusive fishery management authority and for which there is no national allocation;

(B) All billfish, oceanic sharks, wahoo, and mahimahi caught in excess of an applicable OY, TALFF, or national allocation; and

(C) All billfish, oceanic sharks, wahoo, and mahimahi caught in a non-retention zone. (See Table 3 at paragraph (k)(2) of this section.)

(ii) *Treatment.* All prohibited species will be treated in accordance with § 611.11.

(iii) *Additional requirements for billfish and oceanic sharks.* Unless otherwise specifically instructed by a U.S. observer or authorized officer, all prohibited billfish and oceanic sharks must be released by cutting the line (or by other appropriate means) without removing the fish from the water.

(iv) *Rebuttal of presumption.* Foreign vessels fishing subject to paragraph (k) of this section may rebut the presumption of § 611.11(d) by

(A) Storing all prohibited species caught outside the EEZ in a separate part of the vessel's hold which can be sealed, and arranging inspection and sealing of the vessel's hold by U.S. authorities before commencing fishing in the EEZ or in non-retention zones; or

(B) Other reasonable means which may be authorized by the Regional Director if, in consultation with the U.S. Coast Guard, the Regional Director determines that special circumstances warrant alternative arrangements.

(v) Procedures for hold sealing.

(A) Inspection and sealing of a foreign vessel's hold may be arranged by contacting the Southwest Region Office, National Marine Fisheries Service, 2570 Dole Street, Honolulu, HI 96822, telephone number: 808–955–8831, at least 48 hours in advance of the date for which inspection is requested.

(B) Ports at which such inspections may be made are Honolulu and Kahului, Hawaii; Agana, Guam; and San Diego, California.

(C) Additional ports for hold inspections may be arranged with the Regional Director.

(vi) Other requirements. The designation of ports for hold inspection and sealing does not modify any port entry arrangements or requirements (if any) of Governing International Fishery Agreements or the notification requirements of any other laws or regulations of the United States.

3. A new Part 685 is added to Chapter VI to read as follows:

## PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

### Subpart A—General Provisions

Sec.



### Subpart B—Management Measures.



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

### Subpart A—General Provisions

#### § 685.1 Purpose and scope.

(a) The regulations in this part govern fishing for billfish and associated species by fishing vessels of the United States in the exclusive economic zone (EEZ) off the coasts of Hawaii, American Samoa, Guam, and the U.S. possessions.

(b) Regulations governing fishing for billfish and associated species by fishing vessels other than vessels of the United States are published at 50 CFR Part 611.

(c) These regulations implement the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) developed by the Western Pacific Regional Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

#### § 685.2 Definitions.

In addition to the definitions in the Magnuson Act, the terms used in this part have the following meanings (some definitions in the Magnuson Act have been repeated here to aid understanding of the regulations):

*Administrator* means the Administrator of the National Oceanic and Atmospheric Administration (NOAA), or a designee.

*Associated species* refers to the following species managed by the FMP:

(a) *Mahimahi* means "dolphin fish" (*Coryphaena hippurus* and *Coryhaena equisetis*);

(b) *Oceanic sharks* means sharks of the families Carcharhinidae, Alopiidae, Sphyrnidae, and Lamnidae; and

(c) *Wahoo* means fish of the species *Acanthocybium solanderi.*

*Authorized officer* means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard.

(b) Any special agent of the National Marine Fisheries Service.

(c) Any officer designated by the Head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

*Billfish* means broadbill swordfish (*Xiphias gladius*), blue marlin (*Makaira nigricans*), black marlin (*Makaira indica*), striped marlin (*Tetrapturus audax*), sailfish (*Istiphorus platypterus*), and shortbill spearfish (*Tetrapturus angustirostris*).

*Drift gill net* means a floating rectangular net with one or more layers of mesh which is set vertically in the water.

*Exclusive economic zone* (EEZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line each point of which is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

*Fishery management area* means the fishery conservation zone off the coasts of Hawaii, American Samoa, Guam, and U.S. possessions in the western Pacific. The outer boundary of the fishery management area north of Guam extends to those points which are equidistant between Guam and the island of Rota in the Commonwealth of the Northern Marina Islands. This definition does not include the EEZ off the coasts of the Commonwealth of the Northern Mariana Islands.

*Fishing* means:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described above.

(e) This term does not include any scientific research activity which is conducted by a scientific research vessel.

*Fishing vessel* means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

*Land* or *landing* means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded.

*Magnuson Act* means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, as amended.

*Maximum sustainable yield* (MSY) means an average over a reasonable length of time of the largest catch which can be taken continuously from a stock.

*Official number* means the documentation number issued by the U.S. Coast Guard or the certificate number issued by a State or by the U.S. Coast Guard for undocumented vessels.

*Operator*, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

*Owner*, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer including but not limited to parties to a management agreement, operation agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by a person described in paragraph (a), (b), or (c) of this definition.

*Person* means any individual (whether or not a citizen or national of the United States), any cooperation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local or foreign government or any entity of any such government.

*Regional Director* means the Southwest Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, or a designee.

*Secretary* means the Secretary of Commerce or designee.

*State* means the State of Hawaii, the Territory of American Samoa, and the Territory of Guam.

*Vessel of the United States* means:

(a) Any vessel documented under chapter 121 of title 46, United States Code;

(b) Any vessel numbered under chapter 123 of title 46, United States Code, an measuring less than 5 net tons;

(c) Any vessel numbered under chapter 123 of title 46, United States Code, and used exclusively for pleasure; and

(d) Any vessel not equipped with propulsion machinery of any kind and not used exclusively for pleasure.

**§ 685.3 Relation to State laws.**

This part recognizes that any State law which pertains to vessels registered under the laws of that State while in the fishery management area, and which is consistent with the FMP including any State landing law, will continue in effect with respect to fishing activities regulated under this part.

**§ 685.4 Reporting requirements.**

This part recognizes that catch and effort data necessary for implementing the FMP are collected by the State of Hawaii, American Samoa, and Guam under existing State data collection programs. No additional Federal reports are required of fishermen or processors as long as the data collection and reporting systems operated by the State agencies continue to provide the Secretary with statistical information adequate for management.

**§ 685.5 Prohibitions.**

(a) It is unlawful for any person to do any of the following:

(1) Possess, have custody or control of, ship or transport, offer for sale, sell, purchase, import or export any billfish or associated species taken, retained, or landed in violation of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;

(2) Refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;

(3) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any inspection or search described in paragraph (a)(2) of this section;

(4) Resist a lawful arrest for any act prohibited by this part;

(5) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this part;

(6) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search conducted in the process of enforcing the Magnuson Act;

(7) Transfer, or attempt to transfer, directly or indirectly, any U.S.-harvested billfish or associated species to any foreign fishing vessel within the EEZ, unless the foreign vessel has been issued a permit which authorizes the receipt of U.S.-harvested fish of the species being transferred;

(8) Fail to comply immediately with enforcement and boarding procedures specified in § 685.6;

(9) Fish for billfish or associated species in violation of any terms or conditions attached to an experimental fishing permit (EFP) issued under § 685.8; or

(10) Fish for billfish or associated species using gear prohibited under § 685.21 or not permitted by an EFP issued under § 685.8.

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any other regulation or permit promulgated under the Magnuson Act.

**§ 685.6 Facilitation of enforcement.**

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF–FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be tansmitted by a flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must—

(1) Guard Channel 16, VHF–FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.— .—)[1] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY–CY" (.–. –.— –.–. –.—) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

[1] Period (.) means a short flash of light and dash (–) means a long flash of light.

(3) "SQ3" (. . .—.– . . .—) means "You should stop or heave to; I am going to board you."

(4) "L" (.–. .) means "You should stop your vessel instantly."

**§ 685.7 Penalties.**

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions prescribed in the Magnuson Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

**§ 685.8 Experimental fishing permits (EFPs).**

(a) *General.* The Secretary may authorize, for limited experimental purposes, the direct or incidental harvest of billfish or associated species managed by the FMP which would otherwise be prohibited by this part. No experimental fishing may be conducted unless authorized by an EFP issued by the Secretary in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Application.* An applicant for an EFP must submit to the Regional Director at least 60 days before the desired effective date of the EFP a written application including, but not limited to, the following information:

(1) The date of the application;

(2) The applicant's name, mailing address, and telephone number;

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP;

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals;

(5) For each vessel to be covered by the EFP:

(i) Vessel name;

(ii) Name, address, and telephone number of owner and master;

(iii) U.S. Coast Guard documentation, State license, or registration number;

(iv) Home port;

(v) Length of vessel;

(vi) Net tonnage; and

(vii) Gross tonnage.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amounts of such harvest necessary to conduct the experiment;

(7) For each vessel covered by the EFP, the approximate times and places fishing will take place, and the type, size, and amount of gear to be used; and

(8) The signature of the applicant.

(c) The Secretary may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(d) *Issuance.* (1) If an application contains all of the required information, the Secretary will publish a notice of receipt of the application in the **Federal Register** with a brief description of the proposal, and will give interested persons an opportunity to comment. The Secretary will also forward copies of the application to the Western Pacific Fishery Management Council, the U.S. Coast Guard, and the fishery management agency of the affected State, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested;

(ii) A citation of the regulation or regulations which, without the EFP, would prohibit the proposed activity; and

(iii) Biologcial information relevant to the proposal.

(2) At a western Pacific Fishery Managment Council meeting following receipt of a complete application, the Secretary will consult with the Council and the Director of the affected State fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (d)(2) of this section, or as soon as practicable thereafter, the Secretary will notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application;

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way;

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose;

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FMP;

(v) The applicant has failed to demonstrate a valid justification for the permit; or

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The decision of the Secretary to grant or deny an EFP is final and unappealable. If the permit is granted, the Secretary will publish a notice in the **Federal Register** describing the experimental fishing to be conducted under the EFP. The Secretary may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:

(i) The maximum amount of each species which can be harvested and landed during the term of the EFP, including trip limits, where appropriate;

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP;

(iii) The times and places where experimental fishing may be conducted;

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP;

(v) The condition that observers be carried aboard vessels operating under an EFP;

(vi) Data reporting requirements; and

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the FMP.

(3) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than one year unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(f) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(g) *Transfer.* EFPs issued under this part are not transferrable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(h) *Inspection.* Any EFP issued under this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(i) *Sanctions.* Failure of the holder of an EFP to comply with the terms and conditions of an EFP, the provisions of

Subpart B of ths part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated thereunder, is grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR Part 904 Subpart D. Other sactions available under the statute will be applicable.

(j) *Protected Species.* Vessels fishing under an EFP are required to report any incidental take or fisheries interaction with protected species on a form provided for that purpose. Reports must be submitted to the Regional Director within 3 days of arriving in port.

## Subpart B—Management Measures

### § 685.21 Prohibition on drift gill netting.

Fishing with draft gill nets in the fishery management area is prohibited, except where authorized by an experimental fishing permit issued under § 685.8 of this part.

### § 685.22 Annual report.

By June 30 of each year, a plan monitoring team appointed by the Council will prepare an annual report on the domestic and foreign fisheries for billfish and associated species in the management area.

### § 685.23 Five-year review.

Within five years of the effective date of this FMP, the Council, in cooperation with the NMFS and State and Territorial agencies, will conduct a full review of the FMP. The review will assess the affectiveness of the FMP in meeting with the Council's objectives and the need for changes in any management measures, including adjustments in area closure to foreign longline fishing and adding data collection or reporting requirements for the domestic fisheries which take billfish and associated species.

[FR Doc. 86-28240 Filed 12-12-86; 3:06 pm]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 51, No. 242
Wednesday, December 17, 1986

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

December 12, 1986.

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, DC 20503,
Attn: Desk Officer for USDA

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

**Extension**

- *Food Safety and Inspection Service*

Regulations Governing Voluntary Reimbursable Inspection Service
MP–86 and MP–225
On occasion
Individuals or households; State or local governments; Businesses or other for-profit; Small businesses or organizations; 31 responses;
7 hours; not applicable under 3504(h)
Roy Purdie, Jr., (202) 447–5372

- *Foreign Agricultural Service*

CFR Part 1493—Regulations Covering CCC's Export Credit Guarantee Program (GSM–102) and CCC's Intermediate Export Credit Guarantee Program (GSM–103)
Recordkeeping; On occasion
Businesses or other for-profit; 3,418 responses; 4,256 hours; not applicable under 3504(h)
L.T. McElvain, (202) 447–6225

- *Foreign Agricultural Service*

Emergency Relief from Duty Free Imports of Perishable Products
On occasion
Farms; Businesses or other for-profits; 7 responses; 126 hours; not applicable under 3504(h)
Richard K. Petges (202) 382–1336

- *National Agricultural Statistics Service*

Livestock Surveys
Weekly; Monthly; Quarterly, Annually
Farms; Businesses or other for-profits; 194,514 responses; 32,031 hours; not applicable under 3504(h)
Larry Gambrell (202) 447–7737

**Revision**

- *National Agricultural Statistics Service*

Milk and Milk Products
Monthly, Quarterly; Annually
Farms; Businesses or other for-profits; 123,226 responses; 15,656 hours; not applicable under 3504(h)
Larry Gambrell (202) 447–7737

**Donald E. Hulcher,**

*Acting Department Clearance Officer.*

[FR Doc. 86–28282 Filed 12–16–86; 8:45 am]

BILLING CODE 3410–01–M

## Soil Conservation Service

### Southeast Bluffs-Block Island RC&D Measure, Rhode Island; Environmental Impact Statement

**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 Qaulity Guidelines (40 CFR Part 1500); and the Soil Conservation Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Southeast Bluffs Block Island RC&D Measure, Washington County, Rhode Island .

**FOR FURTHER INFORMATION CONTACT:** Robert J. Klumpe, State Conservationist, Soil Conservation Service, 46 Quaker Lane, West Warwick, Rhode Island, 02893, telephone (401) 828–1300.

**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 this finding, Robert J. Klumpe, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Southeast Bluffs-Block Island RC&D Measure, Rhode Island Notice of a Finding of No Significant Impact.

The measure concerns a plan for critical area treatment. The planned works of improvement will redirect concentrated runoff to prevent erosion. Conservation practices include a diversion, a grassed waterway, shrub planting, temporary fencing, seeding and mulching.

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. Basic data developed during the environmental assessement are on file and may be reviewed by contacting Robert J. Klumpe

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. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials).

**Robert J. Klumpe,**

Dated: November 24, 1986.

*State Conservationist.*

[FR Doc. 86-28212 Filed 12-6-86; 8:45 am]

BILLING CODE 3410-16-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-351-602]

### Antidumping Duty Order; Certain Carbon Steel Butt-Weld Pipe Fittings From Brazil

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** In an investigation concerning certain carbon-steel butt-weld pipe fittings from Brazil, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that certain carbon steel butt-weld pipe fittings from Brazil are being sold at less than fair value and that imports of this merchandise from Brazil are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of certain carbon steel butt-weld pipe fittings from Brazil made on or after October 24, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register,** will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register.**

**EFFECTIVE DATE:** December 17, 1986.

**FOR FURTHER INFORMATION CONTACT:** Michael Ready or Mary S. Clapp, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Ave., NW. Washington, DC 20230; telephone: (202) 377-2613 or 377-1769, respectively.

**SUPPLEMENTARY INFORMATION:** The products covered by this investigation are carbon steel butt-weld type fittings, other than couplings, under 14 inches in diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, caps, etc., and, if forged, have been advanced after forging. These advancements may include any one or more of the following: Coining, heat treatment, shot blasting, grinding, die stamping or painting. These fittings are currently provided for under item 610.8800 of the *Tariff Schedules of the United States Annotated (TSUSA).*

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on August 4, 1986, the Department preliminarily determined that there was reason to believe or suspect that certain carbon steel butt-weld pipe fittings from Brazil were being sold at less than fair value (51 FR 28733, August 11, 1986). On October 20, 1986, the Department made its final determination that these imports were being sold at less than fair value (51 FR 37770, October 24, 1986).

On December 8, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d), the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e (a)(1), antidumping duties equal to the amount by which the foreign market value of the merchandise subject to the order exceeds the United States price for all entries of such merchandise from Brazil. These antidumping duties will be assessed on all unliquidated entries of such merchandise entered, or withdrawn from warehouse, for consumption on or after August 11, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**

On and after the date of publication of this notice, United States Customs officers must require at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin as noted below:

| Manufacturers/producers/exporters | Weighted average (percent) |
|---|---|
| All Manufacturers/Producers/Exporters | 52.25 |

This determination constitutes an antidumping order with respect to certain carbon steel butt-weld pipe fittings from Brazil, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 86-28261 Filed 12-16-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-605]

### Antidumping Duty Order; Certain Carbon Steel Butt-Weld Pipe Fittings From Taiwan

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** In an investigation concerning certain carbon-steel butt-weld pipe fittings from Taiwan, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that certain carbon steel butt-weld pipe fittings from Taiwan are being sold at less than fair value and that imports of this merchandise from Taiwan are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of certain carbon steel butt-weld pipe fittings from Taiwan made on or after October 24, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register,** will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for

consumption made on or after the date of publication of this antidumping duty order in the **Federal Register.**

**EFFECTIVE DATE:** December 17, 1986.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Ave., NW. Washington, DC 20230; telephone: (202) 377–1769.

**SUPPLEMENTARY INFORMATION:** The products covered by this investigation are carbon steel butt-weld type fittings, other than couplings, under 14 inches in diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, caps, etc., and, if forged, have been advanced after forging. These advancements may include any one or more of the following: coining, heat treatment, shot blasting, grinding, die stamping or painting. These fittings are currently provided for under item 610.8800 of the *Tariff Schedules of the United States Annotated (TSUSA).*

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on August 4, 1986, the Department preliminarily determined that there was reason to believe or suspect that certain carbon steel butt-weld pipe fittings from Taiwan were being sold at less than fair value (51 FR 28735, August 11, 1986). On October 20, 1986, the Department made its final determination that these imports were being sold at less than fair value (51 FR 37772, October 24, 1986).

On December 8, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e (a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise subject to the order exceeds the United States price for all entries of such merchandise from Taiwan. These antidumping duties will be assessed on all unliquidated entries of such merchandise entered, or withdrawn from warehouse, for consumption on or after August 1, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register.**

On and after the date of publication of this notice, United States Customs officers must require at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the esitmated weighted-average antidumping duty margins as noted below:

| Manufacturers/producers/exporters | Weighted-average (percent) |
|---|---|
| Rigid | 6.84 |
| C.M. | 8.57 |
| Gei Bey | 87.30 |
| Chup Hsin | 87.30 |
| All others | 49.46 |

This determination constitutes an antidumping order with respect to certain carbon steel butt-weld pipe fittings from Taiwan, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contract the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 86–28262 Filed 12–16–86; 8:45 am]

**BILLING CODE 3510–DS–M**

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**[A–122–047]**

## Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On October 6, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on elemental sulphur from Canada. The review covers three producers and/or exporters of this merchandise to the United States and the period December 1, 1984 through November 30, 1985.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. The final results of review are unchanged from those presented in the preliminary results.

**EFFECTIVE DATE:** December 17, 1986.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. Fargo or J. Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

**SUPPLEMENTARY INFORMATION:**

### Background

On October 6, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 35541) the preliminary results of its administrative review of the antidumping finding on elemental sulphur from Canada (38 FR 34655, December 17, 1973). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

### Scope of the Review

Imports covered by the review are shipments of elemental sulphur from Canada, currently classifiable under item 415.4500 of the Tariff Schedules of the United States Annotated.

The review covers three producers and/or exporters of Canadian elemental sulphur to the United States and the period December 1, 1984 through November 30, 1985.

### Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. The final results of our review are the same as those presented in the preliminary results of review, and we determine that the following margins exist for the period December 1, 1984 through November 30, 1985:

| Producer/exporter | Margin (percent) |
|---|---|
| Cornwall Chemicals, Ltd. | [1] 3.84 |
| Canadian Reserve Oil & Gas, Ltd | [1] 15.24 |
| Texaco Canada, Inc. (formerly Texaco Canada Resources, Ltd.) | 0 |

[1] No shipments during the period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, the Department will instruct the Customs Service to collect a cash deposit of estimated antidumping duties for each firm based upon the above margins, as provided in section 751(a)(1)

of the Tariff Act. For any shipments from the remaining known producers and/or exporters not covered by this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms (50 FR 37889, September 18, 1985).

For any shipments from a new producer and/or exporter not covered by this or prior administrative reviews, whose first shipments of Canadian elemental sulphur occurred after November 30, 1985 and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Canadian elemental sulphur entered or withdrawan from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: December 11, 1986.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 86-28263 Filed 12-16-86; 8:45 am]

BILLING CODE 3510-DS-M

## CONSUMER PRODUCT SAFETY COMMISSION

### Privacy Act of 1974; Deletion of System of Record

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of deletion.

**SUMMARY:** The Consumer Product Safety Commission is publishng notice of the deletion of a Privacy Act System of Record.

**DATES:** Effective December 17, 1986.

**FOR FURTHER INFORMATION CONTACT:** Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207. Telephone 301-492-6980.

**SUPPLEMENTARY INFORMATION:** The Consumer Product Safety Commission no longer maintains CPSC-4, Consumer Volunteer Roster. All records in this system of records have been destroyed.

Accordingly, the Commission's systems of records are amended by removing and reserving CPSC-4, Consumer Volunteer Roster.

Dated: December 11, 1986.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 86-28247 Filed 12-16-86; 8:45 am]

BILLING CODE 6355-01-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### USAF Scientific Advisory Board; Meeting

December 8, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Air Base Performance will meet at Osan AB, Kunsan AB, and Suwon AB, Korea, at Yokota AB, Misawa AB, and Kadena AB, Japan, and at Hickam AFB HI during the period 12-17 January, 1987.

The purpose of these meetings is to receive briefings on and to discuss factors affecting air base development, performance, and survivability, threats to air bases, basing posture, and logistics.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

**Patsy J. Connner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 86-28204 Filed 12-16-86; 8:45 am]

BILLING CODE 3910-01-M

### Defense Nuclear Agency

### Scientific Advisory Group on Effects (SAGE); Meeting

The Scientific Advisory Group on Effects (SAGE) will meet in closed session January 13 to January 15, 1987 at the Naval Air Station North Island in San Diego, California. Agenda: January 13 to January 15 (0800-1700): Presentations, Discussions and Executive Sessions on Issues Related to DNA Technology supporting the Non-Nuclear Simulation Testing Program. The presentations and discussions in the above cited agenda will focus on current and planned activities of the Defense Nuclear Agency (DNA). Executive sessions will be held for the primary purpose of advising the Director, DNA, as to the adequacy of ongoing and planned activities. All planned presentations, discussions, and executive sessions may include classified defense information; therefore, under the provisions of section 552b(c)(1) and (3), Title 5, U.S.C. this meeting is closed to the public. Any additional information concerning the meeting may be obtained from: LtCol Gary C. Gibson, USAF, Scientific Secretary, SAGE, Headquarters, Defense Nuclear Agency, ATTN: DDST, Washington, DC 20305-1000.

December 11, 1986.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 86-28228 Filed 12-16-86; 8:45 am]

BILLING CODE 3810-01-M

### Department of the Navy

### Intent To Prepare a Draft Environmental Impact Statement Southeast Alaska Acoustic Measurement Facility in Behm Canal, Ketchikan, AK

Pursuant to section (102(2)(c) of the National Environmental Policy Act of 1969 and the Council on Enviornmental Quality Guidelines (40 CFR Part 1500), the U.S. Navy will prepare an Environmental Impact Statement (EIS) for the subject facility. Extensive public scoping was conducted during the initial stages of environmental assessment; therefore, no additional formal scoping is anticipated for preparation of the EIS. The draft EIS is scheduled for release for agency/public review by April 1987.

Questions or comments regarding this notice should be directed to: Director, PACNORWESTBRO WESTNAVFACENGCOM, P.O. Box 2366, Silverdale, WA 98383. Attn: Mr. D. Mark Wells, (206) 467-5777.

Dated: December 11, 1986.

**Howard L. Stoller, Jr.,**

*Commander, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 86-28231 Filed 12-16-86; 8:45 am]

BILLING CODE 3810-AE-M

### Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Automated Submarine Detection will meet on January 15 and 16, 1987, at the U.S. Naval Facility, Bermuda. The meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on January 15 and 16, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review the present undersea surveillance automated submarine detection and classification techniques and capabilities. The agenda will include technical discussions addressing the threat, maritime strategy, and industry overviews of past, present and future automated efforts. These discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classfied pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T. C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: December 2, 1986.

**Harold L. Stoller, Jr.,**

*Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 86-28232 Filed 12-16-86; 8:45 am]

BILLING CODE 3810-AE-M

## Secretary of the Navy's Advisory Board on Education and Training; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app) notice is hereby given that the Secretary of the Navy's Advisory Board on Education and Training (SABET) will meet in Pensacola, Florida, January 13-15, 1987. The meeting will be held in the Management Information Center (MIC) in the Chief of Naval Education and Training headquarters, Building 628.

The purpose of SABET is to advise the Secretary of the Navy on policy concerning all facets of education and training for Navy Marine Corps personnel. During its winter session the Board will review off-duty voluntary education in the Department of the Navy.

The meeting will commence at 1400 on 13 January to review the agenda. Regular sessions will run 14 January from 8:30 to 5:00. The 15 January executive session will commence at 8:30 and terminate at 11:00. All session are open to the public.

For further information concerning this meeting, contact Mrs. Carol Osborn (Code N-51), Professional Assistant to the Principal Civilian Advisor on Education and Training, Chief of Naval Education and Training, Naval Air Station, Pensacola, Florida 32508-5100, telephone (904) 452-4019.

Dated: December 11, 1986.

**Harold L. Stoller,**

*Commander, JAGC, US Navy, Federal Register Liaison Officer.*

[FR Doc. 86-28230 Filed 12-16-86; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF EDUCATION

## Pell Grant Program, Electronic Pilot Project

**AGENCY:** Department of Education.

**ACTION:** Notice of invitation to participate in the Electronic Pilot Project for the Pell Grant Program (Electronic Pilot) for the 1986-87 award year and notice of closing date for submission of requests to participate.

**SUMMARY:** The Secretary invites postsecondary institutions participating in the Pell Grant Program and those financial aid services that process Pell Grant awards for such institutions to participate in the Electronic Pilot Project of the Pell Grant Program (Electronic Pilot) for the 1986-87 award year.

**DATE:** *Closing Date for Requests to Participate:* An institution or financial aid service that did not participate in the Electronic Pilot for the 1985-86 award year that wishes to participate in the Electronic Pilot must submit a request to participate in the Electronic Pilot to the Secretary, with a listing of the computer equipment it currently owns or leases that will be available for use with the Electronic Pilot data exchange network on or before January 16, 1987. At this time, only a limited number of institutions will be selected to participate. An institution or service that participated in the Electronic Pilot in the 1985-86 award year will be automatically considered as applying to participate in the Electronic Pilot for the 1986-87 award year.

**ADDRESSES:** *Documents Delivered by Mail:* Participation requests should be addressed to William Bush, Room 4635, ROB-3, Office of Student Financial Assistance, Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

*Documents Delivered by Hand:* Requests may be delivered by hand to William Bush, Room 4635, ROB-3, [7th and D Streets, SW.], Washington, DC 20202. The Division of Systems Design and Development will accept these hand-delivered documents between 8:00 and 4:30 daily (Washington, D.C. time), except Saturdays, Sundays, and Federal holidays.

Requests will not be accepted after 4:30 p.m. January 16, 1987.

**SUPPLEMENTARY INFORMATION:** In order to receive a Pell Grant award, a student submits a valid Student Aid Report to an institution of higher education participating in the Pell Grant Program. The Student Aid Report is generated by the Secretary based on information that the student reports on his or her financial aid application. The Student Aid Report contains the student's expected family contribution (called the Student Aid Index in the Pell Grant Program) used to calculate the student's Pell Grant award as well as household and financial information for the student's family used to calculate that figure. Frequently, the information on the Student Aid Report must be corrected by the student because of a keypunch error or inaccurate information reported by the applicant. The Electronic Pilot is a project under which Pell Grant applicants correct or verify information contained on their Student Aid Reports through computer facilities. In contrast, students attending institutions that do not participate in the Electronic Pilot must make the corrections directly on their Student Aid Reports and mail the Reports back to the Pell application processing contractor.

To participate in the Electronic Pilot, an institution or financial aid service must have computer and communications equipment that are compatible with the computer and communications equipment used in the Electronic Pilot and must be capable of developing the software necessary to receive, process, and transmit data in formats that will be used in the Electronic Pilot. It could be recognized that for the 1986-87 award year, an institution or financial aid service wishing to participate will share in the overall costs of the Electronic Pilot in proportion to its use of the Electronic Pilot facilities.

Participation in this project by institutions and financial aid services is strictly voluntary.

The Secretary will permit an institution or financial aid service to participate in the Electronic Pilot if it—

1. Uses hardware and software that will allow it to connect to and communication with the Electronic Pilot network. The Electronic Pilot uses the RJE protocols, specifically the RJE

protocols using Binary Synchronous Communications at 2400 and 4800 bits/second. However, the RJE protocols used in the Electronic Pilot also support the IBM Personal Computer (PC) or compatible PC with:

- Minimum of one dual sided diskette with a fixed disk being optional;
- PC-DOS 2.0 or 2.1 or greater, operating system; and
- 1200 baud asynchronous modem and adaptor.

2. Demonstrates capability to become fully operational by no later than January 30, 1987. This capability involves, at a minimum:

- Connecting successfully to the network using ID and password supplied by the Department;
- Retrieving test data from the network;
- Comparing test data retrieved from the network with expected test data, received via tape or hardcopy, confirming its accuracy;
- Notifying the Department that certification is complete; and
- Scheduling start-up of operational processing.

**FOR FURTHER INFORMATION CONTACT:** William Bush or Ross Thaxter, telephone (202) 732-4846.

(20 U.S.C. 1094)

(Catalog of Federal Domestic Assistance No. 84.063, Pell Grant Program)

Dated: December 12, 1986.

**C. Ronald Kimberling,**

*Assistant Secretary.*

[FR Doc. 28285 Filed 12-16-86; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Office of Energy Research

### Health and Environmental Research Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Health and Environmental Research Advisory Committee (HERAC)

Date and time:

January 8, 1987—9:00 a.m.-5:00 p.m.
January 9, 1987—9:00 a.m.-3:00 p.m.

Place: Conference Room at Warren Hall, University of California, 900 Veteran Avenue, Los Angeles, California 90024.

Contact: David A. Smith, Department of Energy, Office of Health and Environmental Research (ER-72), Office of Energy Research, Washington, DC. 20545, Telephone: 301/353-2967.

**Purpose of the Committee**

To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Health and Environmental Research (HER) program.

**Tentative Agenda:**

Briefings and discussions of:

*January 8, 1987*

- Presentations by Staff of the Laboratory of Biomedical and Environmental Sciences, University of California;
- Report from HERAC Subcommittee on Human Genome; and
- Public comment (10 minute rule).

*January 9, 1987*

- Report from HERAC Subcommittee on Biotechnology;
- Report from HERAC Subcommittee on Radiation Biology;
- Report from HERAC Subcommittee on Ecology;
- New Business Discussion; and
- Public comment (10 minute rule).

**Public Participation**

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact David A. Smith at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

**Transcripts**

The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on December 11, 1986.

**J. Robert Franklin,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 86-28235 Filed 12-16-86; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[Project No. 8738-001, Project No. 9822-002, Project No. 9994-000, Project No. 8160-000, Project No. 2086-002, Project No. 8278-002]**

### Availability of Environmental Assessment and Finding of No Significant Impact; Mega Renewables et al.

December 11, 1986.

In the matter of Mega Renewables, Antelope Valley—East Kern Water Agency, City of Banning, Alternate Energy Resources, Inc., Southern California Edison Company, Crystal Springs Hydroelectric Company,

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

| Project No. | Project name | State | Water body | Nearest town or county | Applicant |
|---|---|---|---|---|---|
| | | | **Exemptions** | | |
| 8738-001 | Walker/Digger Hydroelectric. | CA | Digger Creek | Manton | Mega Renewables. |
| 9822-000 | West Feeder Pressure Reducing. | CA | West Feeder Transmission Main. | Quartz Hill | Antelope Valley—East Kern Water Agency. |
| 9994-000 | San Gorgonio | CA | Banning Water Supply | Banning | City of Banning. |
| | | | **Licenses** | | |
| 8160-000 | Lewis Fork Creek | CA | Lewis Fork Creek | Oakhurst | Alternate Energy Resources, Inc. |
| | | | **Amendments** | | |
| 2086-002 | Vermilion Valley Reservoir. | CA | Mono Creek | Fesno | Southern California Edison Company. |
| 8278-002 | Cedar Draw Creek | ID | Cedar Draw Creek | Twin Falls | Crystal Springs Hydroelectric Company. |

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have

significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Division of Public Information, Room 100, 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 86-28216 Filed 12-16-86; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP87-104-000 et al.]**

## Natural Gas Certificate Filings; Northern Natural Gas Co. et al.

December 10, 1986.

Take notice that the followings filing have been made with the Commission:

### 1. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP87-104-000]

Take notice that on November 26, 1986, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87-104-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to construct and operate one delivery point for service to Peoples Natural Gas Company, Division of Utilicorp United Inc. (Peoples), in Dubuque, Iowa, under the certificate issued in Docket No. CP82-401-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct and operate the delivery point in order to deliver up to 265 Mcf on a peak day and 29,213 Mcf annually (in the fifth year of operation) to Peoples, an existing distribution customer. It is stated that Peoples would redeliver the gas to the Peosta Industrial Park, a new customer of Peoples, for commercial and residential end-use. It is further stated that the deliveries would be within Peoples' entitlement from Northern for the Dubuque, Iowa, service area. It is indicated that the total construction cost would be $44,400 and that Peoples would be required to contribute $3,826 in aid of construction.

*Comment date*: January 26, 1987, in accordance with Standard Paragraph G at the end of this notice.

### 2. United Gas Pipe Line Co.

[Docket No. CP87-93-000]

Take notice that on November 25, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP87-93-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to install a 2-inch sales tap under the certificate issued in Docket No. CP82-430-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United requests authorization to install a 2-inch sales tap on its 8-inch LaFourche pipeline in Terrbonne Parish, Louisiana, for the delivery of natural gas to South Coast Gas Co., Inc. (South Coast), for resale in the Bayou Blue, Louisiana, service area. United states that South Coast is experiencing pressure problems on its distribution system serving the community of Bayou Blue, Louisiana. It is stated that installation of the proposed tap would increase the pressure on South Coast's system and thereby eliminate the low pressure problem during periods of high usage by domestic customers of South Coast on its Bayou Blue system. United states that no increase in existing sales are proposed and that no new sales are proposed.

*Comment date*: January 26, 1987, in accordance with Standard Paragraph G at the end of this notice.

### 3. United Gas Pipe Line Co.

[Docket No. CP87-94-000]

Take notice that on November 25, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-94-000 a request pursuant to § 157.205 of the Regulations (18 CFR 157.205) for authorization to construct and operate a 2-inch sales tap for the delivery of gas to Trans Louisiana Gas Company, Inc. (Transla), in Ouachita Parish, Louisiana, under United's blanket certificate issued in Docket No. CP82-430-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the proposed sales tap would enable United to sell and deliver to Transla, the local distributor, an estimated daily volume of natural gas of up to 80 Mcf for resale to residential users in the Many, Lousiana, service area. United states that it is authorized to sell and deliver to Transla all of its natural gas requirements for resale under United's Rate Schedule G-N and that its proposal would not impact Transla's base requirements under United's curtailment plan with no increase in Transla's contractural maximum daily requirement or annual sales volume.

United also states that it has sufficient capacity to render the proposed service without detriment or disadvantage to United's other existing customers and that the proposed tap would be installed in compliance with Part 157, Subpart F, Appendices I and II of the Commission's Regulations.

*Comment date*: January 26, 1987, in accordance with Standard Paragraph G at the end of this notice.

### Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 86-28271 Filed 12-16-86; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP70-7-032 et al.]**

## Natural Gas Certificate Filings; Southern Natural Gas Co. et al.

December 12, 1986.

Take notice that the followings filings have been made with the Commission:

### 1. Southern Natural Gas Co.,

[Docket No. CP70-032]

Take notice that on November 21, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP70-7-032 a petition to amend the order issued October 29, 1969, in Docket No. CP70-7, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize the sale and delivery of natural gas. Southern proposes to decrease the maximum delivery obligation (MDO) of the City of Montevallo, Alabama, and to reallocate the MDO to the City of Alabaster Water Works and Gas Board in Alabaster, Alabama, all as more fully set forth in the petition to amend which is on file

with the Commission and open to public inspection.

Southern states that it is currently authorized to sell and deliver to Montevallo a MDO of 1,581 Mcf of natural gas per day. Montevallo notified Southern on September 30, 1986, that it desires to reduce its MDO to 1,300 Mcf of natural gas per day pursuant to section 13 of the General Terms and Conditions of Southern's FERC Gas Tariff. Section 13 provides that a customer may decrease its contract demand once during any twelve-month period, provided that another customer or customers increase their contract demand(s) without constructing new facilities (other than minor delivery facilities), it is stated.

It is stated that Montevallo has agreed with Alabaster to provide for the transfer of the 281 Mcf reduction in Montevallo's MDO to Alabaster. It is also stated that Alabaster notified Southern on October 7, 1986, that it would assume the 281 Mcf decrease in Montevallo's MDO and increase its MDO from 2,551 Mcf to 2,832 Mcf per day.

Southern states that it can deliver the additional quantities of natural gas to Alabaster with its existing facilities.

*Comment date:* January 2, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**2. Southern Natural Gas Co.,**

[Docket No. CP87–62–000]

Take notice that on November 10, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP87–62–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for four Alabama municipalities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests limited-term authorization to transport natural gas on behalf of Southeast Gas Acquisition and Supply Association, Inc. (SEGAS), acting as agent in arranging for the transportation of natural gas supplies for the Water Works and Gas Board of the town of Ashville, Alabama (Ashville); the Gas Board of the city of Boaz, Alabama (Boaz); the Water Works and Gas Board of the city of Fultondale, Alabama (Fultondale); and the Utilities Board of the city of Trussville, Alabama (Trussville).

Southern states that it has been advised that SEGAS, as agent for Ashville, Boaz, Fultondale and Trussville (collectively referred to as the "Municipalities") has acquired the right to purchase natural gas from Howell Management Company (Howell) pursuant to an April 10, 1986, agreement, in order to serve the end-users' natural gas requirements. Consequently, it is asserted that SEGAS has requested Southern to transport and redeliver said gas to the respective Municipalities.

Southern requests a limited-term certificate authorizing it to transport natural gas on behalf of SEGAS pursuant to an October 9, 1986, transportation agreement between SEGAS, Ashville, and Southern (Ashville agreement); a September 12, 1986, transportation agreement between SEGAS, Boaz, and Southern (Boaz agreement); an October 3, 1986, transportation agreement between SEGAS, Fultondale, and Southern (Fultondale agreement); and an August 27, 1986, transportation agreement between SEGAS, Trussville, and Southern (Trussville agreement). Subject to the receipt of all necessary governmental authorizations, Southern states that it has agreed to transport on an interruptible basis the following maximum daily volumes of natural gas that the Municipalities have arranged through SEGAS to purchase from Howell: up to 3 million Btu equivalent pursuant to the Ashville agreement; up to 2.2 million Btu equivalent MMBtu pursuant to the Boaz agreement; up to 7 million Btu equivalent pursuant to the Fultondale agreement; and up to 15 million Btu equivalent pursuant to the Trussville agreement. Southern requests that the Commission issue it a limited-term certificate for a term expiring one year from the commission's order issuance date.

The agreements state that SEGAS would cause the gas to be delivered to Southern for transportation at the various existing delivery points on Southern's contiguous pipeline system specified in the Exhibit A to each agreement and in Exhibit F to the Application. Southern asserts that it would redeliver to Ashville at the Water Works and Gas Board of the town of Ashville meter station, St. Clair County, Alabama; to Boaz at the Boaz area delivery point as set forth in the Exhibit A to the August 26, 1969, service agreement between Southern and Boaz; to Fultondale at the Fultondale area delivery point as set forth in the Exhibit A to the September 12, 1967, service agreement between Southern and Fultondale; and to Trussville at the Utilities Board of the city of Trussville area delivery point as set forth in the Exhibit A to the September 14 1967, service agreement between Southern and Trussville an equivalent quantity of gas, less 3.25 percent for compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less SEGAS' pro-rata share of any gas delivered for SEGAS's account which is lost or vented for any reason.

SEGAS states that it shall pay Southern each month for performing the transportation services rendered under the Ashville, Boaz, Fultondale agreements a transportation rate of 64.9¢ per MMBtu.

SEGAS asserts that it shall pay Southern each month for performing the transportation services rendered under the Trussville agreement the following transportation rate:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Trussville under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Trussville do not exceed the daily contract demand of Trussville, the transportation rate shall be 39.9¢ per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Trussville under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Trussville exceed the daily contract demand of Trussville, the transportation rate for the excess volumes would be 64.9¢ per MMBtu.

The derivation of the transportation charges is set forth in a schedule filed as part of Exhibit P.

Southern would also collect from SEGAS the GRI surcharge of 1.35¢ per Mcf, or such other GRI funding unit or surcharge as the Commission or other governmental authority may from time to time by order of general or specific applicablity or otherwise prescribe or approve.

Southern states that the transportation arrangement would enable the Municipalities to diversify their natural gas supply sources and to obtain gas at competitive prices.

*Comment date:* January 2, 1987, in accordance with Standard Paragraph F at the end of this notice.

**3. Southern Natural Gas Co.**

[Docket No. CP87–64–000]

Take notice that on November 10, 1986, Southern Natural Gas Company (Southern ), P.O. Box 2563, Birmingham,

Alabama 35202, filed in Docket No. CP87–64–000 an application pursuant to section 7 of the Natural Gas Act for a limited-term certificate of public convenience and necessity with pre-granted abandonment, authorizing the transportation of natural gas for the Marshall County Gas District (Marshall), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport up to 30 billion Btu equivalent of gas per day, on an interruptible basis, for Marshall for a one-year term. It is indicated that Marshall would purchase gas from SNG Trading Inc. (SNG Trading). Southern states that it would receive the gas at various existing points on its system for redelivery of an equivalent quantity to Marshall at the Marshall County Gas District Meter Stations Nos. 1 and 2 located in Etowah and Jefferson Counties, Alabama, respectively. Southern also indicates that a 3.25 percentage of such gas amount would be accounted for compressor fuel and company-use gas including system unaccounted-for gas losses; less shrinkage, fuel or loss from processing; and for loss or vented gas.

Southern proposes to charge Marshall a transportation rate of 39.9 cents per million Btu equivalent where the aggregate of the volumes transported under any and all transportation agreements betweeen Southern and Marshall, when added to the volumes of gas delivered under Southern 's Rate Schedule OCD does not exceed Marshall's daily contract demand from Southern. For these volumes that exceed Marshall's daily contract demand, Southern proposes to charge 64.9 cents per million Btu equivalent. In addition Southern proposes to collect the GRI surcharge of 1.35 cents per Mcf.

Southern states that the proposed transportation arrangement would enable Marshall to diversify its natural gas supply sources and to obtain gas at competitive prices. In addition Southern states that it would obtain take-or-pay relief on all gas that Marshall may obtain from its suppliers.

*Comment date:* January 2, 1987, in accordance with Standard Paragraph F at the end of this notice.

**4. Southern Natural Gas Co.**

[Docket No. CP87–80–000]

Take notice that on November 14, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP87–80–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport on an interruptible basis up to 3 billion Btu of natural gas per day on behalf of the City of Sylvania, Georgia (Sylvania), and up to 4 billion Btu of natural gas per day on behalf of the City of Statesboro, Georgia (Statesboro). Southern proposes to render the transportation for terms expiring one year from the date of the Commission's order issuing the requested authorization.

Southern states that Sylvania and Statesboro would cause gas to be delivered to Southern at various existing points on Southern's pipeline system specified in Exhibit A to the respective transportation agreements. Southern would redeliver to Sylvania at the Sylvania Meter Station, Screven County, Georgia, and to Statesboro at the Statesboro Meter Station, Screven County, Georgia, an equivalent quantity of natural gas less 3.25 percent of such amount which will be deemed as compressor fuel and company-use gas; less any and all shrinkage, fuel or loss resulting from processing gas; and less a pro-rata share of any gas delivered for their account which is lost or vented for any reason, it is explained.

It is stated that Sylvania would pay Southern each month the following transportation rate:

(1) Where the aggregate of the volumes transported and redelivered by Southern on any day to Sylvania under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Sylvania do not exceed the daily contract demand of Sylvania, the transportation rate shall be 48.2¢ per million Btu; and

(2) Where the aggregate of the volumes transported and redelivered by Southern on any day to Sylvania under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Sylvania exceed the daily contract demand of Sylvania, the transportation rate for the excess volumes would be 77.6¢ per million Btu.

It is further stated that Statesboro would pay Southern a transportation rate of 77.6¢ per million Btu of gas delivered. In addition, Sylvania and Statesboro will pay the GRI surcharge of 1.35¢ per million Btu, it is explained.

Southern states that the proposed services would enable Statesboro and Sylvania to diversify their natural gas supply sources and to obtain natural gas at competitive prices. In addition, Southern would obtain take-or-pay relief on all volumes of gas transported, it is explained.

*Comment date:* January 2, 1987, in accordance with Standard Paragraph F at the end of this notice.

**5. Texas Gas Transmission Corp.**

[Docket No. CP87–26–000]

Take notice that on October 15, 1986, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP87–26–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport natural gas for Stand Energy Corporation (Stand Energy), a marketing company, for ultimate delivery to various end-users, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport, on an interruptible basis, natural gas for Stand Energy pursuant to four separate transportation agreements. It is stated that the gas would be received by Texas Gas at various points of receipt on the Texas Gas system where Stand Energy purchases gas from various producers. It is further stated that the gas would then be transported by Texas Gas and delivered under these four agreements to: (1) The Cincinnati Gas & Electric Company (CG&E) at its interconnection with Texas Gas in Butler County, Ohio, and Columbia Gas Transmission Corporation (Columbia) at its interconnection with Texas Gas near Lebanon, Ohio (volume of up to 31.2 billion Btu equivalent per day);[1] (2) Memphis Light, Gas and Water Division at its interconnection with Texas Gas in Shelby County, Tennessee (volume of up to 400 MMBtu equivalent per day); (3) the City of Murray, Kentucky, at its interconnection with Texas Gas near Mayfield, Kentucky (volume of up to 100 MMBtu equivalent per day); and (4) Western Kentucky Gas Company at its interconnection with Texas Gas near Bowling Green, Kentucky (volume of up to 150 MMBtu equivalent per day). It is stated that the proposed transportation service would allow Stand Energy to move low-cost natural gas to end-use

[1] By letter dated December 3, 1986, Stand Energy has indicated that the volume of gas to be delivered to CG&E and Columbia would be up to 10.9 billion Btu equivalent per day not the 31,200 MMBtu equivalent stated in the application.

customers located behind the various utility companies to which Texas Gas would deliver gas under the four agreements (See appendix for list of these end-users).

Texas Gas also requests flexible authority to add additional points of receipt as Stand Energy has indicated it may be purchasing gas at other locations on the Texas Gas system in the future.

Texas Gas proposes to charge the applicable transportation rate for service under all four agreements as shown on Second Revised Sheet No. 11, on file in Texas Gas' FERC Gas Tariff, Original Volume No. 1 ("T") Rate Schedule. Texas Gas states that the term of the transportation agreement is for a period of five years, and from year to year thereafter.

| Pipeline | LDC | End-User | Location | Volume (MMBtu) |
|---|---|---|---|---|
| Zone 1: Texas Gas Transmission | Memphis Light Gas & Water | The Kroger Co. | Memphis, TN | 400 |
| Zone 2: Texas Gas Transmission | Murray Public Works | The Kroger Co. | Murray, KY | 100 |
| Zone 3: Texas Gas Transmission | Western Kentucky Gas Co. | The Kroger Co. | Bowling Green, KY | 150 |
| Zone 4: | | | | |
| Texas Gas Transmission | Cincinnati Gas & Electric | The Kroger Co. | Cincinnati, OH | 1,000 |
| Texas Gas Transmission | Cincinnati Gas & Electric | The Kroger Co. | Cincinnati, OH | 1,000 |
| Texas Gas Transmission | Cincinnati Gas & Electric | United Services Co. | Cincinnati, OH | 200 |
| Columbia Gas Transmission | Columbia Gas of Kentucky | The Kroger Co. | Winchester, KY | 200 |
| Columbia Gas Transmission | Columbia Gas of Ohio | The Kroger Co. | Columbus, OH | 1,000 |
| Columbia Gas Transmission | National Gas & Oil | The Kroger Co. | Newark, OH | 500 |
| Columbia Gas Transmission | Columbia Gas of Pennsylvania | Washington Steel | Washington, PA | 2,000 |
| Columbia Gas Transmission | New York State Electric & Gas | Diamond Bathurst, Inc. | Elmira, NY | 5,000 |
| Total | | | | 11,550 |

*Comment date:* January 2, 1987, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraph**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to beome a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedures, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-28272 Filed 12-16-86; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. QF84-377-001 et al.]**

## Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; AEM Corp., et al.

December 11, 1986.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

### 1. AEM Corp.

[Docket No. QF84-377-001]

On November 28, 1986, AEM Corp. (Applicant), of 1445 Palisades Drive, Pacific Palisades, California 90272 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The cogeneration facility was originally certified as a qualifying 30.75 megawatts facility on December 11, 1984, (Docket No QF84-377-000, 29 FERC ¶ 62,254 (1984)). The application for recertification requests the change in location of the facility. The new location of the facility will be approximately 7 miles from the initially proposed mine site at Colestrip, Montana. All other details and descriptions of the facility described in the original application remain the same.

### 2. Bound Brook Cogeneration Partnership

[Docket No. QF87-94-000]

On November 21, 1986, Bound Brook Cogeneration Partnership (Applicant), c/o Community Energy Alternatives, 1200 E. Ridgewood Avenue, Ridgewood, New Jersey 07450, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the site of Georgia Gulf's chemical plant in Bound Brook, New Jersey. The facility will consist of two combustion turbine-generators, heat recovery steam generators and an extraction/condensing steam turbine generator. The steam extracted will be used for process in Georgia Gulf's phenol plant. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be 74.5 MW. Installation is expected to begin in the second quarter of 1988.

### 3. CH Cogeneration Limited Partnership

[Docket No. QF87-111-000]

On December 1, 1986, CH Cogeneration Limited Partnership (Applicant), of 25 Eagle Street, Albany, New York 12207, submitted for filing an application for certification of a facility

as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Montgomery, New York. The facility will consist of a combustion turbine generating unit with a waste heat recovery steam generator, and an extraction/condensing turbine generating unit. Steam produced will be used for cooking, heating and cooling by a food processor or heating, drying and pelletizing in a manufacturing process. The electric power production capacity of the facility will be 79 MW. The primary energy source will be natural gas. Installation of the facility will begin in 1987.

**4. Crouse Recovery of Delaware, Inc.**

[Docket No. QF83-332-002]

On November 17, 1986, Crouse Recovery of Delaware, Inc. (Applicant), of Upper Lewis Road, Linfield, Pennsylvania 19468, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility was originally granted by operation of law pursuant to §292.207(b)(5) of the Commission's regulations as a qualifying 13.8 megawatts facility on May 21, 1984, (Docket No. QF83-332-001). The application for recertification requests the change in Applicant's name and size of the electric power production capacity of the facility. Applicant requests that the certification be issued in the name of Crouse Recovery of Delaware, Inc. (the original application was in the name of The Crouse Group), and the electric power production capacity of the facility be increased from 13.8 MW to 19.0 MW. All other details and descriptions of the facility described in the original application remain the same.

**5. Cumberland Cogen Associates**

[Docket No. QF87-108-000]

On November 26, 1986 Cumberland Cogen Associates (Applicant), of 187 Mountain Avenue, Summit, New Jersey 07901, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogneration facility will be located in Vineland, New Jersey and will consist of a combustion turbine generator, a heat recovery steam generator, and an extraction/condensing steam turbine generator. The thermal energy in the form of steam will be used for space heating and cooling of buildings and for drying and heating in an industrial process. The electric power production capacity of the facility will be 99 MW. Installation will begin in 1987.

**6. Texaco Producing Inc.**

[Docket No. QF87-107-000]

On November 26, 1986 Texaco Producing Inc. (Applicant), of P.O. Box 10269, Bakersfield, California 93389 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the Coalinga Field, Fresno County, California. The facility will consist of a combustion turbine-generator and a heat recovery steam generator (HRSG). Steam recovered from the HRSG will be used for enhanced oil recovery in the Coalinga field. The primary energy source for the facility will be natural gas. The maximum electric power production capacity of the facility will be 24.5 MW. Installation is expected to be completed by July 1988.

**7. VP Cogen. Ltd.**

[Docket No. QF87-102-000]

On November 24, 1986, VP Cogen. Ltd. (Applicant), of 58 West 88th Street, New York, New York 10024, submitted for filing an application for certification of a facility was a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Loudoun County, near Leesburg, Virginia. The facility will consist of a combustion turbine generating unit with a waste heat recovery steam generator, and an extraction/condensing turbine generating unit. Steam produced will be used for drying aggregate in an asphalt plant and heating and cooling office office buildings. The electric power production capacity of the facility will be 240 MW. The primary energy source will be natural gas with No. 2 oil as back-up fuel. Installation of the facility will begin in 1987.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-28274 Filed 12-16-86; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA87-1-1-000 001]**

## Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

December 9, 1986.

Take notice that on December 1, 1986, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Twelfth Revised Sheet No. 4
Fifth Revised Sheet No. 5

These tariff sheets are proposed to become effective January 1, 1987. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers. Alabama-Tennessee states that the changes in its rates have been made in conformity with the PGA and related provisions of its tariff.

Alabama-Tennessee has requested any necessary waivers of the Commission's regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure. All such

motions or protests should be filed on or before December 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 86-28219 Filed 12-16-86; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP85-183-002]

## Algonquin Gas Transmission Co.; Petition of Algonquin Gas Transmission Co. for Extension of Authority To Flow Through Direct Billed Order No. 94 Costs

December 11, 1986.

Take notice that on December 5, 1986, Algonquin Gas Transmission Company (Algonquin Gas) petitioned the Federal Energy Regulatory Commission (Commission) to extend until September 30, 1987, its authority to flow through to its customers any direct billed charges that Algonquin Gas may be required to pay to its pipeline suppliers as a result of retroactive payments for production-related costs incurred by such suppliers. Algonquin Gas notes that its petition is made in light of the November 12, 1986 filing, in Docket No. RP85-170-003, by Texas Eastern Transmission Corporation (Texas Eastern) of a petition for authority to extend until September 30, 1987 its authority to direct bill Algonquin Gas (and others) for certain Order No. 94 costs.

As more fully set forth in its petition, Algonquin Gas proposes to flow through charges from Texas Eastern based on its customers' actual purchases during the retroactive period under rate schedules where the gas supply comes from Texas Eastern. Algonquin Gas requests any necessary waivers of the Commission's Regulations to effect extension of the present authority to flow through such direct billings.

Algonquin Gas submits that its proposal will avoid raising current rates and that the use of actual past purchases will more closely match cost incurrence with cost responsibility. Copies of this petition have been served upon affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should filed a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 19, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 86-28275 Filed 12-16-86; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP87-25-000]

## ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 9, 1986.

Take notice that on December 1, 1986, pursuant to section 4 of the Natural Gas Act and Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations thereunder. ANR Pipeline Company ("ANR") tendered for filing with the Commission Third Revised Sheet No. 570 of its F.E.R.C. Gas Tariff, Original Volume No. 2, with an effective date of January 1, 1987.

Third Revised Sheet No. 570 reflects a net decrease of $28,883, in the monthly charge paid by the High Island Offshore System ("HIOS") to ANR pursuant to Rate Schedule X-64 under Original Volume No. 2 of ANR's F.E.R.C. Gas Tariff. Rate Schedule X-64 is a Service Agreement dated August 4, 1977 between ANR and HIOS. Under the terms of this Service Agreement, which was approved by Commission Order issued July 6, 1978 at Docket No. CP78-134, ANR provides certain gas measurement and related services for HIOS.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before December 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 86-28220 Filed 12-16-86; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. ID-2253-000]

## Daniel A. Burkhardt; Application

December 12, 1986.

Take notice that on December 5, 1986, Daniel A. Burkhardt filed with the Commission an application for authority under section 305(b) of the Federal Power Act to hold the following interlocking positions: Director of a public utility (St. Joseph Light & Power Company), and General Partner and Co-Manager of the Investment Banking Department of a firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility (Edward D. Jones & Company).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 29, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 86-28276 Filed 12-16-86; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. CP87-49-001 and CP87-50-001]

## Distrigas of Massachusetts Corp. and Cabot Enegy Supply Corp.; Compliance Filing

December 11, 1986.

Take notice that on December 5, 1986, Distrigas of Massachusetts Corporation (DOMAC) and Cabot Energy Supply Corporation filed in Docket Nos. CP87-49-001 and CP87-50-001, respectively, a

joint filing showing the recalculation of DOMAC's Rate Schedule WS rate and the calculation of revenue credits pursuant to Ordering Paragraphs (B) (1) and (2) of the Commission's November 30, 1986 order authorizing the sale of approximately 1,350,000 MMBtu of imported liquefied natural gas (LNG) (37 FERC ¶ 61,145), all as more fully set forth in the compliance filing which is on file with the Commission and open to public inspection.

DOMAC states that it has recalculated the Rate Schedule WS rate in compliance with Ordering Paragraphs (B) (1) and (2) of the Commission's November 20, 1986 order. DOMAC states that the recalculated fuel loss and use surcharge would be approximately 27.63 cents per MMBtu; subject to recalculation upon receipt of the LNG expected in late December 1986, as required by Ordering Paragraph (B)(1)(a). DOMAC states that the terminalling charge would be 48.70 cents per MMBtu. DOMAC estimates that the recalculated Rate Schedule WS rate would total approximately $4.7534 per MMBtu.

DOMAC further states that the terminalling revenues collected under Rate Schedule WS estimated to total $657,450, would be credited to DOMAC's Rate Schedule TS–1 customers as shown on Schedule 3, attached to its December 5, 1986 report.

Any person desiring to be heard or to make any protest with reference to said compliance filing should on or before December 18, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86–28277 Filed 12–16–86; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA87–2–33–000, 001]**

## El Paso Natural Gas Co.; Tariff Filing

December 11, 1986.

Take notice that on December 1, 1986, El Paso Natural Gas Company (El Paso) tendered for filing, pursuant to the Commission's Opinion No. 252 which issued September 29, 1986 in *Gas Research Institute,* Docket No. RP86–117–000, the following tariff sheets to its FERC Gas Tariff:

*First Revised Volume No. 1*

Eleventh Revised Sheet No. 100

*Original Volume No. 1–A*

Substitute First Revised Sheet No. 19
Substitute Second Revised Sheet No. 20

*Third Revised Volume No. 2*

Thirty-sixth Revised Sheet No. 1–D
Substitute Seventeenth Revised Sheet No. 1–D.2

*Original Volume No. 2A*

Thirty-eighth Revised Sheet No. 1–C.

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until December 5, 1986.

El Paso states that the tendered tariff sheets, when accepted and permitted to become effective, will increase the Gas Research Institute funding unit adjustment component of its rates for certain sales and transportation services from the currently effective 1.28¢ per dth (1.35¢ per Mcf) to the 1.44¢ per dth (1.52¢ per Mcf) authorized to be collected by jurisdictional members of the Gas Research Institute by said Commission Opinion No. 252. El Paso requests that the tendered tariff sheets be accepted and permitted to become effective January 1, 1987, as provided for in Opinion No. 252.

Copies of this filing were served upon El Paso's interstate pipeline system customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before December 18, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86–28278 Filed 12–16–86; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP86–99–001]**

## Granite State Gas Transmission, Inc.; Proposed Changes in Rates

December 9, 1986.

Take notice that on December 1, 1986, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates and certain tariff provisions for effectiveness on December 1, 1986:

Substitute Seventeenth Revised Sheet No. 7
Substitute Second Revised Sheet No. 11
Substitute Fourth Revised Sheet No. 68
Substitute Third Revised Sheet No. 70
Substitute Second Revised Sheet No. 71
Substitute Third Revised Sheet No. 75
Substitute First Revised Sheet No. 75–A
Substitute First Revised Sheet No. 82
Substitute Original Sheet No. 116

According to Granite State, the proposed rate adjustments and tariff changes are to be made effective, subject to refund, in Docket No. RP86–99–000. Granite State further states that it filed a general rate increase pursuant to section 4 of the Natural Gas Act on May 30, 1986 which was suspended and set for a hearing in an order issued by the Commission on June 27, 1986. It is stated that a settlement in principle has been reached in the proceeding but the settlement documents have not yet been filed and that the record closing date has been extended to December 31, 1986 by order of the Chief Administrative Law Judge.

According to Granite State, the revised Base Tariff Rates on Substitute Seventeenth Revised Sheet No. 7 adjust the suspended Base Tariff Rates on Seventeenth Revised Sheet No. 7 to reflect accumulated changes in Granite State's current cost of gas since the initial filing on May 30, 1986, in accordance with the Commission's order of June 27, 1986. Further, it is stated that the proposed rates in the initial filing were derived according to the Modified Fixed Variable (MFV) methodology and the remaining tariff sheets are submitted to reflect the changes in Granite State's rate schedules and the General Terms and Conditions of its tariff to implement the MFV rate design.

Granite State further states that it is concurrently filing a motion pursuant to section 4(e) of the Natural Gas Act and § 154.67 of the Commission's Regulations to make the proposed changes in rates and tariff provisions

effective December 1, 1986, subject to refund.

According to Granite State, copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-28221 Filed 12-16-86; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA87-2-4-000 and 001]**

## Granite State Gas Transmission, Inc.; Proposed Changes in Rates

December 9, 1986.

Take notice that on December 2, 1986, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness on January 1, 1987:

Eighteenth Revised Sheet No. 7
Tenth Revised Sheet No. 9

According to Granite State, the filing is made pursuant to the purchased gas cost adjustment provision in Section XIX of the General Terms and Conditions of its tariff. Granite State further states that the instant rate adjustments reflect changes in the cost of purchased gas at suppliers' rates that will be effective January 1, 1987 and the amortization of Unrecovered Purchased Gas Costs.

Granite State further states that its proposed rates are applicable to wholesale sales to its two affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc. According to Granite State, the effect of the proposed rates in its filing is a decrease of approximately $1,540,364 annually in its rates for sales to Bay State and $805,785 annually for sales to Northern Utilities.

According to Granite State, copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-28223 Filed 12-16-86; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP85-135-001]**

## Pacific Interstate Offshore Co.; Tariff Filing

December 12, 1986.

Take notice that on December 8, 1986, Pacific Interstate Offshore Company (PIOC) tendered for filing Fifth Revised Sheet No. 4 to its FERC Gas Tariff, Original Volume No. 1, in accordance with the Commission's September 30, 1985, order approving an uncontested Stipulation and Agreement in Docket No. RP85-135-000, by which PIOC agreed to reflect change in the current statutory Federal income tax rates during the term of the Stipulation and Agreement. On October 22, 1986, the Tax Reform Act of 1986 (Pub. L. 99-514) was enacted. Under the terms of the Stipulation and Agreement, PIOC must file new tariff sheets to reflect the effect of the reduction in the Federal tax rates. The overall reduction equates to a new rate of 17.132 cents per Mcf down from the currently effective rate of 17.575 cents per Mcf.

PIOC requests any waivers of the Commission's regulations necessary so that the filed tariff sheet may become effective January 1, 1987. Copies of this filing were served upon the Southern California Gas Company and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 19, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-28279 Filed 12-16-86; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CI87-141-000 et al.]**

## Tenneco Oil Co., et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

December 12, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 29, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

| Docket No. and date filed | Applicant | Purchaser and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| CI87-141-000 (CI62-1253), B, Nov. 25, 1986. | Tenneco Oil Co., P.O. Box 2511, Houston, TX 77001 | ARKLA Resources Co., Centrhoma Field, Coal County, OK. | (1) | |
| CI84-544-001, D, Nov. 25, 1986 | Phillips Petroleum Co., 336 HS&L Building, Bartlesville, OK 74004. | United Gas Pipe Line Co., Crescent Farms Field, Terrebonne Parish, LA. | (2) | |
| CI87-151-000 (CI77-472), B, Dec. 2, 1986. | Mesa Operating Ltd., Partnership, P.O. Box 2009, Amarillo, TX 79189-2009. | Northern Natural Gas Company, Division of Enron Corp., Undesignated Field, Clark County, KS. | (3) | |
| CI87-150-000, B, Nov. 28, 1986 | W.C. Payne, 800 United Founders Tower, 5900 Mosteller Drive, Oklahoma City, OK 73112. | Panhandle Eastern Pipeline Co., Domby West Field, Texas County, OK. | (4) | |
| CI82-79-001, B, Dec. 1, 1986 | TXO Production Corp., First City Center, 1700 Pacific Avenue, Dallas, TX 75201. | Northern Natural Gas Company GMK (Yates) Field, Gaines County, TX. | (5) | |
| CI72-660-002, D, Dec. 4, 1986 | Conoco Inc., P.O. Box 2197, Houston, TX 77252 | Tennessee Gas Pipeline Co., a Division of Tenneco Inc., Sarco Creek Field, Goliad County, TX. | (6) | |
| CI81-353-002, D, Dec. 8, 1986 | Cities Service Oil and Gas Corp., P.O. Box 300, Tulsa, OK 74102. | Sea Robin Pipeline Co., OCS Lease No. G-2879, South Marsh Island, Block 112, Offshore LA. | (7) | |
| G-14569-001, D, Dec. 4, 1986 | Sohio Petroleum Co., aka, Standard Oil Production Co., P.O. Box 4587, Houston, TX 77210. | Texas Gas Transmission Corp., Ramos Field, St. Mary's Parish, LA. | (8) | |
| CI67-209-000, D, Dec. 8, 1986 | ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221. | Arkansas Louisiana Gas Co., Hartshorne Area, Pittsburg County, OK. | (9) | |
| CI87-161-000 (G-12308), B, Nov. 28, 1986. | do | Transcontinental Gas Pipe Line Corp., Gueydan Field, Vermilion Parish, LA. | (10) | |
| CI87-162-000 (CI68-197), B, Nov. 28, 1986. | do | Southern Natural Gas Co., Bayou Gentilly Field, Plaquemines Parish, LA. | (11) | |
| CI87-143-000, B, Nov. 26, 1986 | IMC Exploration Co., P.O. Box 55583, Houston, TX 77255-5583. | United Gas Pipe Line Co., South Houma Field, and Chauvin Field, Terrebonne Parish, LA. | (12) | |
| CI86-543-001, F, Nov. 28, 1986 | Mobil Oil Corp. (Succ. in Interest to Minnie M. Duncan & Flo D. Duncan), Nine Greenway Plaza—Suite 2700, Houston, TX 77046. | Colorado Interstate Gas Corp., Certain acreage in Finney County, KS. | (13) | |
| CI67-1827-000, Dec. 1, 1986 | Kerr-McGee Corp., Kerr-McGee Center, Oklahoma City, OK 73125. | Texas Gas Transmission Corp., Cartwright and Calhoun Fields, Jackson Parish, LA. | (14) | |
| CI67-1834-000, Dec. 1, 1986 | do | Texas Gas Transmission Corp., Cartwright, Calhoun and Treemont Fields, Lincoln, Quachita and Jackson Parishes, LA. | (15) | |
| CI67-1835-000, Dec. 1, 1986 | do | Texas Gas Transmission Corp., Cheniere Field, Jackson and Quachita Parishes, LA. | (14) | |
| CI78-1005-001, Dec. 9, 1986 | Phillips Petroleum Co., 336 HS&L Building, Bartlesville, OK 74004. | United Gas Pipe Line Co., Waveland Field, Hancock County, MS. | (15) | |
| CI87-137-000 (CI78-1039), B, Nov. 24, 1986. | ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221. | El Paso Natural Gas Co., Olivia Spencer Gas Unit #1, Schleicher County, TX. | (16) | |

[1] Assignment of all dedicated leases; Tenneco no longer has an interest in the acreage.
[2] Applicant has assigned all its interest to DAC Oil Corporation by assignment effective 12-31-85 and executed on 12-27-85.
[3] Production ceased and depletion of reserves.
[4] The well is depleted.
[5] All wells under the contract and rate schedule are subject to jurisdiction under the NGPA.
[6] Surrender of acreage back to the lessor(s).
[7] OCS Lease No. 2879 expired on 1-24-85.
[8] Last well on lease.
[9] Partial Assignment executed 8-30-82 of certain acreage to Whitmar Exploration Company.
[10] The primary term of the contract expired 9-3-77. ARCO does retain certain deep rights but no further development is planned. Transco has advised that they wish to terminate the contract effective 9-3-86.
[11] By Assignment of Oil, Gas, and Mineral Leases, dated 6-1-86, Applicant assigned to TXO Production Corporation certain acreage in Bayou Gentilly Field, Plaquemines Parish, Louisiana. ARCO retained no deep rights and any WI conversion rights went to the purchaser.
[12] Contracts expired; purchaser no longer wants gas.
[13] Applicant has acquired certain interests in Finney County, Kansas, from Minnie M. Duncan and Flo D. Duncan by Assignments dated 12-27-85, to be effective 12-1-85.
[14] Applicant is filing for a change in delivery point.
[15] Phillips Petroleum Company has assigned all its interest to Texas Crude Exploration, Inc. effective 7-1-86.
[16] ARCO has assigned all its remaining interests to Bill J. Graham Oil and Gas effective 8-21-86.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment do add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-28273 Filed 12-16-86; 8:45 am]
BILLING CODE 6717-01-M

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**[Docket No. RP87-26-000**

## Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Tariff Filing and Rate Changes

December 11, 1986.

Take notice that on December 8, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing Second Revised Volume No. 1 to its FERC Gas Tariff to be effective December 10, 1986.

Tennessee states that this filing is made concurrently with its abbreviated application for a blanket transportation certificate authorizing Tennessee to transport gas on behalf of others pursuant to the terms of the Commission Order Nos. 436 *et al.* Further, Tennessee states that Second Revised Volume No. 1 includes new Rate Schedules FT-A and FT-B applicable to firm transportation service, revised Rate Schedule IT applicable to interruptible transportation service, and revised operating conditions providing for scheduling of transportation services on a first come/first served basis. Although not required by Order Nos. 436, *et al.*, Tennessee has also revised its Rate Schedules G and GS to provide that those customers may receive transportation service under Rates Schedules IT, FT-A and/or FT-B. Tennessee also states that this filing in no way affects the ongoing proceeding in Docket No. RP86-119 concerning direct billing of take or pay costs.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before December 18, 1986. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-28280 Filed 12-16-86; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP84-429-025]**

## Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 11, 1986.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 3, 1986 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in Appendix A.

Texas Eastern filed on October 2, 1986, tariff sheets in Docket No. CP84-429-022 pursuant to the May 2, 1985 Joint Offer of Settlement (Settlement) in Docket No. CP84-429 and the August 1, 1986 Commission order in Docket No. CP84-429-015. Such tariff sheets reflected *inter alia* the then comtemplated implementation as of November 1, 1986 of the remaining 80,000 dth per day increase of the 1986 Contract Adjustment Program (1986 Program) all as more fully described in the Settlement and the August 1, 1986 Commission order. By Commission order issued October 29, 1986 in Docket No. CP84-429-022, the aforementioned tariff sheets were approved to be effective November 1, 1986.

Subsequent to the October 2, 1986 filing, Texas Eastern encountered unavoidable delays in the construction of the facilities required to implement the 1986 Program as of November 1, 1986. Accordingly, Texas Eastern filed on November 7, 1986 tariff sheets in Docket No. CP84-429-023 reinstating as of November 1, 1986 for the affected participants their respective billing determinants, rates and sales entitlements at the 1985 Contract Adjustment Program levels which were in effect prior to the October 2, 1986 tariff filing. Also, such November 7, 1986 filing deleted rates for Rate Schedule CTS.

Texas Eastern by the filing of the tariff sheets listed in Appendix A attached hereto, proposes to implement as of December 4, 1986 for the affected participants in Docket No. CP84-429 *et al.*, Contract Adjustment-Demand rates applicable to Rate Schedules DCQ, GS, SGS and CTS and their respective billing determinants and sales entitlements at the 1986 program levels. Such rates and volumes are the same as previously filed October 2, 1986 in Docket No. CP84-429-022.

In addition to Commission approval pending on Texas Eastern's November 7, 1986 filing as described above, Texas Eastern filed tariff sheets November 14, 1986, in Docket No. CP85-805-001, implementing rates for Rate Schedule SS-II, Phase IV to be effective November 15, 1986 and also filed tariff sheets on November 17, 1986, in Docket No. CP84-429-024, in which proposed revisions were made to Algonquin Gas Transmission Company's and Public Service Electric and Gas Company's billing determinants and sales entitlements. In the event the sheets filed November 7, 1986, November 14, 1986 or November 17, 1986 are not approved or are revised in any way, Texas Eastern will to the extent necessary refile such affected tariff sheets in this instant filing to reflect the final determination.

Texas Eastern also proposes to withdraw its Interim DCQ Form of Service Agreement effective as of the in-service date of all facilities contemplated in Docket No. CP84-429-015. Such termination is in accordance with Ordering Paragraphs (A) and (D)1, of the July 1, 1985 Commission order in CP84-429-001 and Article II, Term of Agreement in the Rate Schedule DCQ Service Agreements pertaining to the 1986 Program.

The proposed effective date of the tariff sheets listed in Appendix A is December 4, 1986, the completion date of the facilities necessary to commence service for the 1986 Program.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 18, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

**Appendix A**

*Fourth Revised Volume No. 1*

Eighty-second Revised Sheet No. 14
Eighty-second Revised Sheet No. 14A
Eighty-second Revised Sheet No. 14B
Eighty-second Revised Sheet No. 14C
Eighty-second Revised Sheet No. 14D
Fifth Revised Sheet No. 16
Fifth Revised Sheet No. 22
Sixth Revised Sheet No. 96A
Twelfth Revised Sheet No. 97
Eleventh Revised Sheet No. 98
Eleventh Revised Sheet No. 101
Fifth Revised Sheet No. 101A
Eighth Revised Sheet No. 101B
Fifth Revised Sheet No. 101C
Seventh Revised Sheet No. 101D
Fifth Revised Sheet No. 101E
Tenth Revised Sheet Nos. 164-167

[FR Doc. 86-28281 Filed 12-16-86; 8:45 am]

BILLING CODE 6717-01-M

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## Federal Energy Regulatory Commission

## Cottonwood Creek No. 2 Associates; Surrender of Preliminary Permit

December 11, 1986.

Take notice that Cottonwood Creek No. 2 Associates, permittee for the proposed Cottonwood Creek No. 2 Hydroelectric Project No. 9417, has requested that its preliminary permit be terminated. The permit was issued on April 4, 1986, and would have expired March 31, 1989. The project would have been located on the Cottonwood Creek near Lone Pine City, Inyo County, California. The permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed the request on November 24, 1986, and the preliminary permit for Project No. 9417 shall remain in effect through the thirtieth day after issurance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-28213 Filed 12-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-58-000, 001, 002

## Texas Gas Pipe Line Corp.; Tariff Filing (PGA)

December 9, 1986.

Take notice that on November 28, 1986 Texas Gas Pipe Line Corporation (Texas Gas), pursuant to § 154.38 of the Commission Regulations under the Natural Gas Act, filed a Seventeenth Revised Sheet No. 4a to its FERC Gas Tariff, Second Revised Volume No. 1. Subsequently, on December 8, 1986, Texas Gas filed a substitute Seventeenth Revised Sheet No. 4a to its FERC Gas Tariff, Section Revied Volume No. 1 to to correct the original filing. Texas Gas states that the filed Tariff Sheet relates to the Unrecovered Purchased Gas Cost Account of the Purchase Gas Adjustment Provision contained in Section 12 of the General Terms and Conditions of the Tariff. More specifically, Substitute Seventeenth Revised Sheet No. 4a reflects a net decrease in the Rate After Current Adjustment being collected to 152.40¢ per Mcf and a change in the rate Surcharge Adjustment to 12.02¢ per Mcf yielding a proposed current Effective Rate of 179.32¢ per Mcf (at 14.65 psia) to be effective December 1, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before December 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-28226 Filed 12-16-85; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TA87-2-53-000, 001]

## K N Energy, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 9, 1986

Take notice that K N Energy, Inc. (K N) on November 28, 1986, tendered for filing Twenty-Sixth Revised Sheet No. 4 and Fifth Revised Sheet No. 4B to its FERC Gas Tariff, Third Revised Volume No. 1. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until December 4, 1986. The proposed changes, to be effective January 1, 1987, will adjust K N's rates charged its jurisdictional customers pursuant to the Gas Research Institute Opinion No. 252 that issued on September 29, 1986.

K N states that it has served copies of this filing on its jurisdictional customers and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-28224 Filed 12-16-86; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. GP87-5-000]

## Texas American Energy Corp. v. Tennessee Gas Pipeline, a Division of Tenneco, Inc.; Complaint

Issued: December 9, 1986.

Take notice that on November 10, 1986, Texas American Energy Corp. (TAE) filed a complaint against Tennessee Gas Pipeline, division of Tenneco Inc. (Tennessee) under Rule 206 of the Rules of Practice and Procedure [1] of the Federal Energy Regulatory Commission (Commission). TAE alleges that Tennessee is in violation of Commission Regulation § 271.1102 [2] because Tennessee has refused to reimburse TAE for *ad valorem* taxes borne by TAW in Wyoming for tax years 1984 and 1985.

TAE asserts that under its gas sales contract with Tennessee it is entitled to reimbursement for all production, gathering, severance or similar taxes levied with respect to the gas delivered under the contract. TAE alleges that Tennessee has refused to reimburse it for $375,558.54 in Wyoming *ad valorem* taxes paid by TAE.

TAE requests that the Commission issue an order finding that Tennessee is in violation of § 271.1102 by refusing to reimburse it for the Wyoming *ad valorem* tax borne by TAE.

Any person desiring to be heard or to protest TAE's complaint should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure.[3] All such motions or protests should be filed within 30 days form the issuance date of this Notice. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Tennessee has been served a copy of the complaints by TAE, and the due date for answering the complaint is 30 days from the issuance date of this Notice.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-28225 Filed 12-16-86; 8:45 am]

BILLING CODE 6717-01-M

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[Project No. 9148-001]

## Topeka Associates; Surrender of Preliminary Permit

December 11, 1986.

Take notice that Topeka Associates, permittee for the Perry Dam Project No. 9148, has requested that it preliminary permit be terminated. The preliminary permit for Project No. 9148 was issued on September 30, 1985, and would have expired on August 31, 1988. The project would have been located on the Delaware River, in Jefferson County, Kansas.

The permittee filed the request on November 10, 1986, and the preliminary permit for Project No. 9148 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided

[1] 18 CFR 385.206 (1986).

[2] 18 CFR 271.1102 (1986).

[3] 18 CFR 385.211 and 214 (1986).

for under 18 CFR Part 4, may be filed on the next business day.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-28214 Filed 12-16-86; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP86-627-000]**

## Tri-Energy Pipeline Co.; Informal Technical Conference

December 8, 1986.

Take notice that an informal technical conference will be held at the Offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC on January 6, 1987, at 2:00 p.m. in the above-captioned matter. At the conference, various issues associated with the application filed by Tri-Energy Pipeline Company will be discussed, particularly those issues raised in the interventions filed by the Missouri Public Service Commission, the Iowa State Commerce Commission, the Iowa State Utilities Board and the Office of the Public Counsel for the State of Missouri, respectively.

All parties to this proceeding, the Commission's staff, and interested members of the public are invited to attend; however, mere attendance at the conference will not confer party status. Any person wishing to become a party to this proceeding must file a Motion to Intervene in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

For further information contact Kenneth L. Glick, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8317.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-28215 Filed 12-16-86; 8:45 am]

BILLING CODE 6717-01-M

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## Western Area Power Administration

## Availability of the Draft Environmental Impact Statement for the California-Oregon Transmission Project and Los Banos-Gates Transmission Project

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of availability and public hearings for draft environmental impact statement.

**SUMMARY:** Notice is hereby given that the Department of Energy (DOE), Western Area Power Administration (Western), has issued for review and comment a draft environmental impact statement (DEIS) for the proposed California-Oregon Transmission Project and Los Banos-Gates Transmission Project (COTP) (DOE/EIS-0128). The DEIS includes an environmental report on the Pacific Northwest (PNW) Reinforcement Project. The DEIS was prepared in accordance with the National Environmental Policy Act of 1969 (NEPA); Council on Environmental Quality guidelines, 40 CFR Part 1500-1508; and DOE guidelines for compliance with NEPA, 45 FR 20694, as amended. The DEIS was jointly prepared with the Transmission Agency of Northern California (TANC), who is issuing the document as a draft environmental impact report to fulfill the requirements of the California Environmental Quality Act. The document will be used by the investor-owned utilities in California, along with other supporting information, as part of their application to the California Public Utilities Commission.

**DATES:** Written comments on the DEIS are due no later than February 3, 1987. Comments should be sent to: Environmental Coordinator, California-Oregon Transmission Project, P.O. Box 660970, Sacramento, CA 95366.

**ADDRESSES:** Formal public hearings will be held at which written and oral statements will be accepted. A court reporter will record the proceedings. The dates and locations of the hearings are:

**Monday, January 5—1 p.m.**

Winema Inn, Crater Lake Room, 1111 Main Street, Klamath Falls, OR

**Monday January 5—7 p.m.**

Newell Elementary School, Multipurpose Room, Highway 139, Newell, CA

**Tuesday, January 6—7 p.m.**

Yreka Community Theater, 810 North Oregon Street, Yreka, CA

**Wednesday Janaury 7—1 p.m.**

Redding Civic Auditorium, 700 Auditorium Drive, Room 116, Redding, CA

**Thursday, January 8—7 p.m.**

Williams Elementary School, Multipurpose Room, 1404 E Street, Williams, CA

**Monday, January 12—7 p.m.**

Tracy Community Center, 300 East 10th Street, Tracy, CA

**Tuesday, January 13—7 p.m.**

Edna Hill Elementary School, Bristow Community Theater, 140 Birch Street, Brentwood, CA

**Wednesday, January 14—1 p.m.**

Vacaville Community Center, Multipurpose Room, 1100 Alamo, Vacaville, CA

**Wednesday, January 7—7 p.m.**

Round Mountain Community Center, Highway 299E, Round Mountain, CA

**Wednesday, January 7—7 p.m.**

Butte Valley High School, Gymnasium, West Third Street, Dorris, CA

**Wednesday, January 14—7 p.m.**

Kecks Park Community Center, Assembly Room B, 555 Monroe, Coalinga, CA

**Thursday, January 15—7 p.m.**

Holiday Inn, Pacheco Main Room, 13070 South Highway 33 at I-5, Santa Nella, CA

**FOR FURTHER INFORMATION CONTACT:** For additional information on the DEIS or hearings, call: Ms. Nancy Weintraub, Environmental Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Sacramento, CA 95825, (916) 978-4460.

**SUPPLEMENTARY INFORMATION:** With the enactment of Pub. L. 98-360, Congress directed the Secretary of Energy, through Western, to proceed immediately with planning and environmental activities related to a new 500-kilovolt (kV) alternating current (AC) transmission line between the Pacific Northwest and California. Western has prepared a DEIS that addresses the potential environmental impacts associated with the construction, operation, and maintenance of a third 500-kV intertie transmission line and supporting facilities in California, Oregon, and Washington. The DEIS includes electrical transmission projects that are proposed by public and privately owned utiltiies and Western that would expand and reinforce the Pacific Northwest-Pacific Southwest Intertie. The projects have mutiple purposes and would: (1) Provide a third 500-kV AC transmission path between southern Oregon and central California (the California-Oregon Transmission Project); complete a third 500-kV AC transmission path in the San Joaquin Valley of California (the Los Banos-Gates Transmission Project); and (3) reinforce the existing 500-kV AC transmission system facilities in Oregon and southern Washington (the Pacific Northwest Reinforcement Project).

**California-Oregon Transmission Project**

Western, TANC, Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company, Southern California Edison Company, California Department of Water Resources, six southern California cities, and six additional public entities propose to build an approximately 340-mile-long, 500-kV AC transmission line from southern Oregon to the Tesla Substation in central California. The COTP proposed action would include a new substation near either Malin, Pinehurst, or Keno, Oregon; 140 miles of new 500-kV transmission line from southern Oregon to a new subsection near Redding, California; approximately 170 miles of 500-kV transmission line that would consist of reconstructing an existing double-circuit 230-kV transmission line owned by Western from the new Redding area substation (Olinda) to the Sacramento River and approximately 20 miles of new 500-kV line from the Sacramento River to the existing Tracy Substation; a new series compensation station (Maxwell) near Maxwell, California; expansion of the Tracy Substation; and approximately 6 miles of new 500-kV transmission line between the Tracy Substation and the existing Tesla Substation. Alternative locations for the transmission line and supporting facilities are analyzed, as are the no-action alternative and other alternative to the project.

**Los Banos-Gates Transmission Project**

PG&E proposes to build an approximately 84-mile-long, 500-kV transmission line in the foothills along the western side of the San Joaquin Valley between the existing Los Banos and Gates Substations. The Los Banos-Gates Transmission Project includes 84 miles of new 500-kV AC transmission line: realignment of the existing Los Banos-Midway No. 2 500-kV transmission line into Gates Substation; modification of the Los Banos and Gates Substations to accommodate new equipment and line connections; installation of new electrical equipment at several existing substations, and reconductoring of portions of the Gates-Arco-Midway 230-kV Transmission Line. Alternative routes for the transmission line are analyzed in the DEIS, as are the no-action alternative and other alternatives to the project.

**Pacific Northwest Reinforcement Project**

The Bonneville Power Administration (BPA), Pacific Power and Light Company, and Portland General Electric Company propose to build new and modify existing transmission lines and supporting facilities in southern Washington and Oregon. Approximately 8 miles of new 500-kV transmission lines are proposed. Modifications may be made to 13 or more existing substations. One new substation (Marcola) may be constructed between the existing Marion Substation. Impacts are assessed and mitigation measures considered.

*Purpose and Need*

The purpose of the proposed action is to expand the bidirectional capability of the Pacific Northwest-Pacific Southwest Intertie transmission system and to help serve California's need for economical power, the Pacific Northwest's desire to sell surplus power, and the need for maintaining and increasing the reliability of the existing transmission system. The COTP will add approximately 1,600 megawatts (MW) of additional transfer capability between the Pacific Northwest and California. The three projects would add to and strengthen the existing high-voltage transmission links between California and the Pacific Northwest. They would provide for greater access to Northwest power surpluses, facilitate more efficient use of regional power resources, provide greater resource diversity, and enhance system reliability.

*Alternatives to the Proposed Actions*

The bidirectional power transactions to be provided by the projects represent one of several approaches for meeting a portion of California's and the PNW's present and future power needs. Several alternatives were examined before the proposed actions were fully defined.

Nontransmission alternatives considered include increased power purchases from the Southwest, increased power purchases from out-of-State coal-fired powerplants, increased dependence on other in-State generating technologies, and increased reliance on conservation and load management. Transmission alternatives evaluated include upgrading the modifying existing AC transmission lines, constructing new AC lines, and constructing direct-current lines.

*Related Projects*

BPA has issued a draft environmental impact statement on a proposed Intertie Access Policy that would address use of the existing and new Intertie capacity. The Intertie Development and Use (IDU) EIS examines the potential environmental impacts associated with the proposed increases in Intertie capacity and use. Effects from changes in energy resource operations are analyzed in the context of alternative Intertie access policy options and are evaluated in terms of impacts on air and water quality, fish, wildlife, recreational and nonrenewable (fossil fuel) resources, and electric power costs. The analysis includes the PNW, California, the Inland Southwest, and British Columbia and covers several scenarios including the Third AC Intertie/COTP. While the COTP EIS addresses the potential impacts from the construction, operation, and maintenance of the three proposed construction projects, the IDU EIS addresses the potential impacts from the possible changes in operations of energy resource facilities that may result from the projects or other Intertie expansion proposals. The IDU EIS discussion of impacts related to the Third AC Intertie/COTP proposal is incorporated into the EIS by reference.

**Cooperating Federal Agencies**

The Federal cooperating agencies on the COTP and BPA: Department of Agriculture, Forest Service; Department of the Interior, Bureau of Land Management; and Department of the Army, Corps of Engineers.

*Availability of Review Copies of the DEIS*

Copies of the DEIS have been distributed to interested Federal, State, and local agencies in California and Oregon; and to libraries, local planning offices, and civic institutions in potentially affected areas. Copies of the DEIS are available for public review at the locations listed below. A more complete list of all individuals and agencies receiving a copy of the DEIS can be obtained from the Environmental Coordinator at the address given above.

**Libraries in California**

Modoc County Library, Alturas; Anderson Branch Library, Anderson; Antioch Branch Library, Antioch; Brentwood Branch Library, Brentwood; Burney Branch Library, Burney; Carmichael Regional Library, Carmichael; California State University at Chico, Meriam Library, Chico; Coalinga District Library, Coalinga; Corning Branch Library, Corning; Fresno County Free Library, Fresno; Cottonwood Branch Library, Cottonwood; Dixon Unified School District Public Library, Dixon; Dorris Branch Library, Dorris; Fair Oaks-Orangevale Community Library, Fair Oaks; Fall River Mills Branch Library, Fall River Mills; Huron Branch Library, Huron; Los Banos Branch Library, Los Banos; McCloud Branch Library, McCloud; Merced County Library, Merced; Stanislaus County Free Library,

Modesto; Mt. Shasta Branch Library, Mt. Shasta; Montgomery Creek Branch Library, Montgomery; Mt. Shasta; Oakley Branch Library, Oakley; Orland Free Library, Orland; Pittsburg Branch Library, Pittsburg; Central Library, Pleasant Hill; Tehama County Library, Red Bluff; Shasta County Library, Redding; Rio Vista Library, Rio Vista; California State Library, Library and Courts Building, Sacramento; McKinley Branch Library, Sacramento; San Francisco Public Library, San Francisco; San Jose Public Library, San Jose; Stockton-San Joaquin County Public Library, Stockton; Tracy Branch Library, Tracy; Tulelake Branch Library, Tulelake; California State University, Stanislaus Library, Turlock; Vacaville Public Library, Vacaville; Sacramento County Library, Walnut Grove; College of the Siskiyous Library, Weed; Weed Branch Library, Weed; West Los Angeles Regional Library, West Los Angeles; Willows Public Library, Willows; Winters Branch Library, Winters; Woodland Public Library, Woodland; Siskiyou County Public Library, Yreka; Suter County Free Library, Yuba City.

**Local Planning Departments in California**

Modoc County Planning Department, Alturas; Chico Planning Office, Chico; Colusa County Planning Department, Colusa; Solano County Department of Environmental Management, Fairfield; Fresno County Public Works Development Services Department, Fresno; Alameda County Planning Department, Hayward; Contra Costa County Community Development Department, Martinez; Yuba County Planning and Building Service Department, Marysville; Merced County Planning Department, Merced; Butte County Planning Commission, Oroville; City of Pittsburg Community Development Department, Pittsburg; Shasta County Planning Department, Redding; Tehama County Planning Department, Red Bluff; Sacramento County Planning Department, Environmental Impact Division, Sacramento; City of Stockton Planning Division, Stockton; San Joaquin County Planning Department, Stockton; City of Vacaville Department of Community Development, Vacaville; Glenn County Planning Office, Willows; Yolo County Community Development Agency, Woodland; Siskiyou County Planning Department, Courthouse Annex, Yreka; Sutter County Planning Department, Yuba City.

**Other Locations in California**

Big Valley Ranger District Office, Adin; Antioch Chamber of Commerce, Antioch; Bethel Island Chamber of Commerce, Bethel Island; Burney Basin Chamber of Commerce, Burney; City of Clayton, Clayton; Coalinga Chamber of Commerce, Coalinga; Corning City Hall, Corning; Dixon City Hall, Dixon; City of Dorris, Dorris; Fresno Chamber of Commerce, Fresno; Huron City Hall, Huron; Los Banos Chamber of Commerce, Los Banos; McCloud Ranger District Office, McCloud; City Clerk and Auditor, Modesto; Mt. Shasta City Hall, Mt. Shasta; Oakley Union School District Office, Oakley; Orland City Hall, Orland; Shasta Lake Ranger District Office, Redding; City of Tracy, Tracy; Modoc National Forest, Doublehead Ranger District Office, Tulelake; Williams City Hall, Williams; Williams Post Office, Williams; Winters City Hall, Winters.

**Libraries in Oregon**

Ashland Public Library, Ashland; Southern Oregon State College Library, Ashland; Bly Branch Library, Bly; Keno Branch Library, Keno; Klamath County Library, Klamath Falls; Malin Branch Library, Malin; Jackson County Library, Medford; Merrill Branch Library, Merrill; Multnomah County Library, Portland.

**Planning Departments in Oregon**

Josephine County Planning Department, Grants Pass; Klamath County Planning Office, Klamath Falls; Lake County Planning Department, Lakeview; Jackson County Department of Planning and Development, Medford; Jefferson County Planning Department, Madras; Multnomah County Planning Department, Portland; Marion County Planning Department Salem.

**Other Locations in Oregon**

Keno Elementary School, Keno; Malin City Hall, Malin.

Copies of the document are also available for public review at Western's offices in Sacramento, California (1825 Bell Street); and Golden, Colorado (1627 Cole Blvd, Building 18, 3rd floor). A copy is also available at the Doe Reading Room, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC. A limited number of copies are available on request for individuals or organizations who are potentially directly affected by the proposed action. Requests for copies should be sent to the Environmental Coordinator, California-Oregon Transmission Project, P.O. Box 660970, Sacramento, CA 95866.

The DEIS should be retained. The final EIS will consist of the DEIS, a record of public comments, the responses to the comments, and any required changes or corrections. The final EIS is scheduled for release in July 1987.

Issued at Golden, Colorado, December 8, 1986.

**William H. Clagett,**

*Administrator.*

[FR Doc. 86-28236 Filed 12-16-86; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-3130-1]**

### Extension of the Comment Period on the Technical Report on Oil, Gas and Geothermal Industry Waste

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of extension of comment period.

**SUMMARY:** On November 5, 1986, the Environmental Protection Agency published a notice of availability of a technical report entitled "Technical Report, Wastes from the Exploration, Development and Production of Crude Oil, Natural Gas and Geothermal Energy, an Interim Report on Methodology for Data Collection and Analysis". The deadline for submitting comments on the report was December 15, 1986. Commenters requested an extension of this deadline. The Environmental Protection Agency is today extending the deadline until January 15, 1987.

**DATE:** Comments should be submitted no later than January 15, 1987.

**ADDRESSES:** The public must send an original and two copies of their comments to: Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Place the docket number F-86-OGRN-FFFFF on your comments.

**FOR FURTHER INFORMATION CONTACT:** RCRA/Superfund Hotline (800) 424-9346 or (202) 382-3000. For technical information, contact Mr. Bob Hall (202) 475-7415.

**SUPPLEMENTARY INFORMATION:** On October 31, 1986, EPA published a report entitled "Technical Report, Wastes from the Exploration, Development and Production of Crude Oil, Natural Gas and Geothermal Energy, an Interim Report on Methodology for Data Collection and Analysis". EPA noticed the availability of that report on November 5, 1986 (51 FR 40251). In that notice of availability, EPA requested that comments on the report be

submitted by December 15, 1986. Several commenters requested an extension of the comment period, indicating that they need more time to fully examine and comment upon the report. In order to allow the commenters additional time to review and submit comments on the report, EPA is today extending the comment period until January 15, 1987.

Dated: December 15, 1986.

J. W. McGraw,

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 86-28377 Filed 12-16-86; 8:45 am]

BILLING CODE 6560-50-M

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[OPP-00235; FRL-3129-5]

## FIFRA Scientific Advisory Panel; Open Meeting of Subpanel

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** There will be a 2-day meeting of a Subpanel of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP), con vened by EPA to provide a review of the draft guidance for the conduct of terrestrial field testing for effects due to use of pesticides. The Subpanel will be chaired by Dr. Harold L. Bergman of the SAP.

**DATES:** The meeting will be held on Wednesday and Thursday, January 7 and 8, 1987, from 8:30 a.m. to 5 p.m. on Wednesday and from 8:30 a.m. to noon on Thursday.

**ADDRESS:** The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** By mail:

Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-769C), 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1121, Crystal Mall Building No. 2, Arlington, VA, (703-557-7695).

**SUPPLEMENTARY INFORMATION:** Under FIFRA EPA is required to regulate pesticides in such a manner as to avoid "unreasonable adverse effects on the environment." Accordingly, EPA has published guidelines specifying the kinds of information required to assess potential environmental effects from use of pesticides. These guidelines, which are revised periodically, include protocols and guidance for conduct of laboratory toxicity tests with avian species.

The Agency is how developing guidance for the conduct of terrestrial field testing for effects due to use of pesticides. This guidance is intended to describe, in general terms, when terrestrial field testing will be required to support a particular pesticide registration. The guidance is also to provide operational details concerning the design of such tests, and will include discussion of sample sizes and an array of techniques that may be useful for particular situations. The guidance will discuss how the data from terrestrial field studies may be used to evaluate the effects of a pesticide use on terrestrial vertebrates, and then can be used in determining regulatory options and decisions. The emphasis in the guidance is on avian testing; however, in general, it is also applicable to studies of other terrestrial wildlife.

Inasmuch as the publication of guidance for terrestrial field testing is a new undertaking by the Agency, and because the public and the pesticide industry have expressed considerable interest in the subject, the Agency has determined to convene a SAP Subpanel of expert scientists to provide consultation.

Copies of documents relating to the draft guidance for terrestrial field testing may be obtained by contacting: By mail:

Frances Mann, Program Management and Support Division (TS-757C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 236, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2805).

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or telephone number given above to be sure that the meeting is still scheduled. Interested persons are requested to provide an executive summary of their statements before the meeting. The limitation of 5 minute presentations is revoked for this meeting due to the nature of the meeting. To the extent that time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the chairman of the Subpanel to present oral statements at the meeting. Since oral statements will be permitted only as time allows, the Agency urges the public to submit written comments. All statements will be made part of the record and will be taken into consideration by the Subpanel. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit 10 copies of all materials and an executive summary no later than December 30, 1986, in order to ensure appropriate consideration by the Subpanel.

Dated: December 11, 1986.

**John A. Moore,**

*Assistant Administrator for Pesticides and Toxic Substances.*

[FR Doc. 86-28378 Filed 12-16-86; 8:45am]

BILLING CODE 6560-50-M

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[OPP-100032; FRL-3129-1]

## Arthur D. Little, Inc.; Transfer of Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Arthur D. Little, Inc. (ADL) has been awarded a contract to perform work for the EPA's Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to ADL consistent with the requirements of 40 CFR 2.307(h) and 2.308(h)(2), respectively. This action will enable ADL to fulfill the obligations of the contract and this notice serves to notify affected persons.

**DATE:** ADL will be given access to this information no sooner than December 22, 1986.

**FOR FURTHER INFORMATION CONTACT:** By mail: William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-2613.

**SUPPLEMENTARY INFORMATION:** Under contract No. 68-03-3293, ADL will provide support to the OPP by investigating the effectiveness of protective clothing for reducing or preventing pesticide exposures.

OPP has determined that access by ADL to information on worker exposure studies, permeation resistance studies, and Confidential Statements of Formula for liquid formulations of Category I and II pesticides listed below are necessary to the performance of this contract. This contract involves no subcontractor.

Ortho Phosphamidon Spray
Formulations with dicortophos as active ingredient
Monocrotophos
EPN (Technical)
Formulations with EPN as active ingredient
Formulations with ethyl parathion as active ingredient
Dialifor
Cygon 2-E
Diazinon 4EC
Thiodan 3EC
Thiodan 50WP
Dimethoate 267EC
Methyl Parathion 4E
Parathion 8E
Diazinon 14G
Monitor 4
Monitor Technical
Guthion 2L
Guthion 2S
Guthion 50% WP
Guthion Technical
DEF 6
DEF Technical
Oftanol 5% GR
Oftanol 2
Di-Syston 8
Di-Syston 15% GR
Di-Syston Technical
MetaSystox-R Spray Concentrate
MetaSystox-R 50% Concentrate
Demeton/Systox
Aminocarb/Matacil
Lasso
Lasso Microtech
Lasso Atrazine
Lasso II
Ethyl Parathion
Methyl Parathion
Bidrin Technical
Azodrin Technical
Phosdrin Technical
Chlorfenvinphos/Birlane 24
Methyltrithion
Formulations with DNBP as active ingredient

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with ADL prohibits use of the information for any purpose other than purposes specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, ADL is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA OPP. All information supplied to ADL by EPA for use in connection with this contract will be returned to EPA when ADL has completed its work.

Dated: December 4, 1986.

**Edwin F. Tinsworth,**

*Acting Director, Office of Pesticide Programs.*

[FR Doc. 86-28246 Filed 12-16-86; 8:45 am]

BILLING CODE 6560-50-M

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**[OPP-100033; FRL-3129-2]**

## Science Application International Corp.; Transfer of Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA).

Science Application International Corporation (SAIC) has been awarded a contract to perform work for the EPA Office of Drinking Water, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SAIC consistent with the requirements of 40 CFR 2.307(h) and 2.308(h)(2), respectively. This action enable SAIC to fulfill the obligations of the contract and serves to notify affected persons.

**DATE:** SAIC will be given access to this information no sooner than December 22, 1986.

**FOR FURTHER INFORMATION CONTACT:** By mail: William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2613).

**SUPPLEMENTARY INFORMATION:** Under Contract No. 68-01-7166, SAIC will provide technical support to EPA's Office of Drinking Water in the development of drinking water standards for a number of pesticides. As part of the standard setting process, SAIC is required to make a determination of the occurrence of the contaminants in drinking water. In order to fully assess the occurrence of pesticides, SAIC will require access to monitoring and chemical fate information in the Office of Pesticide Programs files. This contract involves no subcontractors.

The Office of Drinking Water and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals listed below will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Alachlor
Aldicarb
Aldicarb sulfoxide
Aldicarb sulfone
Atrazine
Carbofuran
Chlordane
2,4-D
Dalapon
DBCP
Diquat
Dinoseb
EDB
Endothall
Endrin
Glyphosate
Heptachlor
Heptachlor epoxide
Lindane
Methoxychlor
Pentachlorophenol
Picloram
Simazine
2,4,5-TP
Toxaphene
Vydate

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with SAIC prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the informaiton in any form to a third party without prior written approval from the Agency or affected business; and required that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, SAIC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for

this contract in the EPA Office of Drinking Water. All information supplied to SAIC by EPA for use in connection with this contract will be returned to EPA when SAIC has completed its work.

Dated: December 4, 1986.

**Edwin F. Tinsworth,**

*Acting Director, Office of Pesticide Programs.*

[FR Doc. 86-28245 Filed 12-16-86; 8:45 am]

BILLING CODE 6560-50-M

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[FRL-3129-4]

## Science Advisory Board, Environmental Effects, Transport and Fate Committee, Municipal Waste Combustion Review Subcommittee; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that the Municipal Waste Combustion Review Subcommittee of the Science Advisory Board's Environmental Effects, Transport and Fate Committee will convene for a one day meeting. The meeting will begin at 9:00 a.m. on January 8, 1987 in the conference facilities of the Holiday Inn Airport North, 1380 Virginia Avenue, Atlanta, Georgia 30320, and will adjourn at approximately 5:00 p.m.

The purpose of the meeting is to continue with a review of a series of scientific issues related to municipal waste incineration and to assess more recent information made available to the subcommittee. This information includes a draft document jointly prepared by the Agency's Office of Air Quality Planning and Standards (OAQPS) and the Environmental Criteria and Assessment Office (ECAO) entitled "Methodology for the Assessment of Health Risks Associated with Multiple Pathway Exposure to Municipal Waste Combustor Emissions." For further information on the draft document, please contact Mr. Robert Kellam, Office of Air Quality Planning and Standards, MD-12, U.S. EPA, Research Triangle Park, NC 27711, telephone 919-541-4608 or FTS 8-629-5645.

The meeting is open to the public. Any member of the public wishing to attend, present information to the subcommittee, or obtain further information concerning the meeting should contact Ms. Janis Kurtz, Executive Secretary, or Mrs. Lutithia Barbee, Staff Secretary, Environmental Effects, Transport and Fate Committee, Science Advisory Board (A-101F), U.S. EPA, 401 M Street, SW., Washington, DC 20460, telephone: (202) 382-2552 or FTS 8-382-2552. Written comments will be accepted, and can be sent to Ms. Kurtz at the above address. Persons interested in making statements before the Committee must contact Ms. Kurtz at the above address no later than January 5, 1987 in order to be assured of space on the agenda.

Dated: December 10, 1986.

**Terry F. Yosie,**

*Director, Science Advisory Board.*

[FR Doc. 86-28243 Filed 12-16-86; 8:45 am]

BILLING CODE 6560-50-M

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[FRL-3129-3]

## Science Advisory Board, Environmental Effects Transport and Fate Committee, Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that the Environmental Effects, Transport and Fate Committee of the Science Advisory Board will convene for a one day meeting. The meeting will begin at 9:00 a.m. on January 14, 1987 in Room 1101 of the West Tower, Waterside Mall, 401 M Street, SW., Washington, DC 20460, and will adjourn at approximately 5:00 p.m.

The purpose of the meeting is to discuss ongoing and upcoming activities of the subcommittees of the Environmental Effects, Transport and Fate Committee including the Water Quality Based Approach Research Review Subcommittee, and the Municipal Waste Combustion Review Subcommittee. Pertinent activities of other subcommittees will also be reviewed, including the Ecological Risk Assessment Subcommittee and the Long Range Ecological Research Needs Subcommittee. Agency activities with regard to the incineration of liquid hazardous wastes, will be discussed by Tudor Davies, Director of the Office of Marine and Estuarine Protection. An EPA Surface Water Monitoring Study will be introduced by Mary Blakeslee, Senior Program Analyst, Office of Water, and the focus of the Agency's newly created Office of Wetlands Protection will be presented by appropriate Agency staff.

The meeting is open to the public. Any member of the public wishing to attend, present information to the subcommittee, or obtain further information concerning the meeting should contact Ms. Janis Kurtz, Executive Secretary, or Mrs. Lutithia Barbee, Staff Secretary, Environmental Effects, Transport and Fate Committee, Science Advisory Board (A-101 F), U.S. EPA, 401 M Street, SW., Washington, DC 20460, telephone: (202) 382-2552 or FTS 382-2252. Written comments will be accepted, and can be sent to Ms. Kurtz at the above address. Persons interested in making statements before the Committee must contact Ms. Kurtz at the above address no later than January 9, 1987 in order to be assured of space on the agenda.

Dated: December 10, 1986.

**Terry F. Yosie,**

*Director, Science Advisory Board.*

[FR Doc. 86-28244 Filed 12-16-86; 8:45 am]

BILLING CODE 6560-50-M

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[OPP-64005; FRL-3128-5]

## Intent to Cancel Certain Pesticide Registrations; Aaqua Pool Service and Supply Co. et al.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of intent to cancel.

**SUMMARY:** EPA is issuing a notice of intent to cancel certain pesticide registrations under section 6(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The registrations which the Agency intends to cancel are held by registrants whom the Agency, after a good faith effort, has been unable to contact. Persons adversely affected by this notice may request a hearing in accordance with the provisions of 40 CFR Part 164.

**DATE:** All registrations will be cancelled at the end of 30 days from the date of publication or receipt of this notice by registrants, unless a hearing has been requested by a person adversely affected by this notice, or the Agency is provided with a correct and current address of an affected registrant.

A request for a hearing by an affected registrant or the registrant's correct and current address must be received by the Agency on or before January 16, 1987 or 30 days after receipt by mail by the affected registrant of this notice, whichever is the later date.

A request for a hearing submitted by any other adversely affected person must be received on or before January 16, 1987.

**ADDRESS:** Hearing requests must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail:

Stanley J. Austin, Registration Support and Emergency Response Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, Crystal Mall Building #2, 1921

Jefferson Davis Highway, Arlington, VA, (703–557–4360).

**SUPPLEMENTARY INFORMATION:** Over the years, EPA has been unable to contact certain pesticide registrants at the addresses on file at the Agency or appearing on current pesticide product labels. EPA's inability to communicate with these registrants impairs the Agency's ability to discharge its statutory mandate to regulate pesticide products and their impact on the environment. Furthermore, it creates an undesirable situation in that some registrants may unknowingly be in violation of the Act and escape burdens assumed by other registrants in compliance with Act.

Section 6(b) of FIFRA allows the Administrator to issue a notice of intent to cancel a pesticide's registration if that ". . . pesticide or its labeling or other mateial required to be submitted does not comply with the provisions of this Act. . . ."

Section 3(c)(1)(A) of FIFRA and 40 CFR 162.10(a)(1)(ii) make it a condition of registration that a registrant's address be filed with the Agency and appear on the label of the registrant's pesticide product. In addition, section 12(a)(1)(E) of FIFRA makes it unlawful to distribute, sell, offer for sale, hold for sale, ship, deliver or offer for delivery to any person a misbranded pesticide. Under FIFRA section 2(q)(2)(C)(i), failure to have the registrant's correct address on the label of its pesticide product constitutes misbranding. Therefore, failure of a registrant to submit a correct and current address and include such address as part of the label of its pesticide products is in violation of the Act's provisions and is grounds for cancellation of that registrant's registrations.

EPA issued a policy statement, published in the **Federal Register** of March 5, 1986 (51 FR 7634), indicating that the Agency may decide to initiate cancellation proceedings for registrations held by registrants whom the Agency has, after good faith efforts, been unable to contact by mail. This notice implements that policy.

This notice will be sent to all affected registrants by certified mail to the most current addresses the Agency has in its files. For the purposes of this notice, the Agency will consider validated non-delivery as receipt and the date of validated non-delivery as the date of receipt in those instances where actual receipt is not accomplished.

The impact of these cancellations on the agricultural economy is difficult to determine. It is believed that some or all of the pesticide products subject to this cancellation action are no longer on the market. Some of the pesticide products have no agricultural uses. At worst, the impact on the agricultural economy is expected to be slight.

Pursuant to section 6(b), the Secretary of Agriculture has reviewed this notice and has no comments. The Science Advisory Panel has waved its right (under section 25(d)) to review this notice.

### Registrations Subject to Cancellation

The following registrations are subject to cancellation under this notice.

| Registrant | Registration No. |
|---|---|
| Aaqua Pool Service & Supply Co., 291 S. Tamiami Dr. N.E., Port Charlotte, FL 33952 | 39481-01 |
| Alladdin Laboratories, Inc., Belleville Industrial Park, Belleville, NJ 07109 | 43566-01, 43566-02 |
| Amchem, 2530 22nd Street South, St. Petersburg, FL 33713 | 43562-01 |
| American Agricultural Products, Inc., 36 N. Huron Street, Ypsilanti, MI 48197 | 44718-02, 44718-03 |
| Aquarian Pool Service, 439 So. Tamiami Dr. N.E., Port Charlotte, FL 33952 | 39771-01 |
| Armando E. Valdes, 6095 W. 19th Ave., Hialeah, FL 33012 | 11579-01 |
| Bilco Associates, 1140 W. 50th Street, Hialeah, FL 33012 | 38733-07 |
| Blue Fin Pool Service and Equipment, Inc., 389 Avenue B.N.W., Winter Haven, FL 33880 | 38783-01 |
| Brown Thumb Products Co., 3308 Midway Drive, Suite 54, San Diego, CA 92110 | 44822-01 |
| Chemical Research and Development Co., P.O., Box 28343, Dallas, TX 75228 | 11739-01 |
| Claubo Corporation, 413 W. Henry St., Savannah, GA 31401 | 44599-01, 44599-02 |
| Cohoon Products Corp., P.O. Box 1788, Jackson, MS 39207 | 8832-01 |
| Compubit, Inc., 2826 N.E. Fourth Ave., Plaza Bldg., Pompano Beach, FL 33064 | 44314-01, 44314-02 |
| Deans Specialty Supply Co., P.O. Box 487, 310 2nd Ave. S.W., Waseca, MN 56093 | 17871-01, 17871-07 |
| Deo Inc., 1032 W. Robinson Street, Orlando, FL 32805 | 37267-03 |
| Dermocare Corporation, 33 Lakeview Street, Sharon, MA 02067 | 11695-01 |
| Dupont Street Swimming Pool Supplies, 1129 B. Tamiami Trail, Port Charlotte, FL 33952 | 38703-01 |
| Eagle Laboratories, 3738 W. North West Highway, Dallas, TX 75220 | 10131-02 |
| ED-EL, Inc., DBA Singer Island Hardware & Gifts, 1217 East Blue Heron Blvd., Rivera Beach, FL 33404 | 39487-10525 |
| Environmental Chemicals, Inc., P.O. Box 346-1111, North Old Rand Road, Wauconda, IL 60084 | 39644-05 |
| Environmental Product Co., 20 North 15th street, Denison, IA 51442 | 39273-01 |
| Family Pool Supply, 141 Harbor Blvd. N.E., Port Charlotte, FL 33950 | 39478-01 |
| Frank's Pool Service, 2069 Cornell Street, Sarasota, FL 33577 | 38697-01 |
| Garden House Spray Co., P.O. Box 459, Route 107, Laconia, NH 03246 | 370-01, 370-08, 370-10, 370-13, 370-14, 370-15, 370-16 |
| Goddard Pool Service, P.O. Box 2423, Naples, FL 33940 | 39483-01 |
| Greystone Industries, Inc., Room 2926, 120 Wall Street, New York, NY 10005 | 44941-01 |
| Gulf States Chemicals, Div. of United Chemical Inc., P.O. Box 5989, Tallahassee, FL 32301 | 38879-01 |
| Intel Chemicals and Metals Co., P.O. Box 420-428 Glen St., Glen Falls, NY 12801 | 43496-01 |
| Leisure Northwest, Northwest Pool-Patio Supply Inc., 17720 South Center Parkway, Seattle, WA 98188 | 39766-01 |
| Maron Pool Maintenance, 3236 2nd Avenue, Lake Worth, FL 33460 | 37297-4369 |
| Miramar Hardware, Inc., #1-2829 S.W. 64th Avenue, Miramar, FL 33023 | 38862-01 |
| Morrell Pool Supply, 180 Langsner ave. S.W., Englewood, FL 33533 | 38787-01 |
| Mundobello Chemical Services Co., 3907 Capitol, Houston, TX 77023 | 39222-01 |
| Neptune Pools Division of Pool It, Inc., 4090 S.W. 26th Street, Ft. Lauderdale, FL 33312 | 39212-10489 |
| Oceanside Pools and Service Inc., 538 N. Dixie Freeway, P.O. Box 887, New Smyrna Beach, FL 32069 | 39037-10342 |

| Registrant | Registration No. |
|---|---|
| Oceanside Pools, Inc., 2615 S. Dixie Highway, Delray Beach, FL 33444 | 39770-01 |
| Olympic Pools, 11661 N.E. 2nd Ave., Miami, FL 33161 | 44701-01 |
| Ormont Drug and Chemical Co., Inc., 520 So. Dean Street, Englewood, NJ 07631 | 7493-01, 7493-02 |
| Owensboro Milling Co., 42116 West Street, Long Island City, NY 11101 | 11518-01 |
| P and R Chemical, 858 Amboy Avenue, Perth Amboy, NJ 08861 | 10715-01 |
| Pierce Chemical Co., 417 Macarthur Ave., Redwood City, CA 94063 | 10028-01, 10028-5600 |
| Pines Hardware, 7157 Pembroke Road, Pembroke Pines, FL 33023 | 38838-10327 |
| Pioneer Chemical Co., 5419 Logan Ave. North, Minneapolis, MN 55430 | 37064-01, 37064-02, 37064-03, 37064-04 |
| Polaris Water Purifiers, Inc., 1366 Andrews Avenue Ext., Pompano Beach, FL 33060 | 38886-01 |
| Process Easy, 1 Waterman Avenue East, E. Providence, RI 02914 | 39182-01, 39182-02 |
| Rich Gold Poultry Farms, Inc., 2058 S.E. Benedictine, Port St. Lucie, FL 33452 | 39100-01, 39100-02 |
| Rollings Spring Clear, Inc., 209 Congress Avenue, Austin, TX 78701 | 44723-01 |
| Scientific Pool Service and Supply, 1215 SE 12th Terrace, Deerfield Beach, FL 33441 | 40046-01 |
| Sheff Chemical and Supply Co., 2827 Riverview Blvd., Bradenton, FL 33505 | 10193-9447, 10193-9529 |
| Smith Soft Water and Swimming Pools, P.O. Box 1327, Plant City, FL 33566 | 38698-01 |
| Sure Kill Mfg. and Dist. Co., Inc., Route 1, Hagan Rd., Nashville, MI 49073 | 11648-01 |
| Tenater Inc., 11170 Green Valley Dr., Olive Branch, MS 38654 | 39190-01, 39190-03 |
| The Water Works-Pool Patio and Spa Supply, 625 E. Harbor View Road, Charlotte Harbor, FL 33950 | 44139-01 |
| Triton Pools, Inc., 3051 Hanson Street, Fort Myers, FL 33901 | 38538-01 |
| U.S. General Corporation, 5262 Independence Street, Maple Pla'n, MN 55359 | 44395-01 |
| Wallin Chemical Co., Box 323, Baltimore, MD 21061 | 44778-01 |
| Walrick Company, P.O. Box 164, Davidson, NC 28036 | 10169-01 |
| Water and Energy Systems Technology, Inc., 139 Victoria Street, Gardena, CA 90248 | 43436-01, 43436-02, 43436-03, 43436-04 |
| Waterworks International, Inc., 8360 S.W. 40th Street, Miami, FL 33155 | 44224-01 |
| Wealthway Pool Service Corp., 5788 Powerline Road, Ft. Lauderdale, FL 33309 | 44419-01 |

Dated: December 5, 1986.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 86-28162 Filed 12-16-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42058B; FRL-3128-7]

## Territory of American Samoa; Approval of State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency grants final approval of the Territory of American Samoa State Plan for the Certification of Commercial and Private Applicators of Restricted Use Pesticides (American Samoa State Plan).

**EFFECTIVE DATE:** December 17, 1986.

**FOR FURTHER INFORMATION CONTACT:** Laurie Perrot, Environmental Protection Agency, 215 Fremont St., San Francisco, CA 94105, (415-974-8919).

**SUPPLEMENTARY INFORMATION:** Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136), and the implementing regulations of 40 CFR Part 171 require each State desiring to certify applicators to submit a plan to EPA for approval. Any State certification program shall be maintained according to the State Plan approved by EPA.

A Notice of Contingent Approval of the American Samoa State Plan by EPA was published in the **Federal Register** of March 6, 1985 (50 FR 9125). This approval was contingent upon the promulgation of regulations for implementation of American Samoa's State Plan. The regulations have been promulgated. The American Samoa Department of Agriculture was originally granted the authority to implement the pesticide regulations. However, this authority has been delegated to the American Samoa Environmental Quality Commission by the Governor's Executive Order No. 12-1985. On December 12, 1985, the Environmental Quality Commission and the Department of Agriculture signed a Memorandum of Understanding delineating their respective responsibilities and activities with regard to the pesticide regulations. EPA finds that all criteria for an approvable State Plan have been met.

EPA is following the congressional intent of FIFRA that States shall certify applicators of restricted use pesticides and hereby grants final approval to the American Samoa State Plan.

Dated: December 2, 1986.

**Judith E. Ayres,**

*Regional Administrator, Region IX.*

[FR Doc. 86-28160 Filed 12-16-86; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-783-DR]

## Northern Mariana Islands; Notice of Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Commonwealth of the Mariana Islands, (FEMA-783-DR), dated December 10, 1986 and related determinations.

**DATED:** December 10, 1986.

**FOR FURTHER INFORMATION CONTACT:** Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice: Notice is hereby given that, in a letter of December 10, 1986, the President declared a major disaster under athe authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 et seq., Public Law 93-288), as follows:

I have determined that the damage in certain areas of the Commonwealth of the Northern Mariana Islands resulting from Typhoon Kim beginning on or about December 3, 1986, is of sufficient severity and

magnitude to warrant a major-disaster declaration under Public Law 93-288. I therefore declare that such a major disaster exists in the Commonwealth of the Northern Mariana Islands.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual assistance in the affected areas. You also are authorized to provide Public Assistance in the affected areas once an acceptable Commonwealth cost-share commitment for these purposes is provided.

Pursuant to Section 408(b) of PL 93-288, you are authorized to advance to the Commonwealth its 25 percent share of the Individual and Family Grant program, to be repaid to the United States as indicated in the Governor's request.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Tommie C. Hamner of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of the Northern Mariana Islands to have been affected adversely by this declared major disaster and are designated eligible as follows:

Saipan and Tinian Islands for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Julius W. Becton, Jr.,**

*Director.*

[FR Doc. 86-28218 Filed 12-16-86; 8:45am]

BILLING CODE 6718-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, 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 § 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.: 224-004089-002.

Title: Palm Beach Terminal Agreement.

Parties

Port of Palm Beach District (Port)
Birdsall, Inc. (Birdsall)

Synopsis: The proposed amendment would permit Birdsall to rent office space, with parking, in the Port's Maritime Office Building through May 31, 1988 with two five-year renewal options.

Agreement No.: 224-004124-003.

Title: Tacoma Terminal Agreement.

Parties

Port of Tacoma (Port)
International Transportation Service, Inc. (ITS)

Synopsis: The proposed amendment would provide for an increase in the rental rates and preferential user fees assessed by the Port and would provide for the construction of a new gate and office complex for the use of ITS. It would also increase the amount of the lease bond and modify the agreement provisions relating to crane rentals.

Agreement No.: 224-004177-004.

Title: Seattle Terminal Agreement.

Parties

Port of Seattle
Stevedoring Services of America

Synopsis: The proposed amendment would extend the basic agreement through December 31, 1991, subject to 30 days' written notice of termination by either party.

Agreement No.: 203-010664-005.

Title: Pan-Atlantic Carrier Trade Agreement.

Parties:

Atlantic Container Line GIE
Compagnie Generale Maritime
Dart-ML Limited
Hapag-Lloyd AG
Johnson Scanstar
Lykes Bros. Steamship Co., Inc.
Trans Freight Lines
Intercontinental Transport (ICT)BV
Nedlloyd Lijnen, B.V.
Sea-Land Service, Inc.
Atlanticargo (South Atlantic Cargo Shipping NV)

Synopsis: The proposed amendment would admit Atlanticargo (South Atlantic Cargo Shipping NV) as a party to the agreement.

Agreement No.: 202-010987-001.

Title: United States/Central America Liner Association.

Parties:

Crowley Caribbean Transport
Seaboard Marine, Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed amendment would delete the authority of the parties to establish rates on household goods, personal effects and privately owned vehicles originating with U.S. Government agencies and moving under through bills of lading. It would also clarify the members' authority to open and close rates and restate the agreement.

Agreement No.: 224-011043.

Title: San Diego Terminal Agreement.

Parties:

San Diego Unified Port District (Port)
Blue Circle West Inc. (Blue Circle)

Synopsis: The proposed agreement would permit the Port to lease a portion of its Transit Shed #2 and certain land area at the Port's 10th Avenue Marine Terminal to Blue Circle for a period of five years.

Dated: December 12, 1986.

By Order of the Federal Maritime Commission

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 86-28251 Filed 12-16-86; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Banca Nazionale del Lavoro, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the

question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, indentifying specifically any question of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Banca Nazionale del Lavoro*, Rome, Italy; to engage *de novo* through its subsidiary, Tiec Services, Inc., New York, New York, in factoring and personal property leasing services pursuant to § 225.25 (b)(5) and (b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First National Pennsylvania Corporation*, Erie, Pennsylvania; to engage *de novo* through its subsidiary, East Bay Mortgage Corporation, Erie, Pennsylvania, in the origination, production, servicing and sale of mortgage loans pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Cole-Taylor Financial Group, Inc.*, Northbrook, Illinois; to engage *de novo* through its subsidiary, Cole-Taylor Trust Company, Northbrook, Illinois, in trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y; personal portfolio and investment advice pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y; real estate appraising pursuant to § 225.25(b)(15) of the Board's Regulation Y; tax planning and preparation pursuant to § 225.25(b)(21); and consumer finance counseling services pursuant to § 225.25(b)(20). Comments on this application must be received by January 2, 1987.

2. *First Michigan Bank Corporation*, Zeeland, Michigan; to engage *de novo* through its subsidiary, First Michigan Life Insurance Company, Phoenix, Arizona, in the activity of underwriting, as reinsurer, credit life and credit disability insurance written in connection with extensions of credit by Applicant's credit extending affiliates pursuant to § 225.25(b)(8) of the Board's Regulation Y. Comment on this application must be received by January 2, 1987.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Falkner Capital Corporation*, Falkner, Mississippi; to engage *de novo* in the activity of selling credit life, accident, and health insurance to borrowers at its current subsidiary, Bank of Falkner, Falkner, Mississippi, pursuant to § 225.25(b)(8) of the Board's Regulation Y. This activity will be conducted in Tippah County, Mississippi.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Financial Holdings, Inc.*, Louisville, Colorado; to engage *de novo* through its subsidiary, Boulder Valley National Mortgage Company, Boulder, Colorado, in making, acquiring, and servicing loans and other extensions of credit as would be conducted by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by January 2, 1987.

2. *Union Bankshares, Ltd.*, Denver, Colorado; to engage *de novo* through its subsidiary, Colorado Bankers Mortgage, Inc., Denver, Colorado, in making, acquiring and servicing loans and extensions of credit as would be made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Sumitomo Bank, Ltd.*, Osaka, Japan; to engage *de novo* through its subsidiary, Sumitomo Bank Capital Markets, Inc., New York, New York, in commercial finance company activities pursuant to § 225.25(b)(1) of the Board's Regulation Y; personal property leasing pursuant to § 225.25(b)(5) of the Board's Regulation Y; and real property leasing pursuant to § 225.25(b)(5) of the Board's Regulation Y.

2. *The Tokai Bank, Limited*, Nagoya, Japan; to engage *de novo* through its subsidiary, Tokai Trust Company of New York, New York, New York, in furnishing investment and financial advisory services pursuant to § 225.25(b)(4) of the Board's Regulation Y.

3. *United Security Bancorporation*, Chewelah, Washington; to acquire 100 percent of the voting shares of USB Mortgage Company, Chewelah, Washington, and engage in mortgage lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 11, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86-28206 Filed 12-16-86; 8:45 am]

BILLING CODE 6210-01-M

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## CNB, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 5, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *CNB, Inc.*, Lake City, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of community National Bank, Lake City, Florida.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690.

1. *Comerica Incorporated*, Detroit, Michigan; to acquire at least 25.77 percent of the voting shares of MetroBanc, Federal Savings Bank, Grand Rapids, Michigan.

2. *NBD Bancorp, Inc.*, Detroit, Michigan; to acquire 100 percent of the voting shares of USAmeribancs, Inc., Highland Park, Illinois, and thereby indirectly acquire USAMERICABANC/Chicago, Chicago, Illinois, USAMERIBANC/Elk Grove, Elk Grove Village, Illinois; The First National Bank of Highland Park, Highland Park, Illinois; Citizens Bank & Trust Company, Park Ridge, Illinois, USAMERIBANC/Woodfield, Schaumburg, Illinois; and First National Bank of Skokie, Skokie, Illinois. In connection with this application, *NBD Valley Corporation*, Detroit, Michigan; has applied to become a bank holding company by acquiring 100 percent of the voting shares of USAmeribancs, Inc., Highland Park, Illinois.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Hartland Banchares, Inc.*, Hartland, Minnesota; to become a bank holding company by acquiring 99.8 percent of the voting shares of Farmers State Bank of Harland, Harland, Minnesota.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Hillcrest Bancshares, Inc.*, Kansas City, Missouri, to become a bank holding company by acquiring 99.9 percent of the voting shares of Hillcrest Bank, Kansas City, Missouri, a *de novo* bank.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Ranco Bancshares, Inc.*, Spur, Texas; to acquire 40 precent of the voting shares of Sudan Bancshares, Inc., Sudan, Texas, and thereby indirectly acquire The First National Bank of Sudan, Sudan, Texas.

Board of Governors, of the Federal Reserve System, December 11, 1986.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 86-28207 Filed 12-16-86; 8:45 am]

BILLING CODE 6210-01-M

## Ira Hoberman et al.; Acquisition of Banks of Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 31, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Ira Hoberman*, Lakewood, New Jersey; to acquire up to 14.92 percent of the voting shares of First State Bancorp, Howell, New Jersey, and thereby indirectly acquire First State Bank, Howell, New Jersey.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Wade Malhas, M.D.*, Chicago, Illinois; to acquire 11.79 percent of the voting shares of Madison Financial Corporation, Chicago, Illinois, and thereby indirectly acquire 1st National Bank of Wheeling, Wheeling, Illinois; Madison National Bank, Niles, Illinois; and Madison Bank & Trust Company, Chicago, Illinois.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Larry Nelson*, Powers Lake, North Dakota; to acquire 100 percent of the voting shares of Liberty Bancorporation, Inc., Powers Lake, North Dakota.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Delford M. Smith.*, McMinnville, Oregon; to acquire an additional 30.6 percent of the voting shares Valley Community Bancorp, McMinnville, Oregon.

Board of Governors of the Federal Reserve System, December 11, 1986.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 86-28208 Filed 12-16-86; 8:45 am]

BILLING CODE 6210-01-M

## The Chase Manhattan Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 1987.

**Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. The Chase Manhattan Corporation, New York, New York; to acquire Clark Equipment Credit Corporation, Buchanan, Michigan, and thereby engage in personal property leasing and the making and servicing of loans and other extensions of credit pursuant to § 225.25(b)(1) and (5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 11, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86-28209 Filed 12-16-86; 8:45 am]

BILLING CODE 6210-01-M

## Citicorp, et al.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. These activities will be conducted on a worldwide basis.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 19, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York; to engage *de novo* through any of its existing subsidiaries or any subsidiaries yet to be formed in acting as principal, agent, or broker for insurance (including home mortgage redemption insurance) that is directly related to an extension of credit by the bank holding company or any of its subsidiaries and limited to assuring the repayment of the outstanding balance due on the extension of credit in the event of the death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i)(A) and (B) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 11, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86-28210 Filed 12-16-86; 8:45 am]

BILLING CODE 6210-01-M

## Saban, S.A., Panama City, Panama and Republic New York Corp., New York, NY; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21 (a)) to commence or to engage *de novo*, either directly or through a subsidary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 9, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Saban, S.A.*, Panama City, Panama, and Republic New York Corporation, New York, New York, to engage through a wholly owned subsidiary, Republic Clearing Corporation, New York, New York, in the execution and clearance of stock index futures contracts, options thereon, and municipal bond index futures contracts on several major commodities exchanges. The Board has previously approved the execution and clearance of these types of futures contracts. *J.P. Morgan & Co. Incorporated*, 71 Federal Reserve Bulletin 251 (1985); *Bankers Trust New York Corporation*, 71 Federal Reserve Bulletin 111 (1985). In addition to the stock index futures contracts previously approved by the Board, Applicants propose to execute and clear the Major Market Index Maxi Stock Index Futures Contract and the Government National Mortgage Association Cash Settled Futures Contract, traded on the Chicago Board of Trade, and the Value Line Futures (Mini) Contract, traded on the Kansas City Board of Trade.

Board of Governors of the Federal Reserve System, December 11, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 6-28211 Filed 12-16-86; 8:45 am]

BILLING CODE 6210-01-M

## Jack's Fork Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing

must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 24, 1986.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Jack's Fork Bancorporation, Inc.*, Mountain View, Missouri; to acquire 100 percent of the voting shares of the successor by merger to Farmers State Bank of Texas County, Houston, Missouri.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *MBI Bancshares, Inc.*, Kansas City, Missouri; to acquire 100 percent of the voting shares of The Bank of Kansas City, Kansas City, Missouri, and thereby indirectly acquire Westport Bank, Kansas City, Missouri.

Board of Governors of the Federal Reserve System, December 12, 1986.

**Barbara R. Lowrey,**

*Associate Secretary of the Board.*

[FR Doc. 86-28342 Filed 12-16-86; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Additions to Senior Executive Service Performance Review Board Membership

Title 5, U.S.C. 4314(c)(4), of the Civil Service Reform Act of 1978, Pub. L. 95-454, requires that the appointment of Performance Review Board members be published in the **Federal Register**.

On October 2, 1986, the Department of Health and Human Services' PRB membership was published in the **Federal Register**. The following members are hereby added to that membership:

James F. Dickson, III

Dated: December 8, 1986.

**Thomas S. McFee,**

*Assistant Secretary for Personnel Administration.*

[FR Doc. 28254 Filed 12-16-86; 8:45 am]

BILLING CODE 4150-04-M

### Alcohol, Drug Abuse, and Mental Health Administration

### Reestablishment of the Board of Scientific Counselors

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570, section 501(j)), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), announces the reestablishment, effective January 5, 1987, of the following committee:

Board of Scientific Counselors, National Institute of Mental Health

The duration of this committee is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

Dated: December 11, 1986.

**Donald Ian Macdonald, M.D.,**

*Administrator, Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 86-28222 Filed 12-16-86; 8:45am]

BILLING CODE 4160-20-M

## Food and Drug Administration

**[Docket No. 86E-0456]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; Buspar

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Buspar and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

**FOR FURTHER INFORMATION CONTACT:** Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857, 301-443-1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension and applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Buspar (buspirone hydrochloride), which is indicated for the management of anxiety disorders and the short-term relief of symptoms of anxiety. Based on this approval, Mead Johnson & Co. now seeks patent term restoration.

FDA has determined that the applicable regulatory review period for Buspar is 5,281 days. Of this time, 3,896 days occurred during the testing phase of the regulatory review period, while 1,385 days occurred during the approval phase. These periods of time were derived from the following dates:

*1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* April 16, 1972. The applicant claims that clinical studies for the drug began on October 22, 1976. However, FDA records indicate that the notice of claimed investigational exemption (IND) for the durg became effective on April 16, 1972.

*2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* December 15, 1982. FDA has verified the applicant's claim that the new drug application for the drug (NDA 18-731) was initially submitted on December 15, 1982.

*3. The date the application was approved:* September 29, 1986. FDA has

verified the applicant's claim that NDA 18–731 was approved on September 29, 1986.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculation of the actual periods for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 17, 1987, submit to the Dockets Management Branch (address above written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 15, 1987, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 10, 1986.

**Stuart L. Nightingale,**

*Associate Commissioner for Health Affairs.*

[FR Doc. 86–28200 Filed 12–16–86; 8:45 am]

BILLING CODE 4160-01-M

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[Docket No. 86E–0455]

## Determination of Regulatory Review Period for Purposes of Patent Extension; Pepcid

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Pepcid and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

**FOR FURTHER INFORMATION CONTACT:** Philip L. Chao, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Pepcid (famotidine), which is indicated in the short-term treatment of active duodenal ulcer, maintenance therapy for duodenal ulcer patients at reduced dosages after healing of active ulcer, and treatment of pathological hypersecretory conditions. Based on this approval, Yamanouchi Pharmaceutical Co., Ltd., now seeks patent term restoration.

FDA has determined that the applicable regulatory review period for Pepcid is 1,917 days. Of this time 1,438 days occurred during the testing phase of the regulatory review period, while 479 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* July 18, 1981. FDA has verified the applicant's claim that the notice of claimed investigational exemption (IND) for the drug became effective on July 18, 1981.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* June 24, 1985. FDA has verified the applicant's claim that the new drug application for the drug (NDA 19–462) was initially submitted on June 24, 1985.

3. *The date the application was approved:* October 15, 1986. FDA has verified the applicant's claim that NDA 19–462 was approved on October 15, 1986.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 17, 1987, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 15, 1987, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch beween 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 10, 1986.

**Stuart L. Nightingale,**

*Associate Commissioner for Health Affairs.*

[FR Doc. 86–28201 Filed 12–16–86; 8:45 am]

BILLING CODE 4160-01—M

[Docket No. 86M-0473]

## N&N Menicon, Inc.; Premarket Approval of N&N 1500® (Mafilcon) Soft Contact Lens

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by N&N Menicon, Inc., Lynnwood, WA, for premarket approval, under the Medical Device Amendments of 1976, of the hemispherical N&N 1500 ® (mafilcon) SOFT CONTACT LENS. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by January 16, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 30857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

**SUPPLEMENTARY INFORMATION:** On June 5, 1980, N&N Menicon, Inc., Lynnwood, WA 98036, submitted to CDRH an application for premarket approval of the N&N 1500 ® (mafilcon) SOFT CONTACT LENS. The hemispherical N&N 1500 ® (mafilcon) SOFT CONTACT LENS is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic. The lens may be worn by persons who exhibit refractive astigmatism of 1.25 diopters or less, that does not interfere with visual acuity. The lens ranges in powers from −20.00 diopters to plano and is to be disinfected using either a heat or chemical lens care system.

On April 17, 1984, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On November 6, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the N&N 1500 ® (mafilcon) SOFT CONTACT LENS states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

### Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitoner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 16, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitons may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d) 360(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 10, 1986.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 86-28198 Filed 12-16-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0467]

## Paco Pharmaceutical Services, Inc.; Premarket Approval of Charter Labs Saline for Sensitive Eyes

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Paco Pharmaceutical Services, Inc., Lakewood, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the Charter Labs Saline for Sensitive Eyes. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by January 16, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

**SUPPLEMENTARY INFORMATION:** On December 21, 1984, Paco Pharmaceutical Services, Inc., Lakewood, NJ 08701, submitted to CDRH an application for premarket approval of the Charter Labs Saline for Sensitive Eyes for use in the heat disinfection, rinsing, and storage of soft (hydrophilic) contact lenses.

On October 17, 1985, the Ophthalmic Devices Panel, an FDA advisory committee reviewed and recommended approval of the application. On October 31, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the Charter Labs Saline for Sensitive Eyes states that the solution is indicated for use in the heat disinfection, rinsing, and storage of soft (hydrophilic) contact lenses. Manufacturers of any soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

### Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitoners may, at any time on or before January 16, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 10, 1986.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 86–28199 Filed 12–16–86; 8:45 am]

BILLING CODE 4160–01–M

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## Social Security Administration

## Privacy Act of 1974; Report of New Routine Use

**AGENCY:** Social Security Administration (SSA), Department of Health and Human Services.

**ACTION:** New routine use.

**SUMMARY:** In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to establish a new routine use of information maintained in the system of records entitled "Master Files of Social Security Number Holders, HHS/SSA/OSR, 09–60–0058." The proposed routine use will permit SSA to disclose information to the Veterans Administration (VA) for the purpose of assisting that agency in conducting various VA medical research and epidemiological studies. We invite public comments on this proposal.

**DATES:** The proposed routine use will become effective as proposed without further notice on January 16, 1986, unless we receive comments on or before that date which would result in a contrary determination.

**ADDRESSES:** Interested individuals may comment on the proposed routine use by writing to the SSA Privacy Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at Room L1140 West Low Rise Building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Willie J. Polk, Social Insurance Policy Specialist, Privacy Branch, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (Area Code 301) 594–5599.

**SUPPLEMENTARY INFORMATION:**

### I. Purpose and Background

The VA has requested our assistance in its administration of various VA medical research and epidemiological studies. More specifically, the VA wishes to obtain dates of birth (DOB's) and Social Security numbers (SSN's) to identify and locate participants in the studies.

The VA will employ the Medical Follow-Up Agency (MFUA) of the National Academy of Sciences as its principal contractor for conducting the studies. While MFUA will be the primary contractor, the VA may also employ other contractors; once the routine use is effective, it will permit disclosure to the VA or any of its contractors employed to assist in conducting the studies. Examples of the VA studies are as follows:

*A. Registry of Vietnam Era Military Veterans Twins*

MFUA, as the VA's contractor, is developing and will maintain a registry of twins in which both members served in the United States (U.S.) Armed Forces during the Vietnam era. The VA estimates that up to 10,000 pairs may be involved. The VA is establishing the registry as part of a program to assess the possible health effects of service in Vietnam and other environmental exposure situations and to address the issue of the comparative roles of genetics and the environment in the development and course of disease. The VA wishes to obtain DOB's from SSA for use in determining twin status and thereby reducing the number of records that have to be reviewed.

*B. Medical Examination Survey of Former Prisoners of War (POW) of World War II and the Korean Conflict*

The MFUA will conduct this study by abstracting and analyzing data obtained from a medical examination. The VA will invite participants in this study to undergo a VA medical examination. The VA expects the study will yield information which will refine and increase knowledge of the effects of captivity and stress on health. The study will focus on depression and other psychiatric effects of the POW experience. Those individuals who choose to participate in the study will have their names, addresses and other information sent by MFUA to the most convenient VA Medical Center for examination scheduling. The VA does not have addresses for all of the individuals and will request SSN information from SSA to assist in locating addresses for the individuals from other sources.

*C. Follow-Up of CROSSLANDS Nuclear Test Participants*

The MFUA will conduct a follow-up study of military participants in the CROSSROADS nuclear test series which occurred at Bikini Atoll in July 1946. The VA anticipates that the study will provide information on the role of low-level exposures to ionizing radiation as an agent in carcinogensis and assist in determining whether the participants were exposed to radiation doses that resulted in later adverse effects on their health. The VA will review its benefit and mortality records to determine the causes of death for an estimated 12,500 of the approximately 42,000 men who participated in the test series and will analyze mortality causes by comparing groups serving on different ships or in different locations with expected U.S. population mortality rates. The VA wishes to obtain SSN information from SSA to assist in identifying deceased individuals who participated in the study.

The proposed routine use provides for the following disclosure:

*Disclosure of Social Security numbers and dates of birth may be made to the Veterans Administration (VA) or third parties under contract to that agency for the purpose of conducting VA medical research and epidemiological studies.*

**II. Compatibility of Proposed Routine Use**

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulation (20 CFR Part 401) both permit us to disclose information for a routine use if the information will be used for a purpose which is compatible with the purpose for which we collected it. Section 401.310 of the regulation permits us to disclose information under a routine use for administering our programs or administering similar income-maintenance or health-maintenance programs (including epidemiological and similar research programs) of other agencies.

Section 401.325 of the regulation permits us to disclose information under a routine use for statistical and research purposes if: (1) We determine that the requester needs the information in an identifiable form and will protect individuals from unreasonable and unwanted contacts; (2) the activity is designed to increase knowledge about Social Security programs or other Federal or State income-maintenance or health-maintenance programs; and (3) the recipient will keep the information as a system of statistical records, will appropriate safeguards, and will agree to our onsite inspection of those safeguards so that we can be sure the information is used or redisclosed only for statistical or research purposes.

We are proposing to establish the routine use to permit disclosure of information for use in VA medical research and epidemiological studies. We will abide by provisions of the Privacy Act and the safeguard procedures of our disclosure regulation when disclosing information. Thus, the proposed routine use is appropriate.

**III. Effect of the Proposed Routine Use on Individuals**

The VA has indicated that participation in the studies will be voluntary. The VA also has indicated that the information it will obtain from SSA will not be used to affect the beneficiaries. The VA will use the information in their studies to determine what disabilities might occur from various events (e.g., internment in POW camps), if current VA programs are sufficient to meet the health needs of veterans and if other VA programs are required. Thus, we do not believe that disclosure under the proposed routine use would have an unwarranted adverse effect on the rights of individuals.

Dated: December 9, 1986.

**Dorcas R. Hardy,**

*Commissioner of Social Security.*

**09-60-0058**

**SYSTEM NAME:**

Master Files of Social Security Number Holders, HHS/SSA/OSR.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Social Security Administration, Office of Systems Operations, 6401 Security Boulevard, Boulevard, Baltimore, MD 21235

Social Security Administration, Office of Central Operations, Office of Central Records, Operations, Metro West Building, 300 N. Greene Street, Baltimore, MD 21201

Social Security Administration, Office of System Requirements, 6401 Security Boulevard, Baltimore, MD 21235

Records also may be maintained at contractor sites (contact the system manager at the address below to obtain contract addresses).

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

This system contains a record of each individual who has applied for and/or obtained a Social Security number (SSN).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system contains all of the information received on original applications for SSN's (e.g., name, date and place of birth, both parents names, and race/ethinc data) and any changes in the information on the applications that are submitted by the SSN holder. Cross-references may be noted where multiple numbers have been issued to the same individual and an indication may be shown that a benefit claim has been made under a particular SSN(s).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sections 205(a) and 205(c) (2) of the Social Security Act.

**PURPOSE(S):**

Information in this system is used by the Social Security Administration (SSA) to assign SSN's. The information also is used for a number of administrative purposes such as:

- By SSA components for various title II, XVI and XVIII claims purposes including usage of the SSN itself as a case control number and a secondary beneficiary cross-reference control number for enforcement purposes and use of the SSN record data for verfication of claimant identity factors and for other claims purposes related to establishing benefit entitlement;
- By SSA as a basic control for retained earnings information;
- By SSA as a basic control and data source to prevent issuance of multiple SSN's;
- As the means to identify incorrectly reported names or SSN's on earnings reports;

- By SSA as a basic control and data source to prevent issuance of multiple SSN's;
- As the means to identify incorrectly reported names or SSN's on earnings reports;
- For resolution of earnings discrepancy cases;
- For statistical studies;
- By the Department of Health and Human Services (HHS) Audit Agency for auditing beneift payments under Social Security programs;
- By the HHS Office of Child Support Enforcement for locating parents who owe child support;
- By the National Institute of Occupational Safety and Health for epidemiological research studies required by the Occupational Safety and Health Act of 1974;
- By the SSA Office of Refugee Resettlement for administratering Cuban refugee assistance payments; and
- By the HHS Health Care Finance Administation for administering title XVIII claims.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure may be made for routine uses as indicated below:

1. Employers are notified of the SSN's of employees in order to complete their records for reporting wages to the SSA pursuant to the Federal Insurance Contributions Act and section 218 of the Social Security Act.

2. To State welfare agencies, upon written request, of the SSN's of Aid to Families with Dependent Children applicants or recipients.

3. To the Department of Justice (Federal Bureau of Investigation and United States attorneys) for investigating and prosecuting violations of the Social Security Act.

4. To the Department of Justice (Immigration and Naturalization Service) for the identification and location of aliens in the United States pursuant to requests received under section 290(c) of the Immigration and Nationality Act. (8 U.S.C. 1360(c)).

5. To a contractor for the purpose of collating, evaluating, analyzing, aggregating or otherwise refining records when the SSA contracts with a private firm. (The contractor shall be required to maintain Privacy Act safeguards with respect to such records.)

6. To the Railroad Retirement Board for:

(a) Administrering provisoins of the Railroad Retirement and Social Security Acts relating to railroad employment; and

(b) Administering the Railroad Unemployment Insurance Act.

7. To the Department of Energy for its study of the long-term effects of low-level radiation exposure.

8. To the Department of the Treasury for:

(a) Tax administration as defined in 26 U.S.C. 6103 of the Internal Revenue Code; and

(b) Investigating the alleged theft, forgery, or unlawful negotiation of Social Security checks.

9. To a congressional office in response to an inquiry from the office made at the request of the subject of a record.

10. To the Department of State for administering the Social Security Act in foreign countries through facilities and services of that agency.

11. To the American Institute on Taiwan for administering the Social Security Act on Taiwan through facilities and services of that agency.

12. To the Veterans Administration (VA), Philippines Regional Office, for administering the Social Security Act in the Philippines through facilities and services of that agency.

13. To the Department of Interior for administering the Social Security Act in the trust territory of the Pacific Islands through facilities and services of that agency.

14. To the Department of Labor, for:

(a) Administering provisions of the Black Lung Benefits Act; and

(b) Conducting studies of the effectiveness of training programs to combat poverty.

15. To the VA for the following purposes:

(a) For the purpose of validating of SSN's of compensation recipients/pensioners in order to provide the release of accurate pension/compensation data by the VA to SSA for Social Security program purposes.

(b) Upon request, for purposes of determining eligibility for or amount of VA benefits, or verifying other information with respect thereto.

16. To Federal agencies which use the SSN as a numerical identifier in their recordkeeping systems, for the purpose of validating SSN's.

17. To the Department of Justice in the event of litigation where the defendant is:

(a) HHS, any component of HHS or any employee of HHS in his or her official capacity;

(b) The United States where HHS determines that the claim, if successful, is likely to directly affect the operations of HHS or any of its components; or

(c) Any HHS employee in his or her individual capacity where the Justice Department has agreed to represent such employee;

HHS may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

18. State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations.

19. Information necessary to adjudicate claims filed under an international Social Security agreement that the United States has entered into pursuant to section 233 of the Social Security Act may be disclosed to a foreign country which is a party to that agreement.

20. To Federal, State or local agencies (or agents on their behalf) for the purpose of validating SSN used in administering cash or noncash income maintenance programs or health maintenance programs (including programs under the Social Security Act).

21. To third party contacts in situations where the party to be contacted has, or is expected to have, information which will verify documents when SSA is unable to determine if such documents are authentic.

22. Upon request, information on the identity and location of aliens may be disclosed to the Department of Justice (Criminal Division, Office of Special Investigations) for the purpose of detecting, investigating and, where appropriate, taking legal action against suspected Nazi war criminals in the United States.

23. To the Selective Service System for the purpose of enforcing draft registration pursuant to the provisions of the Military Selective Service Act (50 U.S.C. App. 462, as amended by section 916 of Public Law 97-86).

24. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

25. Validated SSN information may be disclosed to organizations/agencies such as prison systems which are required by law to furnish SSA with SSN information.

26. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the

General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

27. Disclosure of Social Security numbers and dates of birth may be made to the Veterans Administration (VA) or third parties under contract to that agency for the purpose of conducting VA medical research and epidemiological studies.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in the system are maintained in paper form (e.g., paper lists and punch cards); magnetic media (e.g., magnetic tape and disk with on-line access) and in microfilm and microfiche form.

**RETRIEVABILITY:**

Records in this system are indexed by both SSN and name.

**SAFEGUARDS:**

Safeguards for automated records have been established in accordance with the HHS Automated Data Processing Manual, "Part 6, ADP System Security." This includes maintaining the magnetic tapes and disks within a secured enclosure attended by security guards. Anyone entering or leaving this enclosure must have a special badge issued only to authorized personnel.

For computerized records electronically transmitted between Central Office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and an audit trail. All microfilm, microfiche, and paper files are accesible only by authorized personnel who have a need for the records in the performance of their official duties.

Expansion and improvement of SSA's telecommunications systems has resulted in the acquisition of terminals equipped with physical key locks. The terminals also are fitted with adapters to permit the future installation of data encryption devises and devices to permit the identification of terminals users.

**RETENTION AND DISPOSAL:**

All paper forms are retained for 5 years after they have been filmed or entered on tape and the accurracy has been verified. They then are destroyed by shredding. All tape, disks, microfilm and microfiche files are updated periodically. Out-of-date magnetic tapes and disks are erased. The out-of-date microfiche is disposed of by the application of heat.

**SYSTEM MANAGER (S) AND ADDRESS:**

Director, Office of Pre-Claims Requirements, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

**NOTIFICATION PROCEDURE:**

An individual can determine if this system contains a record pertaining to him/her by providing his/her name, signature and SSN, or if the SSN is not known, name signature, date and place of birth, mother's maiden name, and father's name, and evidence of identity to the address shown under system manager above. (Furnishing the SSN is not voluntary, but it makes searching for an individual's record easier and avoids delay.) (See Appendix K to this publication for documentation individuals may be required to furnish to establish their identity when requesting information pertaining to themselves from SSA.) These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

**RECORD ACCESS PROCEDURES:**

Same as notification procedures. Also, requesters should reasonably specify the record contents they are seeking. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

**CONTESTING RECORD PROCEDURES:**

Same as notification procedures. Also, requesters should reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

**RECORD SOURCE CATEGORIES:**

Information in this system is obtained from SSN applicants (or individuals acting on their behalf). The SSN itself is assigned to the individual as a result of internal processes of this system.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 86-28234 Filed 12-16-86; 8:45 am]

BILLING CODE 4190-11-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[Serial No. I-15072]**

### Proposed Continuation of Withdrawal; Correction

In FR Doc. 86-25929, filed November 17, 1986, appearing on page 41672 of the issue for November 18, 1986, the following correction should be made:

T. 9 S. Rs. 3 and 4 E. should read
T. 9 N., Rs. 3 and 5 E. and the following should be added:
T. 8 N., R. 4 E.

**William E. Ireland,**

*Chief Realty Operations Section.*

[FR Doc. 86-28205 Filed 12-16-86; 8:45 am]

BILLING CODE 4310-84-M

**[CA-060-07-4212-11; CA 15732]**

### Realty Action; Classification of Public Lands for Recreation and Public Purposes; Riverside and San Diego Counties, California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action, Lease of Public Lands for Recreation and Public Purposes, CA 15732.

**SUMMARY:** The following described public land has been examined and found suitable for recreation and public purposes. The land is hereby classified as suitable for recreation and public purposes under the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869 et seq.) and the regulations thereunder (43 CFR Part 2912):

**San Bernardino Meridian, California**

*T. 8S., R. 3W.,*
Sec. 23: SE¼ SE¼
Sec. 24: Lots 1, 2, and 3, S½ SW¼
Sec. 25: W½ NE¼, W½, SE¼
Sec. 26: E½ NE¼, NE¼ SE¼
*T. 9S., R. 3W.,*
Sec. 3: Lot 4.
Containing 902.46 acres+

The San Diego State University, Systems Ecological Research Group has filed an application to lease the above described public land under authority of the Act of June 14, 1926, as amended. The proposed public use is for educational and research activities associated with the University's Santa Margarita Biological Field Station. The educational and research activities planned for the subject lands include: Studies of native vegetation; plant biomass studies; and research involving

the effect of prescribed burns to extant plant communities.

The effective date of this classification is sixty (60) days from the date of publication of this notice in the **Federal Register**. The classification is consistent with the regulations set forth in 43 CFR Parts 2410 and 2430. The land is located adjacent to the University of San Diego's existing Santa Margarita Biological Field Station. The land is physically suitable for the proposed research and educational activities planned by the San Diego State University.

The lease, when issued, will be subject to the provisions of the R&PP Act, applicable regulations of the Secretary of the Interior and will contain the following reservation to the United States:

1. Rights-of-way for highways granted to the California Department of Transportation pursuant to the Act of November 9, 1921 (23 U.S.C. 18) and the Act of August 27, 1958 (23 U.S.C. 317), Grants No. LA–075269 and R–3249, respectively.

2. All mineral deposits in the land so leased, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may describe.

The land is not required for any Federal purpose. The lease is consistent with the objectives of the Indio Resource Area-Southern California Metropolitan Project's Escondido Border Management Framework Plan/ Management Action Summary.

Publication of this notice in the **Federal Register** shall segregate the subject public land from appropriation under any other public land law, including locations under the mining laws. If after 18 months following the publication of this notice in the **Federal Register**, a lease has not been issued for the purpose for which the lands have been classified, the segregative effect of the classification shall automatically expire and the public lands classified in this notice shall return to their former status without further action by the authorized officer.

Detailed information concerning this action is available for review at the California Desert District Office, Bureau of Land Management. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Objections will be reviewed by the State Director, Bureau of Land Management, who may sustain, vacate or modify this realty action. In the absence of any objection, this realty action will become the final determination of the Department of the Interior.

Dated: December 5, 1986.

**Gerald E. Hillier,**

*District Manager.*

[FR Doc. 86–28237 Filed 12–16–86; 8:45 am]

**BILLING CODE 4310–40–M**

## Fish and Wildlife Service

### Availability; Draft Environmental Impact Statement; Proposed Master Plan for the Great Dismal Swamp National Wildlife Refuge, Virginia and North Carolina

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** This Notice advises the public that the Draft Environmental Impact Statement on the proposed Master Plan is available for public review. The statement discusses various alternatives for the future management and development of the Great Dismal Swamp National Wildlife Refuge. Comments and suggestions are requested.

**DATE:** Written comments are requested by February 20, 1987. A public hearing will be held on January 14, 1987, at 7:30 p.m. at the Deep Creek High School, 2900 Margaret Booker Drive, Chesapeake, Virginia.

**ADDRESS:** Comments should be addressed to: Howard N. Larsen, Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

**FOR FURTHER INFORMATION CONTACT:**

Mary Parkin, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, (617) 965–5100, extension 278;

or

Jim Oland, Refuge Manager, Great Dismal Swamp National Wildlife Refuge, P.O. Box 349, Suffolk, Virginia 23434, (804) 986–3705.

Individuals desiring a copy of the DEIS for review should immediately contact one of the above individuals. Copies have been sent to all agencies and organizations that participated in the scoping process, and to individuals who have previously requested copies. Copies will be available for examination at local libraries and at: Headquarters, Great Dismal Swamp National Wildlife Refuge, 3216 Desert Road, Suffolk, Virginia 23434.

**SUPPLEMENTARY INFORMATION:** This action is designed to provide a comprehensive land use plan that will set forth long-range strategies for resource management and public use on the refuge.

The major alternatives that are assessed in the DEIS are:

1. *No Action (Current Management):* Perpetuates current management practices including land acquisition, water management in existing ditches, experimental forest management, full fire suppression, an annual deer hunt, research and studies, controlled public access, conducted tours, fishing, wildlife observation and interpretation, facility maintenance, and interagency coordination.

2. *Proposed Action (Full Management):* Continues most No Action activities and proposes intensive water and forest management to enhance the natural diversity of the swamp, using the existing road and ditch network. Additional management activities include habitat management for endangered species and other specific wildlife benefits, designation of a 7,550-acre Natural Area, fishery management, increased public use within constraints of controlled access, and trapping if needed for wildlife management. Proposed development includes construction of ¼ mile of road in the swamp, fire breaks, tour route development on existing roads, boardwalk expansion, 3 visitor contact facilities, and a main refuge office and visitor complex on Desert Road.

3. *Full Development Alternative:* Under this scenario, water and forest management are identical to the Proposed Action, while public use is expanded. Public access is increased through use of a shuttle service along Washington Ditch Road to Lake Drummond, off-road access, and horseback riding on refuge roads by permit. Expanded development includes an elaborate wildlife interpretive center and refuge office complex on Washington Ditch Road, 3 other visitor facilities, 2 additional conducted tour routes, a cross-country trail, and increased parking.

4. *Limited Management Alternative:* This option suggests passive long-range management of the swamp by gradually phasing out development such as most roads and ditches, leaving large tracts of unmanaged forest lands. It continues control over water outflow from the swamp, holding water at first in ditches and eventually in natural flow channels. Forest management is initially active in an attempt to establish important stands, but is eventually limited to

maintaining only small remnants of each habitat type. A modified fire suppression approach is adopted, letting fires that present no threat burn. Motorized public access into the swamp is prohibited, although non-motorized access is retained, and all consumptive uses except fishing are eliminated. Two visitor facilities are proposed on upland edges of the refuge.

Background on the planning process and the involvement of the public and government agencies was provided in the Notice of Intent, published in the December 10, 1981, **Federal Register.**

Public and agency input on the preliminary alternatives for a master plan was provided at a series of meetings held in early 1983, and through written comments.

**Howard N. Larsen,**

*Regional Director.*

[FR Doc. 86-28249 Filed 12-16-86; 8:45 am]

BILLING CODE 4310-55-M

## National Park Service

### National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 6, 1986. Pursuant to section § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by January 2, 1987.

**Carol D. Shull,**

*Chief of Registration, National Register.*

**ALABAMA**

*Sumter County*

Emelle, *Oakhurst*, Gainesville—Lacy's Ford Rd. approx. 3 mi. SW of AL 116

**CALIFORNIA**

*Sacramento County*

Wilton vicinity, *Alta Mesa Farm Bureau Hall*, 10195 Alta Mesa Rd.

**FLORIDA**

*Indian River County*

Vero Beach, *Vero Railroad Station*, 2336 Fourteenth St.

**GEORGIA**

*Thomas County*

Thomasville, *Church of the Good Shepherd*, 511-519 Live Oak St.

**MASSACHUSETTS**

*Middlesex County*

Cambridge, *Harvard Square Historic District (Cambridge MRA)*, Roughly bounded by Harvard, Massachusetts Ave., Mt. Auburn, Winthrop, Bennett, Story, & Church Sts.

Malden, *Daniels, Charles A., School*, Daniels St.

*Norfolk County*

Dover, *Elm Bank*, Bounded by the Charles River to the W, N, and E, and the carriage path to the S

**MINNESOTA**

*Ramsey County*

St. Paul, *St. Paul, Minneapolis, & Manitoba Railway Company Shops Historic District* Jackson St. and Pennsylvania Ave.

**PENNSYLVANIA**

*Bradford County*

Towanda *Bradford County Courthouse*, 301 Main St.

*Bucks County*

Plumstead Township, *Dyerstown Historic District*, Along Old Easton Rd. near jct. of Stony Ln.

Riegelsville, *Riegel, Benjamin, House*, 29 Delaware Rd.

Sellersville, *Teller Cigar Factory*, 340 N. Main St.

*Chester County*

Tredyffrin Township, *Walker, Joseph, House*, 274 Anthony Wayne Dr.

*Delaware County*

Lansdowne, *Lansdowne Theotre* 29 N. Lansdowne Rd.

*Lancaster County*

New Holland, *Stoever, John Casper, Log House*, 200 W. Main St.

*Monroe County*

Paradise Township, *Henryville House*, jct. PA 191 and 715

*Montour County*

Danville, *Thomas Beaver Free Library and Danville YMCA*, E. Market and Ferry Sts.

*Philadelphia County*

Philadelphia *Middishade, Clothing Factory*, 1600 Callowhill St.

Philadelphia, *Pinehurst Apartments*, 4511-4523 Pine St.

*Potter County*

Austin *Austin Dam*, PA 872

**WISCONSIN**

*Manitowoc County*

Two Rivers, *Frenchside Fishing Village*, Twenty-first, Jackson, East, Sixteenth, Harbor, and Rogers Sts.

*Rock County*

Edgerton, *Edgerton Public Grade Schools*, 116 N. Swift St.

*Sauk County*

Plain vicinity, *Salem Evangelical Church—Rogatz Church*, jct. of CR PF and Church Rd.

[FR Doc. 86-28197 Filed 12-16-86; 8:45 am]

BILLING Code 4310-70-M

## INTERNATIONAL TRADE COMMISSION

### Investigations Nos. 731-TA-308 and 310 (Final)

### Butt-Weld Pipe Fittings From Brazil and Taiwan; Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Brazil and Taiwan of carbon steel butt-weld pipe and tube fittings, under 14 inches in inside diameter, [2] provided for in item 610.88 of the Tariff Schedules of the United States (TSUS), which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

#### Background

The Commission instituted these investigations effective August 11, 1986, following preliminary determinations by the Department of Commerce that imports of butt-weld pipe fittings from Brazil and Taiwan [3] were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 27, 1986 (51 FR 30557). The hearing was held in Washington, DC, on October 28,

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] For purposes of these investigations, such fittings may be finished or unfinished but, if forged, must be advanced beyond forging. Such advancements may include any one or more of the following: coining, heat treatment, shot blasting, grinding, die stamping, or painting. Such fittings do not include couplings (provided for in TSUS item 610.86).

[3] The Commission also instituted investigation No. 731-TA-309 (Final) concerning imports of butt-weld pipe fittings from Japan subsequent to Commerce making a preliminary affirmative LTFV determination (51 FR 28734, August 11, 1986). However, Commerce postponed its final determination regarding imports from Japan until December 19, 1986.

1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 8, 1986. The views of the Commission are contained in USITC Publication 1918 (December 1986), entitled "Butt-Weld Pipe Fittings From Brazil and Taiwan: Determination of the Commission in Investigations Nos. 731–TA–308 and 310 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: December 9, 1986.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 86–28267 Filed 12–16–86; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–250]**

## Certain Ventilated Motorcycle Helmets; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

**AGENCY:** International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Arai Helmet, Ltd. (Japan) and Arai Helmet, Ltd. (U.S.) (Arai).

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on December 12, 1986.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

**Written Comments**

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: December 12, 1986.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 86–28268 Filed 12–16–86; 8:45 am]

BILLING CODE 7020–02–M

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## INTERSTATE COMMERCE COMMISSION

**[Docket No. MC–F–17938]**

## Union Pacific Corp., Union Pacific Railroad Co., and Missouri Pacific Railroad Co.; Control; Katy Transportation Co.; Decision

**AGENCY:** Interstate Commerce Commission.

**ACTION:** The Commission is accepting this petition for exemption. The Commission is also setting a schedule for the proceeding.

**SUMMARY:** Union Pacific Corporation (UPC), Union Pacific Railroad Company (UPRR) and Missouri Pacific Railroad Company (MPRR) petition to exempt under 49 U.S.C. 10505 their acquisition of control of Katy Transportation Company (KTC).

**DATES:** Comments must be received by February 1, 1987.

**ADDRESSES:** Send comments (an original and 10 copies) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative: Lawrence E. Wzorek, General Commerce Counsel, Union Pacific Railroad Company, Missouri Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179

**FOR FURTHER INFORMATION CONTACT:**

Joseph H. Dettmar (202) 275–7245

or

Alan Greenbaum (202) 275–7322

**SUPPLEMENTARY INFORMATION:** UPC is a non-carrier holding company, which controls UPRR and MPRR, two class I railroads. KTC is a wholly-owned motor carrier subsidiary of the Missouri-Kansas-Texas Railroad Company (MKT), a class I railroad. KTC holds authority in Certificate No. MC–105146 (Sub-No. 8) to transport general commodities between specified points in Missouri, Kansas, Oklahoma, and Texas.

This petition is directly related to the application in Finance Docket No. 30800, in which UPC, UPRR, and MPRR seek approval for their acquisition of control of MKT. Upon approval of the application in Finance Docket No. 30800, MKT will become a wholly-owned subsidiary of MPRR. MPRR will acquire indirect control over KTC. Direct control will be accomplished through a merger of MKT into MPRR.

Notice of the directly-related application is published separately in this edition of the **Federal Register** under Finance Docket No. 30800. The time limits established for Finance Docket No. 30800 will be applied to this petition and they shall be consolidated for hearing.

We have reviewed the petition and find it to be complete.

This action will not significantly affect either the quality of the human environment or energy conservation.

*It is ordered:*

1. The petition in Docket No. MC–F–17938 is accepted for consideration.

2. This decision is effective on the date served.

Dated: December 12, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 86–28290 Filed 12–16–86; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30800]

## Union Pacific Corp., Union Pacific Railroad Co. and Missouri Pacific Railroad Co., Control, Missouri Kansas-Texas Railroad Co.

[Finance Docket No. 30800 (Sub-No. 1)

**Notice of Exempt Transaction to Merge Oklahoma, Kansas and Texas Railroad Company Into Missouri-Kansas-Texas Railroad Company**

[Finance Docket No. 30800 (Sub-No. 2)

**Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Galveston, Houston & Henderson Railroad Company**

[Finance Docket No. 30800 (Sub-No. 3)

**Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Texas City Terminal Railroad Company**

[Finance Docket No. 30800 (Sub-No. 4)

**Missouri Pacific Railroad Company—Trackage Rights at Houston, Texas Over Southern Pacific Transportation Company**

[Finance Docket No. 30800 (Sub-No. 5)

**Missouri Pacific Railroad Company; Trackage Rights at San Antonio, Texas Over Southern Pacific Transportation Company**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Applications accepted for consideration.

**SUMMARY:** The Commission is accepting for consideration the application filed November 14, 1986 for Union Railroad Corporation and its wholly-owned subsidiaries, Union Pacific Railroad Company and Missouri Pacific Railroad Company, to control Missouri-Kansas-Texas Railroad Company. The Commission is also accepting for consideration: applications by these parties for terminal trackage rights at facilities of the Southern Pacific Transportation Company; applications for assumption of obligations and liabilities; petitions for exemptions to control carriers in which partial interests are held; and a notice of exemption for the merger of the Oklahoma, Kansas and Texas Railroad Company into the Missouri-Kansas-Texas Railroad Company.

**DATES:** Written comments must be filed with the Interstate Commerce Commission no later than February 1, 1987.

Responsive applications must be filed no later than March 7, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Joseph H. Dettmar, (202) 275–7245

or

Alan Greenbaum, (202) 275–7322

**ADDRESS:** Unless otherwise indicated, an original and 20 copies of all documents should be sent to:

Office of the Secretary, Case Control Branch, Attn: F.D. No. 30800, et al., Interstate Commerce Commission, Washington, DC 20423

In addition, one copy of all documents in this proceeding should be sent to:

(1) Rail Section, Interstate Commerce Commission, Washington, DC 20423

(2) Applicants' representatives:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154

James V. Dolan, Vice President—Law, Union Pacific Railroad, Missouri Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179

Arthur M. Albin, Missouri-Kansas-Texas Railroad Company, 701 Commerce Street, Dallas, TX 75202

**SUPPLEMENTARY INFORMATION:** Published elsewhere today in the **Federal Register**, is a related petition for exemption to control a motor carrier, MC–F–17938, *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Katy Transportation Company*. In an earlier notice, the Commission sought comment on applicants' proposed schedule for the proceeding. A decision on that matter shall shortly be forthcoming.

The application and exhibits are available for inspection in the Public Docket Room at the offices of the Interstate Commerce in Wahington, DC.

Any interested persons may participate in this proceeding by submitting writting comments regarding the applicants. Comments must be filed no later than February 1, 1987. An original and 10 copies must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423. Written comments shall be concurrently served by first class mail on the United States Secretary of Transportation and the Attorney General of the United States. Written comments must also be served upon all parties or record within 10 days of service of the service list by the Commission. We plan to issue the service list by February 10, 1987. Any person who files timely written comments shall be considered a party or record if they so indicate in their comments. In this event no petition for leave to intervene need be filed. Comments must contain the information specified at 49 CFR 1180.4(d)(iii).

Additionally, comments filed by railroads must contain a statement of whether the commenting railroad intends to file inconsistent applications, petitions for inclusion, trackage rights, or any any other affirmative relief requiring an application to be filed with the Commission. This will be considered a prefiling notice without which the commission will not entertain applications for this type of relief.

Preliminary comments from the Secretary of Transportation and Attorney General be filed by February 16, 1987.

Parties seeking to modify any of their requested protective conditions specified in their initial comments must file a second list of protective conditions no later than March 2, 1987. Parties shall not be permitted so seek any protective conditions other than those requested in either their first or second list of protective conditions.

Parties should contact Alan Greenbaum, (202) 275–7322, to obtain docket numbers for their responsive applications. Petitions for waiver, clarification, or leave to file an incomplete application shall be no later than February 1, 1987. Each responsive application filed and accepted will be consolidated with the primary applications in this proceeding.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 242–5403.

Decided: December 12, 1986.

By the Commissioners Sterrett, Andre and Lamboley.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 86–28291 Filed 12–16–86; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to the requirements of Pub. L. 95–602, I hereby certify that the Consumer Price Index for All Urban Consumers rose by 1.5 percent between October 1985 and October 1986 from a level of 325.5 (1967=100) in October 1985 to a level of 330.5 (1967=100) in

October 1986. Signed at Washington, DC, on the 4th day of December 1986.

**William E. Brock,**

*Secretary of Labor.*

[FR Doc. 86-28182 Filed 12-16-86; 8:45 am]

BILLING CODE 4510-24-M

### Task Force on Economic Adjustment and Worker Dislocation; Meeting

Notice is hereby given that the Task Force on Economic Adjustment and Worker Dislocation will hold its eighth and final meeting at 10:00 a.m. on Wednesday, December 17, 1986, in Room C-5515—Seminar Room 6, 200 Constitution Avenue, NW., Washington, DC 20210. The public is invited to attend.

The purpose of the meeting is to discuss the finalized draft outline of the Task Force report.

For further information contact: Mr. Gerald Holmes, U.S. Department of Labor, Room S-5317, Washington, DC 20210, (202) 523-6227.

Signed at Washington, DC, this Thursday of December 11, 1986.

**Michael E. Baroody,**

*Assistant Secretary for Policy.*

[FR Doc. 86-28184 Filed 12-16-86; 8:45 am]

BILLING CODE 4510-23-M

### The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy;

*Meeting*

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: January 13, 1987, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565.

Signed at Washington, DC this 10th day of December 1986.

**Robert W. Searby,**

*Deputy Under Secretary, International Affairs.*

[FR Doc. 86-28183 Filed 12-16-86; 8:45 am]

BILLING CODE 4510-28-M

## NUCLEAR REGULATORY COMMISSION

### Bi-Weekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

#### I. Background

Pursuant to Pub. L. (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on December 3, 1986 (51 FR 43677) through December 8, 1986.

#### NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission had made a proposed determination that the following amendment request involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 am to 5:00 pm. Copies of written comments received may be examined at the NRC Public Document Room 1717 H Street, NW, Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 16, 1987 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules for Practice of Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the

petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifiteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearings is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all pubic and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director):* petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, and at the local public document room for the particular facility involved.

**Arizona Public Service Company et al., Docket Nos. STN 50–528 and STN 50–529, Palo Verde Nuclear Generating Station (PVNGS), Units 1 and 2, Maricopa County, Arizona**

*Date of amendment request:* November 6, 1986.

*Description of amendment request:* The proposed amendments consist of the following proposed changes to the Technical Specifications (Appendix A to Facility Operating License Nos. NPF–41 for PVNGS Unit 1 and NPF–51 for PVNGS Unit 2).

(a) The first part of the proposed amendment would modify Section 6, Figures 6.2–1 and 6.2.2 to reflect changes in the organizational structure being made because Palo Verde is shifting from its construction phase to its commercial operation phase. The Executive Vice President of Arizona Nuclear Power Project for Arizona Public Service Company is now shown as reporting directly to the Chief Executive Officer. The proposed change would have the Executive Vice President of Arizona Nuclear Power Project report to the President and Chief Operating Officer of Arizona Public Service Company. Another proposed change in these figures would indicate that the Compliance Department will report to the Plant Manager. The Compliance Department is currently shown as reporting to the Technical Support Manager. This latter change is intended to increase the effectiveness of compliance in responding to regulatory and plant issues. Thirdly, the licensee has requested that the title of Figure 6.2–2 be changed from "Onsite Unit Organization" to "Onsite Organization".

(b) The second part of the proposed amendment would modify surveillance requirements in Technical Specification Sections 4.6.4.3.b.2, 4.6.4.3.c, 4.7.8.b.2, 4.7.8.c, 4.9.12.b.2 and 4.9.12.c for charcoal filters in the Hydrogen Purge Cleanup System, ESF Pump Room Air Exhaust Cleanup System, and the Fuel Building Essential Ventilation System. The requested change is to allow testing of the charcoal filter units in accordance with ANSI Standard N509–1980 instead of ANSI Standard N509–1976 which is currently specified in the Technical Specifications. This proposed change involves only the initial qualification tests which are performed by the manufacturers ot certify suitability of the impregnated activated carbon for removal of radioiodines from air streams and the verification tests which are performed by the user prior to installation of the charcoal into the filter unit. The differences between ANSI–N509–1976 and ANSI–N509–1980 in Table 5–1 reflect a refinement in the test methods used for initial qualification. Moreover, the 1980 version of the standard has been accepted by the Commission in Section 6.5.1 of the Standard Review Plan, Revision 2, July 1981.

*Basis for No Significant Hazards Consideration Determination:* The Commission has provided standards for determining whether a signficant hazards consideration exists as stated in

10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The Commission has also provided guidance concerning the application of standard for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (i) in 51 FR 7751 is a purely administrative change to the Technical Specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature.

A discussion of the proposed changes, as they relate to the standards and the above example, is presented below:

(a) *Organizational Structure.*

The first part of proposed changes would modify certain figures of the Technical Specifications which show the organizational structure of Arizona Public Service Company to (1) reflect the shift from construction phase to commercial operation phase and (2) increase the effectivness of the Compliance Department. Overall commitments and functional capabilities will not be reduced by this reorganization, nor will any organizational responsibilities be eliminated. Moreover, organizational control and accountability will be enhanced by the proposed changes. The staff finds that this part of the proposed amendment is similar to Example (i) in 51 FR 7751 and, therefore, the staff proposes to determine that this part does not involve any significant hazards considerations.

(b) *Essential Filtration System.*

The essential filtration system is not directly used to help the plant achieve safe shutdown. This system ensures that the office radiation exposures and exposures to operations personnel in the control room are within guideline values during and following all credible accident conditions. The PVNGS accident analysis assumes a filter efficiency of 95%. ANSI Standard N509–1976 requires new charcoal filters to be 99% efficient for removal of Methyl Iodide at 25°C and 95% RH. ANSI Standard N509–1980 requires an efficiency of 97% at 30°C and 95% RH. As specified in Regulatory Guide 1.52, Revision 2, this ANSI Standard is used only for new charcoal filters. The PVNGS filters met all the criteria for used filters when surveillance tests were performed. Hence, this part of the proposed amendment does not significantly increase the probability or consequences of an accident.

The NRC has reviewed ANSI Standard N509–1980 and incorporated it as part of the acceptance criteria in the Standard Review Plan, NUREG–0800, Section 6.5.1, Revision 2, 1981. No change is being made to the surveillance interval or the testing method. The essential filtration system will still serve the same purpose and function in the same manner as before this proposed change. Hence, this part of the proposed amendment does not (1) create the possibility of a new or different kind of accident from any accident previously evaluated or (2) involve a significant reduction in any margins of safety.

Therefore, the staff proposes to determine that this part of the proposed amendment does not involve any significant hazards considerations.

Based on the above considerations, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

*Attorney for licensees:* Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

*NRC Project Directorate:* George W. Knighton.

**Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland**

*Date of amendment request:* July 31, 1986 (partial).

*Description of Amendment request:* The following proposed Technical Specification (TS) changes are in response to the Baltimore Gas and Electric Company (the licensee) application dated July 31, 1986. The remaining issue will be addressed in separate correspondence. The proposed TS changes would: (1) Modify the Units 1 and 2 TS Surveillance Requirement 4.7.1.5 for demonstrating the operability of each main steam isolation valve (MSIV) by requiring full closure of each MSIV in less than 6.0 seconds rather than the currently required 3.6 seconds; (2) Change the surveillance periods for performance of the Units 1 and 2 Snubber TS Surveillance Requirements 4.7.8.1.a, "Visual Inspections," 4.7.8.1.c, "Functional Tests," and 4.7.8.1.e, "Snubber Service Life Monitoring," from the current requirement of at least once every 18 months to at least once per refueling interval where refueling interval shall be defined as 24 months. The inspection period for TS 4.7.8.1.a with one inoperable snubber of each type per inspection period would be changed from 12 months to 16 months. Additionally, several administrative changes in TS 3/4.7.8, "Snubbers," are proposed.

*Basis for proposed no significant hazards consideration determination:* Change No. 1 proposes to extend the MSIV full closure time required by TS 4.7.1.5 to a limit of "less than 6.0 seconds" from the currently required "within 3.6 seconds".

The Calvert Cliffs Updated Final Safety Analysis Report (UFSAR) assumes an MSIV closure time of a maximum 6.0 seconds after a trip signal is initiated under the pressure, temperature and flow conditions applicable to the assumed accident. Additionally, the UFSAR states that closure of the MSIV's within 6.0 seconds will prevent rapid flashing and blow down of the water stored in the shell side of the steam generator due to a steam line rupture event. Thus, a rapid, uncontrolled cooldown of the reactor coolant system (RCS) would be avoided.

Due to the current design of the MSIV's and their actuation system, these valves must be verified to close within 3.6 seconds under no load conditions to ensure that in a steam line rupture event where the MSIV experiences reverse flow, the MSIV will close in less than 6.0 seconds.

As the currently installed MSIV actuation system has contributed to consistent operational problems in properly closing the MSIV's, the licensee is replacing the existing MSIV internals and actuation system. The design of the new MSIV internals will permit the MSIV to close within 3.0 seconds, regardless of steam flow direction, when both hydraulic circuits are operating. Additionally, if one of the two hydraulic circuits fails, the MSIV will close in 5.0 seconds, again regardless of steam flow direction.

The license had evaluated the proposed change against the standards of 10 CFR 50.92 and has determined that the amendments would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated. . .

This extension in the surveillance closure time is for MSIV full closure

under no load conditions. Due to the previous design of the MSIV internals, the value had to close within 3.6 seconds under no load conditions to ensure it would close within 6.0 seconds in a reverse flow scenario. The new MSIV internals design is independent of steam flow direction. Therefore, the MSIV full closure time can be set at the limit of 6.0 seconds provided by the safety analysis, as the no load closure time will accurately reflect the accident closure time. As such, the proposed change does not involve any increase in the probability or consequences of an accident previously evaluated.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated. . .

This proposal maintains the MSIV full closure time within the limits analyzed in and bounded by the UFSAR safety analysis. Hence, this proposal does not create any possibility of a new or different type of accident.

(iii) Involve a significant reduction in margin of safety.

The full closure time of 3.6 seconds at no load conditions for the currently installed MSIV ensured that for a steam line rupture event with reverse flow, the MSIV would be fully closed within 6.0 seconds. As the closure time of the new MSIV design is independent of steam flow direction, requiring the MSIV to fully close in less than 6.0 seconds under no load conditions also ensure that MSIV will close in less than 6.0 seconds under accident conditions. Therefore, this proposal will not involve any reduction in a margin of safety.

Based upon the above, the NRC staff agrees with the licensee's evaluation and proposes to determine that the proposed change to TS 4.7.1.5 involves no significant hazard consideration.

Change No. 2 would revise TS 3/4.7.8, "Snubbers" to reflect a change from an 18-month operating cycle to a 24-month operating cycle (refueling interval). Correspondingly, the proposal would extend the periods between performance to TS Snubber Surveillance Requirements 4.7.8.1.a, "Visual Inspections," 4.7.8.1.c, "Functional Tests," and 4.7.8.1.e, "Snubber Service Life Monitoring," from 18 to 24 months, a refueling interval. Likewise, the inspection period of TS 4.7.8.1.a for one inoperable snubber of each type per inspection period would be extended from 12 to 16 months.

The licensee has an established snubber inspection program which has operated on an 18-month cycle. This program has resulted in functionally testing over 260 small bore snubbers on Units 1 and 2 combined since 1978. Only one failure has been noted during these 260 tests.

The licensee evaluated the proposed change against the standards of 10 CFR 50.92 and has determined that the amendments would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated. . .

Snubber failure could impact the operation of a safety system or a non-safety system whose failure could impact safety related systems. Inspection experience has shown that only one of 260 small bore snubbers failed during the 7 years from 1978 to 1985 for Units 1 and 2 combined. Extending the snubber surveillance interval from 18 to 24 months would therefore produce only a negligible increase in the probability of an accident previously evaluated. Additionally, the punitive nature of the TS requires an increasingly more frequent surveillance schedule if the snubber failure rate per inspection period increased. The severity of the consequences of snubber failures is time independent and would not be affected by increasing the inspection period. Hence, the proposed change does not involve any increase in the probability or consequences of an accident previously evaluated.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated. . .

As the proposal does not alter any snubber operability requirements other than surveillance interval, and since the ability to provide dynamic load support during a design basis seismic event is unaffected, no possibility or creating a new or different type of accident would result due to the proposed change.

(iii) Involve a significant reduction in margin of safety.

Extending the surveillance interval for snubber inspections and functional tests, based upon the very low snubber failure rate observed over a 7-year period, does not involve the significant reduction in any margin of safety.

Several administrative changes to TS 3/4.7.8, "Snubbers," have also been proposed as a part of change No. 2. The licensee has proposed to delete the notes in TS 4.7.8.1.c that the steam generator snubbers as specified need not be functionally tested until the refueling outage following June 30, 1985 and in TS 4.7.8.1.e that the snubber service life program shall be fully implemented by January 1, 1983. These requirements are complete and have expired and as such, are no longer applicable to any TS requirements. Therefore, these changes are only administrative in nature and involve no significant hazards considerations.

Based upon the above, the NRC staff agrees with the licensee's evaluation and proposes to determine that the proposed changes involve no significant hazard consideration.

*Local Public Document Room location:* Calvert County Library, Prince Frederick, Maryland.

*Attorney for licensee:* Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Ashok C. Thadani.

**Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts**

*Date of amendment request:* September 9, 1986.

*Description of amendment request:* Amendment No. 86 to Facility Operating License No. DRR-35 for the Pilgrim Nuclear Power Station issued on April 5, 1985 permitted changes in the normal full power background trip level for the Main Steam Line High Radiation scram and isolation setpoints to accommodate a short-term test of operation with hydrogen injection into the reactor coolant. The licensee concluded from the tests that hydrogen injection is desirable as a mitigator of intergranular stress corrosion cracking (IGSCC) in stainless steel piping. The proposed amendment request would remove the reference to short-term testing in the note to Tables 3.1.1 and 3.2.A of the Technical Specifications, and thereby make permanent the change granted in Amendment No. 86.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment it must provide to the Commission its analysis, using the standards in 10 CFR 50.92, about the issues of no significant hazards consideration.

The licensee states that the proposed amendment would permit changes in the normal full power background trip level setting for the Main Steam Line High Radiation scram and isolation setpoints to allow hydrogen injection as an IGSCC mitigating activity. This increased setpoint during hydrogen injection is necessary to reduce the possibility of spurious scrams caused by the increased radiation level erroneously

spiking over the existing set-point. The proposed amendment requires a return to the non-injection setpoint when injection is not taking place, ensuring that the Main Steam High Radiation scram and isolation setpoints reflect plant conditions.

The capability to monitor for fuel failures, which is the mission of the MSLR trip setpoint, is maintained by: (1) The continued operability of the main steam radiation monitors, which provide signals to the reactor protection system and primary containment isolation system; (2) routine radiation surveys; (3) the performance of primary coolant water analyses; and (4) the continued operability of the Steam Jet-Air Ejector Off-Gas Radiation Monitor.

Although the potential for error exists whenever instrument setpoints are adjusted, the resulting increased in the probability or consequences of accidents previously evaluated is considered insignificant because of Boston Edison's existing quality assurance program and operating procedures as applied to instrument adjustments.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Operating Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or difference kind of accident from accidents previously evaluated because the analyzed accident of concern is a control rod drop accident at 20% rated power. The proposed amendment prohibits withdrawing control rods at below 20% when non-injection MSLHR setpoints have not been reestablished.

Also, if due to a recirculation pump trip or other unanticipated power reduction event, the reactor drops below 20% rated power without setpoint readjustment, control rod withdrawal is prohibited until the necessary setpoint readjustment is made. This ensures that fuel failures of the type concerning the MSLRM are unlikely.

Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Operating Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety because diverse means exist for monitoring such that there is no increase in the possibility of an undetected fuel failure resulting from a control rod drop below 20% rated power.

The licensee states that the radiological safety of the public and plant personnel is maintained by radiation protection practices that will be performed during hydrogen injection based upon injection test data. Steps have been taken to make changes to plant design and procedures deemed appropriate to minimize personnel exposure during the injection of hydrogen. Changes in gaseous effluent release rates for hydrogen are negligible due to the short decay times for N–16.

Therefore, based on the diverse means for maintaining the ability to detect fuel failures, on the protection of primary coolant system piping promised by implementing hydrogen water chemistry, on the efficacy of programs and procedures to assure accurate instrument setpoint adjustment, on both routine and exceptional ALARA actions which have been taken, on the ability of existing technical specifications to ensure that inimical control rod movement cannot occur below 20% power, and on the insignificant effect of increased N–16 activity on gaseous effluent release rates, the proposed amendment will not significantly reduce the margin of safety.

Therefore, based on the above, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

*Local Public Document Room location:* Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

*Attorney for licensee:* W.S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

*NRC Project Director:* John A. Zwolinski.

**Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, Illinois**

*Date of application for amendments:* October 17, 1986.

*Description of amendments request:* These amendments would modify the Zion Technical Specifications to remove references to the initial base line inservice inspection and to a specific version of the ASME Section XI Code.

The discussion of the inservice inspection baseline inspection is being deleted because this one-time inspection has been performed. The references to a specific addendum to the ASME Section XI Code are being deleted because they are altered every 10 years in accordance with 10 CFR 50.55a.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria:

*Criterion 1*

The inservice inspection and testing program implemented at Zion Station provides additional assurance that Zion's structural integrity will not degrade with time from the high level of quality established during the plant's construction. The structural integrity of the Zion Station systems helps to ensure that the probability or consequences of all accidents previously evaluated remain well within the bounds of the analyses contained in the Zion FSAR.

The proposed amendment clarifies some of the administrative details surrounding the performance of the required inservice inspection program. The deletion of the reference to the baseline inspection is of no consequence since this was a one-time inspection that has been completed. The references to the specific versions of the ASME Section XI Code are currently outdated since the Zion units have entered into their second ten-year inspection interval. Thus, the deletion of a reference to a specific version is merely a reflection of Zion Station's ongoing compliance with 10 CFR 50.55a.

Therefore, this proposed amendment is an administrative clarification of the manner in which the inservice inspection and testing program is conducted at Zion Station. The actual conduct and effectiveness of this inspection program will not be altered. The probability or consequences of any accident previously evaluated will not to be changed.

*Criterion 2*

As discussed above, the clarification of administrative details and the deletion of outdated references has no effect on the actual conduct of the inservice inspection program at Zion

Station. Thus, this proposed amendment can have no effect on the actual operation or on the structural integrity of Zion Station.

Therefore, this change cannot create the possibility of a new or different kind of accident from any previously evaluated for Zion Station.

*Criterion 3*

The actual conduct and effectiveness of the inservice inspection program at Zion Station will not be altered. This proposed change involves the clarification of administrative details and the deletion of outdated references. Thus, this proposed amendment does not affect the margin of safety at Zion Station.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The minor changes contained in this proposed amendment are intended to delete outdated references and clarify the administration of the inservice inspection test program at Zion Station. Thus, example (i) is applicable in this instance. Example (i) states:

(i) A purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specification involve no significant hazards consideration.

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

*Attorney for licensee:* P. Steptoe, Esq., Isham, Lincoln and Beale, Counselors at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

*NRC Project Director:* Steven A. Varga.

**Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, Illinois**

*Date of application for amendments:* October 15, 1986.

*Description of amendments request:* These amendments would modify the Zion Technical Specifications in accordance with the guidance contained in the referenced letter, Generic Letter 85–19. These changes will eliminate the requirement to shutdown if the coolant iodine exceeds one microcurie per gram dose equivalent iodine 131 for 800 hours in a twelve month period.

In addition, the reporting requirements regarding iodine spiking and a number of other minor administrative changes are also included. These minor administrative changes include correction of position titles, special reporting requirement changes, and the specific activity reporting requirements discussed above.

*Basis for proposed no significant hazards consideration determintion:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria:

*Criterion 1*

This change involves incorporating the guidance contained in NRC Generic Letter 85–19. It also involves a number of minor administrative changes that are either associated with Generic Letter 85–19 or are intended to clarify and update Section 6.0 of the Zion Technical Specifications.

There will be only one aspect of this proposed change that will have an effect on the operation of Zion Station. Generic Letter 85–19 provides for the deletion of the requirements to shutdown a reactor that has experienced in excess of 800 hours of high coolant iodine activity. The existence of high iodine activity in the primary coolant system has no effect on any other system at Zion Station. That is, the existence of higher specific activity does not affect the integrity of Zion Station nor the ability of its safety related systems to perform their intended functions.

The existing Zion FSAR typically assumes operation with one percent failed fuel for those accidents which involve a release of primary coolant. For example, the analysis of a steam generator tube rupture event contained in the Zion FSAR assumes that a 172 curies of equivalent iodine is contained in 125,000 lbs of reactor coolant. Thus, the assumptions contained in the Zion safety analysis continue to bound the restrictions of the Zion Technical Specifications. This results in the consequences of previously analyzed events being unaltered by this proposed change.

The remaining changes constitute minor modifications in the plant's administrative controls. These alterations have been prompted by either the reporting requirements suggested in 85–19, or by the need to clarify a pre-existing requirement contained in Section 6.0 of the Zion Technical Specifications.

None of the administrative clarifications discussed above has any effect on the operation of Zion Station. Thus, these changes can have no effect on either the integrity of Zion Station nor on the ability of its safety related systems to perform their intended function.

Thus, this proposed amendment has no affect on the probability or consequences of any previously evaluated accident.

*Criterion 2*

Neither the implementation of the guidance contained in Generic Letter 85–19 nor the clarification of administrative controls at Zion Station has any effect on the operation of Zion Station. These proposed amendments have no effect on any of Zion's systems nor on their ability to perform. These changes will not produce any effects or pertubations that might induce the failure or malfunction of another component.

Based upon the above discussion, this proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

*Criterion 3*

The margin of safety at Zion Station is unaffected by this proposed amendment. As discussed above, the assumptions contained in the Zion safety analysis still bound the restrictions on Zion specific coolant activity.

In addition, the minor administrative clarifications have no effect on the operation of Zion Station. They cannot have any detrimental affect on any of Zion Station's systems ability to perform their intended safety functions.

Therefore, the proposed amendment will not involve a reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specification involve no significant hazards consideration.

*Local Public Document Room location:* Waukegan Public Library, 128

N. County Street, Waukegan, Illinois 60085.

*Attorney to licensee:* P. Steptoe, Esq., Isham, Lincoln and Beale, Counselors at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

*NRC Project Director:* Steven A. Varga.

**Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, Illinois**

*Date of application for amendments:* October 16, 1986.

*Description of amendments request:* These amendments would allow disabling the rod control system at Zion Station during the time periods that a reactor is in Mode 3 with less than four reactor coolant pumps operating.

This will result in the restrictions of Zion Technical Specifications being consistent with the assumptions contained in the safety analysis.

The letter from Westinghouse dated July 9, 1984, from E.P. Rahe, Jr. to D. Eisenhut provided initial notification of an inconsistency between the Technical Specifications at various plants and the Safety Analyses that had been performed. By letter dated January 22, 1985, from E.P. Rahe, Jr. to H. Thompson, Westinghouse further provided the NRC with an update regarding this issue and identified the uncontrolled rod withdrawal accident as being the sole event affected by this inconsistency.

Zion Station's rod control system requires the application of electrical power to the control rod drive motors to produce rod movement. This electrical power is supplied by the rod drive M–G sets through the reactor trip breakers. Thus, the addition of a requirement to either open the reactor trip breakers or to de-energize both rod drive M–G sets while in Mode 3 with less than four reactor coolant pumps operating precludes the possibility of experiencing an uncontrolled rod withdrawal event. This new restriction will ensure that Zion Station is operated in accordance with the assumption contained in its safety analysis.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards considerations exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria:

*Criterion 1*

This proposed amendment will result in ther removal of an inconsistency between the current Zion Technical Specifications and the existing Zion safety analysis. The current Zion Technical Specifications allows two reactor coolant pumps (RCP) to be operating during Mode 3. This results in a potentially non-conservative inconsistency with the existing Zion safety analysis in the event of an uncontrolled rod withdrawal from a subcritical condition. The Zion FSAR assumes that four RCPs are in operation during this postulated event.

The addition of a requirement to either open the reactor trip breakers or de-energize the rod drive M–G sets during reactor operation in Mode 3 with less than four reactor coolant pumps in operation will ensure that the assumptions of the Zion safety analysis remain valid. This provides continued assurance that the previously calculated results contained in the Zion FSAR remained bounding for the operation of Zion Station.

Thus, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Rather, it ensures that the postulated consequences of an uncontrolled rod withdrawal from a subcritical condition remain as stated in the Zion FSAR.

*Criterion 2*

The addition of an additional restriction during operation in Mode 3 has no effect on the reliability or integrity of any of Zion's systems. Rather, this change is intended to prevent the postulated spurious operation of Zion's rod control system while in Mode 3.

The new requirement to require either the opening of the reactor trip breakers or the de-energization of the rod drive M–G sets has no effect on any of the Zion's systems nor on the generation of any external event such s a tornado or flood. This new requirement will not create the possibility of any additional system malfunctions or externally generated events.

Therefore, this proposed amendment cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

*Criterion 3*

The proposed amendment will result in more conservative operation than is currently allowed by the Zion Technical Specifications. Specifically, the proposed change will require either the opening of the reactor trip breakers or the de-energization of the rod dirve M–G sets during reactor operations in Mode 3 with less than four reactor coolant pumps in operation. This is a new requirement that results in more conservative operation.

The overall intent of this proposed change is to remove the remote possibility of experiencing spurious operation of the rod control system while in Mode 3 with less than four feactor coolant pumps in operation. This will ensure that Zion Station is always operated within the assumptions contained in the preexisting Zion safety analysis.

Therefore, this change does not involve a reduction in the margin of Safety.

The staff has reviewd the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The proposed amendment will result in an additional restriction in the Zion Technical Specifications. Therefore, example (ii) is applicable in this instance. Example (ii):

> (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specification: for example, a more stringent surveillance requirement.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specification involve no significant hazards consideration.

*Local Public Document Room location:* Waukegan Public Library, 128 N., County Street, Waukegan, Illinois 60085.

*Attorney to licensee:* P. Steptoe, Esq., Isham, Lincoln and Beale, Counselors at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

NRC Project Director: Steven A. Varga.

**Consumers Power Company, Docket No. 50–255, Palisades, Plant, Van Buren County, Michigan**

*Date of amendment request:* October 15, 1985.

*Description of amendment request:* The requested change would allow delegation of the Plant Manager's procedure approval authority, by the Plant Manager, to appropriate members of the plant management.

*Basis for proposed no significnt hazards consideration determination:* The proposed changes have been reviewed agaisnt each of the criteria in 10 CFR 50.92, namely that the proposed changes would not:

(1) Involve a significant increse in the probability or consequences of an accident previously evaluated; or
(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
(3) Involve a significant reduction in a margin of safety.

With regards to (1) above, the change in delegation of procedure approval authority does not involve a significant increase in the probability or consequences of an accident previously evaluated because the Plant Manager's signature approval of procedures is for the most part based on his review of Plant Review Committee (PRC) deliberations as described in PRC meeting minutes, and the PRC review of procedures that consists of a multi-disciplinary review by appropriate management and technical personnel within the plant staff will remain intact.

With regard to (2) above, the change in this administrative approval authority does not create the possibility of a new or different kind of accident previously evaluated because the change does not involve a change in plant design and does not introduce new modes of operation of the facility.

Finally, with regard to (3) above, allowing the Plant Manager to delegate the procedure approval authority to the appropriate line manager will not involve a significant reduction in the margin of safety because the delegated line manager is considered to have first hand knowledge and technical expertise with regard to the procedures in his functional area of responsibility.

Based on the above, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* Van Zoeren Library, Hope College, Holland, Michigan 49423.

*Attorney for licensee:* Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

*NRC Project Director:* Ashok C. Thadani.

**Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan**

*Dates of amendment request:* June 27, 1986.

*Description of amendment request:* This proposed amendment, if approved, would revise the Fermi-2 Operating License No. NPF–43 Plant Technical Specification 3/4.4.5 LCO action statements to delete requirements deemed unnecessarily restrictive by the Commission in Generic Letter 85–19 (September 27, 1985), for reporting exceedances in primary reactor system coolant activity limits (e.g. Iodine-131 activity limits).

Technical Specification 3/4.4.5 currently specifies the primary coolant activity limits at which the plant may continue to be operated, when the plant must be shut down, and the frequency of reporting. For example, Technical Specification 3/4.4.5 states that if the plant is operating in Operational Condition 1, 2 or 3, with the specific activity of the primary coolant greater than 0.2 micorcuries per gram equivalent I–131, but less than or equal to 4 microcuries per gram, operation may continue for up to 48 hours provided that the cumulative operating time under these circumstances does not exceed 800 hours in any consecutive 12-month period. With the total cumulative operating time at a primary coolant specific activity greater than 0.2 microcuries per gram dose equivalent I–131 exceeding 500 hours in any consecutive 6-month period, the licensee must submit a special report to the Commission pursuant to Technical Specification 6.9.2 within 30 days, indicating the number of hours of operation above that limit.

Generic Letter 85–19 was issued as a result of information gained through industry experience and improvements in the quality of nuclear fuels management over the past decade. The generic letter noted that normal coolant iodine activity, industry wide, has been found to be below current Technical Specification limits. In view of this finding, the generic letter provides guidelines and sample Technical Specification change formats to be used by licensees seeking to change their respective plant Technical Specifications, accordingly, for getting the reporting requirements revised.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the profitability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the change proposed to Technical Specification 3/4.4.5 does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, because the proposed change is primarily administrative in nature, relaxing requirements for prompt reports of iodine spikes and for shutting down the plant if reactor coolant system activity exceeds the iodine limit for more than 800 hours per year. This change does not increase the current limit on specific activity and, therefore, does not increase the radiological consequences or any accident in which reactor coolant is postulated to be released to the environment; (2) create the possibility of a new or different kind of accident from any previously evaluated, because the proposed change is primarily administrative, and does not increase the currently specified limits on primary coolant activity or alter the conclusions regarding the radiological consequences from release of reactor coolant in a postulated accident presented in the Fermi-2 FSAR; and (3) involve a significant reduction in the margin of safety because as stated in (2) above, modifying the reporting frequency requirement is an administrative change. In addition, the frequency of reporting and the elimination of the provision for a percentage of the total yearly plant operating time do not involve a significant reduction on safety margin because proper fuel management, improved fuel quality, and existing reporting requirements should preclude approaching currently specified primary coolant activity limits.

The Commission agrees with the licensee's determinations and proposes to determine that the requested change does not involve a significant hazards consideration.

*Local Public Document Room location:* Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

*Attorney for the Licensee:* John Flynn, Esq., 2000 Second Avenue, Detroit, Michigan 48226.

*NEC Project Director:* Elinor Adensam.

**Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania**

*Date of amendment request:* October 9, 1986.

*Description of amendment request:* Beaver Valley Unit 1 and Unit 2 control rooms are currently separated by an air-

tight partition of steel plates. With the planned operation of Unit 2 in 1987, the licensee has submitted this amendment request to change various specifications to allow removal of the partition. These changes will:

(1) Specify the control room emergency habitability systems that must be operable under various modes of operation,

(2) Impose limiting conditions of operation when some of these systems are inoperable,

(3) Impose associated surveillance requirements of these habitability systems, and specifications for their performance level,

(4) Remove specifications of Unit 2's fire detection instruments that are currently in Unit 1's Technical Specifications, since Unit 2's Technical Specifications will address these instruments.

*Basis for proposed no significant hazards consideration determination:* The amendment is proposed to accommodate hardware changes to be made to the control room and habitability systems. The Unit 1 hardware changes consist mainly of increasing equipment capability to cover the Unit 1 and 2 combined control room envelope. In addition, control room habitability will be jointly maintained by Unit 2 habitability systems, whose specifications are being addressed under the Unit 2 docket.

The modifications to Unit 1 systems do not reduce the level of control room habitability under postulated accident conditions, thus ensuring no increase in the probability of occurrence or the consequences of an accident previously analyzed. No new systems are introduced as a result of this amendment and existing systems are only modified to increase capability, thus the possibility of new or different kind of accident will not be created. Furthermore, the modifications are made to maintain the same level of habitability in the combined control room as in the current Unit 1 control room, thus the current margin of safety will not be reduced.

Therefore, the staff proposes to determine that the amendment involves no significant hazard consideration.

*Local Public Document Room location:* B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

*Attorney for licensee:* Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street NW., Washington DC 20037.

*NRC Project Director:* Lester S. Rubenstein.

**Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania**

*Date of amendment request:* October 27, 1986.

*Description of amendment request:* The proposed amendment would revise the Technical Specifications to include requirements for independent testing of the reactor trip breaker undervoltage and shunt trip attachments during power operation, and testing of the reactor trip bypass breakers and control room manual switch contacts during each refueling outage. The proposed amendment is the licensee's response to the staff's Generic Letter 85–09. The design of the subject components has been reviewed by the staff, and documented in the staff's letters dated November 8, 1984, October 9, 1985, and April 3, 1986. The imposition of technical specifications is the last action to completely resolve the issue entitled "Automatic Actuation of Shunt Trip Attachment, Salem ATWS Item 4.3" for Beaver Valley Unit 1.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance concerning the application of these standards by providing certain examples (51 FR 7751). One of the examples of actions involving no significant hazards consideration is example (ii), which is "a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications." The proposed amendment would impose requirements that are currently non-existent, and therefore exactly matches the example. On this basis, the staff proposes to determine that the action involves no significant hazards consideration.

*Local Public Document Room location:* B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

*Attorney for licensee:* Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street NW., Washington, DC 20037.

*NRC Project Director:* Lester S. Rubenstein.

**Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania**

*Date of amendment request:* October 29, 1986.

*Description of amendment request:* The proposed amendment would revise the allowable pressurizer and main steam safety valve setpoint tolerance from ±1% to +1%, −3%. The current ±1% safety valve tolerance will be retained for value testing and adjusting; however a tolerance of +1%, −3% would allow more flexibility during plant operation and potentially reduce the number of licensee event reports (LERs) that result when valve setpoints are found outside of the tolerance. The new tolerances would provide a wider allowable range to accommodate setpoint drift without compromising the analyzed safety valve relief capability.

The essential function of the safety valves is the protection of the primary and secondary systems from overpressure. If the proposed amendment is issued, the safety margin would remain unchanged since the upper limit where the valve will open would have the same tolerance as before. The lowered limit of the lower tolerance, however, would reduce the frequency of valves found outside the specified range, thus resulting in reduced worker radiological exposure associated with valve testing and adjusting.

*Basis for proposed no significant hazards consideration determination:* The primary and secondary coolant overpressure limits are not changed by the proposed amendment since the upper limits of pressure will still be maintained by safety valve settings of +1%. Furthermore, during testing the valves will still be adjusted to a tolerance of ±1%. The less restrictive tolerance of +1%, −3% mainly serves to provide operational flexibility and to reduce the number of LERs. Since parameters that could affect safety would not be changed, the proposed amendment would not increase the probability of occurrence or the consequences of accidents previously evaluated. Since no hardware modifications or changes in operation procedures would be made, the proposed changes would not create the possibility of a new or differnt kind of accident from any accident previously evaluated. The safety margin is controlled by the upper tolerance limit, which is not changed; therefore, there is no decrease in the safety margin.

On the basis of the above discussion, the staff proposes to determine that the amendment involves no significant hazard consideration.

*Local Public Document Room location:* B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

*Attorney for licensee:* Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and

Trowbridge, 2300 N Street NW., Washington, DC 20037.

*NRC Project Director:* Lester S. Rubenstein.

**Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida**

*Date of amendment request:* November 7, 1986.

*Description of amendment request:* The amendment would discontinue the use of nuclear flux peaking augmentation factors. The factors were originally developed to provide margin for increased flux peaks which could result from the formation of interpellet gaps in the fuel pellet column and the subsequent local creepdown of the fuel cladding. This was a problem in older fuel designs, but is not a problem with modern fuel designs.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a signifcant reduction in a margin of safety. The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis:

> Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> The change incorporates a model refinement reflecting present fuel designs and does not adversely affect accident initiating events or consequences. The consequences of removing the augmentation factors have already been evaluated because current safety analyses do take credit for the reduction in linear heat rate imposed by augmentation factors. Removal of the agumentation factors will not cause the results of any analysis to exceed design acceptance criteria.

In connection with the second standard, the licensee states that:

> Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.
>
> No new accident initiators are created by the incorporation of the model refinements. This change will not result in any change in the operating mode of the plant. The deficiencies in fuel design which necessitated the original implementation of augmentation factors have been corrected so that these factors are no longer necessary to ensure adequate fuel performance.

Regarding the third standard, the licensee states that:

> Use of the modified specification would not involve a significant reduction in a margin of safety.
>
> The margin of safety is the difference between the peak linear heat generation rate Limiting Condition for Operation (LCO) and the Specified Acceptable Fuel Design Limit (SAFDL). Augmentation factors were included in the determination of the peak linear heat generation rate LCO and SAFDL in a conservative manner. Since these limits are conservative, neither the LCO nor the SAFDL will be changed by this modification to the Technical Specifications. Elimination of augmentation factors will not reduce the margin of safety between the peak linear heat generation rate LCO and SAFDL.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, it appears that the standards have been met because the augmentation factors were needed for older fuel designs and not newer ones which are currently being supplied by the licensee's fuel vendor. In addition, many other licensees requested deletion of these same Technical Specifications and the staff has approved deletion of them on basically the same basis as argued by the licensee.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

*Attorney for licensee:* Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street NW., Washington, DC 20036.

*NRC Project Director:* Ashok C. Thadani.

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia**

*Date of amendment request:* October 24, 1986.

*Description of amendment request:* These amendments would (1) modify the Technical Specifications for Unit 1 to add Limiting Conditions for Operation and Surveillance requirements for the instrumentation that monitors components controlled from the remote shutdown panel, and (2) modify the Technical Specifications for both Units 1 and 2 to add Limiting Conditions for Operation and Surveillance requirements for the remote shutdown panel.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7751). An example of actions involving no significant hazards considerations is an amendment involving a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. These proposed Technical Specification modifications impose additional limitations, restrictions, and controls and therefore fall within this example.

Therefore, since the application for amendments involves proposed changes that are similar to an example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendments involves no significant hazards considerations.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

*Attorney for licensee:* Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

*NRC Project Director:* Daniel R. Muller.

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia**

*Date of amendment request:* October 27, 1986 partially revising a) the submittal of February 17, 1986 as augmented August 27, 1986 and b) the submittal of May 16, 1986.

*Description of amendment request:* This submittal partially revises the submittal of February 17, 1986 which was noticed in the **Federal Register** on May 7, 1986 (51 FR 16927) as augmented by the submittal of August 27, 1986 which was notified in the **Federal Register** on November 19, 1986 (51 FR 41854).

This submittal revises these previous requests by proposing changes to the administrative Technical Specifications (TS) to 1) correct them to reflect recent organization changes including a) creation of a Senior Executive Vice President position in the corporate office b) creation of an onsite executive position, Vice President Plant Hatch and c) restructuring of plant departments,

and 2) delete the onsite and offsite organizational charts. This submittal also revises the submittal of May 16, 1986 which was noticed in the **Federal Register** on July 2, 1986 (51 FR 24255) to reflect these same organization changes in the proposed modifications to the administrative TSs.

*Basis for proposed no significant hazards consideration determination:* In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendments involve no significant hazards considerations. To make this determination the staff must establish that operation in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in the margin of safety.

The proposed amendments in this instance do not involve a physical modification of the plant, a change in operating procedures, or a change in any limiting conditions of operation. Rather, the change is administrative, concerning changes in management organization, position titles, position responsibilities, and other administrative corrections. In view of the administrative nature of the proposed amendments, none of the criteria enumerated above apply.

Based on the foregoing, the Commission has made a proposed determination that the application for amendments involves no significant hazards considerations.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

*Attorney for licensee:* Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

*NRC Project Director:* Daniel R. Muller.

**GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey**

*Date of amendment request:* November 7, 1986 (TSCR 155).

*Description of amendment request:* The proposed amendment would revise Sections 3.12 and 4.12, Fire Protection, of the Appendix A Technical Specifications (TS), regarding fire protection and the Alternate Shutdown Facility. Specifically, the requested changes to the TS are the following:

(1) Add Sections 3.12.I/4.12.I and Tables 3.12-6/4.12-1, the Limiting Conditions of Operation (LCO) and the Surveillance Requirements for the operability of the Alternate Shutdown Facility.

(2) Revise Table 3.12-1 "Fire Detection Instrumentation" to include new detectors which have been added, new fire area/zone designations, and new detection systems.

(3) Revise Table 3.12-2 "Spray/Sprinkler Systems" to include new fire suppression systems and new fire area/zone designations.

(4) Revise Table 3.12-3 "Hose Stations" and Table 3.12-5 "Hydrants and Hose Houses" to include new fire area/zone designations.

(5) Revise Table 3.12-4 "Halon Systems" to include changes in the 480 Volt Switchgear Room Halon System and new fire area/zone designations.

*Basis for proposed no significant hazards consideration determination:* The licensee has evaluated the proposed change to the TS to determine whether a significant hazards consideration exists.

The licensee's proposed changes to the TS incorporate new requirements related to the Alternate Shutdown Facility being installed during the Cycle 11 Refueling (Cycle 11R) outage in order to comply with the requirements of 10 CFR Part 50, Appendix R. Additional changes were requested by the licensee to reflect changes in plant fire protection features due to configuration changes by the licensee at the plant.

The Alternate Shutdown Facility has been reviewed by the NRC staff. The staff's Safety Evaluation accepting the design was issued on March 24, 1986.

Each of the changes described above has been evaluated by the licensee using the standards presented in 10 CFR 50.92. The results of this evaluation are as follows:

*Section 3.12.I/4.12.I; Table 3.12-6 and 4.12-1*

(1) The proposed change will not involve a significant increase in the the probability or consequences of an accident previously evaluated. The Alternate Shutdown Facility is being installed in compliance with 10 CFR 50, Appendix R to provide an alternate means of achieving and maintaining safe reactor shutdown in the unlikely event of a fire in the Control Room or associated Cable Spreading rooms. The Alternate Shutdown Facility has been designed so as to eliminate any impact on the probability or consequences of other accidents evaluated for the Oyster Creek Nuclear Generating Station (OCNGS). Isolation and electrical separation is provided in the Alternate Shutdown Facility by providing key locked switches and electrical circuit isolators to assure that normal and emergency plant operations (other than fire) are unaffected by the Alternate Shutdown Facility. Operation of the facility during a fire condition is accomplished by operation of the key locked switches which transfers control functions to the Alternate Shutdown Facility while disconnecting and isolating these functions in the area affected by the fire. The Alternate Shutdown Facility design was reviewed and approved by the NRC staff in a letter from J.A. Zwolinski to P.B. Fiedler dated March 24, 1986.

(2) The proposed change will not create the possibility of a new or different kind of accident from any accident previously analyzed. The Alternate Shutdown Facility provides a similar means of control for achieving safe shutdown as that which could be accomplished from the control room. The facility utilizes existing plant systems and established design capabilities. The isolation and electrical separation provided assures that operation from the control room will be unaffected during normal or emergency (other than fire) conditions. Where the Alternate Shutdown Facility interfaces with safety systems qualified electrical isolators are provided or the interfacing circuits and equipment is designed to safety grade standards.

(3) The proposed change will not involve a significant reduction in the margin of safety. The isolation and electrical separation of the Alternate Shutdown Facility assures the existing capabilities are retained to mitigate and/or prevent accidents as that which existed prior to installation of the Alternate Shutdown Facility. Installation of this facility increases the margin of safety by providing a means to improve safe shutdown capability in the event of fire in the control room or cable spread rooms.

*Table 3.12-1*

(1) The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated. Additional fire detectors will be added to existing fire detection systems to provide coverage for safety related and safe shutdown related cabling. The change also includes new detection systems installed for the upper cable spread room and cable bridge tunnels that were previously installed. These additions have been designed consistent with similar fire protection features provided in other areas of the plant and in accordance with the applicable requirements of 10 CFR 50, Appendix R and other regulatory guidance. The fire detectors and fire detection systems alert operators to a possible fire condition and in some cases initiate fire suppression systems. Protection of safety related equipment from inadvertent operation of fire suppression systems is provided where necessary.

Periodic updates of the plant Fire Hazards Analysis (FHA) have resulted in establishing new fire area/zone designations to more accurately identify the characteristics of these areas. These changes are administrative in nature and do not affect plant normal or emergency operations.

(2) The proposed change will not create the possibility of a new or different kind of accident from any accident previously analyzed. The Additional fire detectors will be added to existing fire detection systems to provide coverage for safety related and safe

shutdown related cabling. This change also includes new detection systems installed for the upper cable spread room and cable bridge tunnels that were installed prior to 11R. These additions have been designed consistent with similar fire protection features provided in other areas of the plant and in accordance with the applicable requirements of 10 CFR 50, Appendix R and other regulatory guidance. The fire detectors and fire detection systems alert operators to a possible fire condition and in some cases initiate fire suppression systems. Protection of safety related equipment from inadvertent operation of fire suppression systems is provided where necessary.

Periodic updates of the plant Fire Hazards Analysis (FHA) have resulted in establishing new fire area/zone designations to more accurately identify the characteristics of these areas. These changes are administrative in nature and do not affect plant normal or emergency operations.

(3) The proposed change will not involve a significant reduction in the margin of safety. New fire detectors added to existing fire detection systems and the new detection systems are designed to the same requirements and criteria as existing fire detection systems throughout the plant. These additions improve fire detection capabilities and maintain the existing margin of safety. The fire area/zone designation changes have no effect on plant operations nor fire suppression capability.

*Table 3.12-2*

(1) The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated. The water suppression systems provided for the upper cable spread room and cable bridge tunnels are designed and installed consistent with similar systems in other plant areas and in accordance with 10 CFR 50, Appendix R and other regulatory guidance. The application of water to the cables used in the plant does not result in cable degradation. Provisions have been made to protect safety related equipment from the effects of inadvertent operation of suppression systems and water runoff.

Periodic updates of the plant Fire Hazards Analysis (FHA) have resulted in establishing new fire area/zone designations to more accurately identify the characteristics of these areas. These changes are administrative in nature and do not affect plant normal or emergency operations.

(2) The proposed change will not create the possibility of a new or different kind of accident from any accident previously analyzed. The water suppression systems provided for the upper cable spread room and cable bridge tunnels are designed and installed consistent with similar systems in other plant areas and in accordance with 10 CFR 50, Appendix R and other regulatory guidance. The application of water to the cables used in the plant does not result in cable degration. Provisions have been made to protect safety related equipment from the effects of inadvertent operation and water runoff.

Periodic updates of the plant Fire Hazards Analysis (FHA) have resulted in establishing new fire area/zone designations to more accurately identify the characteristics of these areas. These changes are administrative in nature and do not affect plant normal or emergency operations.

(3) The proposed change will not involve a significant reduction in the margin of safety. The new fire suppression systems are designed and installed to the same requirements and criteria as existing suppression systems throughout the plant. The addition of these systems maintains the margin of safety established. The fire area/zone designation changes have no effect on plant operations nor fire suppression capability.

*Table 3.12-3 and Table 3.12-5*

(1) The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated; and

(2) The proposed change will not create the possibility of a new or different kind of accident from any accident previously analyzed; and

(3) The proposed change will not inolve a significant reduction in the margin of safety as follows:

The proposed changes only reflect administrative revisions to fire area/zone designations. The revised designations clarify fire area/zone locations and characteristics. These changes are administrative in nature and do not materially affect any plant systems, operation, or analyses.

*Table 3.12-4*

(1) The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated. In order to comply with 10CFR50, Appendix R, the 480 volt switchgear room will be divided into two (2) fire zones separated by a one hour fire barrier. The existing halon system for this area will be modified to provide independent fire suppression capability for each zone in this area. The modification has been designed in accordance with applicable requirements and design criteria that was previously invoked for this area prior to the installation of the fire barrier. Therefore, this modification does not affect the analysis of any accidents previously evaluated and decreases the consequences of a fire in the 480 volt switchgear room.

(2) The proposed changes will not create the possibility of a new or different kind of accident from any accident previously analyzed. These changes do not add nor diminish the level of fire safety within the 480 volt switch gear room. The existing systems are being modified to regain compliance with existing requirements and regulatory guidance. The changes modifiy the area of coverage but do not affect any operational characteristics or operational parameters. The modification has been designed consistent with similar fire protection features in other areas of the plant.

The changes to fire area/zone designations are administrative in nature and do not affect any plant systems, operations, or analysis except that two new zones have been established to identify additional separation of safety related and safe shutdown systems and components.

(3) The proposed changes will not involve a significant reduction in the margin of safety. These changes provide additional separation of safety related and safe shutdown systems/components while maintaining the level of fire safety previously existing prior to modification, therefore, the margin of safety has been increased.

Changes to fire area/zone designations do not effect any plant systems, operation, or analyses and have no effect on the margin of safety.

*Conclusion*

Each proposed change has been evaluated in relation to the standards provided in 10CFR50.92. In each case, the results of this evaluation result in a finding that no significant hazards exists in relation to the changes requested.

Therefore, because the staff has reviewed the licensee's no significant hazards consideration and agrees that the licensee's request meets the three criteria in 10 CFR 50.92(c), the staff proposes to determine that the licensee's proposed change does not involve a significant hazards consideration.

*Local Public Document Room location:* Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

*Attorney for licensee:* Ernest L. Blake, Jr.; Shaw, Pittman, Potts, and Trowbridge, 2300 N Street NW., Washington, DC 20037.

*NRC Project Director:* John A. Zwolinski.

**GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey**

*Date of amendment request:* November 26, 1986 (TSCR 152).

*Description of amendment request:* The proposed amendment would add requirements to Sections 3.1 and 4.1, Protective Instrumentation; Section 3.5, Containment; and Sections 3.13 and 4.13, Accident Monitoring Instrumentation, of the Appendix A Technical Specifications (TS). These new requirements concern limiting conditions for operation and surveillance on the containment high range radiation monitors and the isolation capability upon high radiation of the large containment vent and purge isolation valves. The licensee has propsed to (1) add the containment high radiation trip setting to isolate the large containment vent and purge values to Table 3.1.1 and text to the Bases for Table 3.1.1; (2) identify these large valves in Table 3.5.2; (3) add the limiting conditions for plant operation for the containment high range radiation

monitors in Section 3.13 and Table 3.13.1; (4) add the surveillance on the containment high range radiation monitor trip instrumentation for its containment isolation function to Tables 4.1.1. and 4.1.2; and (5) add surveillance requirements for the containment high-range radiation monitors, to monitor high radiation, to Section 4.13 and Table 4.13.1.

*Basis for proposed no significant hazards consideration determination:* The licensee has proposed Technical Specification Change Request (TSCR) No. 152 to add requirements concerning limiting conditions for operation (LCO) and surveillance for the containment high range radiation monitors. TMI Action Plan, NUREG-0737, item II.F.1.3 required the licensee to have two containment high range monitors to measure radiation inside containment during and following an accident. The licensee installed the two monitors during the current Cycle 11 Refueling (Cycle 11R) outage. The monitors are used to measure the radiation inside containment and provide a trip signal to close the large containment vent and purge isolation valves on high containment radiation. This containment isolation capability was also installed in the Cycle 11R outage to meet TMI Item II.E.4.2.7.

In TSCR No. 152, the licensee is proposing new LCO and surveillance requriement to cover the newly installed monitor and its containment isolation function.

The licensee has evaluated TSCR No. 152 to determine if a significant hazards consideration exists. The results of this evaluation, in terms of the criteria in 10 CFR 50.92(c), are given below.

(1) *TSCR 152 does not involve a significant increase in the probability or consequences of a previously evaluated accident because:*

The containment high range radiation monitoring system provides a monitoring function only, existing plant response is unaltered. With respect to the isolation of the containment vent and purge valves upon drywell high radiation, the safety function of these valves and their isolation setpoints of high drywell pressure and low-low reactor water level are unchanged. Isolation of these valves upon drywell high radiation provides greater assurance that releases are within acceptable limits and does not affect any plant safety systems other than containment vent and purge valves.

(2) *TSCR 152 does not create the possibility of a new or different kind of accident from any accident previously analyzed because:*

The containment high range radiation monitoring system provides a monitoring function only, existing plant response is unaltered. Isolation of the containment vent and purge valves upon drywell high radiation will be in addition and subsequent to the existing isolation signals. It will not alter the initial plant response to a LOCA, but rather provide greater assurance that releases are within acceptable limits.

(3) *TSCR 152 does not invovle a significant reduction in a margin of safety because:*

The containment high range monitoring system provides a monitoring function only, existing plant response is unaltered. Isolation of the drywell vent and purge valves upon drywell high radiation will enhance the margin of safety by providing greater assurance that releases are within acceptable limits.

The staff has reviewed the licensee's no significant hazards determination and agrees with the licensee's evaluation. The effect of isolation of the containment vent and purge isolation valves on high radiation is to close these valves. This may be earlier than by other containment isolation signals.

Therefore, because the licensee's request meets the above three criteria in 10 CFR 50.92(c), the staff proposes to determine that the licensee's proposed change does not involve a significant hazards consideration.

*Local Public Document Room location:* Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

*Attorney for licensee:* Ernest L. Blake, Jr.; Show, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

*NRC Project Director:* John A. Zwolinski.

**GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania**

*Date of amendment request:* November 4, 1986 (TSCR No. 161).

*Description of amendment request:* The proposed Technical Specification (TS) amendment would revise Section 6, "Administrative Controls", to delineate all major functional titles associated with the Radiological and Environmental Controls (R&EC) Department reorganization. More specifically, Figures 6–1 (GPUN corporate organization chart) and 6–2 (TMI–1 Unit Staff organization chart) would be revised to depict the major functional sections of R&EC. Along with the administrative reorganization of department titles, this amendment would eliminate the previous distinction between TMI–1 and TMI–2 Radiological Controls management. Dual unit radiological controls responsibilities would be incorporated into one, larger organization as part of GPUN's long-range merger plans. Also, in Section 6.3.2 of the TSs, this amendment proposes a Radiological Controls management title change to reflect the new organization.

*Basis for proposed no significant hazards consideration determination:* Pursuant to the provisions of 10 CFR 50.91, the licensee has provided an analysis of no significant hazards consideration using the standard criteria prescribed by 10 CFR 50.92(c). The Commission's staff has reviewed the proposed amendment and associated analysis. Based on this review, the staff has concluded the amendment is a purely administrative change to TSs similar to example (i) of "Amendments That Are Considered Not Likely To Involve Significant Hazards Considerations" (51 FR 7751). This change will allow for the gradual and controlled merger of the TMI–1 and TMI–2 radiological controls functions. The transfer will result in more functional responsibilites for the existing TMI–1 Radiological Controls management, but it will not impact the overall performance of the Department. This change should not have an effect on plant operation or the technical contents of the Safety Analysis Report or TSs. As such, the Commission's staff proposes to determine that the amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

*Attorney for licensee:* Ernest L. Blake, Jr., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz.

**Indiana and Michigan Electric Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan**

*Date of amendment request:* November 13, 1986.

*Description of amendment request:* The proposed amendment would change the Technical Specifications to clarify that Section 3/4.4.5 addresses steam generator integrity and that Table 4.4–1, footnote 2 requires second and subsequent inspections on one steam generator during each inspection.

*Basis for proposed no significant hazards consideration determination:* The Commission's standard for determining whether a significant hazards consideration exists is as stated

in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The current Technical Specifications include OPERABLE requirements in Section 3/4.1.1, Reactor Coolant Loops and Coolant Circulation. The intent of Section 3/4.4.5 is steam generator integrity which is supported by the Bases section. The licensee proposes to clarify Section 3/4.4.5 by changing OPERABLE statements to integrity statements consistent language for Table 4.4–1, footnote 2 to be compatible with the requirements of the table, i.e., after the first inservice inspection of two steam generators, the second and subsequent inspection should be on the two remaining steam generators, respectively.

The changes proposed by the licensee will clarify the intent of the T/S but will not impact plant components or systems. Therefore these changes will not involve a significant increase in the probability or consequences of a previously evaluated accident. The plant systems, components and operation will not be altered by these changes. Therefore this change will not create the possibility of a new or different kind of accident than has previously been analyzed or evaluted.

Since these changes are clarifications consistent with the intent of the specifications, they will not impact the ability of plant systems and components to perform their safety function. Therefore, these changes will not involve a significant reduction in a margin of safety.

Based on the above consideration, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 40985.

*Attorney for licensee:* Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 M. Street NW., Washington, DC 20036.

*NRC Project Director:* B.J. Youngblood.

**Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of amendment request:* November 14, 1986.

*Description of amendment request:* The proposed amendment revises the current Technical Specification requirements to allow an extension, on a one-time-only basis, of approximately 10 weeks to the surveillance test intervals for the functional testing of snubbers, the local leak rate testing of primary containment isolation valves and penetrations and the replacement on the T-ring seals in the primary containment purge and vent valves. These extensions are requested on a one-time only basis to support the present schedule for the next refuel outage and thereby avoid a premature reactor shutdown. Also, the proposed Technical Specification revisions will allow the subsequent surveillance test interval for the functional testing of snubbers and local leak rate testing of primary containment valves and penetrations to begin with the actual Cycle 8/9 Refuel Outage test date. The change is needed in order to prevent the potential need for a similar extension to reach the Cycle 9/10 Refuel Outage, presently scheduled for September 1988.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of each of the above criteria for the individual items in the amendment request as follows:

*(1) Functional testing of snubbers*

The function of snubbers is to provide flexible support of piping systems to absorb the displacement loading on the pipe from such sources as seismic events, thermal expansion, waterhammer, etc. Periodic visual inspection and functional testing of snubbers assures that they are capable of performing their required function. A statistically-meaningful, representative sample of each snubber type and location is chosen for inspection and testing during each surveillance interval to ensure that potential common-mode failure or performance degradation is detected before a large number of snubbers are affected. If a failure is detected, either the sample size is increased or the inspection interval is shortened to ensure, on a statistically-meaningful basis, that the remaining snubbers are functional.

In the Cycle 6/7 Outage (Spring 1983), 100% of all safety-related hydraulic snubbers were either refurbished or replaced. Since that time no snubber, either hydraulic or mechanical, has failed a visual inspection and only one snubber, a mechanical snubber on the reactor head spray line, has failed a functional test. The probable cause of the failure was drying of the lubricant, due to the higher ambient temperature in the top of the drywell. The snubber was repaired by removing the lubricant, per the vendor's recommendation, prior to return to service. Although the other snubber in this area did not fail its functional test, its lubricant was removed as well, as a precautionary measure. While the failed snubber is scheduled to be retested during the next functional test series, engineering calculations have shown that snubbers are not needed on this line and they are to be replaced with rigid support during the upcoming refuel outage. Again, no mechanical snubbers were found to be inoperable during their last visual inspection, conducted in March of this year. The hydraulic snubbers are scheduled to be visually inspected before the end of this year, prior to the expiration of the functional testing surveillance interval.

Based upon the excellent performance of the snubbers to date, it is judged that a short, approximately 10 week, extension of the Technical Specification-required surveillance interval for functional testing a representative sample (10%) of the safety-related snubbers will not increase the probability of a snubber failure. The potential consequences of a snubber failure are not affected by increasing the surveillance interval for functional testing. [Therefore, the amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.]

The extension of the surveillance interval for functionally testing of snubbers does not involve an actual hardware change to the facility or cause the facility to be operated in a different manner. Therefore, the possibility of a new or different accident is not created by this change.

As stated earlier, a statistically-significant, representative sample of snubbers is periodically tested to ensure that all safety-related snubbers remain functional. Because the snubbers have demonstrated excellent performance in recent testing, the possibility of a common-mode failure or serious degradation in snubber performance, which would affect more than one component or piping system, is highly unlikely. As the plant is designed for the worst single failure of a system or component, a short extension to the functional test interval of safety-related snubbers will not significantly reduce the existing margin of safety.

Consequently, the short extension of the Technical Specification-required surveillance interval for the functional testing of snubbers involves no significant hazards consideration.

*(2) Local Leak Rate Testing of Primary Containment Penetrations and Isolation Valves.*

Primary containment penetrations and isolation valves are routinely tested for leak tightness in accordance with 10 CFR Part 50, Appendix J. Such local leak rate testing (LLRT) ensures the primary containment integrity will be maintained during a design basis LOCA, such that the resulting off-site radiological consequences remain within the acceptance criteria of 10 CFR 100. These LLRTs are required to be performed at least once every two years and are usually done during regularly-scheduled refuel outages.

Type B and C LLRTs were performed on the primary containment penetrations and isolation valves, respectively, during the early weeks of the last refuel outage (February & March 1985). A large percentage (approximatley 70%) of these components met the ASME acceptance criteria for leak tightness in the as-found condition and did not require maintenance to restore their leak tightness. The remaining components were repaired and later re-tested satisfactorily prior to re-start. Consequenlty, only those components which passed their as-found LLRTs require the short extension to their test interval. Again, while these components comprise a large percentage of the components under the Appendix J program, their combined leakage rate of 27,688 sccm is approximately one-third of the total current as-left value of 75,835 sccm. These valves are the maximum in-line leakage rates in the as-left condition and are, therefore, conservative. The maximmum allowable leakage rate permitted by our Technical Specifications is 185,221 sccm. Therefore, considerable margin exists to the allowable limit. Consequently, these components would have to experience severe degradation in order to exceed the allowable technical specification limit.

After the LLRT was conducted on the last of the affected components during the Cycle 7/8 Refuel Outage, the plant remained in a cold shutdown condition for another 12 weeks. The extension now requested (approximately 10 weeks) is less than that 12 week period. Therefore, the actual period of operation for these components will be less than the two year maximum allowable interval.

Based upon the large margin to the allowable leakage rate limit and the actual operating history of these valves, neither the probability nor the consequences of any accident is significantly increased by this change.

As the extension of the surveillance interval for Type B and C LLRTs does not involve an actual hardware change to the facility or cause the facility to be operated in a different manner, the possibility of a new or different accident is not created by this change.

During the extended surveillance period the reactor will be operated in a coastdown mode, i.e., at less than rated power at a linearly decreasing rate. Because the reactor will be operating at less-than-rated power, the peak containment pressure after a postulated loss-of-coolant accident would be less than the 43 psig used to determine the allowable technical specification leak rate limit. Consequently, the driving presure causing potential leakage from the primary containment would be lower than if the reactor had been operating at rated power. Therefore, the margin of safety is not reduced by this change.

Consequently, the short extension of the Technical Specification-required surveillance interval for the performance of Type B and C LLRTs involves no significant hazards consideration.

*(3) Replacement of Purge and Vent Valve T-Ring Seals*

The primary containment purge and vent valves have an inflatable T-ring seal which ensure leak tightness by pressing the valve disk against the valve seat when the valve is closed. This T-ring seal is made of an ethylene-propylene elastomer, which has an in-service life of four years.

This in-service life is due to aging of the material with continued exposure to high temperature and radiation and is based upon worst case environmental conditions (four continous years at nominal drywell conditions plus 30 days at post-accident conditions). As these valves are actually located outside the drywell, their operating environment is less stringent than that used to determine their maximum in-service life. This in-service life is based upon *continuous* exposure to their operating environment. When the plant is in a cold shutdown condition the high temperature and radiation environment are not present and the T-ring seal material does not age. The plant has been in a cold shutdown condition on several occasions, for both planned and unplanned outages, since the installation of the existing T-ring seals in March and April of 1983. In particular, the plant was in a cold shutdown condition for 23 weeks during the Cycle 7/8 Refuel Outage in the Spring/Summer of 1985. The extension now requested (approximately 10 weeks) is less than the 23 week period. Therefore, the actual period of operation for the T-ring seals will be much less than the four-year maximum allowable interval.

Also, the purge and vent valves are tested for leaktightness once per quarter, as a check of T-ring seal integrity. The test history of these valves has been good, with no degradation in leaktightness and consequently T-ring seal integrity, being observed.

Based upon the actual in-service time of the T-ring seals being less than the maximum-allowable interval, even with the extension, and the purge and vent valves continued demonstration of leaktightness, neither the probability nor the consequences of any accident previously analyzed will be significantly increased by this change.

The extension of the replacement interval for the purge and vent valve T-ring seals does not involve an actual hardware change to the facility or cause the facility to be operated in a different manner. Therefore, the possibility of a new or different accident is not created by this change.

Because the actual in-service time is less than the maximum-allowable interval and the continued demonstration of seal integrity, via the leak rate tests, the possibility of a sudden, catastrophic failure of a T-ring seal is highly unlikely. Also, each purge and vent line penetrating primary containment has redundant purge and vent valves, both of which would have to experience T-ring seal failure in order to degrade primary containment integrity. Therefore, the margin of safety is not reduced by this change.

Lastly, the baseline date currently stated in the TS for the replacement of T-ring seals is being corrected to reflect

the actual refuel outage when the T-ring seals were replaced. The current TS states that this replacement took place during the 1982 refuel outage. The Cycle 6/7 Refuel Outage was delayed by several months and actually began in February of 1983; consequently, there was no refuel outage in 1982. This change is considered to be administrative in nature and, therefore, will not significantly increase the possibility or consequences of any previously-analyzed accident, introduce the possibility of a new or different accident, or reduce the margin of safety in any way.

Consequently, the short extension of the Technical Specification-required replacement interval for the purge and vent valve T-ring seals and the correction of the baseline date for such replacement involves no significant hazards consideration.

*(4) Starting Date for the Next Surveillance Interval*

Because the next surveillance interval will begin with the actual Cycle 8/9 outage test date, the operating interval between surveillances will not be increased. Therefore, the probability or consequences of any accident, previously analyzed, will not be increased.

No actual hardware change to the facility is involved; the facility will not be operated in a different manner. Therefore, the possibility of a new or different accident or malfunction is not created by this change.

Again, as the actual operating interval between surveillances is not being increased by this change, the margin of safety will not be reduced.

Therefore, this feature of the Technical Specification revision involves no significant hazards consideration.

Based on an evaluation of the above licensee analysis, the staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

*Attorney for licensee:* Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street NW., Washington, DC 20036.

*NRC Project Director:* Daniel R. Muller.

**Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of amendment request:* November 14, 1986.

*Description of amendment request:* The proposed amendment request modifies the Wolf Creek Technical Specifications, Section 3/4.8.1.1 with an objective to increase overall emergency diesel generator (D/G) reliability, and to prevent undue stress and wear on the D/G engines. This request includes the following in order to meet this objective:

*1. Description of Change—Section 3.8.1.1*

This action statement provides the actions to be taken with one offsite circuit of the required A.C. electrical power sources inoperable. The actions required when one diesel generator (D/G) is inoperable are being separated from this action statement and incorporated into an individual action statement (proposed Technical Specification 3.8.1.1. Action b.). Specification 4.8.1.1.2a.4), demonstration of D/G operability, will be performed once within 24 hours for each D/G unless a D/G has been successfully tested within the past 24 hours. The existing Specification requires demonstration of D/G operability pursuant to 4.8.1.1.2a.4) within 1 hour and at least 8 hours thereafter regardless of when the last D/G test was performed.

*2. Description of Change*

This action statement provides the actions required when declaring one D/G inoperable. Making this a separate action statement is an administrative change.

Specifications (4.8.1.1.2a.4), demonstration of D/G operability, will be performed once within 24 hours of declaring a D/G inoperable unless the D/G became in operable due to preplanned preventive maintenance or testing. This test will be required to be completed regardless of when the inoperable D/G is restored to an operable status. The present requirement is to perform a D/G operability test within 1 hour and at least once per 8 hours thereafter. If the inoperable D/G is not returned to service within 72 hours the action will require the unit to be in hot standby within 6 hours and cold shutdown within the following 30 hours.

*3. Description of Change—Section 3.8.1.1 Action d*

This action provides the required response when a D/G is inoperable in addition to the requirements of Action b or Action c. In the existing Specifications this is Action c and refers to Actions a or b. There are no substantive changes to this Action, only a relabeling of Action statements.

*4. Description of Change—Section 3.8.1.1 Action e*

This action provides the required response in the event of a loss of both offsite A.C. circuits. Specification 4.8.1.1.2a.4) will be performed once within 8 hours unless the D/Gs are already operating. The existing Specification requires the D/Gs to be tested within 1 hour of the loss of both offsite A.C. electical power sources and at least once per 8 hours thereafter.

*5. Description of Change—Section 3.8.1.1. Action f*

This action provides the required response when both D/Gs are inoperable. This is Action e of the existing Specifications. Following the restoration of a D/G, Action b would be entered and will require restoring the remaining D/G within 72 hours from the time of the initial loss or be in hot standby within the next 6 hours and in cold shutdown with the folowing 30 hours. There are no substantive changes proposed, only clarification of the required Action as D/Gs are returned operable.

*6. Description of Change—Section 4.8.1.1.2a.5)*

The present surveillance requirement demonstrates D/G operability by verifying the D/G is synchronized and loaded to greater than or equal to 6201 kW (coninuous rating) in less than or equal to 60 seconds and operated with a load greater than or equal to 6201 kW for at least 60 minutes. The proposed changes modify the test requirement to permit gradual loading of the D/Gs during routine surveillance and Action statement operability testing. The proposed change also reduces the loading requirement of 6201 kW to greater than or equal to 3721 kW (60% of continuous rating) any time the D/G is routinely operated.

*7. Description of Change—Section 4.8.1.1.2f*

This Specification is proposed to encompass the 184 day test requirements as discussed earlier in the proposed changes to Specifications 4.8.1.1.2a.4) and 4.8.1.1.2a.5). This

surveillance demonstrates D/G operability by verifying the D/Gs can be started and loaded under design base accident conditions. The D/G will be verified to start and accelerate to at least 514 rpm in less than or equal to 12 seconds. The generator voltage and frequency will also be verified to attain 4160 + 160 − 420 volts and 60 ± 1.2 Hz respectively within 12 seconds after the start signal. In addition, the generator is verified to be loaded to greater than or equal to 6201 kW (continuous rating) within 60 seconds after the start signal for at least 60 minutes.

*8. Description of Change—Sections 4.8.1.1.2g. 4, 5, and 6*

Notes have been added to ensure that an engine preluble is done prior to starting the diesel.

*9. Description of Change—Section 4.8.1.1.2g*

This change is being submitted concurrent with the other proposed changes in order to reduce Technical Specification change submittals. This change is not related to Generic Letter 84–15 or manufacturer recommendations. This change deletes the requirement to perform 18 month surveillances only during shutdown.

*10. Description of Change—Section 4.8.1.1.2g.4)*

This surveillance requirement verifies the D/G starts on the autostart signal in the event of LOOP. No substantive changes are made, only a footnote stating that D/G starts pursuant to this Specification shall be conducted in accordance with manufacturer's recommendations regarding engine prelube and warmup procedures. This is consistent with Generic Letter 84–15.

*11. Description of Change—Section 4.8.1.1.2h/.2i*

These Specifications are 4.8.1.1.2g/2h respectively of the existing Specifications. No substantive changes are proposed, only a relabeling of the Specifications due to the addition of Specification 4.8.1.1.3f.

*12. Description of Change—Table 4.8.–1*

This table provides the required D/G surveillance test frequency for Specification 4.8.1.1.2a.4). The existing test frequency is based on the number of valid failures experienced in the last 100 valid tests per nuclear unit in accordance with Regulatory Guide 1.108, Revision 1, August 1977. The proposed test frequency is based on a matrix of the number of valid failures in the last 20 and 100 valid tests on a per D/G basis. In addition, the proposed changes provide a restart in counting failures provided successful corrective actions have been implemented.

*Basis for proposed no significant hazards consideration determination:* In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

The proposed modification to action statement testing requirements does not involve a significant hazards consideration.

(1) This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change does not involve a change in the operational limits or physical design of the emergency power system. In accordance with the recommendations of Generic Letter 84–15, the proposed testing requirements adequately assure continued emergency diesel generator operability and reliability while minimizing the number of required emergency diesel generator (D/G) starts. This also allows adequate time for the completion of all manufacturer recommended D/G prelubrication and warmup procedures.

(2) This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not involve a change in the operational limits or physical design of the emergency power system. This change does not affect emergency diesel generator performance. It merely revises D/G testing requirements to achieve an overall gain in D/G reliability and availability.

(3) This change does not involve a significant reduction in a margin of safety. The change does not involve a change in the operational limits or physical design of the emergency power system. This change does not affect emergency diesel generator performance. It merely revises D/G testing requirements to achieve an overall gain in D/G reliability and availability. No margin of safety is reduced.

The proposed modification to routine (frequency other than 184 days or 18 months) load testing requirements does not involve a significant hazards consideration.

(1) This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. This change does not involve a change in the operational limits or physical design of the emergency power system. The emergency diesel generator manufacturer has recommended gradual loading of the D/G's to greater than or equal to 60% of continuous rating load for all routine loading tests. This has been recommended to avoid subjecting the D/G to the severe thermal transients which result from fast loading. D/G operation in accordance with this manufacturer recommendation will reduce unnecessary engine stress and wear, while potentially improving overall D/G reliability and availability.

(2) This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not involve a change in the operational limits or physical design of the emergency power system. This change does not affect emergency diesel generator performance. It merely revises D/G testing requirements to achieve an overall gain in D/G reliability and availability.

(3) This change does not involve a significant reduction in a margin of safety. The change does not involve a change in the operational limits or physical design of the emergency power system. This change does not affect emergency diesel generator performance. It merely revises D/G testing requirements to achieve an overall gain in D/G reliability and availability. No margin of safety is reduced.

The proposed modification adding 184 day testing requirements does not involve a significant hazards consideration.

(1) This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. This change does not involve a change in the operational limits or physical design of the emergency power system. In accordance with the recommendations of Generic Letter 84–15, this testing requirement has been added to encompass the fast loading to the continuous duty rating requirement being deleted from routine testing. This reduced frequency for fast start, full load (6201 kW) testing avoids subjecting the D/G to severe thermal transients, which result from fast loading, on a routine basis. D/G operation in acordance with this manufacturer recommendation will reduce unnecessary engine stress and wear, while potentially improving overall D/G reliability and availability.

(2) This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not involve a change in the operational limits or physical design of the emergency power system. This change does not affect emergency diesel generator performance. It merely revises D/G testing requirements to achieve an overall gain in D/G reliability and availability.

(3) This change does not involve a significant reduction in a margin of safety. The change does not involve a change in the operational limits or physical design of the emergency power system. This change does not affect emergency diesel generator performance. It merely revises D/G testing requirements to achieve an overall gain in D/G reliability and availability. No margin of safety is reduced.

The proposed modification to the diesel generator testing schedule requirements does not involve a significant hazards consideration.

(1) This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change does not involve a change in the operational limits or physical design of the emergency power system. This change will minimize unnecessary emergency diesel generator testing, while maintaining the reliability levels recommended in Generic Letter 84–15. The proposed testing schedule adequately assures continued D/G reliability without maintaining a punitive testing schedule following effective corrective action. This change will serve to reduce

engine stress and wear, while potentially improving overall D/G reliability and availability.

(2) This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not involve a change in the operational limits or physical design of the emergency power system. This change does not affect emergency diesel generator performance. It merely revises D/G testing requirements to achieve an overall gain in D/G reliability and availability.

(3) This change does not involve a significant reduction in a margin of safety. The change does not involve a change in the operational limits or physical design of the emergency power system. This change does not affect emergency diesel generator performance. It merely revises D/G testing requirements to achieve an overall gain in D/G reliability and availability. No margin of safety is reduced.

Based on the above discussions it has been determined that the requested Technical Specification revisions do not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; or create the possibility of a new or different kind of accident or condition over previous evaluations; or involve a significant reduction in a margin of safety. Therefore, the requested license amendment does not involve a significant hazards consideration.

Based on the above analysis the licensee has concluded that the proposed revisions to the Wolf Creek Generating Station Technical Specifications involve no significant hazards considerations. The NRC staff has reviewed the licensee's significant hazards consideration determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

*Local Public Document Room location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas, 66801 and Washburn University School of Law Library, Topeka, Kansas.

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, DC 20036.

*NRC Project Director:* B.J. Youngblood.

**Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* October 15, 1986.

*Description of amendment request:* The Administrative Controls Section of the Technical Specifications describes, in part, the on-site and off-site organizations for operation of Waterford 3. The proposed changes will update the organization charts in Figures 6.2–1 and 6.2–2 in support of the LP&L Nuclear Operations reorganization.

The primary change is the revision of the organization charts in Figures 6.2–1 and 6.2–2. The majority of the remaining proposed changes will simply provide functional titles in place of organizational titles. For instance, the Plant Operations Review Committee (PORC) Chairman is presently required to be the Assistant Plant Manager-Nuclear (Plant Technical Services or Operations and Maintenance). The proposed change will designate the PORC Chairman as "Senior management of plant technical services, operations or maintenance".

The proposed changes introduce no reduction in commitment, involving for the most part merely a change in title designation or a restructuring of organization responsibilities—i.e., the existing organizational functions will continue to be performed in accordance with the Technical Specifications. The only exception concerns the creation of the new position of Vice President-Nuclear, who will report to the Senior Vice President-Nuclear Operations. Certain of the former Senior Vice President responsibilities have been delegated to the Vice President Nuclear. For example, the Nuclear Operations Engineering Manager, the Nuclear Operations Construction Manager, and the Nuclear Operations Plant Manager, all of whom formerly reported to the Senior Vice President—Nuclear Operations, now report to the Vice President Nuclear Operations.

*Basis for Proposed No Significant Hazards Consideration Determination:* The NRC staff proposes to determine that the proposed changes do not involve a significant hazards consideration. As required by the criteria of 10 CFR 50.92(c), a proposed change to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The proposed changes have no effect on the assumptions contained in the safety analyses. Moreover, the technical specifications which preserve the safety analysis assumption are likewise unaffected by the proposed changes. Therefore, the proposed changes will not result in any increase in the probability or consequences of any accident previously analyzed because overall management commitments and capabilities are not reduced.

(2) The proposed changes are administrative in nature and will not create the possibility of a new or different kind of accident from any accident previously evaluated because no organizational responsibilities are being eliminated.

(3) The Waterford 3 safety margins are defined and maintained by the Technical Specifications in Sections 2–5 which are unaffected by the proposed changes. The proposed changes will not involve any reduction in a safety margin because organizational control and accountability will be enhanced by these controls.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

*Attorney for licensee:* Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St. NW., Washington, DC 20037.

*NRC Project Director:* George W. Knighton.

**Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of Amendment Request:* October 1, 1986.

*Description of Amendment Request:* The proposed changes would revise Technical Specification 3.2.1, "Linear Heat Rate," and the associated bases for this Specification. The reasons for these changes are: (1) The removal of certain transient-related uncertainties in the Core Protection Calculators (CPC's) to be consistent with the Cycle 2 safety analysis; (2) elimination of the heat flux augmentation factors; and (3) correction of minor typographical errors.

The Core Operating Limit Supervisory System (COLSS) is a monitoring system which continuously calculates and advises operators of margins to core operating limits on fuel design and the license power level. Technical Specification 3/4.2.1, "Linear Heat Rate," requires that the linear heat rate limit be maintained by operating within the region of acceptable operation as

indicated by either the COLSS or the CPC.

When COLSS is in service, the Linear Heat Rate (LHR) is maintained at an acceptable level by ensuring that the COLSS calculated core power is less than the COLSS calculated Power Operating Limit (POL) based on linear heat rate. Maintaining the core power below the LHR-based on linear heat rate. Maintaining the core power below the LHR-based POL ensures that, in the event of a Loss of Coolant Accident (LOCA), the peak temperature of the fuel cladding will not exceed 2200°F.

When COLSS is out-of-service, the LHR is maintained at an acceptable level by ensuring that the LHR, as indicated on any operable CPC channel, is maintained below the maximum allowable value shown on Figure 3.2.1a. The proposed revision will modify Figure 3.2.1a to be consistent with the CPC analyses performed for Cycle 2. Specifically, conservatisms on the monitoring of linear heat rate with the CPC's, which were credited when Figure 3.2.1a was generated, have been reduced for Cycle 2; thus, the limit will be shifted. In addition, the penalty factor which is applied by the current CPC software when both Control Element Assembly Calculators (CEAC's) are inoperable will not provide adequate LHR margin for Cycle 2. Therefore, the licensee has proposed to delete Specification 3.2.1c, which permitted the use of the CPC's to automatically maintain the LHR limit. Further, the licensee has requested that Specification 3.2.1b and the associated Figure 3.2.1a be modified such that they will apply whether or not any CEAC's are operable.

The proposed elimination of the heat flux augmentation factors is a direct result of a recent study that has shown that the increased power peaking associated with the small interpellet gaps found in modern fuel rods (non-densifying fuel in pre-pressurized tubes) is insignificant compared to the uncertainties in the safety analysis. This study has shown that augmentation factors can be eliminated from the reload analyses of any reactor loaded exclusively with this type of fuel. Since Waterford 3, Cycle 2 utilizes this type of fuel, the licensee has requested that the augmentation factors be eliminated.

In addition to the above, two typographical errors are being corrected. In Action statement (1) the word "in" is being replaced by "on" and in Surveillance Requirement 4.2.1.2 the word "channels" is being changed to its singular form.

*Basis for Proposed No Significant Hazards Consideration Determination:* The NRC staff proposes to determine that the proposed changes do not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of any accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety.

The basis for this proposed finding is given below.

(1) The Cycle 2 safety analyses have shown that when COLSS is in service, maintaining the core power below the COLSS calculated LHR-based POL, as required by Specification 3.2.1a, ensures that there is sufficient LHR margin to maintain the clad surface temperature below 2200 °F during a LOCA. Similarly, when COLSS is out-of-service, operation within the region of acceptable operation of the proposed revision to Figure 3.2.1a, as required by Specification 3.2.1b, also endures that the clad surface temperature will remain below 2200 °F during a LOCA. Since the clad surface temperature during a LOCA is the limiting event with respect to LHR margin, the proposed changes will not significantly increase the probability or consequences of any accident previously evaluated.

(2) The proposed changes are primarily a result of changes in the Cycle 2 core parameters as well as changes to the CPC software. There has been no physical change to plant structures, systems or components. All changes are either internal to the CPC's or are reflected as proposed revisions to the Technical Specifications. Thus, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The intent of Technical Specification 3/4.2.1 is to limit the linear heat rate in the core to ensure that, in the event of a LOCA, the peak temperature of the fuel cladding will not exceed 2200 °F. Generally, the LHR is continuously monitored by COLSS; however, if COLSS is out-of-service, the limitation on CPC-calculated LHR (as function of cold leg temperature) shown in Figure 3.2.1 represents a conservative envelope of operating conditions consistent with the Cycle 2 safety analysis assumptions. This band of operating conditions has been analytically demonstrated to be adequate to maintain the clad surface temperature below 2200 °F during a LOCA. Therefore, the proposed changes will not result in a significant reduction in the margin of safety.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to a purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature.

The correction of the typographical errors is clearly similar to example (i).

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

*Attorney for licensee:* Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St. NW., Washington, DC 20037.

*NRC Project Director:* George W. Knighton.

**Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric, Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* October 1, 1986.

*Description of amendment request:* Technical Specification 3.3.3.11 provides for operable radioactive gaseous effluent monitoring instrumentation to ensure that the release of gaseous effluents does not exceed specified limits. The proposed changes would revise ACTION statements "a" and "b" to Technical Specification 3.3.3.11, "Radioactive Gaseous Effluent Monitoring Instrumentation," and ACTION statements 35, 36, 37, 38, 39 and 40 to Table 3.3–13 of that same Specification.

The reason for changing ACTION statement "a" is to add an option that would return the plant to complicance with the Limiting Condition for Operation (LCO). The reason for changing ACTION statement "b" and all the ACTION statements to Table 3.3–13 is to clarify the wording such that there is no confusion as to what actions must be taken when the minimum channels

OPERABLE requirements of Table 3.3–13 cannot be satisfied.

When a radioactive gaseous effluent monitoring instrumentation channel alarm or trip setpoint has been found to be less conservative than that required by Technical Specification 3.3.3.11, ACTION statement "a" requires the operator to immediately suspend the radioactive releases monitored by that channel or declare that particular channel inoperable. The proposed change to this ACTION statement will add the option to change the alarm/trip setpoint of the channel to an acceptably conservative value and hence, to once again comply with the LCO.

ACTION statement "b" to this specification instructs the operator to take the action specified by Table 3.3–13 whenever the minimum number of radioactive gaseous effluent monitoring instrumentation channels is less than specified by the same table. Further, it requires that the inoperable instrumentation be returned to OPERABLE status within the time specified in the appropriate ACTION statement or explain in the next Semiannual Radioactive Effluent Release Report why the inoperability was not corrected in the time specified.

The proposed change would remove the reference to the "time specified in the ACTION" and replace it with a specific 30-day time period. Thus, all the ACTION statements of Table 3.3–13 would have the same 30-day limit in which to restore an inoperable instrument to OPERABLE status before it must be reported in the semiannual Radioactive Effluent Release Report. The proposed change would provide additional clarification by including a statement that specifically allows the releases to continue as long as the required actions of Table 3.3–13 are continued. This change is consistent with the proposed Revision 3 to NUREG–0472, "Standard Radiological Effluent Technical Specifications for PWRs," in which the intent is to eliminate the need for a licensee Event Report (LER) simply because the required instrumentation could not be restored to operable status with the specified time. By continuing to comply with the ACTION statements of Table 3.3–13, the radioactive gaseous effluents released would not result in the exposure of a member of the public to an average annual concentration exceeding the limits specified in Appendix B of 10 CFR 20. In addition, this proposed change is consistent with the requirements of Appendix 1 to 10 CFR 50 by keeping the annual dose from gaseous effluents to individuals in unrestricted areas less than 10 millirads for gamma radiation and 20 millirads for beta radiation.

When the number of OPERABLE monitoring channels is less than that required by Table 3.3–13, ACTION statement 35 to this table currently allows effluent releases via the Waste Gas Holdup System pathway as long as, prior to initiating the release, (1) two independent samples of the effluent are analyzed and (2) at least two technically qualified members of the Facility Staff independently verify the release rate calculations and discharge line valving. If these two requirements cannot be satisfied, release of the effluents must be suspended. If these requirements are satisfied, the releases may continue without the minimum number of channels OPERABLE requirement being met for up to 14 days before it must be reported in the next Semiannual Radioactive Effluent Release Report.

The proposed change would remove references to time limits or reporting requirements and replace them with a provision that "best efforts" be made to repair the instrument. The time limits and reporting requirements are already contained in the proposed change to ACTION statement "b". In addition, the statement that requires the effluent releases to be suspended if the two requirements of the ACTION statement cannot be satisfied would be removed because it is already clear that releases through a specific pathway may not occur if the two requirements are not satisfied.

When the number of OPERABLE monitoring channels is less than that required by Table 3.3–13, ACTION statement 37 of this table currently allows the release of noble gas effluents via the Main Condenser Evacuation/Turbine Gland Sealing system, the Reactor Auxiliary Building Ventilation system and the Fuel Handling Building Ventilation system pathways as long as grab samples are taken at least once every 12 hours and analyzed for gross activity within 24 hours. If this requirement is satisfied, the releases may continue without the minimum number of channels OPERABLE requirement being met for up to 30-days before it must be reported in the next Semiannual Radioactive Effluent Release Report.

ACTION statement 39 to Table 3.3–13 is very similar to ACTION statement 37 in that it relates to the same three systems. The only difference is that ACTION statement 39 applies to iodine and particulate releases which must be continuously collected with auxiliary sampling equipment and analyzed in accordance with the program specified in Technical Specification 3.11.2.1 and Table 4.11.2.

The proposed change the ACTION statements 37 and 39 would remove references to time limits or reporting requirements and replace them with a provision that "best efforts' be made to repair an instrument. This is similar to the proposed change to ACTION statement 35 and is consistent with the proposed change to ACTION statement "b" which already contains the time limits and reporting requirements which must be adhered to.

With no instrumentation available to measure the flow rate of the aforementioned releases, ACTION statement 36 to Table 3.3–13 allows the releases to continue for up to 30-days before it must be reported in the next Semiannual Radioactive Effluent Release Report as long as the flow rate is estimated every four hours. The proposed change to this ACTION statement is the same as the one proposed for ACTION statements 35, 37 and 39; that is, the time limits and reporting requirements will be replaced by a provision that "best efforts" be made to repair an instrument. As discussed previously, this proposed change is consistent with the proposed change to ACTION statement "b".

With an inoperable hydrogen monitor, ACTION statement 38 to Table 3.3–13 allows continued operation of the Waste Gas Holdup System as long as grab samples are collected at least once per eight hours and analyzed within the following four hours. Such operation may continue for up to 14 days before it must be reported in the next Semiannual Radioactive Effluent Release Report. The proposed change will remove the time limits and reporting requirements as described previously.

With one inoperable oxygen monitor, ACTION statement 40 to Table 3.3–13 allows continued operation of the Waste Gas Holdup System as long as the system is sampled by either the remaining monitor or by grap samples every four hours and the oxygen concentration remains less than 2%. If there are no oxygen monitors operable, operation of the system may continue provided a grab sample is taken and analyzed from the onservice gas decay tank once per four hours and the oxygen content remains less than 1%. Such operation may continue for up to 14 days before it must be reported in the next Semiannual Radioactive Effluent Release Report.

The proposed change to ACTION statement 40 is the same as the one proposed for the ACTION statements to

Table 3.3–13; that is, the time limits and reporting requirements will be replaced by a provision that "best efforts" be made to repair the instrument. As discussed previously, this change is consistent with the proposed change to ACTION statement "b" which contains the time limits and reporting requirements for all the ACTION statements of Table 3.3–13.

All changes meet the intent of General Design Criteria 60, 63, and 64, which require a means to control and monitor all radiological storage areas and releases to the environment during normal operation, including anticipated operational occurrences, and postulated accidents.

*Basis for Proposed No Significant Hazards Considerations Determination:* The NRC staff proposes to determine that the proposed changes do not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of any accident previously evaluated; or (2) Create the possibility of a new different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The proposed changes to this Technical Specification are administrative and do not affect the manner in which the plant is operated. The changes are made only to clarify what actions are to be taken when the LCO cannot be satisfied. Since there is no change to the intent of this Specification or to any of the safety analyses, the proposed changes will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) The proposed changes are meant to clarify the ACTION statements of Technical Specification 3.3.3.11 and the associated Table 3.3–13. There are no changes being made to the facility or to any of the operating procedures. Since the gaseous radwaste effluents have no new pathways to the environment, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The intent of Technical Specification 3.3.3.11 is to comply with General Design Criteria 60, 63 and 64 by requiring a means to monitor and control radioactive storage areas and gaseous releases to the environment. Normally this is accomplished by using on-line instrumentation; however, in the event that the required instruments are not in service, compliance with these criteria is ensured by following the appropriate ACTION statements. Since the proposed changes to the ACTION statements are only administrative, the proposed changes do not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

*Attorney for licensee:* Brace W. Churchill, Esq., Shaw Pittman, Potts and Trowbridge, 2300 N St. NW, Washington, DC 20037.

*NRC Project Director:* George W. Knighton.

**Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska**

*Date of amendment request:* October 31, 1986.

*Description of amendment request:* The amendment would modify the Technical Specifications to (1) reflect replacement of drywell pressure instruments in order to comply with environmental qualification and human factors requirements, (2) divide the torus water temperature monitoring system, which contains, sixteen instrument channels into two trains of eight instruments for improved reliability as part of the Regulatory Guide 1.97 instrumentation upgrade program, (3) clarify action statements for inoperable torus temperature instruments, and (4) add a redundant temperature recorder for the torus temperature instruments as part of the Detailed Control Room Design Review (DCRDR) process and as part of the Regulatory Guide 1.97 post-accident instrumentation upgrade.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement; and (vii) A change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

Change (1) is being made to comply with 10 CFR 50.49 Environmental Qualification and NUREG–0737 Detailed Control Room Design Review (DCRDR) requirements. Change (1) is thus within the scope of criterion (vii). Change (2) reflects modification approved as part of the licensee's Regulatory Guide 1.97 program. Change (2) is thus within the scope of criterion (vii). Change (3) adds additional requirements to cover inoperability conditions not presently addressed in the Technical Specifications and is thus within the scope of criterion (ii). Change (4) reflects a modification to be made as part of the DCRDR and Regulatory Guide 1.97 programs and thus meets criterion (vii).

Since the application for amendment involves proposed changes that are encompassed by examples for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

*Local Public Document Room location:* Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

*Attorney for licensee:* Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

*NRC Project Director:* Daniel R. Muller.

**Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska**

*Date of amendment request:* November 6, 1986.

*Description of amendment request:* The amendment would modify the Technical Specifications to indicate that the normal position of the main steam drain primary containment isolation valves is normally open.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3)

involve a significant reduction in a margin of safety.

The licensee is permitted to open and close the main steam drain isolation valves in accordance with system operational requirements. The normal position indication specified in the Technical Specifications is not an operability requirement. Its purpose is to identify those valves subject to an associated Technical Specification which requires that normally open power operated valves be cycled fully closed and reopened at least quarterly for maintenance purposes. The licensee is already required to perform this maintenance action to comply with ASME Section XI Pump and Valve Inservice Testing requirements. Thus, the proposed amendment will have no effect on the facility design or its operations, but will serve only to provide consistency and clarification of the Technical Specifications. The proposed amendment would therefore not involve a significant increase in the probability or consequences of an accident, create the possibility of a new or different kind of accident, or involve a significant reduction in a margin of safety.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

*Local Public Document Room location:* Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

*Attorney for licensee:* Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

*NRC Project Director:* Daniel R. Muller.

**Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska**

*Date of amendment request:* November 5, 1986.

*Description of amendment request:* The amendment would change Section 3 of criteria for the steam generator tube inspections. The change would remove Section 3.3(2) and Table 3–8 from Section 3.3 and put them into a new section, Section 3.17. The change would correct the criteria for Sample Selection and Inspection Results from fixed numerical criteria to comparable percentages. This would accommodate steam generator tube inspection whether the sample size has been increased from the minimum size required by the Technical Specification and regulatory commitments.

*Basis for proposed no significant hazards consideration determination:* The staff has completed its preliminary review of the proposed changes and concluded that the changes meet the criteria of 10 CFR 50.92. A discussion of the criteria follows:

(i) Involve any sigificant increase in the probability or consequences of an accident previously evaluated.

The change affects the organization of the Technical Specifications and not the contents of the sections involved. It would affect those inspections where the sample size exceeds the minimum size used as a basis for the previous evaluation increasing the reliability of the inspection results.

This will not affect any of the assumptions or conditions that were used in the analyses used for licensing the plant. Therefore, there will be no significant increase in the probability or consequences of accidents previously evaluated.

(ii) Create the possibility of a new or different kind of accident from any accident previously evaluated.

Since this change does not change the surveillance requirements and will not affect the assumptions or operating conditions in the plant, no new path is created that could lead to a new or different kind of accident from any previously evaluated.

(iii) Involve any reduction in the margin of safety.

The main purpose of this change is to remove the steam generator tube inspection requirements from Section 3.3 to a new section, Section 3.17, that is dedicated specifically to steam generator tube inspection. This does not change the surveillance requirements. For the larger sample sizes addressed in the change, the inspection reliability is greater. Since this, along with the fact that assumptions and operating conditions used in the analysis of the plant are not affected, the margin of safety will not be affected in a postive or negative manner.

In addition, the Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to a change which is administrative in nature, intended to achieve consistency or a change in nomenclature. The proposed change is representative of Example (i) in that it moves the steam generator tube inspection requirements from Section 3.3 to a new section, Section 3.17.

Based on the above, the Commission proposes to determine that the proposed amendment involves no significant hazards considerations.

*Local Public Document Room location:* W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

*Attorney for licensee:* LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue NW., Washington, DC 20036.

*NRC Project Director:* Ashok C. Thadani.

**Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Unit 1 and 2, Luzerne County, Pennsylvania**

*Date of amendment request:* September 29, 1986.

*Description of amendment request:* The proposed amendments would revise the Susquehanna Steam Electric Station (SSES) Unit 1 and Unit 2 Technical Specifications to incorporate statements regarding actions to be taken if two channels for the 4.16 Kv Bus degraded voltage instrumentation for voltage less than 65 percent, and less than 84 percent are found to be inoperable. The licensee has also proposed to change SSES Technical Specifications to provide a two hour delay in entering a limiting condition for operation (LCO) if the degraded voltage protection channel instrumentation is found inoperable. The addition of a two hour surveillance window will allow monthly channel functional testing in a manner consistent with testing of other ECCS actuation instrumentation during which the trip function is not degraded and the trip initiating parameter is still being monitored.

Specifically, the changes proposed are as follows:

*a. Table 3.3.3–1, ACTION 36*

The existing ACTION 36 has become ACTION 36(a). ACTION 36(b) has been added, which states: "With both channels inoperable, declare the associated 4.16 kv ESS bus inoperable, and take the ACTION required by Specification 3.8.3.1 or 3.8.3.2 as appropriate."

*b. Table 3.3.3–1, Items 5.b and 5.c*

Note (g) has been added to two items in Table 3.3.3–1: Item 5.b, 4.16 kv ESS Bus Undervoltage (Degraded Voltage, less than 65 percent), and Item 5.c, 4.16 kv ESS Bus Undervoltage (Degraded Voltage, less than 84 percent). Note (g)

states that "All channels of Degraded Voltage Protection (both less than 65 percent and less than 84 percent) for a single bus may be placed in an inoperable status for up to two hours for required surveillance testing provided that Loss of Voltage Protection (less than 20 percent) is OPERABLE (Table 3.3.3–1, Item 5.a)."

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis provided by the licensee in its September 29, 1986 submittal.

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

a. No Final Safety Analysis Report (FSAR) accident analysis takes credit for operation of the less than 65 percent and less than 84 percent Degraded Voltage Protection devices. Additionally, application of the proposed ACTION 36(b) will not change the Degraded Voltage Protection instrumentation design, operation, or surveillance methods. The proposed change defines the appropriate Action Statement for both channels per bus of less than 65 percent and less than 84 percent Degraded Voltage Protection in an inoperable status. The worst possible consequence of the unavailability of Degraded Voltage Protection for a single Class IE 4.16 kv ESS bus is the inability of loads to perform their design function during a degraded voltage condition. This scenario is no worse than and is bounded by the loss of a single 4.16 kv ESS bus. The Class IE onsite distribution system is single failure proof in accordance with IEEE 379–1972. Per FSAR Subsection 8.1.5.1.f, "minimum engineered safety feature loads required to shut down the unit safely and maintain it in a safe shutdown condition are met by any three of the four load group channels." Loss of a single 4.16 kv ESS bus is thus a previously evaluated event; it is also bounded by the loss of a single diesel generator. Therefore, inoperability of all channels of Degraded Voltage Protection for a single bus is not an unanalyzed event.

The proposed Action Statement is appropriate and conservative since it addresses the condition of both channels per bus of Degraded Voltage Protection (less than 65 percent or less than 84 percent) inoperable in the same manner as the loss of a single 4.16 kv ESS bus is addressed in Specifications 3.8.3.1 and 3.8.3.2. The addition of an applicable Action Statement does not change the 4.16 kv system design or operation and so does not increase the probability or consequences of an accident previously evaluated.

b. The proposed Table 3.3.3–1 note (g), permits all less than 65 percent and less than 84 percent channels per bus of Degraded Voltage Protection to be inoperable for surveillance testing for up to two hours without declaring an LCO (provided less than 20 percent Loss of Voltage Protection is operable). Inoperability of all channels of Degraded Voltage Protection is bounded by the loss of a single 4.16 kv ESS bus. Specification 3.8.3.1 allows a single ESS bus to be inoperable for up to eight hours before being required to be in at least HOT SHUTDOWN within the next 12 hours. Thus, the potential consequences of the proposed two hour surveillance window are bounded by the loss of a single 4.16 kv ESS bus. In addition, grid voltage is still monitored by the less than 20 percent loss of Voltage device; therefore, protection is still provided during the proposed surveillance window, and the ability to transfer ESS bus power sources on loss of voltage is not degraded by surveillance testing. Also, no FSAR accident analysis takes credit for operation of the less than 65 percent and less than 84 percent Degraded Voltage Protection devices. Thus, the addition of a two hour surveillance window does not involve an increase in the probability or consequences of an accident previously evaluated. Examples of Specifications which already allow instrumentation to be out of service for surveillance testing are as follows: Table 3.3.2–1, "Isolation Actuation Instrumentation," note (b), Table 3.3.3–1, "Emergency Core Cooling System Actuation Instrumentation, notes (a) and (f), and Table 3.3.4–1, "End-of-Cycle Recirculation Pump Trip System Instrumentation," note (a). These Specifications permit instrumentation to be placed in an inoperable status for up to two hours for required surveillance. The proposed Table 3.3.3–1, note (9), permits all channels per bus of Degraded Voltage Protection to be inoperable at the same time (this is necessary because, in testing, all channels per bus are simultaneously removed from service with a single test switch).

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

a. This proposed change defines the appropriate Action Statement for both channels of Degraded Voltage Protection inoperable. Since the 4.16 kv system design and operation remain unchanged, the proposed ACTION 36 b) does not create the possibility of a new or different kind of accident from any accident previously evaluated (i.e., loss of less than 65 percent and less than 84 percent Degraded Voltage Protection is bounded by the loss of one ESS bus).

b. The addition of the two hour surveillance window does not affect the system design or operation. Therefore, this addition does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

a. This change corrects an omission in the existing Specification by providing an appropriate Action Statement for both channels per bus of Degraded Voltage Protection (less than 65 percent or less than 84 percent) inoperable. The margin of safety is defined in the basis for this Specification, and is maintained through conformance with the appropriate Action Statement. The margin of safety is, therefore, not reduced by the addition of ACTION 36 b).

b. The proposed two hour surveillance window does not affect the system design or operation, and does not involve any change in monthly surveillance practices. The margin of safety is therefore not reduced.

Based on the above considerations, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, DC 20036.

*NRC Project Director:* Elinor G. Adensam.

**Public Service Company of Colorado, Docket No. 50–267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado**

*Date of amendment request:* July 9, 1986 (P–86451).

*Description of amendment request:* These proposed changes to the Fort St. Vrain Technical Specifications concern LCO 4.1.9., Minimum Helium Flow and Maximum Core Region Temperature Rise, and a proposed new Technical Specification, SR 5.1.8., which incorporates the associated surveillance requirements. Minimum helium flow and maximum core region temperature rise are specified at low power levels to assure that reactor safety limits are not violated. The associated surveillance requirements assure compliance with the LCO by specifying the frequency at which compliance is verified.

An earlier notice concerning these changes was published on January 26, 1984 at 49 FR 3352.

*Basis for proposed no significant hazards consideration determination:* This Technical Specification specifies minimum allowable total flow and maximum allowable region temperature rise to assure that flow stagnation or reversal does not occur and thus, that excessive fuel temperature is prevented. These limits are necessary between 0 percent and approximately 25 percent power because the core power-to-flow ratio limits of Safety Limit 3.1 and the region outlet temperature mismatch limits of Specification LCO 4.1.7. do not, by themselves, preclude the adverse flow conditions. At higher power levels, the power-to-flow and region outlet temperature limits are sufficient to preclude excessive fuel temperatures and fuel failure.

The proposed Specification correct errors in the original analysis, includes allowance for explicit uncertainties assocated with thermal power and total circulator flow (instrument errors) measurements, and makes the assumptions consistent with plant operation. In addition, minimum coolant flow curves were added for 1 to 10 orifice valves more open then the equal flow position. Curves were also added for maximum region temperature rise when either no orifice value is less than 6 percent open or less than 8 percent open. These additional curves facilitate the transition from equal flow orifice positions to equal region outlet temperature orifice positions. Minimum coolant flow curves were also added for reduced helium density conditions since the lower densities result in smaller helium buoyance effects.

The proposed flow and temperature limits are signficantly more restrictive then the corresponding limits in the existing Technical Specification. The new curves that have been added to permit operation when up to 10 orifice valves are further open than the equal flow position, have the same degree of conservatism that is included in the equal flow position curves. In determining the total circulator flow requirements, it was assumed that any orifice value further open was full open and the total circulator flow requirements were increased so that the minimum flow in any coolant channel would not be less than that required when all orifice valves are set for equal flow. The same philosophy was applied when generating the new curves to limit the maximum region temperature rise when the orifice valves are set at any position, but no orifice valve is either less than 6 percent open or less than 8 percent open.

The applicability of the proposed Specification has been limited when the reactor is in the SHUTDOWN mode to that condition when the CALCULATED BULK CORE TEMPERATURE is greater than 760 degrees F. This excludes the case when the amount of thermal energy from fission product decay is sufficiently low to prevent the average core temperature from, exceeding 760 degrees F even if there is no helium coolant flow. The expected gas coolant temperature at full power are 760 degrees F (core inlet and upper plenum) and 1460 degrees F (core outlet and steam generator inlet). The upper plenum internal components, including the control and rod drive and orifice assemblies and thermal barrier, have been designed to be consistent with this temperature environment.

Consequently, limiting the CALCULATED BULK CORE TEMPERATURE during a primary coolant flow termination to 760 degrees F would conservatively ensure that both the core and prestressed concrete reactor vessel internals would be protected when the primary coolant flow is resumed.

In summary, our evaluation of significant hazards considerations is as follows: (1) FSAR accident analysis have been reviewed to determine the effect, if any, of this change on these analyses. Since the proposed changes increased the minimum flow requirementrs and decrease the allowable region temperature rise, they preclude flow stagnation or reversal, and there is no adverse impact on any accident previously analyzed in the FSAR; (2) The proposed Technical Specification changes does not involve any modification of plant systems, equipment, or structures. The only changes to plant operating procedures are to ensure compliance with the revised limits. Thus, these changes would not create a new or different type of accident than any previously evaluated; and (3) A review of the margins of safety associated with these Technical Specification confirms that the margins of safety are not reduced by this change. In fact, the new limits represent a significant increase in the minimum flow required and a significant decrease in the allowed temperature rise. Both of these changes provide additional assurance that excessive fuel temperature are prevented.

Based on the above evaluation, it is concluded that operation of Fort St. Vrain in accordance with the proposed changes will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluate, or (3) involve a significant reduction in any margin of safety. Therefore, this change will not involve any significant hazards consideration.

*Local Public Document Room location:* Greeley Public Library, City Complex Building, Greeley, Colorado.

*Attorney for licensee:* Bryant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201–0840.

*NRC Project Director:* Herbert N. Berkow.

**Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment request:* December 9, 1985.

*Description of amendment request:* The proposed amendments would correct several typographical errors of previous requests for amendments to the Technical Specifications.

*Basis for proposed no significant hazards consideration determination:* The NRC published guidance in the **Federal Register** (51 FR 7744) concerning examples of amendments that are not likely to involve a significant hazards consideration.

Example (i) provided in 51 FR 7744 identifies a proposed amendment to an operating license likely to involve no significant hazard if it is "a purely administrative change to technical specifications." The TVA requested change would be purely administrative since it would correct typographical errors. There would be no change to the plant design, configuration, or testing

requirements. Therefore, the Commission proposes to determine that the changes involve no significant hazards consideration.

*Local Public Document Room location:* Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

*Attorney for licensee:* Lewis E. Wallace, Esquire, Acting General Counsel Tennessee Valley Authority, 400 Commerce Avenue, E11B33, Knoxville, Tennessee 37902.

*NRC Project Director:* B.J. Youngblood.

**Union Electric Company, Docket No. 50–483, Callaway Plant, Callaway County, Missouri**

*Date of amendment request:* September 29, 1986, supplemented by letter dated November 18, 1986.

*Description of amendment request:* The proposed amendment application replaces a related, previous application dated May 17, 1985. The effect of this application is the following:

1. The one-time request for an extension to perform Type C tests on 59 containment isolation valves and the request for a partial exemption from 10 CFR 50, Appendix J are withdrawn (Tables 3.6–1).

2. Editorial changes to valve function descriptions and systems designators in Table 3.6–1 are withdrawn. A request will be submitted under separate cover to delete Table 3.6–1 under the Short Term Technical Specification Improvement Program via the "Lead Plant" change process.

3. Table 3.3–5 would be clarified to indicate that the Steam Line Isolation and Feedwater Isolation response times include only instrument and loop response times.

4. Isolation time requirements would be deleted from Table 3.6–1 for the Main Steam and Main Feedwater Isolation Valves. This is the only active change request from the referenced letter.

5. A new specification (3/4.7.1.7) would be added to more clearly define the requirements for the Main Feedwater Isolation Valves and to specify the valve closure time.

*Basis for proposed no significant hazards consideration determination:* In accordance with the requirements of 10 CFR 50.92, the licensee submitted the following significant hazards determination:

This amendment request consists of three categories of changes to table 3.3–5, Table 3.6–1 and proposed Specification 3/4.7.1.7 as discussed in the Safety Evaluation (Enclosure 3 of ULNRC–1377). The following discussions address these changes and their corresponding significant hazard evaluations in the same order as discussed in the Safety Evaluation.

1. The changes to table 3.3–5, Engineered Safety Features Response Times, are requested such that only the sensor and associated electronic loop response times are included in this table. The valve closure times are given in Specification 3/4.7.1.5 and proposed Specification 3/4.7.1.7.

(a) These changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes delineate the electronic and mechanical portions of the closure times associated with the main steam isolation valves (MSIVS) and main feedwater isolation valves (MFCIVS). The 2 second signal processing time is appropriate for inclusion in the instrumentation section of the Technical Specifications (Table 3.3–5) whereas the 5 second valve closure time is appropriate for inclusion in the plant systems section of the Technical Specifications (4.7.1.5 and proposed 4.7.1.7). No changes to the total closure times are proposed. These changes are a logical rearrangement of the electronic and mechanical portions of the total closure times, consistent with the treatment of Phase "A" isolation reponse times in Table. 3.3–5.

(b) These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation is unchanged and the changes involve clarifications between the electronic and mechanical portions of unchanged total valve closure times.

(c) These changes do not involve a significant reduction in a margin of safety. This is based on the fact that no change in design or operation is involved.

The Commission has provided guidance concerining the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). This change request is similar to the example of a change involving no significant hazards consideration which relates to a change that is administrative in nature. The changes provide consistency between the Technical Specifications and FSAR.

2. The changes to Table 3.6–1 delete the MSIV and MFIV isolation time requirements and reference Specification 3/4.7.1.5 and proposed specification 3/4.7.1.7 for these valves' operability requirements and closure times.

(a) These changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. As discussed in the FSAR (Figure 6.2.4–1 pages 1–8 and Safety evaluation 7 of Section 6.2.4.3), the MSIVs and MFIVs are not containment isolation valves. They were included in Technical Specification Table 3.6–1 per NRC direction for table completeness. Since these valves are not required for containment isolation, operability in mode 4 should not be a requirement. Containment integrity is maintained by the steam generator tubes, the shell of the secondary side of the steam generator, and the lines emanating form the steam generator secondary shells. Based on a vendor recommendation to test these valves under operating conditions (i.e. mode 3) and the fact that these valves are not necessary for containment isolation, the mode applicability and closure time requirements specified in 3/4.7.1.5 and proposed 3/4.7.1.7 are appropriate and reflect design requirements.

(b) These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation is unchanged. The changes in mode applicabilities are consistent with current Technical Specification Table 3.3–3 and 3/4.7.1.5 (applicable modes are 1, 2, and 3) and Table 3.6–1 of Specifications for Wolf Creek Generating Station). No changes in valve closure times are proposed; they remain the same as stated in Technical Specifications 4.7.1.5 and proposed 4.7.1.7. MSIV and MFIV closure times should not be listed in Table 3.6–1 since these valves are not required for containment isolation.

(c) These changes do not involve a significant reduction in a margin of safety. This is based on the fact that no design change is involved, MSIV and MFIV closure times remain the same, and mode applicabilities are consistent with the design requirements for steam and feedwater isolation rather than for containment isolation.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). This change request is similar to the example of an action involving no significant hazard consideration which relates to a change that is administrative in nature. The change provides consistency between the Technical Specifications and FSAR as to the purpose for valve closure and the closure time requirement.

3. The addition of Specification 3/4.7.1.7 provides specific actions to be ataken when MFIVs are inoperable.

(a) This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed Technical Specification 3/4/.7.1.7 adds operability and surveillance requirements for the MFIVs heretofore not included in the Technical Specifications.

(b) This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation is unchanged. Further, the valve operability and closure time requirements are consistent with, or more conservative than, Technical Specification Table 3.3–3 (which requires feedwater isolation capability in modes 1 and 2) and current Tables 3.3–5 and 3.6–1 (i.e., 2 second signal time and 5 second valve closure time).

(c) This change does involve a significant reduction in a margin of safety. This is based on the fact that no design change is involved, MFIV closure times remain the same, and mode applicabilities are consistent with the design requirements for feedwater isolation.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain example (48 FR 14870). This change request is similar to the example of a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications.

Based on the above discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a reduction in the required margin of safety. Based on the above analysis, the licensee concluded that the proposed amendments do not involve significant hazards considerations. The staff has reviewed the licensee's significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

*Local Public Document Room location:* Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

*Attorney for Licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 M Street, NW., Washington, DC 20036.

*NRC Project Director:* B.J. Youngblood.

**Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin**

*Date of amendment request:* September 30, 1986.

*Description of amendment request:* The amendment would remove requirements from the Technical Specifications (TS) that are duplicated in the Operational Quality Assurance Program. In addition, a recent change in a management title would be made to three pages of the TS.

*Basis for proposed no significant hazards consideration determination:* This amendment would not revove any operating restrictions from the TS. The offsite and onsite management organization charts would be removed from the TS. These charts are currently a part of the Operational Quality Assurance Program (OQAP). The OQAP is both auditable and enforceable through 10 CFR Part 50, Appendix B. Therefore, this amendment serves to remove a redundant and unnecessary portion of the TS. A second change, due to a personnel change at WPSC, serves to chagne the position of Manager-Nuclear Power to Vice President-Nuclear Power. This change, occurring in three separate places in Section 6 of the TS is a purely administrataive change.

The Commission has provided guidance for the application of standards for determining whether a significant hazards consideration exists by providing examples of amendments that are considered likely to involve significant hazards considerations (51 FR 7751). Two of these examples are:

(i) a purely administrative chagne to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a chagne in nomenclature; and

(vii) a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

The deletion of the organization charts from the TS and reliance on the regulations for this requirement is covered by example (vii). The change in title falls into example (i). As a consequence, the staff had made a proposed determination that the application for amendment involves no significant hazards consideration.

*Local Public Document Room location:* University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

*Attorney for licensee:* Steven E. Keane, Esquire, Foley and Lardner, P.O. Box 2193 Orlando, Florida, 32082.

*NRC Project Directorate:* George E. Lear.

## PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia**

*Date of amendment request:* November 10, 1986.

*Brief Description of amendment request:* The proposed changes would modify the sections of the Technical Specifications related to operability requirements for the Main Control Room Environmental Control System.

*Date of publication of individual notice in* **Federal Register:** November 10, 1986 (51 FR 42951).

*Expiration date of individual notice:* December 26, 1986.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

*Attorney for licensee:* Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washinton, DC 20037.

*NRC Project Director:* Daniel R. Muller.

**Kansas Gas and Electric Company, Kansas City Power and Light Company, Kansas Electric Power Cooperative Inc., Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas.**

*Date of amendment request:* November 7, 1986.

*Brief description of amendment:* The proposed amendment would change Technical Specifications 3.5.1.a to allow closure of one ECCS accumulator isolation valve in Mode 3 above 1000 psig during startup and 3.5.2.e to allow closure of EJ HV–8809A and/or B in Mode 3 during startup (while performing Surveillance Requirement 4.4.6.2.2).

*Date of publication of individual notice in* **Federal Register:** November 25, 1986 (51 FR 42665).

*Expiration date of individual notice:* November 25, 1986 (51 FR 42665).

*Local Public Document Room location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia Kansas, and the Washburn University School of Law Library, Topeka, Kansas.

**Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut**

*Date of amendment request:* October 20, October 24, and October 27, 1986.

*Brief description of amendment:* The proposed changes to the TS would (1) revise temperature pressure limits in TS 3/4.4.9, "Pressure/Temperature Limits"

and TS Figure 3.4–2, "Reactor Coolant System Pressure Temperature Limitations for 12 Full Power Years," (2) change the surveillance frequency for determining reactor coolant system (RCS) flow rate in TS 4.2.6, "DNB Margin," and (3) change several TS associated with RCS flow and reactor power peaking limits.

*Date of publication of individual notice in Federal Register:* November 4, 1986 (51 FR 40096).

*Expiration date of individual notice:* December 4, 1986.

*Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.*

## NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application 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, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

**Arkansas Power and Light Company, Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas.**

*Date of application for amendment:* September 10, 1986, as supplemented September 19, 1986, and revised November 7, 1986.

*Brief description of amendment:* This amendment modified the Technical Specifications to permit operation of Arkansas Nuclear One, Unit No. 1, for an eighth cycle (Cycle 8).

*Date of issuance:* November 24 1986.

*Effective date:* November 24, 1986.

*Amendment No.:* 105.

*Facility Operating License No. DPR–51.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: October 8, 1986 (51 FR 36083).

Since filing of the September 19, 1986, application, which was the subject of the initial notice, the licensee supplemented and revised the application with documents dated September 19, 1986, and November 7, 1986. These filings provided clarifying information and did not change the description or determination of the initial **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 24, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

**Arkansas Power and Light Company, Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas**

*Date of application for amendment:* April 1, 1986, as supplemented August 22, October 14 and October 23, 1986.

*Brief description of amendment:* The amendment modified the ANO–1 TSs for steam generator surveillance to (1) allow the sleeving of steam generator tubes and (2) modify the designation of those areas identified as special groups in the steam generators where imperfections had been previously found.

*Date of issuance:* December 5, 1986.

*Effective date:* December 5, 1986.

*Amendment No.:* 106.

*Facility Operating License No. DPR–51.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: June 18, 1986 (51 FR 22227).

Since the initial notice, the licensee submitted supplements dated August 22, October 14 and October 23, 1986, which responded to the Commission's request for additional information. This information did not change the original application in any way, and therefore did not warrant renoticing.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 5, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

**Carolina Power & Light Company, Dockets Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina**

*Date of application for amendment:* September 12, 1986.

*Brief description of amendment:* The amendments change the Technical Specifications (TS) to modifty Table 3.6.3–1 of TS Section 3/4.6.3 to extend the allowable isolation time for the reactor core isolation cooling system steam isolation values from 20 seconds to 30 seconds. A similar change was granted for Brunswick 2 on a temporary basis by Amendment No. 126 issued on June 10, 1986.

*Date of issuance:* December 4, 1986.

*Effective date:* December 4, 1986.

*Amendment Nos.:* 101 and 130.

*Facility Operating License Nos. DPR–71 and DPR–62.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: October 22, 1986 (51 FR 37504).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

**Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina**

*Date of application for amendment:* July 14, 1986.

*Brief description of amendment:* The amendment revises the graph "Normalized Axial Dependence Factor for $F_Q$ verses Elevation," Figure 3.10–3 of the Technical Specifications, by increasing the 12-foot intercept from 0.431 to 0.647.

*Date of issuance:* December 1, 1986.

*Effective date:* December 1, 1986.

*Amendment No.:* 109.

*Facility Operating License No. DPR–23.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 27, 1986 (51 FR 30563).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1986.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

**Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, Illinois**

*Date of application for amendments:* April 24, 1986, supplemented June 16, and September 2, 1986.

*Brief description of amendments:* These amendments would allow the use of the Combustion Engineering sleeving process to repair defective steam generator tubes.

*Date of issuance:* November 18, 1986.

*Effective date:* November 18, 1986.

*Amendment Nos.:* 98 and 88.

*Facility Operating License Nos. DPR–39 and DPR–48.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 24, 1986 (51 FR 33947).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 18, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

**Consolidation Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York**

*Date of application for amendment:* June 3, 1986 as supplemented August 12, 1986.

*Brief description of amendment:* The amendment revises the Technical Specifications to allow the plant to reduce power to 50% when a quadrant power tilt ratio of greater than 1.09 exists instead of going to Hot Shutdown. A change form 2 to 3 percent reduction in rated thermal power for every percent of indicated power tilt ratio exceeding 1.00 is also made.

*Date of issuance:* November 13, 1986.

*Effective date:* November 13, 1986.

*Amendment No.:* 117.

*Facilities Operating License No. DPR–26:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 24, 1986 (51 FR 33948).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* White Planis Public Library, 100 Martime Avenue, White Plains, New York, 10610.

**Flordia Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida**

*Date of application of amendment:* July 8, 1986, as supplemented October 6, 1986.

*Brief description of amendment:* This amendment reformatted Section 5.6.1 entitled "Fuel Storage—Critically," Section 5.6.1.a now addresses spent fuel storage and Section 5.6.1.b now addresses new fuel storage. In addition, the maximum U–235 enrichment that can be stored in the spent fuel pool and new fuel storage racks is increased from 3.7 weight percent to 4.0 weight percent.

*Date of Issuance:* December 1, 1986.

*Effective Date:* December 1, 1986.

*Amendment No.:* 75.

*Facility Operating License No. DPR–67:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 13, 1986 (51 FR 28992 at 28998).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 1, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450.

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia**

*Date of application for amendment:* July 25, 1986.

*Brief description of amendments:* The amendments revise the fire protection license conditions (License Condition 2.C(3) for Unit 1 and 2.C(3)(b) for Unit 2 to provide consistency with the standard fire protection license condition contained in NRC Generic Letter 86–10, "Implementation of Fire Protection Requirements." The amendments revise the TSs for Units 1 and 2 to delete the fire protection surveillance and operability requirements (these have been relocated in the Hatch Fire Hazards Analysis and Fire Protection Program) and add requirements for a) review of changes to the fire protection program and b) submittal of special reports for fire protection equipment and surveillance requirements.

*Date of issuance:* November 24, 1986.

*Effective date:* November 24, 1986.

*Amendments Nos.:* 130 and 70.

*Facility Operating Licenses Nos. DPR–57 and NPF–5.* Amendments revised the licenses and the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 10, 1986 (51 FR 32270).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 24, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

**Kansas Gas and Electric Company, Kansas City Power and Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of application for amendment:* September 10, 1986.

*Brief description of amendment:* The amendment modifies the Technical Specifications to change the reporting relationship of the Independent Safety Engineering Group.

*Date of issuance:* November 28, 1986.

*Effective date:* November 28, 1986.

*Amendment No.:* 6.

Facility Operating License No. NPF–42. Amendment revised the Technical Specifications.

*Date of initial notice the* **Federal Register:** October 8, 1986 (51 FR 36092).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas, and Washburn University School of Law Library, Topeka, Kansas.

**Kansas Gas and Electric Company, Kansas City Power and Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of application for amendment:* May 13, 1985, as supplemented September 15, 1986.

*Brief description of amendment:* The amendment modified the reactor trip system instrumentation setpoints contained in Technical Specification Table 2.2–1 to incorporate increased uncertainties related to resistance temperature detector errors identified during high temperature calibration.

*Date of issuance:* December 2, 1986.

*Effective date:* December 2, 1986.

*Amendment No.:* 7.

*Facility Operating License No. NPF–42.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 25, 1986 (51 FR 34169).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas, and Washburn University School of Law Library, Topeka, Kansas.

**Mississippi Power & Light Company, Middle South Energy, Inc. South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Clairborne County, Mississippi**

*Date of application for amendment:* June 26, 1986.

*Brief description of amendment:* Deletes Technical Specifications and associated bases for control room chlorine detectors based on acceptable consequences of on site accidental chlorine releases and the acceptably low probablity of offsite accidental chlorine releases.

*Date of issuance:* December 3, 1986.

*Effective date:* December 3, 1986.

*Amendment No.* 25.

*Facility Operating License No. NPF–29.* This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 8, 1986 (51 FR 36096).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

**Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska**

*Date of amendment request:* April 26, 1985 as modified July 3, 1986.

*Brief description of amendment:* The amendment changes the Technical Specifications applicable to station battery surveillance.

*Date of issuance:* November 24, 1986.

*Effective date:* November 24, 1986.

*Amendment No.:* 104.

*Facility Operating License No. DPR–62.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** July 17, 1985 (50 FR 29012) and August 27, 1986 (51 FR 30578).

The Commission's related evaluated of the amendment is contained in a Safety Evaluation dated November 24, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

**Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska**

*Date of amendment request:* February 10, 1986 as supplemented September 9, 1986.

*Brief description of amendment:* The amendment changes the Technical Specification applicable to personnel access control for high radiation areas.

*Date of issuance:* December 3, 1986.

*Effective date:* December 3, 1986

*Amendment No.:* 105.

*Facility Operating License No. DPR–62.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 9, 1986 (51 FR 12230) and October 22, 1986 (51 FR 37516).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

**Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut**

*Date of applications for amendment:* October 20, October 24 and October 27, 1986.

*Brief description of amendment:* This amendment modified the Technical Specifications (TS) for Millstone Unit No. 2. The proposed changes to the TS provide for: (1) Revised temperature/pressure limits in TS 3.4.4.9, "Pressure/Temperature Limits" and TS Figure 3.4–2, "Reactor Coolant System Pressure Temperature Limitations for 12 Full Power Years," (2) a change to the surveillance frequency for determining reactor coolant system (RCS) flow rate in TS 4.2.6, "DNB Margin," and (3) changes to several TS associated with RCS flow and reactor power peaking limits.

*Date of issuance:* December 8, 1986.

*Effective date:* December 8, 1986.

*Amendment No.:* 113.

*Facility Operating License No. DPR–65.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 4, 1986 (51 FR 40096).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 8, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Waterford Public Library, Rope Ferry Road, Waterford, Connecticut.

**Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota**

*Date of application for amendment:* May 12, 1986.

*Brief description of amendment:* The amendment relocates the hydrogen monitor trip function from the recombiner train trip logic to the offgas compressor trip logic. This allows offgas flow to continue to flow in those portions of the system able to withstand

a hydrogen detonation while operators investigate hydrogen monitor trips. The change increases plant reliability by providing more time for operators to respond to hydrogen monitor trips.

*Date of issuance*: December 1, 1986.

*Effective date*: The Technical Specification pages in this amendment are effective when the equipment modifications necessitating the changes on these pages are completed and the affected systems are made operable but not later than startup following the thirteenth refueling outage.

*Amendment No.*: 48

*Facility Operating License No. DPR-22.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: August 13, 1986 (51 FR 29006).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location*: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

**Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York**

*Date of application for amendment*: June 13, 1986.

*Brief description of amendment*: The amendment revises the Technical Specifications to permit storage of fuel having enrichment up to 4.3 weight percent U-235 in the fresh and spent fuel racks.

*Date of issuance*: November 19, 1986.

*Effective date*: November 19, 1986.

*Amendment No.*: 70.

*Facilities Operating License No. DPR-64:* Amendment revised the Technical Specifications.

*Date of Initial notice in* **Federal Register**: August 13, 1986 (51 FR 29012).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 19, 1986.

No significant hazards consideration comment received: No.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

**Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado**

*Date of application for amendment:* June 10, 1985.

*Brief description of amendment:* This amendment added Section 7.7 concerning a formalized Fuel Surveillance Program to the Technical Specifications.

*Date of issuance:* November 25, 1986.

*Effective date:* November 25, 1986.

*Amendment No.:* 48

*Facility Operating License No. DPR-34:* Amendment revised the Technical Specifications.

*Date of Initial notice in* **Federal Register:** July 17, 1986 (50 FR 29014).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 25, 1986.

No significant hazards consideration comment received: No.

*Local Public Document Room location:* Greeley Public Library, City Complex Building, Greeley, Colorado.

**South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina**

*Date of application for amendment:* September 11, 1986.

*Brief description of amendment:* The amendment deletes the maximum total weight of uranium limitation per fuel rod.

*Date of issuance:* November 24, 1986.

*Effective date:* November 24, 1986.

*Amendment No.:* 55.

*Facility Operating License No. NFP-12:* Amendment revised the Technical Specifications.

*Date of Initial notice in* **Federal Register:** October 22, 1986 (51 FR 37521).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 24, 1986.

No significant hazards consideration comment received: No.

*Local Public Document Room location:* Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

**Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

*Date of application for amendments:* February 24, 1986.

*Brief description of amendments:* The amendments change the Technical Specifications to expand the Structural integrity specification to include the balance of ASME Code Class 1, 2 and 3 equivalent systems.

*Date of issuance:* December 4, 1986.

*Effective date:* December 4, 1986.

*Amendment Nos.:* 131, 127, and 102.

*Facilities Operating Licenses Nos. DPR-33, DPR-52, DPR-68:* Amendments revised the Technical Specifications.

*Date of Initial notice in* **Federal Register:** June 18, 1986 (51 FR 22245).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 1986.

No significant hazards consideration comment received: No.

*Local Public Document Room location:* Athens Public Library, South and Forrest, Athens, Alabama 35611.

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of application for amendments:* August 8, 1986.

*Brief description of amendments:* The amendments change the Technical Specifications to reduce the minimum flow rate requirement for Safety Injection Pumps and Centrifugal Charging Pumps.

*Date of issuance:* December 1, 1986.

*Effective date:* December 1, 1986.

*Amendment Nos.:* 50 and 42.

*Facility Operating License Nos. DPR-77 and DPR-79:* Amendments revised the Technical Specifications.

*Date of Initial notice in* **Federal Register:** September 24, 1986 (51 FR 33958).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1986.

No significant hazards consideration comment received: No.

*Local Public Document Room Location:* Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of application for amendments:* April 7, 1986.

*Brief description of amendments:* The amendments change the Technical Specifications to delete the requirement for 24 hours of data acquisition after the Axial Flux Difference Monitor Alarm is restored to operable status.

*Date of issuance:* December 2, 1986.

*Effective date:* December 2, 1986.

*Amendment Nos.:* 51 and 43.

*Facility Operating License Nos. DPR-77 and DPR-79.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 27, 1986 (51 FR 30581).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 2, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

**Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont**

*Date of application for amendment:* August 28, 1986 as supplemented November 3, 1986.

*Brief description of amendment:* The amendment changes the Technical Specifications to revise on a one time basis, the length of time any one of the RHR pumps may be inoperable from 7 days to 14 days, for the purpose of inspection/repair of impeller wear rings during the 1986–87 operating cycle.

*Date of issuance:* December 4, 1986.

*Effective date:* December 4, 1986.

*Amendment No.:* 97.

*Facility Operating License No. DPR–28:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 24, 1986 (51 FR 33959).

The November 3, 1986 submittal provided clarifying information and did not change the determination of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

**Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington**

*Date of amendment request:* September 11, 1985 as supplemented on October 4, 1985.

*Brief description of amendment:* This amendment revises the Administrative Controls section of the WNP–2 Technical Specifications by changing the composition of the Corporate Nuclear Safety Review Board (CNSRB), Section 6.5.2.2.

*Date of issuance:* December 2, 1986.

*Effective date:* December 2, 1986.

*Amendment No.:* 33.

*Facility Operating License No. NPF–21:* Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 4, 1985 (50 FR 49795).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

**Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin**

*Date of application for amendment:* November 10, 1982 and as supplemented January 13 and August 9, 1983 and January 22, 1985.

*Brief description of amendment:* Brings the Kewaunee Plant Technical Specifications into closer conformance with the requirements of 10 CFR Part 50 Appendix J.

*Date of issuance:* December 1, 1986.

*Effective date:* December 1, 1986.

*Amendment No.:* 69.

*Facility Operating License No. DPR–43.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 26, 1983 (48 FR 49597).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room Location:* University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

**Yankee Atomic Electric Company, Docket No. 50–029, Yankee Nuclear Power Station, Franklin County, Massachusetts**

*Date of application for amendment:* July 31, 1986.

*Brief description of amendment:* The amendment revises the Technical Specification requirements regarding the minimum number of operable incore neutron detector thimbles for the remainder of Cycle XVIII operation. In addition, the factor for measurement uncertainty is increased when a reduced number of detectors are operable.

*Date of issuance:* December 1, 1986.

*Effective date:* December 1, 1986.

*Amendment No.:* 100.

*Facility Operating License No. DPR–3.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 27, 1986 (51 FR 30584).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Greenfield Community College, 1 College Drive, Greenfield, Massachusetts.

## NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment 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, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's applicaiton and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of

increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By January 16, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why determination based on that assessment, it is so indicated. For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

**Baltimore Gas & Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert Company, Maryland**

*Date of application for amendment:* November 23, 1986.

*Brief description of amendment:* The amendment temporarily changes Technical Specification (TS) 3/4.8.1, "A.C. Sources," and TS 3/4.8.2, "Onsite Power Distribution Systems," to permit

for one time only, the movement of fuel or core alterations in Unit 1 without the services of an operable emergency diesel generator. The performance of operations involving core alterations or positive reactivity changes has been made contingent in the Action Statement of TS Limiting Condition for Operation (LCO) 3.8.1.2 upon the continued operability of a 500 kV offsite power circuit, the 69 kV offsite power feeder, and the 1000 kV, 480 VAC portable diesel generator. In addition, the Action Statement requirement to establish containment integrity withn 8 hours if the onsite A.C. electrical busses specified in TS LCO 3.8.2.2 are not aligned to an operable emergency diesel generator was modified to permit the licensee to restrain from establishing containment integrity to allow equipment movement into and out of the containment structure to facilitate refueling operations. Instead, the licensee will be required to set containment integrity within 4 hours after any of the onsite A.C. busses specified in TS LCO 3.8.2.2 become deenergized or inoperable. This temporary change shall expire (1) upon completion of licensee preparations to drain but before commending the actual draining of the Unit 1 refueling pool befow the 23 foot level; (2) upon restoration of EDG 12 to operability; or (3) at 11:59 PM on December 10, 1986, whichever occurs earlier.

*Date of Issuance:* November 28, 1986.

*Effective date:* This license amendment is temporary and is to be used only once. This amendment became effective upon issuance on November 28, 1986. This amendment shall be cancelled (1) upon completion of licensee preparations to drain but before commencing the actual draining of the Unit 1 refueling pool below the 23 foot level; (2) upon restoration of EDG 12 to operability; or (3) at 11: 59 PM on December 10, 1986, whichever occurs earlier.

*Amendment No.:* 124.

*Facility Operating License No. DPR–53.* Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration. No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 1986.

No significant hazards consideration comments received: No.

*Attorney for licensee:* Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M. Street, NW., Washington, DC 20036.

*Local Public Document Room location:* Calvert County Library, Prince Frederick, Maryland.

Dated at Bethesda, Maryland this 11th day of December, 1986.

For the Nuclear Regulatory Commission.

**Frank J. Miraglia,**

*Director Division of PWR Licensing-B Office of Nuclear Rector Regulation.*

[FR Doc. 86–28270 Filed 12–16–86; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Agreement on Government Procurement; Notice of Value of Special Drawing Rights

Under the authority delegated to the United States Trade Representative by section 1–104 of Executive Order 12260, I hereby determine that, effective on January 1, 1987, the dollar equivalent of 150,000 Special Drawing Right units referred to in the Agreement on Government Procurement is $171,000. This determination may be modified as appropriate.

**Alan F. Holmer,**

*United States Trade Representative (Acting).*

[FR Doc. 86–28227 Filed 12–6–86; 8:45 am]

BILLING CODE 3190–01–M

## DEPARTMENT OF TRANSPORTATION

**[Order 86–12–37; Docket No. 40813]**

### Proposed Suspension of the Section 401 Certificate of Regent Air Corporation

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice of order to show cause.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order suspending the certificate of Regent Air Corporation, issued under section 401 of the Federal Aviation Act.

**DATE:** Persons wishing to file objections should do so no later than January 2, 1987.

**ADDRESS:** Responses should be filed in Docket 40813 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Carol A. Szekely, Special Authorities Division, P–47, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: December 11, 1986.

**Mathew V. Scocozza,**

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 86–28287 Filed 12–16–86; 8:45 am]

BILLING CODE 4910–62–M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: December 10, 1986.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0800
*Form Number:* None
*Type of Review:* Extension
*Title: Rules and Regulations*

Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OBM Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Douglas J. Colley**

*Departmental Reports Management Office*

[FR Doc. 86–28194 Filed 12–16–86; 8:45 am]

BILLING CODE 4810–25–M

**[Department Circular—Public Debt Series—No. 39–86]**

### Treasury Notes of December 31, 1988, Series AH–1988

December 11, 1986.

**1. Invitation for Tenders**

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $10,250,000,000 of United States securities, designated Treasury Notes of December 31, 1988, Series AH–1988 (CUSIP No. 912827 UJ 9), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the

basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

**2. Description of Securities**

2.1. The Notes will be dated December 31, 1986, and will accrue interest from that date, payable on a semiannual basis on June 30, 1987, and each subsequent 6 months on December 31 and June 30 through the date that the principal becomes payable. They will mature December 31, 1988, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the **TREASURY DIRECT** Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

**3. Sale Procedures**

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard Time, Wednesday, December 17, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, December 16, 1986, and received no later than Wednesday, December 31, 1986.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extend required to attain the amount offered. Tenders at the highest accepted yield will be protected if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

**4. Reservations**

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

**5. Payment and Delivery**

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a

guarantee as provided in Section 3.5. must be made or completed on or before Wednesday, December 31, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, December 29, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, December 31, 1986. When payment has been submitted with the tender and the purchase price of the Notes alloted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in **TREASURY DIRECT** are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in **TREASURY DIRECT** must be completed to show all the information required thereon, or the **TREASURY DIRECT** account number previously obtained.

**6. General Provisions**

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 86-28329 Filed 12-15-86; 10:51 am]

BILLING CODE 4810-40-M

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**[Department Circular—Public Debt Series—No. 40-86]**

## Treasury Notes of December 31, 1990, Series R-1990

December 11, 1986.

**1. Invitation for Tenders**

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,750,000,000 of United States securities, designated Treasury Notes of December 31, 1990, Series R-1990 (CUSIP No. 912827 UK 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

**2. Description of Securities**

2.1. The Notes will be dated December 31, 1986, and will accrue interest from that date, payable on a semiannual basis on June 30, 1987, and each subsequent 6 months on December 31 and June 30 through the date that the principal becomes payable. They will mature December 31, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

**3. Sale Procedures**

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Thursday, December 18, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, December 17, 1986, and received no later than Wednesday, December 31, 1986.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the

list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own acocunt will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after, the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount of yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.000. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

**4. Reservations**

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

**5. Payment and Delivery**

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to other whose tenders are accompanied by a guarantee as provided in Section 3.5 must be made or completed on or before Wednesday, December 31, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, December 29, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, December 31, 1986. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

**6. General Provisions**

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 86-28330 Filed 12-15-86; 8:45 am]

BILLING CODE 4810-40-M

## VETERANS ADMINISTRATION

### Agency Form Letter Under OMB Review

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

The Veterans Administration has sumitted 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 a revision and lists the following information: (1) The department or staff office issuing the form letter, (2) the title of the form letter, (3) the agency form letter number, if applicable, (4) how often the form letter 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 letter, and (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

**ADDRESSES:** Copies of the form letter and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Allison Herron, 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 on or before February 17, 1987.

Dated: December 11, 1986.

By direction of the Administrator.

**David A. Cox,**

*Associate Deputy Administrator for Management.*

**Revision**

1. Department of Veterans Benefits
2. Report of Treatment in Hospital
3. VA Form Letter 29–551
4. On occasion
5. Individuals or households
6. 20,277 responses
7. 4,055 hours
8. Not applicable

[FR Doc. 86–28195 Filed 12–16–86; 8:45 am]

BILLING CODE 8320–01–M

## Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held January 8 and 9, 1987, in the Omar Bradley Conference Room of Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. Both meetings will begin at 8:00 a.m. and conclude at 4:30 p.m.

These meetings will be open to the public to the seating capacity of the room. Anyone having questions concerning the meetings may contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Veterans Administration Central Office, (phone number 202–233–3317/3303).

Dated: December 8, 1986.

By direction of the Administrator.

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 86–28196 Filed 12–16–86; 8:45 am]

BILLING CODE 8320–10–M

## Medical Care Reimbursement Rates for Fiscal Year 1987

In accordance with provisions of OMB Circular A–11, § 13.5(a), revised reimbursement rates have been established by the Veterans Administration (VA) for inpatient and outpatient medical care furnished to beneficiaries of other Federal Agencies during Fiscal Year 1987. These rates will be charged for such medical care provided at health care facilities under the direct jurisdiction of the Administrator on and after December 1, 1986:

| | |
|---|---|
| Medicine | $344 |
| Surgery | 402 |
| Rehabilitation Medicine | 267 |
| Spinal Cord Injury | 391 |
| Blind Rehabilitation | 379 |
| Neurology | 294 |
| Psychiatry | 250 |
| Drug and Alcohol | 94 |
| Intermediate Medicine | 151 |
| Nursing Home Care | 130 |
| Outpatient | 56 |
| Pharmacy—Prescription Refill | 11 |
| Hemodialysis: | |
| Hospital Component | 118 |
| Physician Component | 12 |

The hospital component for hemodialysis will be charged in addition to the inpatient per diem rate except when billing Medicare for maintenance dialysis, in which case the physician component will be charged in addition to the hospital component. If other than maintenance dialysis care is provided a Medicare beneficiary treated as a humanitarian service in an emergency, an additional charge for an outpatient visit may be made by the VA. Prescription refill charges in lieu of the outpatient visit rate will be charged when the patient receives no service other than the pharmacy outpatient service. These charges apply if the patient receives the prescription refills in person or by mail.

When medical services for beneficiaries of other Federal Agencies are obtained by the VA from private sources, the charges to the other Federal Agencies will be the actual amounts paid by the VA for such medical services.

Inpatient charges to other Federal Agencies will be at the current interagency per diem rate as set forth above for the type of bed section or discrete treatment unit providing the care.

Dated: December 10, 1986.

By direction of the Administrator.

**Thomas E. Harvey,**

*Deputy Administrator.*

[FR Doc. 86–28250 Filed 12–16–86; 8:45 a.m]

BILLING CODE 8320–01–M

# Sunshine Act Meetings

Federal Register
Vol. 51, No. 242
Wednesday, December 17, 1986

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).

**BOARD FOR INTERNATIONAL BROADCASTING**

**TIME AND DATE:** 9:00 a.m., January 12, 1987.

**PLACE:** Forbes, Inc., The Board Room, 60 Fifth Avenue, New York, New York 10011.

**STATUS:** Closed, pursuant to 5 U.S.C. 552(b)(c)(1) 22 CFR 1302.4(c) and (h) of the Board's rules (42 FR 9388, March 12, 1977).

**MATTERS TO BE CONSIDERED:** Matters concerning the broad foreign policy objectives of the United States Government.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Bruce D. Porter, Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Ave., NW., Washington, DC 20036.

**Bruce D. Porter,**

*Executive Director.*

[FR Doc. 86-28369 Filed 12-15-86; 12:59 pm]

BILLING CODE 6155-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 51 FR 44565, December 10, 1986.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 12:00 Noon, Monday, December 15, 1986.

**CHANGES IN THE MEETING:** Addition of the following closed item(s) to the meeting:

Proposed amendments to the Board's Rules Regarding Delegation of Authority.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: December 15, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86-28375 Filed 12-15-86; 2:22 pm]

BILLING CODE 6210-01-M

**FEDERAL TRADE COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 51 FR, December 12, 1986, Page No. 44861.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 2:00 p.m., Monday, December 15, 1986.

**CHANGES IN THE AGENDA:** The Federal Trade Commission has cancelled its previously announced oral argument at which it was to discuss R.J. Reynolds Tobacco Company, Inc., Docket No. 9206.

**Emily H. Rock,**

*Secretary.*

[FR Doc. 86-28405 Filed 12-15-86; 3:46 p.m.]

BILLING CODE 6750-01-M

# Corrections

Federal Register
Vol. 51, No. 242
Wednesday, December 17, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### 48 CFR Parts PHS 315 and PHS 352

### Acquisition Regulations; Acceptance of Late Proposals

*Correction*

In rule document 86–27050 beginning on page 43355 in the issue of Tuesday, December 2, 1986, make the following corrections:

1. On page 43356, in the first column, the **DATES** caption should read as follows:

**DATES:** Effective December 2, 1986.

Comment date: Comments must be received on or before February 2, 1987.

**PHS 315.412 [Corrected]**

2. On page 43357, in the first column, in paragraph (c)(1) of PHS 315.412, in the tenth line, "FAR 52.215.10" should read "FAR 52.215–10".

**PHS 352.215–10 [Corrected]**

3. On the same page, in the same column, in the 11th line from the bottom, in PHS 352.215–10, "1983" should read "1986".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Public Land Order 6629

**[ID–943–07–4220–11; I–7322]**

### Withdrawal of Public Lands for Protection of the Lower Salmon River, ID

*Correction*

In rule document 86–25653 beginning on page 41104 in the issue of Thursday, November 13, 1986, make the following corrections:

1. On page 41104, in the first column, under **Boise Meridian, Idaho**, the fourth and fifth lines should read "Sec. 10, lots 1, 2, 3, 4, 5, 7, 8, 10, NW¼SE¼;".

2. On the same page, in the second column, the 14th line should read "Sec. 35, W½NW¼.".

BILLING CODE 1505-01-D

Federal Register

Wednesday
December 17, 1986

Part II

# Environmental Protection Agency

**40 CFR Parts 430 and 431**

**Pulp, Paper, and Paperboard and the Board Mills Point Source Categories; Best Conventional Pollutant Control Effluent Limitations Guidelines; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 430 and 431**

**[FRL-3074-7]**

# Pulp, Paper, and Paperboard and the Builders' Paper and Board Mills Point Source Categories; Best Conventional Pollutant Control Effluent Limitations Guidelines

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is establishing effluent limitations guidelines based on the "best conventional pollutant control technology" (BCT) for the pulp, paper, and paperboard and the builders' paper and board mills point source categories as required by the Clean Water Act. This final regulation controls the discharge of five-day biochemical oxygen demand (BOD5), total suspended solids (TSS), and pH into waters of the United States by existing sources that produce pulp, paper, and paperboard.

**DATES:** In accordance with 40 CFR Part 23 (50 FR 7268), this regulation shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on January 2, 1987. These regulations shall become effective February 2, 1987.

Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

**ADDRESSES:** On January 16, 1987, the complete public record for this rulemaking will be available for review in EPA's Public Information Reference Unit, Room 2404 (Rear) (EPA Library), 401 M Street, SW., Washington, DC. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wendy D. Smith, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Phone: (202) 382-7184) or Ms. Debra Maness, Economic Analysis Division (WH-586), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Phone: (202) 382-5385).

**SUPPLEMENTARY INFORMATION:**



## I. Legal Authority

EPA is promulgating this regulation under the authority of sections 301, 304, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Public Law 95-217; also called the "Act").

## II. Scope of This Rulemaking

This final regulation applies to the pulp, paper, and paperboard and the builders' paper and board mills point source categories (hereafter known as the pulp, paper, and paperboard industry). These categories are included within the following: U.S. Department of Commerce, Bureau of the Census Standard Industrial Classifications (SIC): 2611 (pulp mills), 2621 (paper mills except building paper mills), 2631 (paperboard mills), and 2661 (building paper and building board mills).

Best conventional pollutant control technology limitations controlling BOD5, TSS, and pH are established for 23 subcategories of the pulp, paper, and paperboard industry which are as follows:

*40 CFR Part 430*

- Subpart A—unbleached kraft.
- Subpart B—semi-chemical.
- Subpart D—unbleached kraft-neutral-sulfite semi-chemical (cross recovery).
- Subpart E—paperboard from wastepaper.
- Subpart F—dissolving kraft.
- Subpart G—market bleached kraft.
- Subpart H—board, coarse, and tissue (BCT) bleached kraft.
- Subpart I—fine bleached kraft.
- Subpart J—papergrade sulfite (blow pit wash).
- Subpart K—dissolving sulfite pulp.
- Subpart N—groundwood-coarse, molded, and news (CMN) papers.
- Subpart O—groundwood-fine papers.
- Subpart P—soda.
- Subpart Q—deink.
- Subpart R—nonintegrated-fine papers.
- Subpart S—nonintegrated-tissue papers.
- Subpart T—tissue from wastepaper.
- Subpart U—papergrade sulfite (drum-wash).
- Subpart V—unbleached kraft and semi-chemical (BPT limitations for mills in this subcategory are included in subpart D—unbleached kraft-neutral sulfite semi-chemical (cross recovery)).
- Subpart W—wastepaper-molded products.
- Subpart X—nonintegrated-lightweight papers.
- Subpart Y—nonintegrated-filter and nonwoven papers, and,
- Subpart Z—nonintegrated-paperboard.

*40 CFR Part 431*

- Subpart A—builders' paper and roofing felt.

BCT limitations are not being established for Subpart L of 40 CFR Part 430, the groundwood-chemi-mechanical subcategory. When BAT regulations were promulgated for the pulp, paper, and paperboard industry, this subcategory was excluded from regulation under authority of paragraph 8(a)(iv) of the Revised Settlement Agreement in *NRDC* v. *Costle*, 12 ERC 1833 (1979). New source and pretreatment standards for this subcategory were also not established due to insufficient data. For the same reason, BCT effluent limitations are not being established at this time for this subcategory. (See 46 FR 1446, January 6, 1981).

BCT limitations are also not established for the groundwood-thermo-mechanical subcategory (Subpart M) because insufficient data are available to develop costs and pollutant removals for this subcategory.

## III. Background

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (Section 101(a).) To implement the Act, EPA was required to issue effluent limitations guidelines, pretreatment standards, and new source performance standards for industrial dischargers.

EPA promulgated effluent limitations guidelines based on best practicable control technology currently available and best available technology economically achievable and issued new source performance standards and pretreatment standards for existing and new sources for the pulp, paper, and paperboard industry on November 18, 1982 (47 FR 52006).

The 1977 amendments to the Clean Water Act added section 301(b)(2)(E) establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. Conventional pollutants are those defined in section 304(a)(4) [biochemical oxygen demand (BOD5), total suspended solids (TSS), fecal coliform, and pH], and any additional pollutants defined by the Administrator as "conventional" (oil and grease, 44 FR 44501, July 30, 1979).

EPA originally published a methodology for carrying out the BCT analysis on August 24, 1979 (44 FR 50732). The core of this methodology was a comparison of the costs of removing additional pounds of conventional pollutants for industry to the costs of removing conventional pollutants for an average-sized publicly owned treatment works (POTW). The 1979 methodology was challenged in the U.S. Court of Appeals for the Fourth Circuit, and on July 28, 1981, the Court issued its decision. *American Paper Institute* v. *EPA*, 660 F2d 954 (4th Cir. 1981). While upholding the methodology that EPA had developed for the POTW cost comparison test, the Court remanded the regulation to the Agency for two reasons. First, the Court held that the Clean Water Act requires EPA to consider two tests of "reasonableness" as part of the BCT methodology: A POTW cost-comparison test and an industry cost-effectiveness test. Since the 1979 methodology contained only the POTW cost test, the Court directed EPA to develop a separate industry cost-effectiveness test. If candidate BCT effluent limitations are not found "reasonable," after evaluation of both tests, then BCT limitations will be established equal to BPT. In no case may BCT be less stringent than BPT. Second, the Court remanded the regulation for EPA to correct certain statistical errors that had been made in calculating the POTW test.

The Agency proposed a revised methodology for the general development of BCT limitations on October 29, 1982 (47 FR 49176). EPA also published new cost information and announced that additional information on the development of the BCT methodology was available on September 20, 1984 (49 FR 37046). The Agency has recently finalized this methodology. Details of the methodology development are presented in the preamble discussing the final BCT methodology (see FR 24974, July 9, 1986).

On January 6, 1981, EPA proposed BCT limitations for the pulp, paper, and paperboard industry (46 FR 1430); these regulations were reproposed in 1982 when the revised BCT methodology was issued in response to the *American Pulp Institute* v. *EPA* decision above (47 FR 49176, October 29, 1982). The final BCT limitations for the pulp, paper, and paperboard industry promulgated today have been developed based on the recently promulgated BCT methodology.

## IV. Methodology and Data Gathering Efforts

EPA first proposed BCT limitations for the pulp, paper, and paperboard industry on January 6, 1981. A great amount of technical information used to develop the final BCT limitations was collected prior to that proposal. The methodology and data gathering activities associated with the January 1981 rulemaking are detailed in sections III, IV, and V of the preamble to those proposed rules (46 FR 1430). Following this proposal, the Agency received numerous public comments. In order to respond fully to these comments, EPA engaged in additional data gathering activities. In particular, the Agency obtained discharge monitoring reports (DMR) from Regional and State permitting authorities and collected additional conventional pollutant data under the authority of Section 308 of the Clean Water Act to update its records and broaden the existing data base. These activities are explained in the preamble to the final BPT, BAT, PSES, PSNS, and NSPS regulations for the pulp, paper, and paperboard industry (47 FR 52006, November 18, 1982) and in section II of the *Development Document for Best Conventional Pollutant Control Technology Effluent Limitations Guidelines for the Pulp, Paper, and Paperboard and the Builders' Paper and Board Mills Point Source Categories*, U.S. EPA, Washington, DC August 1986 (hereafter referred to as the *Final Pulp and Paper BCT Development Document*).

The Agency has responded to the issues raised by public commenters, and a summary of these responses may be found in section XII of this preamble, "Public Participation and Responses to Major Comments." A more detailed presentation of comments and responses on the proposed BCT rules can be found in "Summary of Comments and Responses on the Proposed BCT Effluent Limitations Guidelines for the Pulp, Paper, and Paperboard Industry," which is part of the public record for this regulation.

## V. Summary of Promulgated Regulations and Changes From Proposal

In reviewing comments on the proposed regulations, the Agency conducted extensive analyses of existing data, new data, and information submitted by the commenters. These analyses are listed in section XIII of this preamble. As a result of these analyses, the Agency made some changes in the control and treatment options considered for the basis of the BCT limitations and in the costs, energy, and non-water quality environmental impacts associated with each treatment option. These changes, including revisions to the cost of each treatment option, are explained in sections III and IV of the *Final Pulp and Paper BCT Development Document*.

In summary, when the BCT limitations were reproposed on October 29, 1982 (47 FR 49176), technology options for three subcategories passed the BCT cost test using the 1982 reproposed BCT methodology: The papergrade sulfite (drum wash), papergrade sulfite (blow pit wash), and the groundwood-thermo-mechanical subcategories. The BCT limitations for these subcategories were proposed based on BPT technology plus in-plant controls which is explained in section VI of this preamble. The remaining twenty-one subcategories failed the reproposed BCT cost test for all technology options; therefore, BCT limitations for these subcategories were proposed equal to BPT.

The final BCT effluent limitations guidelines issued today differ from the proposed regulations in several respects. After the Agency's review of all comments on the proposed rules and further analyses of additional data, EPA made all appropriate changes to the alternative technology options which could serve as the basis for the final limitations and to the costs for incremental conventional pollutant removal for each option. The Agency then applied these revised costs to the two-part BCT cost test that was recently promulgated. As a result, no option for any subcategory in the pulp, paper, and paperboard industry passes the BCT cost test. Therefore, BCT effluent limitations guidelines for each subcategory are set equal to BPT effluent limitations guidelines.

Second, on October 29, 1982, EPA proposed BCT limitations for the groundwood-thermo-mechanical subcategory (subpart M) which were more stringent than the BPT limitations for that subcategory. After proposal, EPA assessed the comments on these proposed effluent limitations guidelines and determined that insufficient data are available to calculate costs and pollutant removals for the four candidate BCT technology options. Therefore, the Agency is not issuing nationally-applicable BCT effluent limitations guidelines for the groundwood-thermo-mechanical subcategory at this time. The BCT effluent limitations guidelines were reserved for this subcategory when the final BPT, BAT, NSPS, PSES, and PSNS regulations were issued on November 18, 1982 and will remain reserved at this time. BCT effluent limitations will be developed on a case-by-case basis by Agency and State permit writers, as appropriate.

A minor change in the format of the originally proposed regulations (January 6, 1981) and reproposed BCT effluent limitations guidelines (October 29, 1982) was made when final BPT, BAT, NSPS, PSES, and PSNS were issued on November 18, 1982. This format change consisted of a reassignment of subpart letters and paragraph numerals; no substantive changes to the existing BPT effluent limitations were made (See 47 FR 52007). The subpart letters and paragraph numerals assigned to each subcategory in the final regulations issued on November 18, 1982 are the same used for the BCT effluent limitations promulgated today. These are listed in Section II of this preamble.

Another minor change involves language to clarify the relationship of 40 CFR Part 430, Subpart D and V. Pursuant to the November 18, 1982 final rule for certain effluent limitations guidelines for the pulp and paper industry, EPA determined that a new subcategory, the Unbleached Kraft and Semi-Chemical Subcategory (40 CFR Part 430, Subpart V), should be established to include all mills within the original unbleached kraft-neutral sulfite semi-chemical (cross recovery) subcategory (40 CFR Part 430, Subpart D) and those mills where both the unbleached kraft and another type of semi-chemical pulping process (i.e., green liquor) are used on site. Available data indicate that there are no significant differences in wastewater or conventional pollutant generation at mills where the neutral sulfite semi-chemical pulping process or any other semi-chemical process are used. See *Development Document for Effluent Limitations Guidelines and Standards for the Pulp, Paper, and Paperboard and the Builders' Paper and Board Mills Point Source Categories*, U.S. EPA, October 1982, pp. 90–92. Accordingly, all effluent limitations guidelines for Subpart D are identical to those in Subpart V.

EPA did not remove Subpart D from the Code of Federal Regulations because of the familiarity of permitting authorities and representatives of affected mills with that subpart. In today's final rule we are adding language in 40 CFR Part 430, Subpart D to clarify that the effluent limitations guidelines under Subpart D are entirely identical to those in Subpart V.

Another change involves the addition of language to five subparts so that all paragraphs in Parts 430 and 431 describing BCT effluent limitations are consistent. BPT regulations for the pulp, paper, and paperboard industry were issued in two phases. The phase II subcategories promulgated on January 6, 1977 (42 FR 1398) specifically addressed the application of BPT limitations to noncontinuous dischargers. The underlying standard for effluent discharges is the same for noncontinuous and continuous dischargers; however, noncontinuous dischargers are only required to meet annual average mass-based effluent limitations rather than be subject to the maximum day or average-of-30-consecutive-days mass-based limitations. The annual average limitations are determined by dividing the average of 30-consecutive-days limitations for BOD*5* and TSS by the appropriate variability factor for each pollutant in each subcategory. Language indicating this procedure is included in the BPT regulations for all Phase II subcategories.

The issue of applying BPT limitations to noncontinuous dischargers was not specifically addressed in the Phase I regulations. Accordingly, the BPT regulations for the Phase I subcategories do not contain language concerning noncontinuous dischargers. Nevertheless, the Agency considers the use of annual average effluent limitations to be the appropriate procedure for BPT/BCT limitations for noncontinuous dischargers in the Phase I subcategories, and in the October 29, 1982 reproposal of the BCT effluent limitations guidelines (47 FR 49176), language specifically addressing noncontinuous dischargers was added for 40 CFR Part 430, Subparts A, B, E, and V. Today's final rule promulgates this language for noncontinuous dischargers for these subparts of 40 CFR Part 430 and for Subpart A of 40 CFR Part 431. The Agency does not consider the new BCT effluent limitations to be different from the BPT effluent limitations that apply for these subcategories. The language simply codifies our procedure for applying BPT, and now BCT, limitations to noncontinuous dischargers.

## VI. Control and Treatment Options and Technology Basis for the Final Regulation

### *A. Control and Treatment Technologies Applicable to the Pulp, Paper, and Paperboard Industry*

In the development of effluent limitations guidelines and standards for the pulp, paper, and paperboard industry, EPA assessed various control and treatment technologies that may be employed to reduce pollutant discharges from this industry. An overview of applicable technologies is presented in section VII of the preamble to the proposed rules for the pulp, paper, and paperboard industry (46 FR 1430, January 6, 1981). Detailed descriptions of these technologies can be found in section VII of the development document supporting the proposed rules (*Development Document for Proposed Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Pulp, Paper, and the Builders' Paper and Board Mills Point Source Categories*, U.S. EPA, December, 1980).

### *B. Control and Treatment Technologies Considered*

An extensive review of the control and treatment technology alternatives available for application in the pulp, paper, and paperboard industry resulted in the identification of several methods for the control of conventional pollutants beyond the level of control provided by the application of BPT effluent limitations guidelines. Four technology options were considered for the basis of the final BCT effluent limitations. Cost estimates for each option were developed by subcategory, and these cost estimates were assessed in light of the recently-promulgated BCT methodology to determine which options, if any, would pass the cost tests. The four options, which are discussed in detail in section III of the *Final Pulp and Paper BCT Development Document*, are summarized below:

- *Option 1*—Base effluent limitations on the model BPT technology for each subcategory plus additional in-plant production process controls. No additional end-of-pipe technology

beyond BPT is contemplated in this option. Effluent limitations would be based on specific controls that include segregation of non-contact cooling water, use of dry barking operations, collection of spills and leaks for reprocessing, increased efficiency of pulp washing, collection and reuse of paper machine spills, improvement in save-all operation, and effluent recycle-reuse. These controls primarily achieve reductions in water use, wastewater discharge, and BOD5 raw waste loading. Implementation of these process controls would improve performance of existing primary and secondary biological treatment systems due to the reductions of raw waste loadings.

- *Option 2*—Base effluent limitations on the addition of chemically-assisted clarification of the BPT final effluents for all integrated and secondary fiber subcategories and for the nonintegrated-fine subcategory (for these subcategories, BPT is based on biological treatment). EPA anticipates that additional solids-contact clarifier(s) would be added using alum as a coagulant and polymer as a flocculant aid. For the remaining nonintegrated subcategories, for which primary treatment was the basis of BPT, effluent limitations would be based on the addition of biological treatment.
- *Option 3*—Base effluent limitations on BCT Option 1 plus the addition of chemically-assisted clarification for all integrated and secondary fiber subcategories and for the nonintegrated-fine papers subcategory (for these subcategories BPT is based on biological treatment). EPA expects that additional solids-contact clarifier(s) would be added using alum as a coagulant and polymer as a flocculant aid. For the remaining nonintegrated subcategories, for which primary treatment was the basis of BPT, effluent limitations would be based on the application of Option 1 plus the addition of biological treatment.
- *Option 4*—Base effluent limitations on the levels attained by best performing mills in the respective subcategories. Best mill performance for a subcategory is generally the average performance at all mills where BPT effluent limitations are attained. The technologies for achieving Option 4 effluent limitations vary depending on the type of treatment systems that are employed at mills in each subcategory. Treatment systems commonly employed at mills in the integrated segment, nonintegrated-fine papers, and deink subcategories in which BPT was based on biological treatment include aerated stabilization basins, activated sludge systems, and oxidation ponds.

EPA expects that aerated stabilization basin treatment systems would be upgraded through the addition of spill prevent and control systems, by increasing aeration capacity, and by providing additional settling capacity. For the nonintegrated-fine papers subcategory, the Agency anticipates that equalization would also be provided. Conversion to the extended aeration activated sludge process was considered to be the probable method of upgrading the performance of aerated stabilization basins located in colder climates.

Activated sludge systems would most likely be upgraded through the addition of spill prevention and control systems, by providing equalization, by increasing the capacity of aeration basins and by providing for operation in the contact stabilization mode, and by increasing the size of clarification and sludge-handling equipment. Ponds would probably be upgraded through the addition of rapid sand filtration to remove algae that can contribute to the discharge of large levels of suspended solids.

At mills in the nonintegrated subcategories in which BPT is based or assumed to be based on primary treatment, EPA assumes that existing primary treatment systems would be upgraded by reducing clarifier overflow rates to provide for better settling, by adding chemical coagulants, and by increasing sludge-handling capability.

At best performing mills in the remaining subcategories (paperboard from wastepaper, tissue from wastepaper, wastepaper-molded products, and builders' paper and roofing felt), extensive use is made of production process controls to reduce wastewater discharge. Therefore, Option 4 for these subcategories is based on the application of the same technologies as discussed in BCT Option 1: the technology on which BPT is based plus the application of additional production process controls.

### *C. Technology Option Costs and Application to the BCT Methodology*

For each subcategory, EPA estimated the costs for each of the four alternative technology options. The development of these costs is detailed in section IV of the *Final Pulp and Paper BCT Development Document*. The actual cost estimates for each candidate technology are also presented.

The costs for each technology option are used to determine if the candidate technology option passes the BCT cost test. EPA evaluated the four technology options considered for the pulp, paper, and paperboard industry by applying the recently promulgated BCT cost test, which consists of two parts: the POTW test and the industry cost-effectiveness test. This methodology is detailed in section II of the BCT Methodology preamble (51 FR 24974).

*POTW Test.* In general, to "pass" the POTW test, the cost per pound of conventional pollutants removed by industrial dischargers in upgrading from BPT to the candidate BCT level must be less than the cost per pound of conventional pollutants removed in upgrading POTWs from secondary treatment to advanced secondary treatment. For the pulp, paper, and paperboard industry, this upgrade cost must be less than the POTW benchmark of $0.28 per pound (in first quarter 1978 dollars) based on long-term performance data. (See 51 FR 24974 for a description of the use of long-term performance data where available.)

As discussed in section III, conventional pollutants are defined by the Act to include BOD5, TSS, fecal coliform, pH and any additional pollutants defined by the Administrator as "conventional" (oil and grease, 44 FR 44501, July 30, 1979). The pollutants included in calculating the POTW pollutant removal are BOD5 and TSS. These pollutants were also used to calculate the pollutant removal for candidate BCT technology options in the pulp and paper industry. Oil and grease was not included since this conventional pollutant is not generally a concern in the pulp, paper, and paperboard industry. Fecal coliform is also not a general concern for the pulp, paper, and paperboard industries. The pollutant parameter pH is not included in the calculations because control of this pollutant is not measurable as "pounds removed." An acceptable interval for controlling pH is evaluated with respect to the particular processes of a candidate technology. Generally, the acceptable pH interval for BCT will be the same as that for BPT.

*Industry Test.* Generally, candidate technologies must also "pass" the industry cost-effectiveness test. For each industry subcategory, EPA computes a ratio which is a comparison of two incremental costs. The first is the cost per pound removed by the BCT candidate technology relative to BPT; the second is the cost per pound removed by BPT relative to no treatment (i.e., raw wasteload).

The ratio of the first cost divided by the second is a measure of the candidate technology's cost-effectiveness. The ratio is compared to an industry cost benchmark, which is based on POTW cost and pollutant removal data. If the

industry ratio is lower than the benchmark, the candidate technology passes the industry cost test. The benchmark for the pulp, paper, and paperboard industry, whose ratio is based on long-term performance data, is 1.29.

*Application of BCT POTW and Industry Cost Tests.* For each subcategory in the pulp, paper, and paperboard industry, EPA applied the costs calculated for each option to the BCT POTW and industry cost test. Results are presented in Table 1.

As shown in Table 1, none of the subcategories in the pulp, paper, and paperboard industry pass both parts of the BCT cost test at any of the four alternative treatment options. Therefore, BCT limitations for each subcategory are set equal to the BPT limitations.

TABLE 1.—SUMMARY OF BCT COST TEST CALCULATIONS FOR PULP, PAPER, AND PAPERBOARD INDUSTRY

[1st Quarter 1978 Dollars]

| Subcategory (subpart) | POTW test [1] | Industry cost test [2] |
|---|---|---|
| Unbleached Kraft (A): | | |
| BPT | 0.24 | |
| Option 1 | 0.98 | 4.10 |
| Option 2 | 1.33 | 5.57 |
| Option 3 | 1.31 | 5.51 |
| Option 4 | 1.38 | 5.79 |
| Semi-Chemical (B): | | |
| BPT | 0.32 | |
| Option 1 | 0.66 | 2.06 |
| Option 2 | 1.56 | 4.88 |
| Option 3 | 1.44 | 4.52 |
| Option 4 | 1.43 | 4.49 |
| Paperboard from Wastepaper (E): | | |
| BPT | 0.12 | |
| Option 1 | 1.22 | 10.50 |
| Option 2 | 4.42 | 38.22 |
| Option 3 | 2.25 | 19.42 |
| Option 4 | 1.22 | 10.50 |
| Dissolving Kraft (F): | | |
| BPT | 0.11 | |
| Option 1 | 2.07 | 19.28 |
| Option 2 | 1.32 | 12.33 |
| Option 3 | 1.39 | 12.98 |
| Option 4 | 0.63 | 5.90 |
| Market Bleached Kraft (G): | | |
| BPT | 0.18 | |
| Option 1 | 0.66 | 3.71 |
| Option 2 | 1.50 | 8.41 |
| Option 3 | 1.45 | 8.10 |
| Option 4 | 1.00 | 5.59 |
| BCT Bleached Kraft (H): | | |
| BPT | 0.11 | |
| Option 1 | 1.39 | 12.75 |
| Option 2 | 1.51 | 13.88 |
| Option 3 | 1.41 | 12.99 |
| Option 4 | 1.04 | 9.51 |
| Alkaline Fine [3] (I,P): | | |
| BPT | 0.14 | |
| Option 1 | 1.85 | 13.71 |
| Option 2 | 1.66 | 12.29 |
| Option 3 | 1.52 | 11.27 |
| Option 4 | 0.86 | 6.39 |
| Papergrade Sulfite [4] (J,U): | | |
| BPT | 0.26 | |
| Option 1 | 0.51 | 1.96 |
| Option 2 | 1.75 | 6.67 |
| Option 3 | 1.40 | 5.39 |
| Option 4 | 0.71 | 2.74 |
| Dissolving Sulfite Pulp (K): | | |
| BPT | 0.14 | |
| Option 1 | 0.70 | 4.99 |
| Option 2 | 1.07 | 7.64 |
| Option 3 | 1.22 | 8.69 |
| Option 4 | 0.64 | 4.61 |
| Groundwood-CMN Papers (N): | | |
| BPT | 0.15 | |
| Option 1 | 0.59 | 3.88 |
| Option 2 | 2.79 | 18.47 |
| Option 3 | 1.63 | 10.78 |
| Option 4 | 1.02 | 6.73 |
| Groundwood-Fine Papers (O): | | |
| BPT | 0.15 | |
| Option 1 | 1.05 | 7.12 |
| Option 2 | 3.01 | 20.33 |
| Option 3 | 1.86 | 12.58 |
| Option 4 | 0.99 | 6.66 |
| Deink (Q): | | |
| BPT | 0.09 | |
| Option 1 | 0.25 | 2.78 |
| Option 2 | 1.22 | 13.83 |
| Option 3 | 0.72 | 8.17 |
| Option 4 | 0.71 | 8.07 |
| Nonintegrated Fine Papers (R): | | |
| BPT | 0.22 | |
| Option 1 | 0.35 | 1.62 |
| Option 2 | 1.95 | 9.01 |
| Option 3 | 1.23 | 5.67 |
| Option 4 | 0.77 | 3.57 |
| Nonintegrated Tissue Papers (S): | | |
| BPT | 0.28 | |
| Option 1 | 0.86 | 3.06 |
| Option 2 | 3.09 | 11.02 |
| Option 3 | 2.80 | 9.97 |
| Option 4 | 4.03 | 14.37 |
| Tissue from Wastepaper (T): | | |
| BPT | 0.32 | |
| Option 1 | 0.74 | 2.28 |
| Option 2 | 4.44 | 13.75 |
| Option 3 | 3.01 | 9.32 |
| Option 4 | 0.74 | 2.28 |
| Unbleached Kraft and Semi-Chemical (V): | | |
| BPT | 0.17 | |
| Option 1 | 0.63 | 3.73 |
| Option 2 | 1.68 | 9.99 |
| Option 3 | 1.35 | 8.02 |
| Option 4 | 0.94 | 5.59 |
| Wastepaper Molded Products (W): | | |
| BPT | 1.04 | |
| Option 1 | 1.45 | 1.40 |
| Option 2 | 9.21 | 8.88 |
| Option 3 | 2.86 | 2.75 |
| Option 4 | 1.45 | 1.40 |
| Nonintegrated Lightweight Papers (X): | | |
| BPT | 0.34 | |
| Option 1 | 0.98 | 2.91 |
| Option 2 | 3.16 | 9.38 |
| Option 3 | 2.81 | 8.33 |
| Option 4 | 4.12 | 12.21 |
| Nonintegrated Filter and Nonwoven Papers (Y): | | |
| BPT | 1.80 | |
| Option 1 | 1.41 | 0.78 |
| Option 2 | 4.47 | 2.48 |
| Option 3 | 3.97 | 2.20 |
| Option 4 | 5.69 | 3.16 |
| Nonintegrated Paperboard (Z): | | |
| BPT | 0.35 | |
| Option 1 | 1.79 | 5.09 |
| Option 2 | 6.83 | 19.41 |
| Option 3 | 6.17 | 17.56 |
| Option 4 | 10.09 | 28.71 |
| Builders' Paper and Roofing Felt (Part 431 Subpart A): | | |
| BPT | 0.13 | |
| Option 1 | 0.86 | 6.47 |
| Option 2 | 23.16 | 173.63 |
| Option 3 | 1.90 | 14.25 |
| Option 4 | 0.86 | 6.47 |

[1] POTW test: Total annual cost per pound removed (BPT to BCT).

Candidate technology passes if POTW test is less than $0.28 in 1st Quarter 1978 dollars.

[2] Industry cost test: Total annual cost per pound removed (BPT to BCT) divided by total annual cost per pound removed (raw wasteload to BPT).

Candidate technology passes if industry cost test is less than 1.29.

[3] Includes fine bleached kraft (Subpart I) and soda (Subpart P) subcategories.

[4] Includes blow pit wash (Subpart J) and drum wash (Subpart U) subcategories.

## VII. Economic Considerations

### *A. Costs and Economic Impact*

As shown in section VI above, none of the candidate technologies considered as a basis for BCT effluent limitations guidelines for the pulp, paper, and paperboard industry pass the BCT cost test. Since the BCT effluent limitations guidelines are being set equal to the BPT effluent limitations guidelines for each subcategory, there are no incremental costs associated with these BCT regulations, and no adverse economic impacts will occur.

### *B. Executive Order 12291*

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. Major rules are those which impose an annual cost on the economy of $100 million or more or have certain other economic impacts. This regulation is not considered a major rule because no incremental costs are associated with attainment of BCT limitations and the regulation meets none of the other criteria specified in section I, paragraph (b) of the Executive Order.

### *C. Regulatory Flexibility Analysis*

Pub. L. 96–354 requires EPA to prepare a Regulatory Flexibility Analysis for all regulations that have a significant impact on a substantial number of small entities. Since no economic impacts are anticipated to result from the final BCT effluent limitations, a formal Regulatory Flexibility Analysis is not required.

## VIII. Non-Water Quality Environmental Impacts

Eliminating or reducing one form of pollution may cause other environmental problems. Section 304(b) and 306 of the Act require EPA to consider the non-water quality environmental impacts (including energy requirements) of certain regulations. Since the final BCT effluent limitations promulgated today for the pulp, paper, and paperboard industry to not require any incremental conventional pollutant removal beyond the BPT level, no additional non-water quality impacts (including air pollution, solid waste generation, and energy requirements) are expected.

## IX. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations guidelines and standards during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is an unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. Industry argues that an upset provision in EPA's effluent limitations guidelines is necessary because such upsets inevitably occur even in properly operated control equipment. Because technology-based effluent limitations guidelines require only what technology can achieve, they claim that liability for such situations is improper. When confronted with this issue, courts have been divided on the question of whether an explicit upset or excursion incident may be handled through EPA's exercise of enforcement discretion. Compare, *Marathon Oil Co.* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser Co.* v. *Costle*, 590 F.2d 1011 (D.C. Cir. 1978) and *Corn Refiners Association, Inc.* v. *Costle*, 594 F.2d 1223 (8th Cir. 1979.) See also, *American Petroleum Institute* v. *EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International, Inc.* v. *Train*, 540 F.2d 1320 (8th Cir. 1976); *FMC Corp.* v. *Train*, 539 F.2d 973 (4th Cir. 1976).

While an upset is an unintentional episode during which effluent limitations are exceeded, a bypass is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. Bypass provisions have, in the past, been included in NPDES permits.

EPA has determined that both upset and by-pass provisions should be included in NPDES permits and has promulgated NPDES regulations that include such permit provisions (40 CFR 122.41). The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations guidelines. The bypass provision authorizes bypassing to prevent loss of life, personal injury or severe property damage. Permittees in the pulp, paper, and paperboard industry are entitled to upset and bypass provisions in NPDES permits, and this final regulation does not affect the applicability of such provisions.

## X. Variances and Modifications

These BCT effluent limitations guidelines must generally be applied in all Federal and State NPDES permits issued to direct dischargers in the pulp, paper, and paperboard industry.

The only exception to the binding limitations is EPA's "fundamentally different factors" variance (see *E.I. duPont de Nemours and Co.* v. *Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co.* v. *Costle*, supra). This variance recognizes factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. This variance clause is included in the NPDES regulations and is cross referenced in the specific pulp, paper, and paperboard industry regulations (see the NPDES regulations at 40 CFR Part 125, Subpart D).

## XI. Relationship to NPDES Permits

This regulation does not restrict the power of any permit-issuing authority to act in a manner that is consistent with EPA regulations, guidelines, or policy. For example, the fact that this regulation does not control a particular pollutant does not preclude the permit issuer from limiting such pollutants on a case-by-case basis when necessary to carry out the purposes of the Act. In addition, to the extent that state water quality standards or other provisions of state or Federal law require limitation of pollutants not covered by this regulation (or require more stringent effluent limitations on covered pollutants), the permit-issuing authority must apply such effluent limitations.

One additional topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which have been considered in developing this regulation. The Agency wishes to emphasize that, although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary (*Sierra Club* v. *Train*, 557 F.2d 485 (5th Cir. 1977)). EPA has exercised and intends to exercise that discretion in a manner that recognizes and promotes good faith compliance efforts.

## XII. Public Participation and Response to Major Comments

Individual pulp, paper, and paperboard facilities and trade associations have participated in the development of this regulation. Following the publication of proposed rules on January 6, 1981 and October 29, 1982 in the **Federal Register**, the technical Development Document, the economic impact analysis, and supporting record materials were made available for public review.

Since proposal, the Agency has received many comments on its technical analysis for BCT effluent limitations in this industry. All comments received have been considered carefully, and appropriate changes in the regulations have been made where data and information supported those changes. All comments received are included in the public record for this rulemaking. A summary of the comments and the responses to these comments is presented in a document entitled "Summary of

Comments and Responses on the Proposed BCT Effluent Limitation Guidelines for the Pulp, Paper, and Paperboard Industry" hereafter referred to as the "Comments and Responses" document. A summary of the Agency's responses to major comments not covered in other sections of this preamble appears below.

1. *Comment:* Permit writers should continue to have maximum flexibility to: (1) Account for site specific conditions, (2) assure water quality protection, and (3) avoid excessively stringent permit conditions.

*Response:* As explained in Sections XI and XII of this preamble, the promulgated limitations will be applied to individual pulp, paper, and paperboard facilities through NPDES permits issued by EPA or approved State agencies. However, the promulgation of these limitations does not prevent the permitting authority from imposing more stringent limitations on a case-by-case basis using best professional judgment when such limitations are necessary to protect water quality and carry out the purposes of the Clean Water Act.

2. *Comment:* In its cost analyses, EPA should have used actual mill costs for BPT. The industry cost ratio is incorrect if the BPT cost is understated.

*Response:* EPA obtained some actual cost information as part of its 308 questionnaire data gathering activities in 1976. However, in many cases, the data were not complete, were estimates only, or were unsupported. Therefore, to develop representative costs for the whole industry, EPA used a model mill approach which is explained in Section IV of the *Final Pulp and Paper BCT Development Document.*

3. *Comment:* EPA's general methodology for determining costs is flawed. Specific examples given include: (1) Basing costs on a facility constructed in a moderate climate only, (2) not incorporating geographical cost adjustment factors, and (3) underestimating energy costs. Also, EPA fails to state the acceptable confidence interval for BCT costs.

*Response:* EPA reviewed all comments on the cost methodology and made all appropriate changes. In response to the specific comments listed above: (1) EPA assessed costs associated with various climates and determined that the costs estimated for moderate climates can be appropriately applied in the BCT costing methodology. Climate is a factor only in the initial choice of the type of biological treatment system, and the BCT option costs are based only on upgrading the existing biological treatment systems. (2) EPA has determined that geographical cost adjustment factors do not significantly impact the total cost; however, cost adjustment factors are presented in the *Final Pulp and Paper BCT Development Document* for informational purposes; (3) EPA has reviewed national energy costs and has determined that the energy cost of $0.0325/kwH is an appropriate estimate for us in the BCT costing methodology. Finally, EPA's costs are pre-engineering cost estimates and are expected to have a variability on the order of plus or minus 30 percent when applied to individual mill situations.

4. *Comment:* Raw waste loads for the unbleached kraft and semi-chemical, dissolving sulfite pulp, papergrade sulfite, nonintegrated segment, and secondary fibers segment subcategories are incorrect.

*Response:* EPA reviewed all comments on raw waste loads and reassessed its analysis before promulgation of the BCT effluent limitations. All appropriate changes were made and are specifically explained in the "Comments and Responses" document.

5. *Comment:* Raw waste load control measures can not be applied in a universal manner nor can they achieve the same reductions at different mills. Reuse and recycle of process streams may be constrained because of materials of construction, heat buildup, inherent process configuration and capacity, and existing load reduction practices. Specific examples are given to substantiate claims that EPA has overestimated the flow and raw waste load reduction from BPT to BCT Option 1: (1) Reusing relief and flow condensates will not destroy BOD*5*, but would require steam distillation at a considerable cost; (2) TSS is a function of BOD*5* reduction, not BOD*5* influent levels. Thus, at a constant BOD*5* reduction, final TSS levels should not change.

Response: The Agency recognizes the difficulty in predicting the benefits derived from individual process controls, and, for this reason, based BCT Option 1 raw waste loads on actual mill data whenever sufficient data were available. Sufficient data were not available for the dissolving kraft, dissolving sulfite, and groundwood CMN subcategories, however, and, as a result, Option 1 raw waste loads were based on the reductions in flow and BOD*5* that were predicted from the application of the BCT Option 1 process controls.

The Agency has completed an extensive review of mill data to ensure that the estimated effluent reductions from each process control for each subcategory were reasonable. In addition, the Agency reviewed available sources of information to assure that the process controls were suitable for use in the various subcategories and that the combination of controls would obtain the reductions in waste loads predicted for each subcategory. Revisions in the applicability of the process controls and the resulting effluent reductions were made as required. As shown in the Record, EPA performed mass balance calculations to show that if all controls were employed, a mill could meet the reduced levels.

The Agency has compared the raw waste loads determined by the general methodology (average of flows less than the BPT flow and average of BOD*5* levels less than BPT raw waste BOD*5* for most subcategories) with the raw waste loads predicted from the application of BCT Option 1 process controls. The raw waste loads determined by these two methods are comparable in all cases.

The Agency has reviewed BPT and suggested BCT Option 1 process controls, and believes that, if the Option 1 controls are added to a mill that has BPT controls and has a well-operated BCT treatment system in place, the mill can attain the BPT Option 1 effluent levels. The costs of attaining BCT Option 1 limitations are based on model mills for each subcategory assuming that all mills are now meeting BPT limitations.

As explained above, the estimated reductions that can be obtained for each internal control have been reviewed and corrected as necessary. Some examples of EPA's reassessment are:

(1) The reuse of relief and blow condensates has been deleted as an Option 1 internal process control because its use may lead to air quality problems.

(2) The TSS final effluent regression equation is an empirical relationship between influent BOD*5* concentration and TSS final effluent concentration. Although the percentage BOD*5* reduction remains nearly constant in a biosystem after application of flow and BOD*5* reducing process controls, the pounds of BOD*5* removed per ton are decreased by the process controls and the TSS is therefore reduced. The regression equation correctly predicts this within a reasonable degree of certainty.

6. *Comment:* EPA's cost estimates for Option 1 internal controls are underestimated for: (1) Deink mills, (2) unbleached kraft and semi-chemical

mills, and (3) papergrade sulfite pulp mills.

*Response:* EPA has reviewed the cost estimates for all Option 1 internal controls. In response to the above comments:

(1) EPA has revised the costs for Option 1 controls for deink mills. The Agency added recycle as an Option 1 control for this subcategory and made corresponding changes to the attainable BCT Option 1 final effluent levels.

(2) EPA has reviewed the process controls applicable to the unbleached kraft, semi-chemical, and the unbleached kraft and semi-chemical subcategories. Reuse of condensates has been deleted, the costs of additional brown stock washers have been recalculated, and the costs of buildings and other ancillary equipment have been included.

(3) EPA has derived equations for BPT effluent levels based on the percent sulfite pulp produced at each mill and has determined mill specific levels representative of BPT. BCT Option 1 costs were revised as appropriate.

7. *Comment:* Chemically assisted clarification (CAC) is not an acceptably demonstrated technology nor can it be achieved at the stated costs. Further, the estimated TSS performance levels for Options 2 and 3 are unrealistic. Bench scale tests indicate that CAC will not achieve 15 mg/1 TSS.

*Response:* EPA has revised its assessment of CAC based on additional data submitted by commenters. On the basis of these new data, long-term average TSS performance levels for Options 2 and 3 have been revised from 15 to 25 mg/1.

8. *Comment:* EPA's use of the BOD5 reduction equation (derived when BPT effluent limitations were developed) to determine best performers in the unbleached kraft, semi-chemical, and unbleached kraft and semi-chemical subcategories is invalid.

*Response:* EPA reviewed all claims made by commenters concerning the BOD5 reduction equation used for these subcategories. Using additional data representative of these subcategories yields a reduction equation very similar to the one derived at BPT promulgation. The Agency has determined that this equation is applicable to these subcategories and that its use is appropriate to determine the comparison effluent levels (used in place of BPT effluent levels) to identify best performers in these subcategories. Details of the Agency's analysis are explained in the "Comments and Responses" document.

9. *Comment:* EPA should base BCT Option 4 performance on the Discharge Monitoring Report (DMR) data used in the development of final BPT and NSPS issued in November 1982. Deletions of data should be explained.

*Response:* EPA is basing the BCT Option 4 technology on the most recent and complete DMR data available. The rationale for all data deletions is presented in the administrative record.

10. *Comment:* EPA's approach for establishing BCT Option 4 performance levels for the dissolving sulfite pulp subcategory is incorrect because the Agency transferred technology from the papergrade sulfite pulp subcategory. BCT Option 4 costs for these subcategories are understated.

*Response:* EPA assessed the claims made by commenters and determined that it is appropriate to transfer technology from the best performing mills in the papergrade sulfite pulp subcategory. There are no data available for mills in the dissolving sulfite pulp subcategory employing treatment systems representative of BPT, the technologies used in the papergrade sulfite pulp subcategory are similar to those that would be employed in the dissolving sulfite pulp subcategory, and the technologies can be readily transferred from the papergrade sulfite pulp subcategory to the dissolving sulfite pulp subcategory because both subcategories have similar processes and products. Therefore, the Agency determined that it is appropriate to use data from mills in the papergrade sulfite pulp subcategory employing BPT treatment systems to develop performance levels for the dissolving sulfite pulp subcategory (see *Tanners' Council of America* v. *Train*, 540 F.2d 1188, Fourth Circuit, 1976). EPA reviewed the BCT Option 4 cost analysis for these subcategories and altered its methodology. As a result, the cost effectiveness ratio is similar to that predicted by the commenter. Details of the Agency's analysis are explained in the "Comments and Responses" document.

11. *Comment:* Costs calculated for BCT Option 4 are understated for: (1) Dissolving kraft mills due to underestimated energy costs and the omission of foam control costs; (2) unbleached kraft and semi-chemical mills because EPA did not consider all factors; (3) paperboard from wastepaper mills; and (4) dissolving sulfite pulp and papergrade sulfite pulp mills due to underestimated sludge disposal costs.

*Response:* EPA reviewed all BCT Option 4 costs and made all appropriate revisions. Details are presented in the "Comments and Repsonses" document and in the administrative record. In response to specific comments: (1) EPA reviewed energy costs for the dissolving kraft subcategory and determined that these costs are correct. EPA agrees with the commenter that foam control costs for this subcategory were not included in the BCT Option 4 costs. These costs have been considered in the final rulemaking; (2) Each factor cited by the commenters as having been ignored by EPA in developing BCT Option 4 costs for the unbleached kraft and semi-chemical subcategories was included in EPA's cost development, as shown in the administrative record; (3) EPA altered its BCT Option 4 methodology for the paperboard from wastepaper subcategory and used the BCT Option 1 methodology. Also, EPA reviewed the record for the BPT rulemaking and determined that the costs of BPT were overstated. The Agency reassessed its methodology and lowered the BPT costs because too many internal controls were included. These controls are now considered BCT technologies, therefore the costs of these controls were added to the previous BPT estimates. As a result, the costs for BCT Option 4 for this subcategory increased; and (4) The Agency reassessed its sludge disposal costs and made all appropriate revisions based on available data. However, no sludge dewatering or sludge disposal cost information was submitted by the commenters to support the claims that dissolving sulfite pulp and papergrade sulfite pulp Option 4 costs were underestimated.

12. *Comment:* EPA should clarify the definition of each subcategory in the appropriate subpart of the regulations so that permit writers and industry will not be confused in later years when supporting material is unavailable.

*Response:* The Agency believes that the definition of each subcategory as defined in the November 1982 final rules and in the development document supporting that rule adequately characterizes each subcategory in the pulp, paper, and paperboard industry. It is unnecessary to include any more specific definition in the regulation because permit writers will continue to use the supporting materials in the future when making permit decisions. All development documents supporting pulp, paper, and paperboard industry regulations are important tools for both permit writers and industry representatives and will be available at all times.

13. *Comment:* EPA neglected to incorporate the Fundamentally Different Factors (FDF) variance citation, 40 CFR 125.30–125.32, in the BCT guidelines published on October 29, 1982 for Subparts J, M, U, V, and W. Since EPA

has acknowledged that the FDF variance is available for all limits under sections 301 and 304 of the Clean Water Act, reference to §§ 125.30–125.32 must be included in the BCT regulations for the subparts mentioned above.

*Response:* The fundamentally different factors variance is independently available to all facilities covered by effluent guidelines by the terms of the regulations at 40 CFR 125.30–125.32. However, to avoid any confusion, EPA has made the appropriate changes to the pulp and paper BCT effluent guidelines.

14. *Comment:* Option 4 costs are underestimated for the papergrade sulfite subcategories because the BPT starting point levels were overestimated. The Agency used the flow versus percent sulfite equation; however, the correct starting point is the Option 4 formula where BOD5 and TSS are related to percent sulfite produced on-site.

*Response:* The Agency has reviewed and altered its methodology for the papergrade sulfite subcategories. As a result, EPA used the formula relating BOD5 and TSS to percent sulfite produced on-site to identify the best performers in the papergrade sulfite pulp subcategory. EPA also determined the BPT starting point levels as a function of percent sulfite produced on-site. The Agency has now correctly determined the Option 4 removals. The current BCT cost effectiveness ratio is similar to that predicted by the commenter.

## XIII. Availability of Technical Information

The major documents on which this regulation is based are: (1) *Development Document for Best Conventional Pollutant Control Technology Effluent Limitations Guidelines for the Pulp, Paper, and Paperboard and the Builders' Paper and Board Mills Point Source Categories* (U.S. EPA, Washington, DC, August 1986), and (2) *Summary of Comments and Responses on the Proposed BCT Effluent Limitations Guidelines for the Pulp, Paper, and Paperboard Industry.*

On January 16, 1987, (30 days after publication in the **Federal Register**), copies of the technical Development Document will be available for public review in EPA's Public Information Reference Unit, Room 2404 (Rear) (EPA Library), 401 M Street, SW., Washington, DC. On January 16, 1987 (30 days after publication in the **Federal Register**), the complete Record, including the Agency's responses to comments on the proposed regulation, will be available for review at the Public Information Reference Unit. The EPA information regulation (40 CFR Part 2) allows the Agency to charge a reasonable fee for copying.

Copies of the technical Development Document may also be obtained from the National Technical Information Service (NTIS), Springfield, Virginia 22161 (703/487–6000). A notice will be published in the **Federal Register** announcing the availability of these documents from NTIS. (This should occur within 60 days of publication of this regulation.)

## XIV. Office of Management and Budget (OMB) Review

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Written comments made by OMB are in the record for this final rulemaking.

## List of Subjects in 40 CFR Parts 430 and 431

Paper and paper products industry, Water pollution control, Waste treatment and disposal.

Dated: December 5, 1986.

**Lee M. Thomas,**

*Administrator.*

## XV—Appendix A

*Abbreviations, Acronyms, and Other Terms Used in this Notice*

Act—The Clean Water Act.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable, under section 304(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology, under section 304(b)(4) of the Act.

BPT—The best practicable control technology currently available, under section 304(b)(1) of the Act.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.), as amended by the Clean Water Act of 1977 (Public Law 95–217).

Direct Discharger—A facility where wastewaters are discharged or may be discharged into waters of the United States.

Indirect Discharger—A facility where wastewaters are discharged or may be discharged into a publicly owned treatment works.

New Sources—Industrial facilities which are "new sources" under the definition in section 306 of the Act.

NPDES Permit—A National Pollutant Discharge Elimination System permit issued under section 402 of the Act.

NSPS—New source performance standards, under section 306 of the Act.

POTW or POTWs—Publicly owned treatment works.

PSES—Pretreatment standards for existing sources of indirect discharges, under section 307(b) of the Act.

PSNS—Pretreatment standards for new sources of indirect discharges, under section 307(c) of the Act.

RCRA—Resource Conservation and Recovery Act (Public Law 94–580) of 1976, as amended, 42 U.S.C. 6901 et seq.

For the reasons set out in the preamble, 40 CFR Part 430 is amended as follows:

## PART 430—PULP, PAPER, AND PAPERBOARD POINT SOURCE CATEGORY

1. The authority citation for Part 430 continues to read as follows:

**Authority:** Secs. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c) and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) or the "Act"; 33 U.S.C., 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c) and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Sections 430.63, 430.73, 430.83, 430.93, 430.103, 430.113, 430.143, 430.153, 430.163, 430.173, 430.183, 430.193, 430.203, 430.213, 430.233, 430.243, 430.253, and 430.263 are revised. The text of each section is identical except for the section number in the heading and the section number referenced at the end of the section. The text of the sections is set out only once. Within the text are two blank spaces, one designated (a) and one designated (b). In the table preceding the text, column (a) indicates the section number to be added to the section heading for the respective subparts of Part 430. Column (b) indicates the section number to be added to the text of the section indicated in column (a).

| Subpart | Section Number to be added to section heading (a) | Section Number to be added to text of the section in (a) (b) |
|---|---|---|
| F—Dissolving Kraft Subcategory | 430.63 | 430.62 |
| G—Market Bleach Kraft Subcategory | 430.73 | 430.72 |
| H—BCT Bleached Kraft Subcategory | 430.83 | 430.82 |
| I—Fine Bleached Kraft Subcategory | 430.93 | 430.92 |
| J—Papergrade Sulfite (Blow Pit Wash) Subcategory | 430.103 | 430.102 |
| K—Dissolving Sulfite Pulp Subcategory | 430.113 | 430.112 |
| N—Groundwood—CMN Papers Subcategory | 430.143 | 430.142 |
| O—Groundwood—Fine Papers Subcategory | 430.153 | 430.152 |

| Subpart | Section Number to be added to section heading (a) | Section Number to be added to text of the section in (a) (b) |
|---|---|---|
| P—Soda Subcategory | 430.163 | 430.162 |
| Q—Deink Subcategory | 430.173 | 430.172 |
| R—Nonintegrated—Fine Papers Subcategory | 430.183 | 430.182 |
| S—Nonintegrated—Tissue Papers Subcategory | 430.193 | 430.192 |
| T—Tissue froom Wastepaper Subcategory | 430.203 | 430.202 |
| U—Papergrade Sulfite (Drum Wash) Subcategory | 430.213 | 430.212 |
| W—Wastepaper—Molded Products Subcategory | 430.233 | 430.232 |
| X—Nonintegrated—Lightweight Papers Subcategory | 430.243 | 430.242 |
| Y—Nonintegrated Filter and Nonwoven Papers Subcategory | 430.253 | 430.252 |
| Z—Nonintegrated—Paperboard Subcategory | 430.263 | 430.262 |

§ __(a) *Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).*

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations shall be the same as those specified for conventional pollutants (which are defined in § 401.16) in § __(b) of this subpart for the best practicable control technology currently available (BPT).

3. Section 430.13 is amended by adding text to read as follows:

**§ 430.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).**

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations shall be the same as those specified for conventional pollutants (which are defined in § 401.16) in § 430.12 of this subpart for the best practicable control technology currently available (BPT), except that non-continuous dischargers shall not be subject to the maximum day and average-of-30-consecutive-days limitations, but shall be subject to annual average effluent limitations determined by dividing the average-of-30-consecutive-days limitations for BOD*5* by 1.50 and TSS by 1.67.

4. Section 430.23 is amended by adding text to read as follows:

**§ 430.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).**

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations shall be the same as those specified for conventional pollutants (which are defined in § 401.16) in § 430.22 of this subpart for the best practicable control technology currently available (BPT), except that non-continuous dischargers shall not be subject to the maximum day and average-of-30-consecutive-days limitations, but shall be subject to annual average effluent limitations determined by dividing the average-of-30-consecutive-days limitations for BOD*5* by 1.36 and TSS by 1.36.

5. Section 430.43 is amended by adding text to read as follows:

**§ 430.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).**

BCT effluent limitations for unbleached kraft-neutral sulfite semi-chemical (cross recovery) mills are presented in Subpart V.

6. Section 430.53 is amended by adding text to read as follows:

**§ 430.53 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).**

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations shall be the same as those specified for conventional pollutants (which are defined in § 401.16) in § 430.52 of this subpart for the best practicable control technology currently available (BPT), except that non-continuous dischargers shall not be subject to the maximum day and average-of-30-consecutive-days limitations, but shall be subject to annual average effluent limitations determined by dividing the average-of-30-consecutive-days limitations for BOD*5* by 1.77 and TSS by 2.18.

7. Section 430.223 is amended by adding text to read as follows:

**§ 430.223 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).**

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

| Pollutant or pollutant property | Maximum for any one day [1] | Average of daily values for 30 consecutive days |
|---|---|---|
| BOD*5* | 8.0 | 4.0 |
| TSS | 12.5 | 6.25 |
| pH | ([2]) | ([2]) |

[1] Kg/kkg (or pounds per 1,000 lb of product).
[2] Within the range of 6.0 to 9.0 at all times.

Non-continuous dischargers shall not be subject to the maximum day and average-of-30-consecutive-days limitations, but shall be subject to annual average effluent limitations determined by dividing the average-of-30-consecutive-days limitations for BOD*5* by 1.36 and TSS by 1.75.

For the reasons set out in the preamble, 40 CFR Part 431 is amended as follows:

## PART 431—THE BUILDERS' PAPER AND BOARD MILLS POINT SOURCE CATEGORY

1. The authority citation for part 431 continues to read as follows:

**Authority:** Secs. 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(b) and (c) and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) or the "Act", 33 U.S.C., 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c); and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 431.13 is amended by adding text to read as follows:

**§ 431.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).**

Except as provided in § 125.30–32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations shall be the same as those specified for conventional pollutants (which are defined in § 401.16) in § 431.12 of this subpart for the best practicable control technology currently available (BPT), except that noncontinuous dischargers shall not be subject to the maximum day and average-of-30-consecutive-days limitations, but shall be subject to annual average effluent limitations determined by dividing the average-of-30-consecutive-days limitations for BOD*5* by 1.90 and TSS by 1.90.

[FR Doc. 86–28157 Filed 12–16–86; 8:45 am]

BILLING CODE 6560–50–M

federal register

Wednesday
December 17, 1986

Part III

# Department of Health and Human Services

## Food and Drug Administration

**Dimetridazole; Opportunity for Hearing; Notice**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**[Docket No. 86N-0438]**

## Dimetridazole; Opportunity for Hearing

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA), Center for Veterinary Medicine (Center), is proposing to withdraw approval of new animal drug applications for dimetridazole, and antiprotozoal agent approved for use in turkeys. This action is based on the Center's determination that the drug is not shown to be safe for use (1) because new evidence provides a reasonable basis from which serious questions about the ultimate safety of dimetridazole and the residues that may result from its use may be inferred, (2) because new evidence shows that dimetridazole is no longer shown to be safe by adequate tests by all methods reasonably applicable, and (3) because new evidence shows that the labeled directions for use have not been followed in practice and are not likely to be followed in the future.

**DATES:** A written appearance requesting a hearing by January 16, 1987; data and analysis on which the request for hearing relies by February 17, 1987.

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

**FOR FURTHER INFORMATION CONTACT:** Philip J. Frappaolo, Center for Veterinary Medicine (HFV-240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4940.

**SUPPLEMENTARY INFORMATION:**

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### I. Introduction

FDA's Center for Veterinary Medicine is providing an opportunity for hearing on a proposal to withdraw approval of the new animal drug applications (NADA's) for dimetridazole and to revoke the new animal drug regulations reflecting approval of the NADA's (21 CFR 520.680, 556.210, and 558.240). Dimetridazole belongs to a class of compounds called 5-nitroimidazoles, some of which are used to treat protozoal diseases in man and other animals. Dimetridazole is approved for use in turkeys (1) for the prevention and treatment and as an aid in the control of blackhead (histomoniasis, infectious enterohepatitis), (2) for growth promotion, and (3) for improved feed efficiency (21 CFR 558.240 and 520.680). Section 558.240 provides for continuous use at 0.015 to 0.02 percent (136 to 182 grams per ton) in feed and for use for not more than 7 days at 0.06 to 0.08 percent (544 to 725 grams per ton) in feed. Section 520.680a provides for continuous use at 0.01 or 0.02 percent in drinking water and for use for 5 days only at 0.04 percent in drinking water. Section 520.680b provides for the use of one 125-milligram tablet for 1 to 10 pound birds and for the use of two 125-milligram tablets for birds weighing more than 10 pounds. The regulations specify a 5-day withdrawal period. In the Federal Register of November 13, 1964 (29 FR 15255), FDA established a tolerance of zero for residues of dimetridazole in the uncooked edible tissues and eggs of turkeys (current 21 CFR 556.210).

This action is being taken in accordance with section 512(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(e)(1)(B)). That section requires FDA to withdraw approval of an NADA if the agency finds:

> * * * that new evidence not contained in such application or not available to the [FDA] until after such application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the [FDA] when the application was approved, shows that such drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved * * *.

As discussed in Section III of this notice, the Center has determined that dimetridazole is not shown to be safe for use within the meaning of section 512(e)(1)(B) of the act because new evidence provides a reasonable basis from which serious questions about the ultimate safety of the drug and the residues that may result from its use may be inferred, because new evidence shows that the drug is no longer shown to be safe by adequate tests by all methods reasonably applicable, and because new evidence shows that the labeled directions for use have not been followed in practice and are not likely to be followed in the future. Dimetridazole has been used widely for the treatment and prevention of dysentery in swine, a species in which use of the drug has not been approved. Unless the approvals are withdrawn, the misuse in swine is likely to continue.

### II. Relevant NADA'S

#### *A. Affected NADA's*

The NADA's for dimetridazole known to the Center and affected by this notice are:

| Firm | NADA No. | Date approved |
|---|---|---|
| Salsbury Laboratories, Inc. | 14-145 | Jan. 21, 1964. |
| Salsbury Laboratories, Inc. | 14-345 | Nov. 13, 1964. |
| Salsbury Laboratories, Inc. | 14-613 | Mar. 19, 1965. |

The approval of NADA 36-826 for dimetridazole, held by Albers Milling Co. (a Division of Carnation Co.), was voluntarily withdrawn in response to a letter dated March 6, 1986, from the Center's Associate Director for Surveillance and Compliance (see 51 FR 28764; August 11, 1986). The Associate Director pointed out that § 514.115(d) of FDA's regulations governing administrative actions on applications (21 CFR 514.115(d)) provides for the withdrawal of approval of an NADA upon the written request of the sponsor if the drug that is the subject of the application is no longer being marketed, and suggested that Albers, whose dimetridazole product was not being marketed, might want to withdraw its approval voluntarily under § 514.115(d).

By letter dated March 6, 1986 (Ref.1), the Center's Associate Director for Surveillance and Compliance informed Salsbury Laboratories, Inc. (Robert R. Baron, Director, Regulatory Affairs), 2000 Rockford Rd., Charles City, IA 50616, that the Center had initiated a causal review of the firm's NADA's for dimetridiazole and requested Salsbury to submit to the Center any additional data the firm had pertaining to the drug. Salsbury indicated (Refs. 2 and 3) that it would submit additional data in response to the March 6 letter. It did not do so, however.

By letter dated August 18, 1986 (Ref. 4), the Center's Associate Director for Surveillance and Compliance informed Salsbury that the Center had completed its causal review of the firm's NADA's for dimetridazole. The letter stated that the Center had concluded (1) that new evidence evaluated together with the evidence available when the NADA's were approved shows that the drug is not shown to be safe, and (2) that dimetridazole is not longer shown to be safe by adequate tests by all methods reasonably applicable. (The new evidence and the data required to support continued approval of the applications were summarized in an enclosure accompanying the letter (Ref. 5).) For these reasons, and because of the amount and nature of the scientific studies necessary to establish the safety of dimetridazole, the Associate Director advised Salsbury that, unless it voluntarily withdrew the NADA's within 30 days of receipt of the letter, the Center intended to publish a notice of opportuntiy for hearing on a proposal to withdraw approval of the applications.

Salsbury neither withdrew the NADA's nor responded to the August 18 letter.

*B. Other NADA's*

In 1973 and 1974, Salsbury submitted supplements to its NADA's 14-345 and 14-613 requesting approval for the use of dimetridazole in the prevention and treatment of swine dysentery. By letters dated June 8, 1973 (Ref. 6) and February 7, 1974 (Ref. 7), Hess & Clark, Inc., which had also submitted NADA's (93-534, 93-535, and 96-406) requesting such approval, authorized FDA to refer to the data in those NADA's and any supplements thereto in the agency's consideration of Salsbury's supplemental applications. Neither Hess & Clark's NADA's nor Salsbury's supplemental NADA's were approved, but some of Hess & Clark's data are relevant to the Salsbury NADA's affected by this notice, as Salsbury recognized (Ref. 2). The data in question are summarized and discussed in Sections III.A(1)(b)(*i*), (2)(b), (3)(a)(*ii*), and III.B(1)(a) and (b) of this notice. Disclosure of those data in such summary form has been authorized by the Director of the Center for Veterinary Medicine pursuant to § 514.11(d) of FDA's regulations governing NADA's (21 CFR 514.11(d)), under the authority delegated to the Director by 21 CFR 5.23.

**III. Withdrawal Under Section 512(e)(1)(B) of The Act (The Safety Clause)**

*A. New Evidence Shows That Dimetridazole is not Shown to be Safe*

Under the Safety Clause, "the [Center] must provide a reasonable basis from which serious questions about the ultimate safety of [dimetridazole] and the residues that may result from its use may be inferred." (Diethylstilbestrol; Withdrawal of Approval of New Animal Drug Applications; Commissioner's Decision, 44 FR 54842, 54861; September 21, 1979, *Aff'd, Rhone-Poulenc, Inc., Hess & Clark Div.* v. *FDA*, 636 F.2d 750 (D.C. Cir. 1980).) "Serious questions" can be raised where the evidence is not conclusive, but merely suggestive of an adverse effect. The "serious questions" can relate to adverse effects such as carcinogenicity, tumorigenicity, or another toxicological endpoint. Assuming the Center does provide a basis for questioning dimetridazole's safety, the sponsor will have the ultimate burden of showing the drug's safety (44 FR 54861).

The necessary "serious questions" about dimetridazole's safety can be raised from evidence about either the parent drug or its metabolites. A metabolite is a compound formed in a living organism from the parent drug by chemical or biological mechanisms. Residues of an animal drug in edible tissues will, therefore, be made up not only of the parent drug, but also of its metabolites. Moreover, metabolites can be more toxic than the parent drug and may be responsible for toxic effects seen after its administration. Accordingly, when considering the safety of a new animal drug, all drug-related residues, including metabolites, are to be taken into account. This principle complies with the requirement in section 512(d)(2)(A) of the act that FDA, before approving a new animal drug, evaluate the safety of both the parent drug and "any substance formed in or on food" because of the use of the drug.

For new animal drugs used in food-producing animals, the Center is concerned with intermittent and chronic exposure of people to relatively low concentrations of residues. The Center tailors the type of toxicological testing needed for a showing of safety for a specific drug by considering its proposed use in the animals whose tissues we eat, the probable exposure of people to the parent drug and its metabolites (residues) under its conditions of use, their possible biological effects as deduced by structure-activity relationships, and their effects as observed in biological systems. (See section 512(d)(2) of the act; 21 CFR 514.1(b)(8)(iii); and FDA guidelines concerning "General Principles for Evaluating the Safety of Compounds used in Food-Producing Animals" (Ref. 8), the availability of which was announced in a notice published in the Federal Register of October 31, 1985 (50 FR 45556).)

The purpose of the toxicological studies is to define the biological effects of the sponsored drug. An important part of that definition is the relationship between the amount of the test substance and the observed biological effect. The Center always requires testing of the sponsored xenobiotic drug. The Center may also require separate testing of a metabolite when such testing is necessary to define adequately the biological effect of the sponsored drug. For a carcinogen, the Center calculates the safe concentration for residues from the tumor data using a statistical extrapolation procedure; for other toxicological endpoints, the Center calculates the safe concentration for residues from the no-observed-effect-level using a safety factor approach.

In this case, the Center has concluded that new evidence requires that Salsbury conduct chronic bioassays to resolve questions about the carcinogenicity of dimetridazole (see Sections III.A(1) and B(1)(a) of this notice). Without the results of such studies, it is impossible to establish a safe concentration for the drug.

(1) New evidence of toxicity

(a) *Genetic toxicity.* There is an extensive data base on the correlation between the results in bacterial mutagenicity assays and carcinogenicity as determined by long-term whole animal studies (Refs. 9, 10, and 11). These data demonstrate that mutagenicity in bacteria is a reliable indication that a chemical is likely to be carcinogenic. In addition, correlative studies for the oncogenic potential of 60 chemicals have demonstrated that the sex-linked recessive lethal test in *Drosophila melanogaster* has a high degree of detection capability both for direct-acting carcinogens and procarcinogens (Refs. 12 through 15).

Dimetridazole has been shown to be mutagenic in a variety of in vitro bacterial tests including (1) *Salmonella typhimurium* (tester strains TA100, TA100–FR$_1$, TA1530, his G46, TA1531, TA1532, TA1534) (Ames test) (Refs. 16 through 19), (2) *Klebsiella pneumoniae* (Refs. 18 and 20), (3) *Escherichia coli* (Ref. 20), and (4) *Citrobacter freundii* (Refs. 18 and 20).

Genotoxic activity associated with dimetridazole has also been demonstrated in the sex-linked recessive lethal test using *Drosophila melanogaster* (Ref. 21). Significant dose-dependent dimetridazole-induced enhancements of sex-linked recessive lethality were observed in a feeding study in larvae.

As a class of compounds, 5-nitroimidazoles are mutagenic in a number of different assay systems (Refs. 9 through 33). At least 20 5-nitroimidazoles have been demonstrated to be mutagenic to *S. typhimurium* tester strain TA100 (Refs. 22 and 23). Included among these are several 5-nitroimidazoles that are structural analogs of dimetridazole, i.e., ipronidazole, ronidazole, metronidazole, 2-methyl-5-nitroimidazole, ornidazole, nimorazole, tinidazole, carnidazole, and azanidazole. These data indicate that any 5-nitroimidazole, whether a parent compound or a metabolite, could be carcinogenic.

Metronidazole and ipronidazole are mutagenic in the same bacterial assay systems as dimetridazole (Refs. 20 and 24). These systems include several tester strains of *S. typhimurium, E. coli, K. pneumoniae,* and *C. freundii.* The fact that all three compounds are mutagenic in the same test systems is especially noteworthy because metronidazole and ipronidazole have each been shown to be carcinogenic in mice (see Section III.A(1)(b) of this notice).

Numerous reports describe the mutagenic activity of metronidazole in the Ames test (Refs. 16, 17, and 25 through 28). Potent mutagenic activity resulting from metronidazole treatment has been observed in the eukaryotic microorganism *Neurospora crassa* as well (Refs. 29 and 30).

Metabolites of metronidazole have also been reported to be mutagenic in the Ames test (Refs. 27, 31, and 32). Mutagenic activity in the Ames test was found in the urine of 10 patients given therapeutic doses of metronidazole orally or per vagina and was associated with parent drug and metabolites (Refs. 31). In another study, also using the Ames test, significant mutagenic activity was detected in the urine of six female patients taking metronidazole (Ref. 27). In a third study, the urine of two patients receiving therapeutic doses of metronidazole was found to have mutagenic activity in the Ames test (Ref. 32).

Ronidazole, another structural analog of dimetridazole, is also mutagenic in *S. typhimurium* tester strains his G46, TA1530, TA1531, TA1532, TA1534, TA1535, TA98, and TA100, *K. pneumoniae, E. coli,* and *C. freundii* (Refs. 9, 20, and 33). In addition, ronidazole caused sex-linked recessive lethal mutations in *Drosophila melanogaster* (Ref. 21).

The fact that dimetridazole in particular and 5-nitroimidazoles in general are mutagenic in bacterial and *Drosophila* systems raises serious questions about the carcinogenicity of dimetridazole and its metabolites. In addition, the fact that the metabolites of a closely related compound, metronidazole, are mutagenic raises serious questions about the safety of the metabolites of dimetridazole.

(b) *Tumorigenicity.* Dimetridazole and metronidazole have been shown to cause an increase in mammary tumors in rats. In addition, ipronidazole and metronidazole are both demonstrated carcinogens in mice. The fact that dimetridazole is a tumorigen in rats and that dimetridazole is structurally closely related to two demonstrated carcinogens raises serious questions about the carcinogenicity of dimetridazole. Indeed, dimetridazole has been predicted to be a carcinogen on the basis of computer-assisted structure activity relationship studies, using pattern recognition methods (Ref. 34).

(*i*) *Dimetridazole causes a significant increase in tumors in rats.* In a feeding study in female Sprague-Dawley rats, dimetridazole caused a significant increase ($P<0.001$) in adenofibromas of the mammary gland (Ref. 35). Thirty-five rats were fed dimetridazole at a concentration of 0.2 percent in the diet for 46 weeks, followed by a control diet for an additional 20 weeks. Adenofibromas were present in 25 of the treated rats but in only 4 of the control rats at the end of the study. Dimetridazole also increased the multiplicity of mammary tumors in experimental animals (mean=1.7 tumors per tumor-bearing rat in the dosed group versus 1.0 tumor per tumor-bearing rat in the control group). Mammary adenocarcinomas were not seen in the control or in the treated rats.

In 1976, Hess & Clark, Inc., submitted a long-term (122 week) feeding study in Carworth CFY rats entitled "Dimetridazole (Emtryl): Tumorigenicity in Rats," which was conducted by May & Baker, LTD (Ref. 86). Groups of 50 male and 50 female rats received 0, 100, 400, or 2,000 parts per million (ppm) dimetridazole in the diet for 122 weeks. All surviving animals were sacrificed during the 123rd week of dosing. In the study, dimetridazole caused a dose-related increase in mammary adenofibromas in male and female rats in the two highest dose groups. This increase was evidenced both by an increase in the number of rats with tumors and in the number of tumors per tumor-bearing rat.

The Center has concluded that each of these feeding studies demonstrates that dimetridazole is tumorigenic in rats and raises serious questions about the carcinogenicity of the drug. The studies cannot answer those questions because they are inadequate to assess the cumulative effects of exposure to dimetridazole and its metabolites. The flaws in each study are in Section III.B(1)(a) of this notice.

The occurrence of benign tumors raises the strong possibility that the agent in question is also carcinogenic because compounds that induce benign neoplasms frequently induce malignant neoplasms (Ref. 36). In addition, benign neoplasms may be an early stage in a multi-step carcinogenic process and they may progress to malignant neoplasms; moreover, benign neoplasms themselves may jeopardize the health and life of the host. For these reasons, if a substance is found to induce benign neoplasms in experimental animals it should be regarded as a potential hazard to human health requiring further evaluation (Ref. 36). Indeed, the results of a bioassay

provide "some evidence of carcinogenicity" when the study exhibits a chemically related increased incidence of benign neoplasms, even when those tumors may not progress to malignant neoplasms (51 FR 11843, 11844; April 7, 1986).

(*ii*) *Dimetridazole is structurally related to demonstrated carcinogens.* Ipronidazole and metronidazole, which are structurally related to dimetridazole, have been shown to be carcinogenic in mice. The fact that two structurally related compounds are demonstrated carcinogens strengthens the Center's concerns about the carcinogenicity of dimetridazole.

Ipronidazole was administered to Charles River CD–1 mice orally in their diet at a concentration of 0, 20, 200, and 1,000 ppm (Ref. 37). This study, which was conducted between 1977 and 1979, was designed to end at 104 weeks or at 20 percent survival, whichever occurred first. It ended at week 89 for the males and at week 100 for the females. Ipronidazole caused a significant increase in adenomas and adenomas plus carcinomas of the lung in male and female mice. Based upon these data, the Center has concluded that ipronidazole is a carcinogen.

BALB/c/Cb/Se mice (33 males and 34 females) were administered 66 milligrams per kilogram per day metronidazole in an aqueous solution by a stomach tube for 100 days (Ref. 38). Animals were sacrificed at the 80th week after the start of treatment (earlier if moribund). Metronidazole caused a significant increase ($P<0.001$) in lung tumors in males and a significant increase ($P<0.001$) in lymphocytic lymphomas in females.

In a study by Rustia and Shubik (Ref. 39), metronidazole again significantly increased the incidence of lung tumors in mice. Swiss mice were divided into five groups and given metronidazole in their diet for up to 120 weeks as follows: Group 1, 36 males and 36 females, 0.5 percent metronidazole; Group 2, 20 males and 20 females, 0.3 percent metronidazole; Group 3, 20 males and 20 females, 0.15 percent metronidazole; Group 4, 10 males and 10 females, 0.06 percent metronidazole; Group 5, 70 males and 70 females, 0.0 percent metronidazole. Metronidazole caused significant increases in the incidence of lung tumors in both male and female mice in the three highest dose groups when compared to controls. (For the 0.5 percent group, $P<.001$ in males and $P<0.01$ in females; for the 0.3 percent group, $P<0.001$ in both males and females; for the 0.15 percent group, $P<0.005$ in males and $P<0.025$ in females.) In addition, the drug caused significant increases ($P<0.010$ for the 0.5 percent group; $P<0.050$ for the 0.3 percent group) in the incidence of malignant lymphomas in female animals when compared to controls.

Rust (Ref. 40) also reported a dose-related increase in lung tumors in both male and female $CF_1$ albino mice fed 0, 75, 150, or 600 milligrams per kilogram per day metronidazole for 92 weeks and then sacrificed. Sixty males and 60 females were in the control group and 40 males and 40 females were in each of the treatment groups. The incidence of lung tumors increased with increased dietary exposure to metronidazole in both male and female mice.

Two papers (Refs. 41 and 42) describe chronic feeding studies in rats using metronidazole. Both studies demonstrate that, when fed to rats, metronidazole is tumorigenic.

Sas:MRC(WI)BR rats received metronidazole at 0, 0.06, 0.3, and 0.6 percent of their diet for up to 150 weeks. Each treatment group contained 30 males and 30 females; the control group had 100 males and 100 females. Metronidazole caused a significant incidence ($P<0.020$) of mammary fibroadenomas in females given the highest dose; animals given the two lower doses developed an increased but not statistically significant incidence of these tumors when compared to controls. The multiplicity of fibroadenomas was also increased significantly ($P<0.010$) in animals given the highest dose. The multiplicity of fibroadenomas increased with increasing dose. The number of mammary tumors in male rats was increased, but the increase was not statistically significant. In addition, the drug caused a significant increase (23.3 percent in the 0.6 percent group versus 0 percent in the controls) in hepatic tumors in high-dose females when compared to controls (Ref. 41).

A second study in rats gave similar results (Ref. 42). Fifty male and 50 female Sprague-Dawley rats were administered 30 milligrams per kilogram metronidazole in aqueous solution by stomach tube daily for 100 days; the control group also contained 50 males and 50 females. Rats were sacrificed after a long latency period (>120 weeks). Metronidazole caused a significant increase ($P<0.001$) in mammary tumors in female rats treated with metronidazole when compared to controls. Thirty-six (72 percent) of the 50 treated female rats had a total of 62 mammary tumors (1.72 tumors per tumor-bearing rat). There were 28 fibroadenomas, 18 adenomas, 11 fibromas, and 5 carcinomas. Fifteen (30 percent) of the female control rats had a total of 17 mammary tumors (1.13 tumors per tumor-bearing rate. There were nine fibroadenomas and eight adenomas.

(c) *Toxicity of metabolites.* As discussed in Section III.A(2) of this notice, the Center has concluded that several pathways account for the metabolism of dimetridazole in turkeys. Some of the metabolites and their toxicity are discussed below.

(*i*) *Metabolites containing a nitro group.* Reduction of the nitro group is a major step in the metabolism of nitroheterocyclic compounds (Refs. 43 and 44). The nitro group is believed to be reduced stepwise via nitroso and hydroxylamino intermediates to the amine. These intermediates, particularly the hydroxylamino, can covalently bind to protein or deoxyribonucleic acid (DNA). Binding of chemical electrophiles to cellular macromolecules is accepted as the mechanism by which most chemical carcinogens initiate the neoplastic process (Refs. 45 and 46). The carcinogenic activity of many nitroheterocyclic compounds such as the 5-nitroimidazoles may be associated, in part, with the presence of the 5-nitro group (Refs. 43, 47, and 48).

Several metabolites of dimetridazole in turkeys retain a nitro group. These metabolites are 2-hydroxymethyl-1-methyl-5-nitroimidazole (HMMNI), 1-methyl-5-nitroimidazole-2-carboxylic acid (MNICA), 2-hydroxymethyl-1-methyl-5-nitro-imidazole sulfate, and 2-hydroxymethyl-1-methyl-5-nitroimidazole glucuronide (see Section III.A(2) of this notice). Given the toxicity of nitro-containing compounds, the Center regards as a suspect carcinogen any metabolite of dimetridazole that retains a nitro group.

(*ii*) *2-Hydroxymethyl-1-methyl-5-nitroimidazole (HMMNI) and 1-methyl-5-nitroimidazole-2-carboxylic acid (MNICA).* A demonstrated metabolite of dimetridazole is HMMNI, which results from oxidation at the 2-methyl group of dimetridazole (see Section III.A(2)(a) of this notice). When tested in vitro with TA1535, the analogous 2-hydroxymethyl metabolite of metronidazole was some 5 to 10 times more mutagenically active than parent drug metronidazole (Ref. 32). Similar mutagenic activity would be expected for HMMNI.

Metabolites of metronidazole in the urine of patients receiving therapeutic doses of the drug were found to be mutagenic when tested in vitro with TA1535 (Ref. 31). Metabolites were separated prior to mutagenicity testing, and each was identified by its $R_f$ value. Mutagenic activity was associated with the areas where 1-(hydroxyethyl)-5-nitroimidazole-2-carboxylic acid and 1-

(2-hydroxyethyl)-2-hydroxymethyl-5-nitroimidazole would be expected to migrate. Based upon this study, the Center believes that HMMNI and MNICA, the structural analogs of the mutagenic metabolites of metronidazole, would be mutagens and therefore suspect carcinogens.

The Center's concern about the mutagenicity of HMMNI and MNICA are supported by the fact that both of these compounds retain a nitro group, which is associated with mutagenic activity (Refs. 43, 47, and 48).

(*iii*) *Acetamide.* One postulated metabolite of dimetridazole is acetamide, which results from ring scission. In each of two feeding studies in rats, acetamide was shown to cause hepatic tumors (Refs. 49 and 50). In one experiment (Ref. 49), 4 groups of 25 1-month old male Wistar rats were fed a diet containing 0, 1.25, 2.5, or 5 percent acetamide for 1 year. One rat per group was sacrificed each month; the remaining rats were sacrificed after 1 year. Liver tumors (most of them described as trabecular carcinomas and some as adenocarcinomas with lung metastases) were seen in 4/24, 6/22, and 1/18 rats available for examination from the low-, medium-, and high-dose groups, respectively. The first liver tumor was seen after 16 weeks. No liver tumors occurred in any of the 25 controls. Another group of 50 male Wistar rats was fed 5 percent acetamide continuously in the diet. For the first 26 weeks of the experiment, a rat was sacrificed each week; for the remainder of the experiment, one rat was sacrificed every other week. Liver tumors (described as being trabecular carcinomas and some as adenocarcinomas with lung metastases) were observed in 4/48 rats treated for 38 to 52 weeks, compared with 0/43 in controls. In another 52-week experiment (Ref. 49), acetamide was administered at a concentration of 5 percent in the diet to 99 male Wistar rats. Each week, the treatment of two rats was stopped and they were returned to a control diet for the remainder of the year. Liver tumors were found in 22/81 rats autopsied.

In another study (Ref. 50), 2 groups of 40 male Wistar rats were fed diets containing 2.5 percent acetamide or 2.5 percent acetamide plus 5.6 percent L-arginine-L-glutamate, and 2 groups of 15 male Wistar rats were fed a diet containing 5.6 percent of the dipeptide or a control diet for 1 year. In 2/8 rats fed acetamide and available for examination after 1 year, hepatomas were observed; 7/16 rats fed acetamide for 1 year and maintained on a control diet for an additional 3 months developed liver tumors. By contrast, 1/11 rats that received acetamide plus the dipeptide for 1 year and that were available for examination developed a hepatoma, and 1/19 rats receiving such a diet for 1 year and the control diet for 3 months had hyperplastic liver nodules. No liver tumors occurred in the control group or in rats fed 5.6 percent of the dipeptide alone.

The International Agency for Research on Cancer (Ref. 51) concluded that these studies show that acetamide is carcinogenic in rats. The Center agrees.

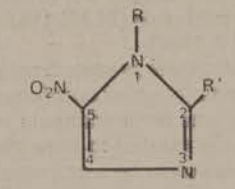
(*iv*) *Other metabolites.* The Center has identified several other possible metabolites of dimetridazole (see Section II.A(2) of this notice). The safety of these metabolites, including the covalently bound residues of dimetridazole, has not been established.

(d) *Center's conclusions.* The Center has concluded that there are serious questions about the carcinogenicity of dimetridazole and its metabolites. As discussed above, this conclusion is based on the results of feeding studies with dimetridazole, with structurally related compounds, and with acetamide. The Center's conclusion is also based on the results of genetic toxicity tests with dimetridazole and structurally related compounds. Because the Center has concluded that both of the existing feeding studies with dimetridazole in rats are seriously flawed (see Section III.B(1)(a) of this notice), neither is suitable for calculating a safe concentration for the total residue of dimetridazole (see Section III.B(1)(a) of this notice). The questions about the carcinogenicity of dimetridazole can only be answered by adequate chronic bioassays in two rodent species.

(2) The Metabolism of Dimetridazole

The 5-nitroimidazoles undergo extensive metabolism. The biotransformations generally include or are postulated to include (1) changes (oxidation or reduction) with the ring structure remaining intact and (2) scission of the ring. In order to describe as fully as possible the metabolic pathways open to dimetridazole, the Center has summarized research on the metabolism of ornidazole, metronidazole, and ronidazole in addition to data on the metabolism of dimetridazole in turkeys and swine. Structually, ornidazole and metronidazole differ from dimetridazole only in the substituent on the 1-nitrogen; ronidazole differs from dimetridazole by having a methyl carbamate rather than a methyl group at the 2-position of the ring (see Figure 1).

**Figure 1**




Dimetridazole, $R=CH_3$, $R'=CH_3$

Ronidazole, $R=CH_3$, $R'=CH_2OCNH_2$ (O)

Ornidazole, $R=CH_2CH(OH)CH_2Cl$, $R'=CH_3$

Metronidazole, $R=CH_2CH_2OH$, $R'=CH_3$

Based on the information summarized below with respect to the metabolism of 5-nitroimidazoles, the Center has reached the following conclusions about the metabolism of dimetridazole:

1. Dimetridazole in turkeys likely undergoes extensive metabolism.

2. Ring intact metabolites result mainly from oxidation at the 2-methyl group.

3. Ring scission can take place, leading to acetamide. In addition, some radioactivity probably becomes incorporated into natural components via fragments from dimetridazole.

4. Dimetridazole would be expected to yield covalently bound residues, based on research demonstrating the ability of ronidazole to bind covalently with amino acids and proteins.

(a) *Dimetridazole in turkeys.* The basic metabolic routes for dimetridazole in turkeys are shown in Figure 2. The study on which this Figure is based is discussed in detail in Sections III.B(1)(b) and (c) of this notice (Ref. 85). Paper chromatographic examination of urine and water soluble extracts of feces revealed dimetridazole, HMMNI, MNICA, and the sulfate conjugate of HMMNI. A fifth metabolite was postulated to be the glucuronide of HMMNI. Two other metabolites were detected but not identified.

(b) *Dimetridazole in swine.* Dimetridazole, labeled with $^{14}C$ in the N-methyl group, was administered orally to two pigs in a single dose of 29.8 milligrams per kilogram or 16.6 milligram per kilogram; the animals were sacrificed 6 or 17 hours after dosing, respectively (Ref. 52). Samples of urine and tissues taken at sacrifice were examined by several techniques, including paper and thin layer

chromatography, electrophoresis, and automatic amino acid analysis, for isotopically labeled products.

In the tissues of the pig sacrificed at 6 hours after dosing, three residues were identified: Dimetridazole, HMMNI, and MNICA. The results of analyses for these compounds are given in Table 1. These data show that a large portion of the residue remains uncharacterized, particularly in liver.

TABLE 1

| Compound | Amount of compound present | | | | | |
|---|---|---|---|---|---|---|
| | As percent of total $^{14}C$ in specified tissue | | | In ppm | | |
| | Muscle | Kidney | Liver | Muscle | Kidney | Liver |
| Dimetridazole | 0.5 | 0.5 | 0.07 | 0.04 | 0.18 | 0.01 |
| HMMNI | 40.2 | 25.7 | 0.5 | 3.56 | 10.31 | 0.09 |
| MNICA | 13.8 | 3.6 | (1) | 1.33 | 1.55 | (1) |
| Total | 54.5 | 29.8 | 0.57 | 4.93 | 12.04 | 0.10 |

[1] Not detected.

Based on the data for turkeys and swine, the Center believes that the pathways shown in Figures 2, 3, and 4 account for the metabolism for dimetridazole in both species.

**Figure 2. Oxidative and Reductive Pathways for 1,2-Disubstituted-5-Nitroimidazoles**

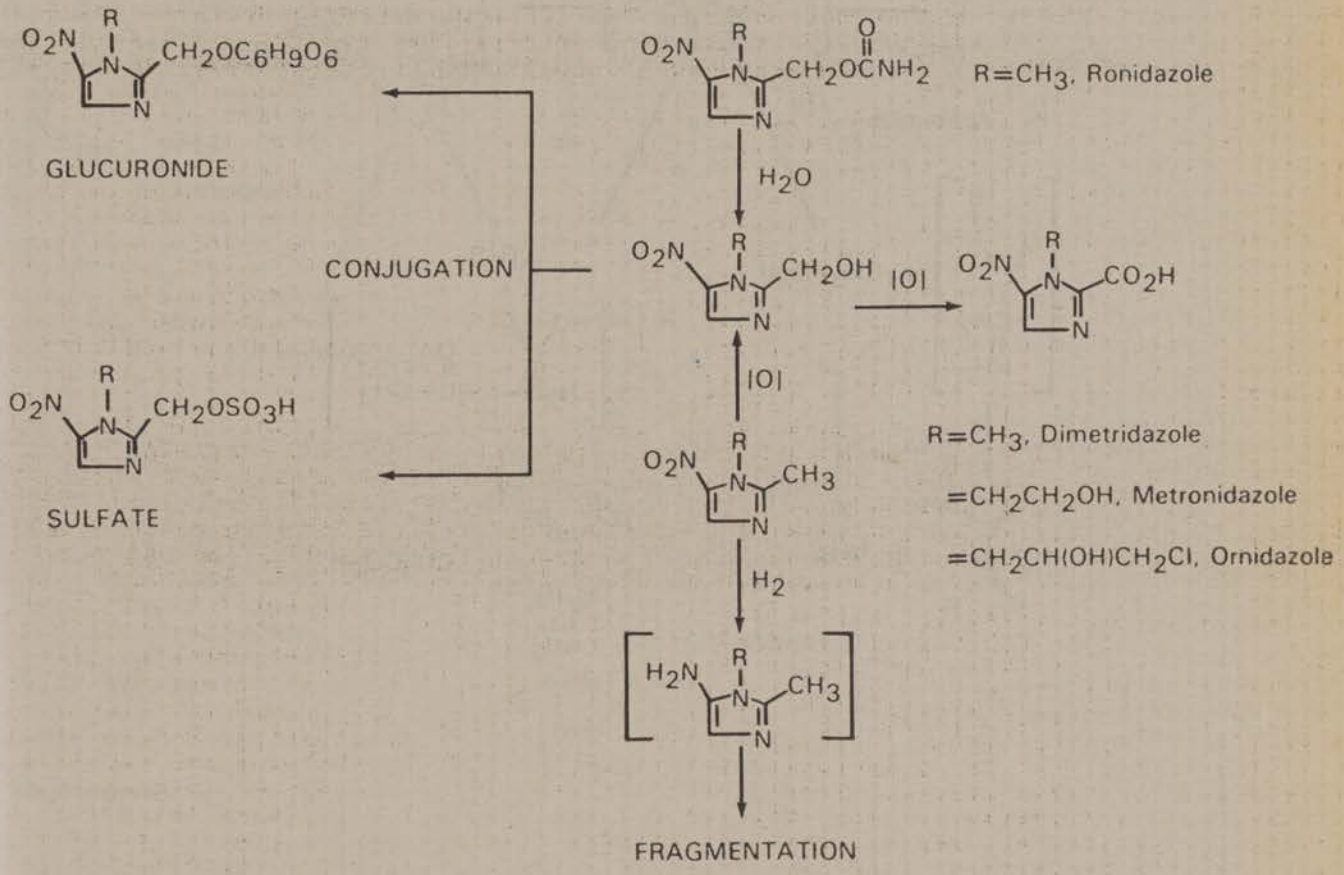



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**Figure 3. Possible Fragmentation Patterns through Parent Drug**

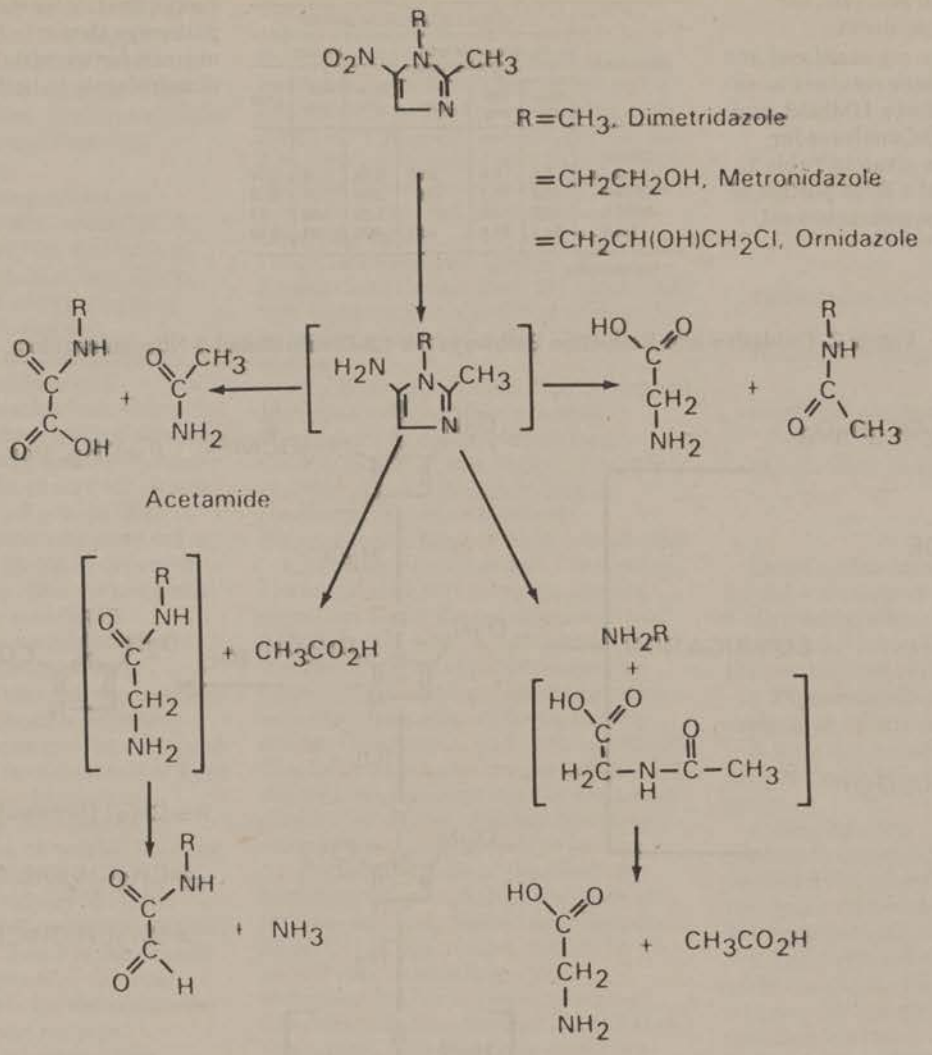
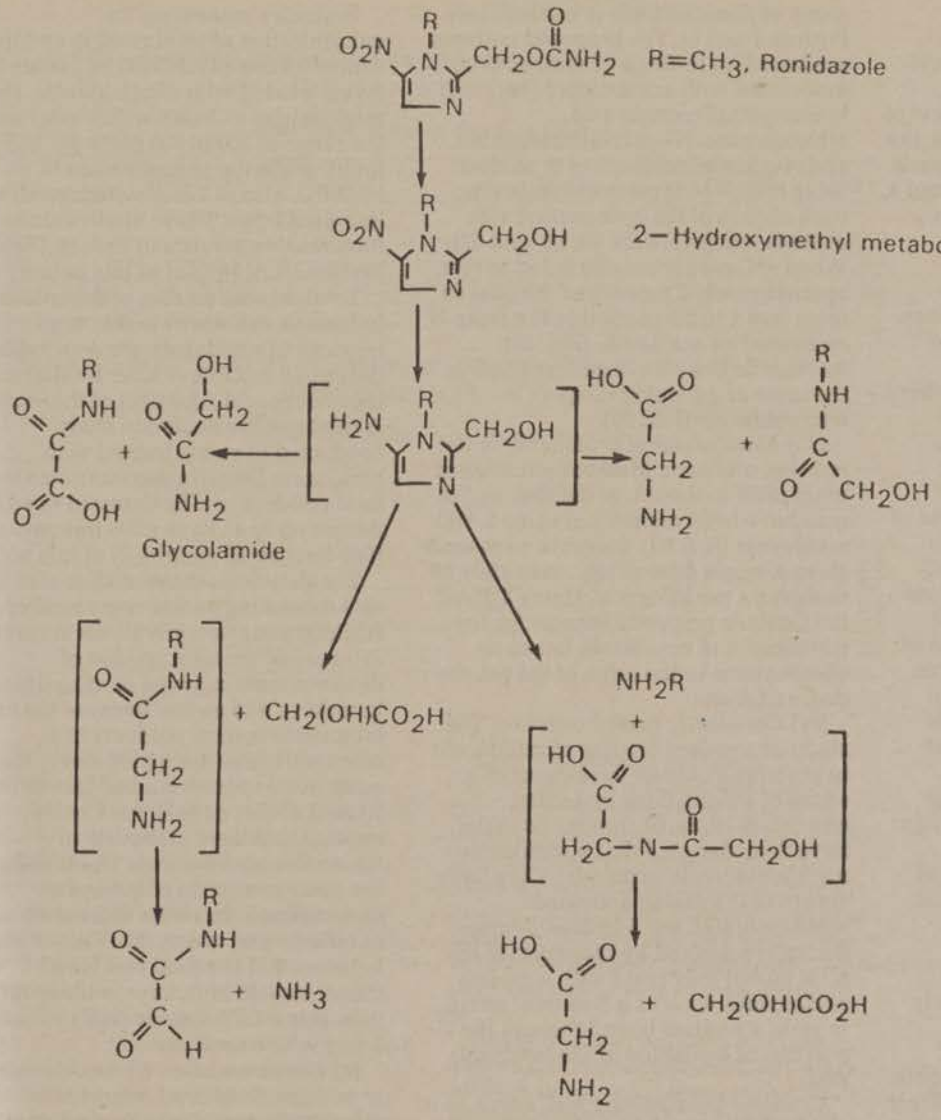


**Figure 4. Possible Fragmentation Patterns through 2-Hydroxymethyl Metabolite**

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(*i*) *Oxidation.* Dimetridazole is first oxidized to HMMNI, which in turn oxidizes to MNICA. See Figure 2.

(*ii*) *Reduction.* The nitro group of dimetridazole or the 2-hydroxymethyl derivative is reduced to the 5-aminoimidazole. See Figure 2. In view of the instability of 5-aminoimidazoles, the molecule would be expected to degrade to simple fragments. See Figures 3 and 4.

(*iii*) *Ring scission.* Figures 3 and 4 present possible pathways for the scission of the imidazole ring of dimetridazole and of HMMNI.

In addition to the degradative routes, the Center believes that some of the label would be incorporated into endogenous compounds via biosynthetic pathways. Covalent binding of ring intact metabolites could also occur.

(c) *Metabolism of other 5-nitroimidazoles—(i) Ronidazole in turkeys.* In a study of the metabolism of ronidazole in turkeys (Ref. 53), birds were administered 0.006 percent $^{14}$C-ronidazole (labeled in the C–2 position of the ring or in the N-methyl group) through the feed for 3 days. Samples of tissues were analyzed for metabolites using paper electrophoresis and thin layer chromatography. This analysis revealed the presence of only parent ronidazole and HMMNI at zero withdrawal. Analysis of the aqueous soluble extracts of liver, which contain up to 80 percent of the total tissue radioactivity, showed the presence of $^{14}$C-N-methylglycolamide, $^{14}$C-oxalic acid (from birds dosed with 2-$^{14}$C-ronidazole), and $^{14}$C-methylamine. These products all demonstrate the degradation of ronidazole, most likely via HMMNI, through ring scission. HMMNI is a common metabolite of ronidazle and dimetridazole (see Figure 2). Therefore, although there is no direct evidence of ring scission of dimetridazole in turkey tissue, the data on the metabolism of ronidazole provide an adequate basis to anticipate similar biotransformations for dimetridazole.

(*ii*) *Metronidazole in mammalian and bacterial systems.* The metabolism of metronidazole has been studied in a number of systems including rats (Ref. 54) and bacteria (Refs. 55, 56, and 57).

Figure 2 shows the ring-intact excretion products identified in the urine of rats dosed once at 10 milligrams per kilogram with 2-$^{14}$C-metronidazole. The products of the pathway labeled "oxidation," the 2-hydroxymethyl derivative and the 2-carboxylic acid, are analogous to those observed for dimetridazole in turkeys. Using xanthine oxidase and bacteria, several researchers demonstrated the extensive fragmentation of metronidazole (Ref. 58). Based on this research, the Center believes that similar fragmentation could occur in the turkey if the nitro group of dimetridazole is reduced (see Figures 3 and 4). The proposed patterns are based on findings of radioactivity associated with acetamide, N-(2-hydroxyethyl)oxamic acid, ethanolamine, N-acetylethanolamine, and N-glycolethanolamine in studies using [1',2',-$^{14}$C2] metronidazole (i.e., each carbon of the hydroxethyl side chain is labeled) (Refs. 54, 56, and 57). When $^{14}$C-metronidazole is fed to rats, approximately 2 percent of the dose in urine and 1 to 2.5 percent in the feces is recovered as acetamide (Ref. 56). Acetamide has also been identified in the urine of patients taking metronidazole (Ref. 59).

(*iii*) *Metabolism of ornidazole in the rat, dog, and man.* Metabolic studies of ornidazole in the rat, in the dog, and in man have been carried out using 2-$^{14}$C-ornidazole (Ref. 60). Subjects were each given a single dose of approximately 10 milligrams per kilogram. Figure 2 gives the Center's proposed scheme for the metabolism of ornidazole based on observations in the urine of the rat, the dog, and man.

(*iv*) *Covalently bound residues.* The study of covalent binding of ronidazole to proteins has been the subject of a series of publications by Lu and coworkers (Refs. 61 through 68), who have demonstrated that a ronidazole metabolite binds to protein. They have shown that suitably activated ronidazole (i.e., the 5-hydroxyamino derivative derived by reduction of the nitro group) may react with a protein nucleophile, such as a free thiol group, to yield a product bound through the 2'-position of 4-position of the imidazole ring.

Covalent binding may well occur as a result of the use of dimetridazole in turkeys. Binding could be expected to take place via HMMNI. Although the carbamate group of ronidazole is better leaving group than the hydroxyl of dimetridazole, the in vitro data show that HMMNI binds to protein (Refs. 61 and 62). These covalently bound residues would persist in turkey tissues.

(3) Evidence of Residues

Salsbury conducted studies measuring the depletion of dimetridazole in turkeys (see Section III.A(3)(a)(*i*) of this notice). The analytical method used by Salsbury does not detect dimetridazole (<2/.0 parts per billion (ppb)) at short withdrawal times.

However, radiotracer studies used to detect residues of dimetridazole in swine and residues of ronidazole in turkeys and swine show that large quantities of total residue of dimetridazole are probably present in tissue.

In studies measuring the concentration of total residue and the concentration of HMMNI in tissues from swine treated with dimetridazole, the total residue at 7-day withdrawal was in the range of 300 to 900 parts per billion (ppb), while the concentration of HMMNI, also at 7-day withdrawal, was less than 2 ppb. These studies show that total residue persists in tissues. (See Section III.A(3)(a)(ii) of this notice.)

Total residue studies with ronidazole in turkeys demonstrate that total residues of ronidazole are detectable in tissues up to 21 days after treatment. (See Section III.A(3)(b)(*i*) of this notice.) A total residue depletion study conducted in swine treated with ronidazole likewise demonstrates that total residues can be detected in edible tissues up to 42 days after treatment. (See Section III.A(3)(b)(*ii*) of this notice.)

The data from these studies also show that measuring parent compound or HMMNI does not provide an accurate estimate of the total residue of dimetridazole in swine or of ronidazole in turkeys and swine. Because the major biotransformation products of 5-nitroimidazoles are qualitatively the same in all species studied (see Section III.A(2) of this notice), the Center expects that the metabolism of dimetridazole in turkeys would follow the same metabolic pathways as dimetridazole in swine and ronidazole in turkeys and swine. The Center also believes that the total residue of dimetridazole in turkeys is likely to persist in edible tissues well beyond the 5-day withdrawal period.

(a) *Dimetridazole—(i) Residue studies in turkeys.* Salsbury Laboratories submitted several residue depletion studies in turkeys treated with dimetridazole. The two studies in which dimetridazole was measured with the method with the lowest limit of detection are discussed below (Ref. 69); the other studies are discussed in Section III.B(1)(b) of this notice.

A group of 20-week old turkeys was treated with 0.08 percent dimetridazole in the feed (therapeutic dose) for 7 days. A group of 10-week old turkeys was treated with 0.02 percent dimetridazole in the feed (prophylactic dose) for 10 weeks. At the end of the dosing period for each group, six birds were sacrificed at each of the following withdrawal times: 0, 1, 3, 5, 7, 10, and 14 days. Muscle, liver, kidney, and skin were collected from each bird at the time of sacrifice.

Tissues samples were assayed for dimetridazole by using a gas

chromatographic method with a limit of detection of 2 ppb.

Tables 2 and 3 present the residue data obtained from the studies conducted by Salsbury.

TABLE 2.—DIMETRIDAZOLE IN TISSUES OF TURKEYS TREATED WITH 0.08 PERCENT DIMETRIDAZOLE IN THE FEED

(Mean residue levels expressed as ppb)

| Withdrawal time (days) | Muscle | Liver | Kidney | Skin |
|---|---|---|---|---|
| 0 | 168 | 9.2 | <2 | 170.0 |
| 1 | <2 | <2 | <2 | 4.3 |
| 3 | <2 | <2 | <2 | <2.0 |
| 5 | <2 | <2 | <2 | <2.0 |

TABLE 3.—DIMETRIDAZOLE IN TISSUES OF TURKEYS TREATED WITH 0.02 PERCENT DIMETRIDAZOLE IN THE FEED

(Mean residue levels expressed as ppb)

| Withdrawal time (days) | Muscle | Liver | Kidney | Skin |
|---|---|---|---|---|
| 0 | 112 | <2 | <2 | 144.0 |
| 1 | <2 | <2 | <2 | 2.5 |
| 2 | <2 | <2 | <2 | 3.7 |
| 3 | <2 | <2 | <2 | 3.0 |
| 5 | <2 | <2 | <2 | 2.5 |
| 7 | (1) | (1) | (1) | 2.6 |

[1] Samples not analyzed.

Salsbury concluded that the dimetridazole in the skin of turkeys treated at the 0.02 percent level was due to contamination. Therefore, the firm measured dimetridazole in skin in two additional studies, one using 0.08 percent dimetridazole in feed (Ref. 70) and another using 0.02 percent (Ref. 69). At the 0.08 percent level, the mean concentration of dimetridazole in skin was 227 ppb at zero withdrawal, 32.2 ppb after 1-day withdrawal, and <2 ppb at all remaining withdrawal periods. At the 0.02 percent level, the mean concentrations of dimetridazole in skin were 105 ppb at zero withdrawal and <2 ppb at all other withdrawal periods.

(*ii*) *Residue studies in swine.* Hess & Clark conducted a study under NADA 93–535 to determine the total residue of dimetridazole in the edible tissues of swine (Ref. 71). Pigs were treated with a single dose of approximately 25 milligrams per kilogram (range 19 to 37 milligrams per kilogram) of dimetridazole-N-methyl-$^{14}$C. Muscle biopsies were taken from three pigs at 24 and 48 hours after treatment and from one pig at 72 hours after treatment. Animals were slaughtered 7 days after administration of $^{14}$C-dimetridazole, and samples of muscle, liver, kidney, and fat were analyzed.

The mean concentrations of total residue of dimetridazole measured in the muscle biopsies at 24, 48, and 72 hours after treatment were 665 ppb, 270 ppb, and 400 ppb, respectively. The mean concentration of total residue of dimetridazole found in edible tissues at slaughter (7 days after treatment) was as follows: 318 ppb in muscle, 908 ppb in liver, 805 ppb in kidney, and 370 ppb in fat.

Based on the results of a study to quantify dimetridazole, HMMNI, and MNICA in two pigs dosed with $^{14}$C-dimetridazole (Ref. 52), Hess & Clark concluded that parent compound was not adequate for monitoring the total residue of dimetridazole and therefore developed a method to measure HMMNI (Ref. 72). Using that method, HMMI was measured in the tissues of swine treated with unlabeled dimetridazole in the drinking water (Ref. 73). Fifteen pigs were treated with dimetridazole in the drinking water at a level of 200 milligrams per liter for 5 days (approximately 10 milligrams per kilogram per day). Three pigs were slaughtered at 0, 3, 5, 6, and 7 days after withdrawal from medication. Tissue samples of muscle, liver, kidney, fat, and skin were taken at the time of slaughter and analyzed for levels of HMMNI. The results are given in Table 4.

TABLE 4.—HMMNI IN SWINE TREATED WITH 10 MILLIGRAMS PER KILOGRAM DIMETRIDAZOLE IN THE DRINKING WATER FOR 5 DAYS

[Mean residues expressed as ppb]

| Withdrawal time (days) | Muscle | Liver | Kidney | Skin | Fat |
|---|---|---|---|---|---|
| 0 | 301 | <2 | 235 | 123 | 25 |
| 3 | <2 | (1) | <2 | (1) | (1) |
| 5 | <2 | (1) | <2 | (1) | (1) |
| 6 | <2 | <2 | <2 | <2 | <2 |
| 7 | <2 | (1) | <2 | (1) | (1) |

[1] Samples not analyzed.

These studies demonstrate that the total residue of dimetridazole in swine at 7-day withrawal ranges from 300 to 900 ppb while the concentration of HMMNI is less than 2 ppb. Thus, total residue persists in edible tissues and the measurement of HMMNI is inadequate to monitor the total residue of dimetridazole in swine.

(b) *Ronidazole—(i) Residue studies in turkeys.* In a study by Rosenblum (Ref. 74), the amount of total radioactivity detected in tissues of turkeys treated with 0.006 percent $^{14}$C-ronidazole in feed was far greater than assay values for ronidazole and HMMNI, as shown in Table 5.

TABLE 5.—CONCENTRATION OF TOTAL RESIDUE, RONIDAZOLE, AND HMMNI IN TURKEY TISSUE AT ZERO WITHDRAWAL

| Treatment | Tissue | Total residue (ppm) | (Residue (ppm) | |
|---|---|---|---|---|
| | | | Ronidazole | HMMNI |
| Three days on drug (ring - 2-$^{14}$C). | Kidney | 4.43 | 0.09 | 0.0 |
| | Liver | 3.77 | 0.01 | 0.0 |
| | Muscle | 2.05 | 1.6 | 0.03 |
| Three days on drug (N-$^{14}CH_3$). | Kidney | 4.00 | <0.03 | 0.0 |
| | Liver | 4.15 | <0.02 | 0.0 |
| | Muscle | 2.58 | 1.5 | 0.1 |

In another study, the concentration of total residue of ronidazole was measured, at various withdrawal times, in turkeys treated for 4 days with $^{14}$C-ronidazole administered in feed containing 0.006 percent of drug (Ref. 53). The results are given in Table 6. The time for depletion of radioactivity from tissues to background levels varied depending on the tissue, with residues in muscle detectable up to 21 days after withdrawal. Based on these data, the Center concludes that the total residue of dimetridazole, for which the maximum approved dose is 13 times higher than the dose of ronidazole used in this study, would likewise persist beyond the 5-day withdrawal period.

TABLE 6.—CONCENTRATION OF TOTAL RESIDUE IN TISSUES OF TURKEYS TREATED WITH 0.006 PERCENT RONIDAZOLE IN THE DIET

[Mean values expressed as ppm]

| Withdrawal time (days) | Muscle | Liver | Kidney | Fat |
|---|---|---|---|---|
| 0 | 3.0 | 4.5 | 4.7 | — |
| 2 | 0.275 | 0.500 | 0.725 | 0.370 |
| 5 | 0.085 | 0.180 | 0.400 | — |
| 10 | 0.260 | 0.045 | 0.135 | — |
| 14 | 0.025 | 0 | 0.070 | — |
| 21 | 0.004 | 0 | 0 | — |

*(ii) Residue studies in swine.* Swine were treated with $^{14}$C-ronidazole administered once daily for 3 days. The dose was 7 milligrams per kilogram per day. Total radioactivity in tissues was determined at withdrawal times of 6 hours and 3, 7, 14, 28, and 42 days after treatment (Ref. 75). Concentrations of total residue in muscle, liver, kidney, and fat are given in Table 7.

TABLE 7.—TOTAL RESIDUE IN TISSUES OF SWINE TREATED WITH $^{14}$C-LABELED RONIDAZOLE

[Mean residues expressed as ppm]

| Withdrawal time (days) | Muscle | Liver | Kidney | Fat |
|---|---|---|---|---|
| 0 | 6.47 | 10.63 | 9.37 | 1.46 |
| 3 | 0.49 | 1.53 | 1.22 | 0.30 |
| 7 | 0.52 | 1.15 | 0.85 | 0.25 |
| 14 | 0.35 | 0.44 | 0.27 | 0.15 |
| 28 | 0.18 | 0.10 | 0.09 | 0.06 |
| 42 | 0.13 | 0.06 | 0.05 | 0.05 |

In another study (Ref. 76), four groups of pigs (three per group) were treated with unlabeled ronidazole in the drinking water (0.012 percent, corresponding to 15 milligrams per kilogram per day) for 7 days. Three pigs were slaughtered at 0, 1, 3, and 5 days after discontinuation of medication. Samples of muscle, liver, kidney, and fat were taken at slaughter and analyzed for the parent compound by using a differential pulse polarographic method with a limit of detection of 2 ppb. Residue values are given in Table 8.

TABLE 8.—RONIDAZOLE IN TISSUES OF SWINE TREATED WITH 0.012 PERCENT RONIDAZOLE IN THE DRINKING WATER FOR 7 DAYS

[Mean residues expressed as ppm]

| Withdrawal time (days) | Muscle | Liver | Kidney | Fat |
|---|---|---|---|---|
| 0 | 3.00 | ND | 0.014 | 0.058 |
| 1 | 0.08 | ND | ND | ND |
| 3 | ND | ND | ND | ND |
| 5 | ND | ND | ND | ND |

ND=No detectable residue.

The results presented in Tables 7 and 8 demonstrate that the total residue of ronidazole in swine persists in tissues up to 42 days after treatment and that, by contrast, no ronidazole is detectable after 1-day withdrawal.

(4) An Adequate Method To Monitor for Total Residue of Dimetridazole Does Not Exist.

Section 512(b)(7) of the act and § 514.1(b)(7) of FDA's regulations require that the sponsor develop a reliable and practical regulatory method to be used in monitoring compliance with a drug's conditions of use. In contrast to the radiotracer procedures used in total residue and metabolism studies, the regulatory method must use procedures that can measure the residue in animals that are slaughtered for food.

To provide a means of developing a method to monitor the total residue in all edible tissues of a treated animal, the Center selects a target tissue and a marker residue. The target tissue is the edible tissue selected to monitor for the total residue in the target animal. The target tissue is usually, but not necessarily, the last tissue in which residues deplete to the permitted concentration. A maker residue is a residue the concentration of which is in a known relationship to the concentration of the total residue in the target tissue. The marker residue can be the sponsored compound, any of its metabolites, or a combination of the residues for which a common assay can be developed. The target tissue and marker residue are selected so that the absence of marker residue above a designated concentration ($R_m$) will confirm that each edible tissue has a concentration of total residue at or below its permitted concentration.

Application of the concepts of marker residue and target tissue requires an experimental determination of the quantitative relationships among the residues that might serve as the marker residue in each of the various edible tissues that might serve as the target tissue in each of the species for which approval of the drug is sought. Because these relationships may change with

time, the Center requires that the sponsor measure the depletion of potential marker residues in potential target tissues starting just after the last treatment with the sponsored compound and continuing until the total residue has depleted to the permitted concentration for that tissue.

Salsbury has developed two methods to measure dimetridazole in the edible tissues of turkeys. One is a differential polarographic method with a limit of detection of 0.05 to 0.1 ppm depending on the size of the tissue sample used for analysis (Ref. 77). This method measures parent dimetridazole and any nitro-containing metabolites that can be efficiently extracted from tissue. Salsbury has not demonstrated the extent of recovery for any metabolites from turkey tissues with the assay extraction procedures. The other method is a gas liquid chromatographic method with a limit of detection of 2 ppb (Ref. 78). This latter method measures only parent compound. Salsbury has not demonstrated that parent dimetridazole is an adequate marker residue because it has not determined the relationship between parent drug and total residues at any time after treatment is discontinued. Therefore, neither method is adequate for monitoring the total residue of dimetridazole in tissues of turkeys.

*B. New Evidence Shows That Dimetridazole is no Longer Shown to be Safe by Adequate Tests by All Methods Reasonably Applicable*

Section 512(d)(1)(A) of the act requires FDA to refuse to approve an NADA if the agency finds that:

> * * * the investigations, reports of which are required to be submitted to the [FDA] pursuant to subsection (b) [21 U.S.C. 360b(b)], do not include adequate tests by all methods reasonably applicable to show whether or not such drug is safe for use under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof * * *.

The analog of section 512(d)(1)(A) is section 512(e)(1)(B), which requires withdrawal of approval of an NADA where "* * * tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the [FDA] when the application was approved, shows that such drug is not shown to be safe * * *."

The Center can satisfy its burden under the safety clause by citing (1) progress in scientific standards (new evidence) such that new tests are needed for a safety evaluation under current scientific standards, and (2) a failure by the sponsor to do such tests. Section 512(e)(1)(B) of the act is not as explicit as section 512(d)(1)(A) in imposing on the sponsor the duty to conduct tests and submit the results. But the general philosophy of section 512 (as of sections 505, 409, and 706 of the act (21 U.S.C. 355, 348, and 376)) is that testing shall be the responsibility of the firm, and not the agency. That philosophy is explicitly reflected in section 512(b)(1) and (d)(1)(A). There is no reason to interpret section 512(e)(1)(B) differently.

Section 512(d)(1)(A) of the act uses the phrase "adequate tests," but section 512(e)(1)(B) does not. Nevertheless, it would be absurd to interpret "tests" in section 512(e)(1)(B) as possibly including inadequate tests. Therefore, it is appropriate to read "tests" in section 512(e)(1)(B) as "adequate tests." It is also appropriate to read the general "new evidence" provision of section 512(e)(1)(B) as incorporating the standard of "adequate tests by all methods reasonably applicable," which appears in section 512(d)(1)(A) of the act. Thus, if new evidence of scientific progress shows that the data supporting an NADA no longer constitute adequate tests by all methods reasonably applicable to a determination of safety, that new evidence warrants withdrawal under section 512(e)(1)(B). *Cf. United States* v. *Western Serum Co., Inc.*, 666 F.2d 335 (9th Cir. 1982) (absent current general recognition of the safety of an animal drug, that drug is a new animal drug and must have an approved NADA).

(1) The Data in the NADA's Are Inadequate

Salsbury's NADA's for dimetridazole were approved in 1964 and 1965. At that time, the Center required less toxicological testing to demonstrate safety than it does today. The Center generally relied upon the results of 90-day toxicity studies and a demonstration with a chemical assay that the concentration of the parent drug was below 0.1 ppm in the edible tissues at the time the animals were slaughtered for food. Thus, the studies in laboratory animals conducted by Salsbury and submitted to its NADA's consisted only of (1) a 90-day oral toxicity study in rats (Ref. 79), (2) a 90-day oral toxicity study in dogs (Ref. 81), and (3) a 30-day dose-range finding toxicity study in dogs (Ref. 82). In 1973, Hess & Clark submitted (1) a 90-day oral toxicity study in rats (Ref. 80), (2) a 90-day oral toxicity study in dogs (Ref. 80), (3) a 30-day intermittent oral dose toxicity study in dogs (Ref. 83), and (4) a 30-day oral toxicity study in rats (Ref. 83). (The Hess & Clark studies are included in Salsbury's NADA's by virtue of an authorization from Hess & Clark (see Section II.B. of this notice).) Salsbury's NADA's also included a residue depletion study to measure dimetridazole in the tissues of treated turkeys (Ref. 84), and a study on the absorption, excretion, and metabolism of dimetridazole in turkeys (Ref. 85). Each of these studies is discussed below.

These data no longer constitute adequate tests by all methods reasonably applicable to show whether or not dimetridazole is safe. In the last 25 years, there has been considerable progress in the field of regulatory toxicology. Based on the increased knowledge of chemical toxicity, there is now greater concern about the public health significance of chronic, low level exposure to residues of an animal drug. As a result, toxicological testing standards are more rigorous and test endpoints are more sensitively measured today than was the case in the early 1960's. A number of factors are responsible for these changes. The factors include the increase in the number of animals used at each dose, an increase in the number of tissues examined for toxic lesions, and improvements in animal husbandry and general laboratory techniques. These and other improvements have contributed to the increased reliability and statistical sensitivity of the classical toxicological feeding study. In addition, new tests such as tests for genetic toxicity, for reproductive toxicity, and for teratogenicity are routinely required prior to approval of a new animal drug. Furthermore, as the toxicological data base has expanded, scientists are better able to make predictions about potential toxicity based on structure-activity relationships. In light of the changes in regulatory toxicology and the data discussed in Section III.A. of this notice, chronic bioassays in two rodent species are required to determine the carcinogenicity of dimetridazole. None of the NADA's includes data from an adequate bioassay in any such species. Each NADA is also lacking the results of an adequate 90-day or longer feeding study in a nonrodent mammalian species.

None of the toxicity studies in the applications is adequate to establish a no-observed-effect-level because (1) the lowest dose caused testicular atrophy in rats and testicular and renal degenerative changes in dogs; (2) the number of animals per dose was not sufficient in any of the studies; or (3) hematology, blood chemistry, organ weight, or histopathology data were

lacking or inadequate in each of the studies.

The total residue and metabolism data contained in the study on the absorption, excretion, and metabolism of dimetridazole in turkeys are inadequate primarily bacause they do not provide reliable information of the total residue remaining in the edible tissues of treated turkeys. In addition, the NADA's do not contain metabolism data in the species used for toxicological testing. Thus, it is impossible to determine if the metabolites present in the edible tissues of turkeys have been adequately tested for toxicity.

a. *Toxicity data.* Salsbury conducted a 90-day study in rats (Ref. 79). The doses used were 0, 2,000, 4,000, 6,000, 8,000 and 10,000 ppm in the diet. Each dose group consisted of 10 male and 10 female rats. A no-observed-effect-level cannot be established from this study because testicular atrophy was observed at all doses ($P=0.01$ at the lowest dose). In addition, insufficient numbers of animals were used at each dose and blood chemistry and hematology data were not reported.

Hess & Clark submitted another 90-day study in rats (Ref. 80). The study used doses of 0, 50, and 100 milligrams per kilogram body weight per day with five male and five female rats in each dose group. A no-observed-effect-level cannot be established from this study because insufficient numbers of animals were used at each dose and clinical chemistry, hematology, and organ weight data were not reported.

Salsbury conducted a 90-day study in dogs (Ref. 81). The doses used were 0, 16, 33, 66, and 132 milligrams per kilogram body weight per day and were administered in gelatin capsules. The lowest dose group consisted of four male dogs; each of the other dose groups consisted of two male and two female dogs. A no-observed-effect-level cannot be established from this study because, at the lowest dose tested, all dogs showed mild cortical nephrosis and one dog showed renal necrosis, and because dose-related testicular degenerative changes were observed in all dose groups. In addition, there were no female dogs in the lowest dose group, insufficient numbers of animals were used in the remaining dose groups, and blood chemistry (except blood urea nitrogen), urinalysis, and organ weight data were not reported.

Hess & Clark submitted another 90-day study in dogs (Ref. 80). The study used doses of 12.5 and 50 milligrams per kilogram body weight per day with one male and one famale dog at each dose. A no-observed-effect-level cannot be established from this study because all dogs showed hyperexcitability and distension of irises. In addition, a concurrent control group was not used, insufficient numbers of animals were used at each dose, and organ weight data were not reported.

Salsbury also conducted a 30-day dose-range finding toxicity study in dogs (Ref. 82). Hess & Clark also submitted a 30-day intermittent oral dose toxicity study in dogs (Ref. 83), and a 30-day oral toxicity study in rats (Ref. 83). None of these studies can be used to establish a no-observed-effect-level because of their short duration.

In 1976, Hess & Clark submitted a 122-week feeding study in Carworth CFY rats using dimetridazole (Ref. 86). (This study is also discussed in Section III.A(1)(b)(*i*) of this notice.) Groups of 50 male and 50 female rats received 0, 100, 400, or 2,000 ppm dimetridazole in the diet for 122 weeks. All surviving animals were sacrificed during the 123rd week of dosing.

Because of the way in which the histopathological examination was conducted, the Center has concluded that this study is seriously flawed and is not suitable for any quantitative evaluation of the potential carcinogenicity of dimetridazole.

In the control and 100 ppm dose groups, only those rats that died or were sacrificed at the end of the study (the last 20 rats) received complete histological examinations for the 32 tissues listed on page 296 of the study report. The remainder of the rats had only gross lesions examined histologically. An addendum to the report dated April 1976 included data from histopathological examinations of 20 males and 20 females from the 2,000 ppm group. Mammary glands, however, were not included in the additional tissues examined. Therefore, no additional information concerning mammary gland tumors was obtained from those histopathological examinations.

Table 9 gives the number of rats in each dose group that did not have a histopathological examination of mammary tissue.

TABLE 9

| | Dose—ppm | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Males | | | | Females | | | |
| | 0 | 100 | 400 | 2,000 | 0 | 100 | 400 | 2,000 |
| Number of rats with no tissue preserved | 5 | 5 | 3 | 6 | 6 | 10 | 4 | 2 |
| Number of rats not examined | 15 | 22 | 42 | 22 | 5 | 6 | 3 | 5 |
| Total number of rats not evaluated | 20 | 27 | 45 | 28 | 11 | 16 | 7 | 7 |
| Percent of rats not evaluated | 40 | 54 | 90 | 56 | 22 | 32 | 14 | 14 |

As can be seen from Table 9, more than 50 percent of the male rats were not examined histopathologically for mammary tumors. This is especially important because 20 to 25 percent of the mammary tumors were not detected by palpation but only upon histopathological examination. Therefore, it is very likely that more tumors were present but not detected, especially in the 400 ppm dose group. Although not as extensive as for the males, a similar problem exists for the female rats.

The Center has also concluded that the feeding study discussed in Section III. A(1)(b)(*i*) of this notice is inadequate for any quantitative evaluation of the carcinogenicity of dimetridazole because the study was not of sufficient duration, too few animals were used, only female animals were used, and only one dose of dimetridazole was tested.

(b) *Residue data.* Salsbury conducted a residue depletion study to measure the concentration of dimetridazole in tissues of treated turkeys (Ref. 84). Turkeys were treated with 0.025 percent (n=70), 0.05 percent (n=70), 0.1 percent (n=110), or 0.2 percent (n=110) dimetridazole in the feed until they were 24 weeks of age. For the 0.025 percent and 0.05 percent groups, an unspecified number of birds were sacrificed at 0, 3, 6, 12, 24, and 48 hours after withdrawal of medicated feed. For the 0.1 percent and 0.2 percent groups, an unspecified number of birds were sacrificed at 0, 3, 6, 12, 24, 48, 72, and 96 hours. Tissue samples of breast muscle, liver, kidney, fat, and thigh skin were taken at sacrifice. The concentration of dimetridazole in tissues was measured using a polarographic method with a claimed limit of detection of 0.05 ppm. The results of this study are given in Tables 10 and 11.

TABLE 10.—CONCENTRATION OF DIMETRIDAZOLE (PPM)

| Tissue | Drug level | Withdrawal time (hours) | | | | | |
|---|---|---|---|---|---|---|---|
| | | 0 | 3 | 6 | 12 | 24 | 48 |
| Muscle | 0.05 | 3.44 | 1.98 | 0.71 | 0.92 | ND. | <.05 |
| | 0.025 | 0.10 | 0.09 | 0.08 | ND | <.05 | ND |
| Liver | 0.05 | 6.67 | 1.17 | 2.34 | 0.10 | <.05 | ND |
| | 0.025 | 0.12 | <.05 | 0.12 | <.05 | <.05 | ND |
| Kidney | 0.05 | 0.64 | 0.11 | 0.06 | 0.08 | <.05 | ND |
| | 0.025 | 0.15 | 0.05 | <.05 | <.05 | <.05 | ND |
| Fat | 0.05 | 2.27 | 1.31 | 0.75 | 0.89 | 0.08 | <.05 |
| | 0.025 | 0.12 | <.05 | 0.05 | <.05 | 0.05 | <.05 |
| Skin | 0.05 | 3.28 | 1.29 | 1.10 | 0.78 | 0.06 | ND |
| | 0.025 | 0.06 | 0.08 | 0.12 | <.05 | <.05 | ND |

ND=No detectable residue.

TABLE 11—CONCENTRATION OF DIMETRIDAZOLE (PPM)

| | Tissue Drug level (percent) | Withdrawal time (hours) | | | 12 | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | 0 | 3 | 6 | 24 | 48 | 72 | 96 | |
| Muscle | 0.1 | 11.56 | 5.75 | 5.24 | 3.31 | 0.22 | 0.08 | 0.05 | 0.06 |
| | 0.2 | 12.72 | 12.40 | 8.66 | (a)0.29 | 1.04 | 0.23 | (b) | (a)0.06 |
| Liver | 0.1 | 15.20 | 6.52 | 6.96 | 4.75 | 0.48 | <.05 | <.05 | 0.06 |
| | 0.2 | 14.88 | 14.68 | 8.50 | (a)0.21 | 1.07 | 0.24 | (b) | (a)0.16 |
| Kidney | 0.1 | 6.80 | 0.88 | 1.65 | 1.42 | 0.10 | <.05 | <.05 | <.05 |
| | 0.2 | 17.76 | 12.44 | 6.75 | (a)0.90 | 0.14 | 0.14 | (b) | (a)0.08 |
| Fat | 0.1 | 7.40 | 3.41 | 2.99 | 1.81 | 0.10 | <.05 | 0.08 | <.05 |
| | 0.2 | (c) | 0.03 | 2.69 | (c) | 0.69 | 0.29 | (b) | (a)0.11 |
| Skin | 0.1 | 7.40 | 3.90 | 3.84 | 3.12 | 0.26 | 0.10 | 0.07 | 0.06 |
| | 0.2 | 15.68 | 6.60 | 6.67 | 0.27 | 0.75 | 0.22 | (b) | (a)0.10 |

(a)=Value calculated from 1 bird.
(b)=Birds not available at this withdrawal period.
(c)=Insufficient sample for analysis.

Salsbury submitted a study on the absorption, excretion, and metabolism of dimetridazole in turkeys (Ref. 85). For the metabolism and recovery experiments, turkeys weighing approximately 3 kilograms received by a crop tube a single dose of 100 milligrams per kilogram unlabeled dimetridazole (one turkey), 300 milligrams per kilogram unlabeled dimetridazole (two turkeys), or 32 milligrams per kilogram (equivalent to 0.05 percent in the drinking water) dimetridazole labeled with $^{14}C$ in the 2-position of the ring and 2-methyl group (seven turkeys). For the residue experiments in tissue, turkeys were given free access to medicated water (0.05 percent) for 6 days (five turkeys) or were administered a single dose of labeled dimetridazole at 32 milligrams per kilogram as specified above (two turkeys). Samples of excreted material, tissues, and expired air were assayed by colorimetric, polarographic, or radiochemical procedures.

Dimetridazole was measured by a polarographic method with a limit of detection of 0.1 ppm. These results are given in Table 12.

TABLE 12.—CONCENTRATION OF DIMETRIDAZOLE IN TISSUES OF TURKEYS TREATED FOR 6 DAYS WITH 0.05 PERCENT DIMETRIDAZOLE IN THE DRINKING WATER

[Mean values expressed in ppm]

| Withdrawal time (days) | Muscle | Liver | Kidney | Skin |
|---|---|---|---|---|
| 0 | 0.92 | 0.66 | <0.1 | 0.38 |
| 1 | 0.04 | 0.22 | <0.1 | <0.1 |
| 2 | <0.1 | <0.1 | <0.1 | <0.1 |

The residue in tissues of turkeys treated with a single dose of $^{14}C$-labeled dimetridazole was determined by both a radiochemical and polarographic method, 72 hours after treatment. These results are given in Table 13.

TABLE 13.—CONCENTRATION OF RESIDUE IN TISSUES OF TURKEYS TREATED WITH A SINGLE DOSE OF $^{14}C$-LABELED DIMETRIDAZOLE

[32 milligrams per kilogram (ppm)]

| Tissue | Polarographic | Radiochemical |
|---|---|---|
| Muscle | <0.05 | |
| Liver | <0.05 | <0.03 |
| Kidney | <0.1 | <0.05 |
| Skin | <0.05 | |

For the samples analyzed, residue concentrations were below the limit of detection of the assays.

The studies, the results of which are given in Tables 11, 12, and 13, do not and cannot provide an adequate determination of total residue in turkey tissues. As discussed in Section III.A(4) of this notice, the Center applies a marker residue approach (i.e., analyzing for a residue whose relationship to the total residue is known) to monitor the total residue in edible tissues. In the case of dimetridazole, the relationship between the concentration of dimetridazole and the concentration of total residue in turkey tissues has not been established. Without such information, the results of studies measuring the concentration of dimetridazole in turkey tissues (see Tables 11 and 12) cannot be regarded as reflecting the total residue.

The results of the radiotracer study (see Table 13) cannot be used to derive the relationship between the concentration of dimetridazole and the concentration of total residue for several reasons. First, the turkeys were treated with only a single dose of dimetridazole, and not according to label directions. Multiple dosing with labeled drug would give higher total residue values than those reported in the study. Second, the total residue values reported for tissues in Table 13 were obtained by assaying a benzene extract of the tissues, not by assaying whole tissue samples. Thus, the amount of radioactivity that was nonextractable was not determined. Radioassay of whole tissue samples would also give higher total residue values than those reported. Finally, it is impossible to establish the relationship between total residue measured by the radiochemical method and residue measured by the polarographic method because all residue values reported were below the limit of detection of the assay.

In 1973 Salsbury submitted the residue depletion studies described in Section III.A(3)(a)(*i*) of this notice. For the reasons stated in that Section, the studies are not adequate to determine the total residue of dimetridazole in, or

the depletion of that residue from, the tissues of treated turkeys. Based on the residue data summarized in Tables 10 and 12 of this notice, which show that liver and muscle from birds sacrificed at zero withdrawal (6 hours) contain dimetridazole in the range of 1 to 2 ppm, the Center concludes that the total residue in those tissues would be considerably higher.

(c) *Metabolism data.* In the study on the absorption, excretion, and metabolism of dimetridazole in turkeys (Ref. 85) discussed in Section III.B(1)(b) of this notice, examination by ultraviolet light of a paper chromatogram of urine collected at 24 hours post dosing revealed six spots following treatment at the 32 milligrams per kilogram, 100 milligrams per kilogram, and 300 milligrams per kilogram levels. In addition, a seventh spot was found using autoradiography of a sample of urine of birds treated with labeled dimetridazole. Four of the metabolites were identified by comparison of chromatograms for unknowns versus standards using several solvent systems. The four metabolites and the percentage of the total radioactivity excreted were: unchanged dimetridazole (3.4 percent), HMMNI (9.4 percent), 1-methyl-5-nitroimidazole-2-ylmethyl hydrogen sulfate (44.4 percent), and MNICA (25.8 percent). Another metabolite, representing 8.8 percent of the excreted dose, was identified by color reactions as a conjugated glucuronide of a nitroimidazole. The glucuronide was thought to be that of HMMNI but positive identification was not made because a reference standard was not used. The remaining two metabolites, comprising 10.9 percent of the excreted drug, were shown to be non-nitro containing compounds. One of these two compounds did not absorb ultraviolet light and was presumed to be a ring-degraded metabolite, because absorbing ultraviolet light is characteristic of ring-intact imidazoles. Salsbury concluded that almost all the excreted drug is metabolized and that the basic metabolic pathway involves oxidation of the 2-methyl group to 2-hydroxymethyl. In addition, Salsbury found the nitro group to be resistant to reduction in the turkey, with approximately 90 percent of the excreted drug in the form of a nitroimidazole.

Salsbury found that, 3 days after a single oral dose of labeled dimetridazole to turkeys at 32 milligrams per kilogram, an average of 79.6 percent of the radioactivity was recovered in the urine, 7.7 percent in the feces, and 1.2 percent in the expired air. About 90 percent of the administered drug, therefore, can be accounted for in the 3-day period after dosing; 80 percent of the drug is excreted within 48 hours post-dosing. Examination of the urine-fecal extracts with polarographic and colorimetric methods (methods which would detect nitro-containing metabolites) evidenced 66.1 percent and 63 percent recovery, respectively, during the 3-day period after dosing.

The Center has concluded that these studies are inadequate to characterize the metabolism of dimetridazole in turkeys for several reasons. First, Salsbury did not present a metabolic profile for any of the edible tissues. Second, the results for urine actually reflect those for urine and water soluble extracts of feces. In the study, excreta were combined and centrifuged, with the supernatant designated urine, and the pellet designated feces. Third, the turkeys should have been dosed with labeled drug at the maximum use level approved (i.e, 7 days' dosing with labeled dimetridazole at 32 milligrams per kilogram), because underdosing may not permit full characterization of the metabolites present in tissue.

The data on the metabolism of dimetridazole in swine submitted by Hess & Clark in the 1970's and relied upon by Salsbury (see Section II.B. of this notice) are summarized in Section III.A(2)(b) of this notice. Those data are useful in providing an understanding of the possible metabolism of the drug in turkeys, but they do not and cannot provide definitive information on the metabolism of dimetridazole in turkey tissues.

(2) Salsbury Has Not Submitted the Additional Residue, Metabolism, or Toxicological Data Required To Support Continued Approval of its NADA's

Since approval of the NADA's for dimetridazole, the Center has advised Salsbury on numerous occasions that additional residue, metabolism, and toxicological data are required to support continued approval of the applications. Salsbury has not submitted any of the requisite data.

By letter dated March 1, 1977 (Ref. 87), the Center requested that Salsbury submit a chronic feeding study in a rodent species other than the rat to support the firm's then pending supplemental NADA's for the use of dimetridazole in swine. The letter stated that the data from the study in rats submitted by Hess & Clark in support of its NADA's (see Sections III.A(1)(b)(*i*) and III.B(1)(a) of this notice) indicated that dimetridazole is a tumorigen and possibly a weak carcinogen. The Center's March 1 request, taken together with the information in FDA's (1) final rule governing chemical compounds in food-producing animals; criteria and procedures for evaluating assays for carcinogenic residues in edible products of animals (42 FR 10412, 10429; February 22, 1977), (2) proposed rule governing chemical compounds in food-producing animals; criteria and procedures for evaluating assays for carcinogenic residues (44 FR 17070, 17104; March 20, 1979), and (3) reproposed rule governing sponsored compounds in food-producing animals; criteria and procedures for evaluating the safety of carcinogenic residues (50 FR 45530, 45550; October 31, 1985), provided Salsbury notice that the Center also required such a study to support the continued approvability of the firm's NADA's for the use of dimetridazole in turkeys. By letter dated August 18, 1986 (Ref. 4), the Center requested that Salsbury submit a chronic feeding study in rats and a chronic feeding study in mice to support the continued approvability of those NADA's.

Salsbury did not submit such studies in response to any of the Center's requests, nor did the firm indicate that it would conduct them (see Section II.A. of this notice).

By letter dated October 2, 1973 (Ref. 88), the Center requested Salsbury to determine in turkey tissue the depletion of HMMNI, 1-methyl-5-nitroimidazole-2-ylmethyl hydrogen sulfate, and MNICA. The Center's request was the subject of a conference with Salsbury on December 13, 1973 (Ref. 89). By letter dated December 21, 1973 (Ref. 90), Salsbury proposed that it be allowed (1) to rely on information on the metabolism of dimetridazole, ipronidazole, and ronidazole; and (2) to develop a chemical assay for HMMNI and measure its depletion in turkey tissues instead of conducting a qualitative radiotracer metabolism study. By letter dated May 29, 1974 (Ref. 91), the Center rejected Salsbury's proposal and requested a metabolism study in turkey tissue using radiotracer methods sensitive to 2 ppb. By letter dated August 18, 1986 (Ref. 4), the Center again asked Salsbury for total residue depletion and metabolism studies in turkeys.

Salsbury did not submit any data in response to any of these numerous requests.

Plainly, new tests are needed for a safety evaluation of dimetridazole; the data supporting Salsbury's NADA's no longer constitute adequate tests by all methods reasonably applicable to a determination of the safety of the drug. And despite repeated requests, Salsbury

has not conducted the requisite new tests. Accordingly, withdrawal of approval of the NADA's is warranted under section 512(e)(1)(B) of the act on the ground that dimetridazole is not shown to be safe for use because new evidence shows that the drug is no longer shown to be safe by adequate tests by all methods reasonably applicable.

*C. New Evidence Shows That Dimetridazole Is Not Shown To Be Safe by Virtue of Misuse*

Section 512(d)(2)(D) of the act provides that in determining whether a drug is safe for use under the conditions prescribed, recommended, or suggested in the labeling, the agency is to consider, among other factors, whether those conditions of use are reasonably certain to be followed in practice. Accordingly, where labeled indications for use of an approved new animal drug have not been followed, and are not reasonably likely to be followed in practice, the drug is not shown to be safe for use and therefore its approval is subject to withdrawal under section 512(e)(1)(B) of the act. Furthermore, the use or intended use of an approved new animal drug in a manner that is inconsistent with the conditions of its approval causes the drug to be unsafe and thereby adulterated under sections 512(a)(1) (A) and (B) and 501(a)(5) of the act. The approval of such an adulterated drug is also subject to withdrawal under section 512(e)(1)(b) of the act. See "Chloramphenicol Oral Solution; Opportunity for Hearing" (50 FR 27059; July 1, 1985).

The Center has, in the past, exercised its regulatory discretion through a policy permitting "extra-label" use of approved new animal drugs in certain circumstances. Until recently, the policy permitted extra-label use of drugs in food-producing animals unless residues occurred in edible products. Because of evidence increasing misuse of chloramphenicol and other drugs, the Center revised the policy to provide that extra-label use of new animal drugs in food-producing animals is permitted only in very limited instances. The policy is stated in Compliance Policy Guide 7125.06 (see 49 FR 20915, May 17, 1984; and 49 FR 45930, November 21, 1984). In August and November 1986, the Center revised the policy to clarify that it does not apply to drugs added to medicated feeds intended for extra-label use or to dimetridazole for use in swine (see 51 FR 42656; November 25, 1986).

Even before the 1986 revisions, the policy was inapplicable to the use of dimetridazole in swine. First, several new animal drugs, e.g., carbadox, lincomycin, virginiamycin, gentamicin, and tiamulin, are approved for use in the treatment and prevention of swine dysentery (see 21 CFR 558.115, 558.325, 558.635, 520.1044, 520.1263, 520.2455). Second, a safe concentration of residues of dimetridazole in the edible tissues of swine has not been established (see Sections III.A., A(1)(c)(*ii*), and III.B(1) of this notice), and there is no approved method to monitor the total residue of the drug in swine.

The sections below document evidence available to the Center establishing that dimetridazole medicated premix and dimetridazole soluble powder have been used widely for the treatment and prevention of swine dysentery and that such use is likely to continue.

*Treponema hyodysenteriae*, an anaerobic spirochete, has been identified as the primary etiologic agent in swine dysentery (Refs. 92, 93, and 94). Swine dysentery, a severe mucohemorrhagic diarrheal disease, affects pigs primarily during the growing-finishing period and is most commonly observed in 15- to 70-kilogram pigs (Refs. 93 and 94). It is reported that morbidity of swine dysentery is usually over 90 percent and that the mortality can be as high as 30 percent (Refs. 93 and 94). Estimates place the infection rate at more than 10 percent of the swine herds in the United States (Ref. 92). When swine herds in Iowa, Illinois, and Missouri were surveyed, an average of 39.5 percent of them were found to be infected with *T. hyodysenteriae* (Ref. 95).

Nitroimidazole compounds are said to be effective in the prevention and treatment of swine dysentery (Refs. 93 through 98). In one study (Ref. 98), dimetridazole and ronidazole reportedly were effective not only in treating swine dysentery, but also in eliminating *T. hyodysenteriae* from carrier pigs. This latter effect of dimetridazole is reported elsewhere in the literature (Refs. 95 and 97). For example, one publication, "Swine Dysentery-Practitioner Planning Guide For Herd Elimination Programs" (Ref. 97), claims that dimetridazole is effective in eliminating *T. hyodysenteriae* in pigs at a dose of 36.4 grams per 50 gallons of water (0.04 percent) for 3 to 4 weeks. For the prevention of swine dysentery, dimetridazole is recommended at a level of 100 or 182 grams per ton of feed (Refs 92, 93, 94, and 97). For the treatment of swine dysentery, dimetridazole is recommended at a level of 0.025 percent in the water for 5 days (Refs. 92, 93, and 94).

Although dimetridazole has apparently been administered to swine in the United States for a number of years, the Center's increased concern over the drug's use has resulted from new information about its toxicity (see Section III.A(1) of this notice). Furthermore, there is neither a safe concentration for residues of dimetridazole in the edible tissues of swine, nor is there an approved method to monitor the total residue of the drug in swine.

(1) Evidence of Misuse

Results of more than 20 inspections of swine producers, veterinarians, feed mills, and distributors conducted by FDA since 1984 show that dimetridazole premix and soluble powder are used extensively for swine dysentery, also known as bloody scours. The inspections have documented the illegal use of dimetridazole premix and soluble powder in Arkansas, Illinois, Iowa, Minnesota, Missouri, Tennessee, and Texas.

In some cases, feed mills purchased the premix for sale to hog producers or to veterinarians prescribing it for swine dysentery. In other cases, distributors sold the dimetridazole premix to persons who then added it to hog feed or sold it to others for eventual use in such feed. For example, in 1984, a routine FDA inspection of a feed mill in Minnesota revealed that the mill received from a hog producer 1 and 2 pound bags of dimetridazole premix to be mixed in hog feed. The producer admitted to receiving the repackaged dimetridazole premix from a local veterinary clinc, which had repacked the premix into the 1 and 2 pound bags. The hog producer admitted that the premix was sold to him by the clinic for the treatment and prevention of bloody scours in his hogs. The veterinarian at the clinic admitted to having sold dimetridazole premix to 10 to 15 hog producers for the prevention and treatment of swine dysentery.

Dimetridazole soluble powder is an over-the-counter drug. Evidence obtained during FDA inspections shows that the powder is frequently sold to hog producers to be added to the feed or drinking water for the treatment of swine dysentery. For example, in Illinois, which was the second highest State in percent of total pig crop in 1985 (Ref. 99), FDA observed dimetridazole soluble powder in nearly every feed mill and farm supply store. Moreover, producers, veterinarians, and distributors report that the use of dimetridazole for the treatment and prevention of swine dysentery is

widespread. In one case, a veterinarian in Illinois purchased 194 50-pound bags of dimetridazole premix and 2,000 units of dimetridazole soluble powder over a 1-year period. He admitted that although some of each product was sold to turkey producers, the rest was sold to other veterinarians, or prescribed by him, for use in the prevention or treatment of swine dysentery. The veterinarian admitted to prescribing dimetridazole for the disease for more than 15 years.

Textbooks now used in schools of veterinary medicine throughout the United States refer to the use of dimetridazole in the treatment of swine dysentery (Refs. 92, 93, and 94). Although the references are accompanied by footnotes explaining or suggesting that the drug is not approved for use in swine dysentery in this country, the fact that dimetridazole is cited as a treatment for the disease encourages use of the drug. Such use is also encouraged by the veterinary and trade literature (Refs. 95 through 98), which recommend dimetridazole for the prevention and treatment of swine dysentery.

For all these reasons, the Center concludes that the use of dimetridazole for the treatment and prevention of swine dysentery is widespread.

(2) Likelihood of Misuse in the Future

Based on the current attitude among hog producers and veterinarians, the Center believes that the use of dimetridazole for the treatment and prevention of swine dysentery will continue if approval of Salsbury's NADA's is not withdrawn. The misuse is not localized but has a broad geographic distribution in predominant hog-rearing areas. Producers and veterinarians engaged in swine management admit that dimetridazole is widely used in the treatment and prevention of swine dysentery. In many instances, veterinarians and hog producers report that they believe that dimetridazole is effective in preventing and treating swine dysentery, and that they will continue to use dimetridazole for the disease. Many veterinarians, producers, and feed mill operators report that dimetridazole is commonly prescribed and used in their area for swine dysentery. As a veterinarian in Indiana commented in a letter to FDA, there is widespread belief on the part of producers that dimetridazole is effective against swine dysentery. Indeed, in one case, a producer stated that although he would discontinue the extra-label use of other animal drugs, he would continue to use dimetridazole in swine. The likelihood of misuse in the future is also substantial because of the extent to which the product is promoted through agriculture extension meetings, local feed supply houses, veterinary clinics, the veterinary literature, and by word of mouth (Refs. 95 and 97).

## IV. Environmental Economic Impact

The Center has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in an environmental assessment under 21 CFR 25.31, may be seen in the Dockets Management Branch, Food and Drug Administration (address above), between 9 a.m. and 4 p.m., Monday through Friday.

The economic consequences of the withdrawal of dimetridazole are expected to be minimal. Salsbury is the only firm that holds approved NADA's for the drug, and a substitute product approved for the same claims in turkeys is readily available at competitive prices.

## V. References

In addition to the Salsbury and Hess & Clark NADA's identified in Section II of this notice, copies of the references and other documents cited or referred to in Section II, III, and IV of this notice have been placed on display in the Dockets Management Branch (address above). Except for data and information prohibited from public disclosure under section 301(j) of the act (21 U.S.C. 331(j)), § 20.61 of FDA's regulations governing public information (21 CFR 20.61), § 514.11 of FDA's regulations governing NADA's (21 CFR 514.11), or 18 U.S.C. 1905, and data and information exempt from public disclosure under § 20.64, copies of the NADA's, the references, and the other documents may be examined in the Dockets Management Branch by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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4. Letter from William B. Bixler, FDA, to Robert R. Baron, Salsbury Laboratories, Inc., dated August 18, 1986.

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## VI. Notice of Opportunity for Hearing

Therefore, notice is given to the sponsors listed in Section II of this notice, and to all other interested persons, that the Center proposes, under section 512(e) of the act, to withdraw approval of the NADA's for dimetridazole. This action is based on section 512(e)(1)(B) of the act in that the drug is not shown to be safe for use (1) because new evidence provides a reasonable basis from which serious questions about the ultimate safety of dimetridazole and the residues that may result from its use may be inferred, (2) because new evidence shows that dimetridazole is no longer shown to be safe by adequate tests by all methods reasonably applicable, and (3) because new evidence shows that the labeled directions for use have not been followed in practice and are not likely to be followed in the future. Upon finalization of the withdrawal of approvals of the applications identified in Section II of this notice, the corresponding regulations shall be revoked as provided in section 512(i) of the act (21 U.S.C. 360b(i)) (21 CFR 514.115(e)).

In accordance with provisions of section 512 of the act (21 U.S.C. 360b) and regulations promulgated under it (21 CFR Part 514) and under authority delegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84), the Center hereby provides an opportunity for hearing to show why approval of the new animal drug applications listed in Section II.A of this notice, and all supplements thereto, should not be withdawn. Any hearing would be subject to the provisions of 21 CFR Part 12.

If a sponsor decides to seek a hearing, the sponsor shall file (1) on or before January 16, 1987 a written notice of appearance and request for a hearing, and (2) on or before February 17, 1987 the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 514.200.

Any other interested person may also submit comments on this notice. Procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 212 CFR 514.200.

The failure of the sponsor to file timely written appearance and request for hearing as required by 21 CFR 514.200 constitutes an election by the sponsor not to avail itself of the opportunity for a hearing. The Center will summarily enter a final order withdrawing approval of the application.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact that precludes the withdrawal of approval of the application(s), or that the request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice shall be filed in four copies. All submissions under this notice, except as provided in 21 CFR 10.20(j), may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b)) and under authority delegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84).

Dated: December 11, 1986.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 86-28203 Filed 12-12-86- 11:06 am]

BILLING CODE 4160-01-M

Federal Register

Wednesday
December 17, 1986

Part IV

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Fair Housing and Equal Opportunity**

**24 CFR Part 146**

**Nondiscrimination on the Basis of Age in Programs Receiving Federal Financial Assistance; Final Rule**

**Guidelines for Application of Standards for Determining Age Discrimination; Notice**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Fair Housing and Equal Opportunity**

**24 CFR Part 146**

**[Docket No. R-86-876; FR-1161]**

# Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the Age Discrimination Act of 1975 in connection with programs and activities carried out by HUD. The Act generally prohibits discrimination on the basis of age in HUD programs and activities receiving Federal financial assistance. This final regulation is designed to guide the actions of recipients of financial assistance from HUD.

**EFFECTIVE DATE:** Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Myra Kennedy, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 5230, Washington, DC 20410 (202) 755-5904 (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background and Responses to Public Comments

The Age Discrimination Act of 1975 (the Act), 42 U.S.C. 6101-6107, prohibits any person from being excluded from participation in, denied the benefits of, or subjected to discrimination under, any program or activity receiving Federal financial assistance. The Act does not apply to any age distinction established under authority of any law which provides benefits or establishes criteria for participation on the basis of age or in age-related terms, nor does it apply when an explicit age distinction is necessary to the normal operation of a program or to the achievement of the statutory objective of a program.

The Act mandated that the Department of Health and Human Services (HHS) publish a general regulation to guide the development of specific regulations by each Federal agency that administers programs of financial assistance. HHS published a final general regulation on June 12, 1979 (44 FR 33768).

In compliance with the Act and in keeping with the HHS general regulation, on November 4, 1980, HUD published in the **Federal Register** (45 FR 73454) a notice of proposed rulemaking proposing to add to Title 24 of the Code of Federal Regulations a new Part 146, Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance. Interested parties were given until January 5, 1981 to submit comments. Comments were received from five entities: a children's interest fund, an elderly interest association, a county association, and two private individuals. All comments have been carefully reviewed and considered in the adoption of this final rule. The following is a summary of the comments received and the Department's responses to those comments.

1. All five commenters requested clarification of the four-part test contained in § 146.12(b) which was proposed to be used to determine when an age distinction is necessary to the normal operation of a program or to the achievement of a statutory objective of a program (thus providing an exception to the rule). All four parts of the test must be met. The discussion below following each of the four described parts of the test responds to the questions about the test raised by the commenters by clarifying the intent of each part. (The example and analysis under comment 2 will further illustrate application of the four-part test.) Note that § 146.12 is redesignated as § 146.13 in the final rule.

a. *Age is used as a measure or approximation of one or more other characteristics.* This refers to a situation in which an *age distinction is used as an indicator* of some other (non-age) characteristic. If age is not being used as an indicator or measure of some other (non-age) characteristic, it is unnecessary to apply the four-part test.

b. *The other characteristics must be measured or approximated in order for the normal operation of the program to continue, or to achieve any statutory objective of the program.* The test asks whether the other (non-age) characteristic that is being measured by the use of an age distinction is a characteristic that *must be measured* in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity.

c. *The other characteristics can be reasonably measured or approximated by the use of age.* The test asks whether the non-age characteristic is *capable of being reasonably approximated by age.* Hence, the test requires the agency to determine how accurate a measure the age distinction is of the non-age characteristic; i.e., whether there is a sufficiently high correlation between the age distinction being used and the non-age characteristic that is being measured to warrant the use of age.

d. *The other characteristics are impractical to measure directly on an individual basis.* Even though a non-age characteristic is capable of being reasonably approximated through the use of an age distinction, the test requires that the characteristic be measured without the use of an age distinction *unless it would be impractical to do so.* In other words, the four-part test permits the use of age distinctions only when no other practical alternative exists.

2. Several commenters requested that examples appear in the final rule to demonstrate how the four-part test should be applied. HUD will soon publish an Age Discrimination Act handbook which will provide detailed guidance and specific examples. However, below is one example of how the four-part test should be applied.

*Example:* A project providing housing for the elderly or handicapped under Section 202 of the Housing Act of 1959, 12 U.S.C. 1701q, refuses to accept as tenants persons over 66 years of age. The stated reason for this age distinction is that Section 202 of the Housing Act of 1959 was generally designed to provide housing for elderly and handicapped individuals capable of "independent living." In addition, the project in question does not provide services for those unable to live independently. The project sponsor asserts that persons over a certain age (66 years) are not likely to be capable of living independently.

*Analysis:* Section 146.13 of the final rule provides that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance. Section 202 projects receive Federal financial assistance as defined in Section 146.7. Persons over 66 years of age are excluded from the project

because of their age. However, under § 146.13(b), a recipient is permitted to take an action otherwise prohibited by § 146.13(a) if the action reasonably takes into account age as a factor necessary to the normal operation or achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity if it satisfies the four-part test:

(1) *Is age used as a measure or approximation of one or more other characteristics? Yes.* In this hypothetical instance, age is used as a measure or approximation of prospective tenants' ability to live independently.

(2) *Must the other (i.e., non-age) characteristics be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity? Yes.* In this case, the non-age characteristic (the ability to live independently) must be measured in order for the normal operation of the program or activity to continue. The Section 202 project in question is designed for independent living. Persons not capable of independent living would not be able to reside successfully in the project.

(3) *Can the other (i.e., non-age) characteristic be reasonably measured or approximated by the use of age? No.* While there may be a correlation between age and the ability to live independently, there are many people well over the age of 66 who are fully capable of independent living. In addition, there are many people under the age of 66 who are not capable of independent living. Therefore, the non-age characteristic cannot *reasonably* be measured or approximated by the use of age.

(4) *Is it impractical to measure the other characteristic directly on an individual basis? No.* Project management can, through individual interviews and other means, determine, without bearing an impractical burden, whether an individual applicant is capable of living independently. In most cases, a face-to-face interview will suffice to make this determination. Therefore, age is an inaccurate and unnecessary way of determining an applicant's ability to live independently.

In order to qualify for the exemption contained in § 146.12(b), the age distinction must satisfy *all four parts* of the test. In this case, the age distinction failed to satisfy two parts of the test. Therefore, it violates the Act.

In today's issue of the **Federal Register**, HUD is publishing additional guidelines for the application of standards for determining whether prohibited age discrimination is being practiced.

3. Several commenters questioned HUD's authority to conduct compliance reviews and terminate funds of recipients. Response: HUD has the authority to conduct compliance reviews of recipients under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–1; Sections 104(d) and 109 of the Housing and Community Development Act of 1974, 42 U.S.C. 5304, 5309; and under the Age Discrimination Act of 1975 that will enable it to investigate and correct violations of the above authorities. HUD may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation has occurred. If a compliance review under the Act indicates a violation of this part, HUD will attempt to achieve voluntary compliance. If voluntary compliance cannot be achieved, HUD will arrange for enforcement as described in § 146.35 of this part. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Therefore, cases that are settled in mediation, or before a hearing, will not involve termination of a recipient's Federal financial assistance from HUD.

4. One commenter suggested that HUD withdraw the proposed rule pending further study of the impact that the Act and the proposed regulation would have on certain groups; i.e., the elderly, families with children, and persons under 18 years of age. Response: A HUD recipient, in furtherance of statutory objectives and normal program objectives, may administer a program or activity which is designed only for a particular age group, so no adverse impact on special age groups that HUD seeks to serve is anticipated.

5. Another commenter requested clarification as to whether the proposed regulation allowed certain housing sites to be designated only for elderly (over age 62) tenants. Response: The Section 202 program (12 U.S.C. 1701q) contains a minimum age requirement of 62 years for non-handicapped persons. This statutory requirement constitutes an exception to the Age Discrimination Act. In the absence of a statutory requirement of this kind, age distinctions involving limits on access to housing would have to be subjected to the four-part test described previously.

**Discussion of Changes in Final Rule**

The final rule incorporates the basic standards for defining age discrimination that were set forth in the proposed rule. It also sets forth the responsibilities of HUD recipients and the investigation, settlement, and enforcement procedures that HUD will use to ensure compliance with the Act.

The self-evaluation requirement has been revised from the provision contained in the proposed rule. The proposed rule provision required all recipients employing 15 or more employees to complete a written self-evaluation. Section 146.25 now states that such recipients *may* be required to undertake a self-evaluation as part of a compliance review or complaint investigation conducted by HUD. The change is made to be consistent with the requirements of the Paperwork Reduction Act of 1980. The paperwork burden associated with the self-evaluation will apply only to recipients where circumstances indicate the need for the self-evaluation in connection with a compliance review or complaint investigation.

**Other Matters**

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

A Finding of No Significant Impact with respect to the environment has been made in accordance with 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, DC 20410.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities

because it primarily concerns the investigation, settlement, and enforcement procedure that HUD will use to ensure compliance with each recipient's statutory responsibility under the Age Discrimination Act of 1975. It is not expected to cause any significant impact on small entities.

This rule is listed in 51 FR 38463 as item number 939 in the Department's Semiannual Agenda of Regulations published on October 27, 1986, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance title and program number is Nondiscrimination in Federally-Assisted Programs (on the Basis of Age), 14.402.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation have been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

**List of Subjects in 24 CFR Part 146**

Discrimination against the aged, Civil rights, Grant programs: Housing and community development, Administrative practice and procedures, Loan programs: Housing and community development, Reporting and recordkeeping requirements.

Accordingly, Title 24 of the Code of Federal Regulations, Subtitle B, Chapter I, is amended by adding a new Part 146, to read as follows:

## PART 146—NONDISCRIMINATION ON THE BASIS OF AGE IN HUD PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

**Subpart A—General**

Sec.



**Subpart B—Standards for Determining Age Discrimination**



**Subpart C—Duties of HUD Recipients**



**Subpart D—Investigation, Settlement, and Enforcement Procedures**



**Authority:** Age Discrimination Act of 1975 (42 U.S.C. 6103); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

### Subpart A—General

#### § 146.1 Purpose of the Age Discrimination Act of 1975.

The Age Discrimination Act of 1975 (the Act) prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act, however, permits federally assisted programs and activities and recipients of Federal funds to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and this part.

#### § 146.3 Purpose of HUD's age discrimination regulation.

The purpose of this part is to state HUD's policies and procedures under the Age Discrimination Act of 1975, consistent with the government-wide age discrimination regulation contained at 45 CFR Part 90.

#### § 146.5 Applicability of part.

This part applies to each program or activity that receives Federal financial assistance provided by HUD.

#### § 146.7 Definitions.

As used in this part, the term:

"Act" means the Age Discrimination Act of 1975, 42 U.S.C. 6101–07.

"Action" means any act, activity, policy, rule, standard, or method of administration or the use of any policy, rule, standard, or method of administration.

"Age" means how old a person is, or the number of elapsed years from the date of a person's birth.

"Age distinction" means any action using age or an age-related term.

"Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children", "adult", "older persons", but not "student").

"Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which HUD provides or otherwise makes available assistance in the form of:

(a) Funds;

(b) Service of Federal personnel; or

(c) Real or personal property or any interest in or use of property, including:

(1) Transfers or leases of property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal government.

"HUD" means the United States Department of Housing and Human Development.

"Recipient" means any State or its political subdivisions; any instrumentality of a State or its political subdivisions; any public or private agency; any Indian tribe or Alaskan Native Village, institution, organization, or other entity; or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but does not include the ultimate beneficiary of the assistance.

"Secretary" means the Secretary of HUD or his or her designee.

"Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A subrecipient is regarded as a recipient of Federal financial assistance and has all the duties of a recipient set out in this part.

"United States" means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

### Subpart B—Standards for Determining Age Discrimination

#### § 146.11 Scope of subpart.

This subpart contains the standards that HUD will use to determine whether an age distinction, or a factor other than age that may have a disproportionate effect on persons of different ages, is prohibited.

#### § 146.13 Rules against age discrimination.

(a) The rules stated in this paragraph are limited by the exceptions contained in paragraphs (b) and (c) of this section.

(1) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(2) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contracting, licensing, or other arrangements, use age distinctions or take any other actions that have the effect, on the basis of age, of:

(i) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance; or

(ii) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(3) The specific forms of age discrimination listed in paragraph (2) of this paragraph (a) do not necessarily constitute a complete list.

(b) *Exceptions for normal operation or statutory objective of any program or activity.* A recipient is permitted to take an action otherwise prohibited by paragraph (a) of this section if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(1) Age is used as a measure or approximation of one or more other characteristics; and

(2) The other characteristics must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(3) The other characteristics can be reasonably measured or approximated by the use of age; and

(4) The other characteristics are impractical to measure directly on an individual basis.

(c) *Exceptions for reasonable factors other than age.* A recipient is permitted to take action otherwise prohibited by paragraph (a) of this section if the action is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or the achievement of a statutory objective.

(d) *Burden of proof.* The burden of proving that an age distinction or other action falls within an exception described in paragraph (b) or (c) of this section is on the recipient of Federal financial assistance.

(e) For the purposes of paragraphs (b) and (c), "normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its statutory objectives. "Statutory objectives" means any purpose of a program or activity expressly stated in any Federal, State, or local statute adopted by an elected, general purpose legislative body.

(f) Notwithstanding paragraph (b) of this section, if a recipient operating a program provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program.

## Subpart C—Duties of HUD Recipients

### § 146.21 General responsibilities.

Each recipient has primary responsibility to ensure that its programs and activities that receive Federal financial assistance from HUD comply with the provisions of the Act, the government-wide regulation, and this part, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford HUD access to its records to the extent HUD finds necessary to determine whether a program or activity receiving Federal financial assistance from HUD is in compliance with the Act and this part.

### § 146.23 Notice of subrecipients.

Whenever a recipient passes Federal financial assistance from HUD to subrecipients, the recipient shall provide the subrecipient with written notice of its obligations under this part and the recipient will remain responsible for the subrecipient's compliance with respect to programs and activities receiving Federal financial assistance from HUD.

### § 146.25 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from HUD shall sign a written assurance as specified by HUD that it will comply with the Act and this part with respect to programs and activities receiving Federal financial assistance from HUD.

(b) As part of a compliance review under § 146.31 or an investigation under § 146.37, HUD may require a recipient employing the equivalent of 15 or more employees to complete, in a manner specified by the Secretary or Secretary's designee, a written self-evaluation of an age distinction imposed in its program or activity receiving Federal financial assistance from HUD, so that HUD may have to assess the recipient's compliance with the Act. Whenever an assessment indicates a violation of the Act or this part, the recipient shall take corrective action to remedy the violation.

### § 146.27 Information requirements.

In order to make it possible for HUD to determine whether recipients are in compliance with the Act and this part, each recipient shall:

(a) Keep records in a form and containing information that HUD determines is necessary;

(b) Make information available to HUD upon request;

(c) Permit reasonable access by HUD to the books, records, accounts and other recipient facilities and sources of information.

## Subpart D—Investigation, Settlement, and Enforcement Procedures

### § 146.31 Compliance reviews.

(a) HUD may conduct pre-award reviews to determine whether programs or activities submitted for HUD assistance are consistent with the age distinctions set forth at § 146.13(b).

(b) If a pre-award review indicates that the proposed programs or activities are not consistent with the age distinctions set forth at § 146.13(b), the application will be returned to the applicant for additional information or clarification or for correction consistent with this part.

(c) HUD may conduct compliance reviews of recipients that will enable it to investigate and correct violations of this part. HUD may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary for HUD to determine whether a violation has occurred.

(d) If a compliance review indicates a violation, HUD will attempt to achieve voluntary compliance. If voluntary compliance cannot be achieved, HUD may begin enforcement procedures as provided in § 146.39.

### § 146.33 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with HUD alleging discrimination prohibited by the Act. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause, HUD may extend this

time limit. The filing date for a complaint will be the date upon which the complaint is deemed sufficient to be processed.

(b) HUD shall facilitate the filing of complaints and shall take the following measures:

(1) Accept as a sufficient complaint any written legible statement which is signed by the complainant and which identifies the parties involved, the date the complainant first had knowledge of the alleged violation, and describes generally the alleged prohibited action or practice;

(2) Freely permit a complainant to add information to the complaint to meet the requirements of a sufficient complaint;

(3) Widely disseminate information regarding the obligations of recipients under the Act and this part;

(4) Notify the complainant and the recipient of their rights under the complaint process, including the right to have a representative at all stages of the complaint process; and

(5) Notify the complainant and the recipient of their right to contact HUD for information and assistance regarding the complaint resolution process.

(c) HUD will return to the complainant any complaint determined to be outside the coverage of this part, and shall state the reasons why it is outside the coverage.

**§ 146.35 Mediation.**

(a) HUD shall refer to the Federal Mediation and Conciliation Service, a mediation agency designated by the Secretary of Health and Human Services, all complaints that:

(1) Fall within the coverage of this part, unless the age distinction complained of is clearly with an exeption; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informal judgment that an agreement is not possible. There should be at least one meeting by each party with the mediator during the mediation process. However, the recipient and the complainant need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator shall send a copy of the agreement to HUD. HUD will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator shall protect the confidentiality of information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or othewise disclose any information obtained in the course of the mediation process without the prior approval of the head of the mediation agency.

(e) HUD shall use the mediation process for a maximum of 60 days after receiving a complaint. Mediation ends if:

(1) 60 days elapse from the time HUD receives the complaint; or

(2) Before the end of the 60-day period, an agreement is reached; or

(3) Before the end of the 60-day period, the mediator determines that an agreement cannot be reached.

This 60-day period may be extended by the mediator, with the concurrence of HUD, for not more than an additional 30 days if the mediator determines that it is likely that an agreement will be reached during such extended period.

**§ 146.37 Investigation.**

(a) *Investigation and settlement following mediation.*

(1) HUD shall investigate complaints that are unresolved after mediation or are reopened because of an alleged violation of a mediation agreement.

(2) In the investigation of complaints filed under this part, HUD will establish facts through such methods as discussion with the complainant and recipient and the review of documents in the possession of either party. HUD may also seek the assistance of any applicable State agency. Where possible, HUD will settle the complaint on terms that are mutually agreeable to the parties.

(3) Settlements shall be in writing and signed by the parties and by an authorized HUD official.

(4) A settlement shall not affect the initiation or continuation of any other enforcement effort of HUD, including compliance reviews or investigation of other complaints involving the recipient.

(5) A settlement reached under this paragraph (a) is an agreement to resolve an alleged violation of the Act to the satisfaction of the parties involved, and does not constitute a finding of discrimination against the recipient.

(b) *Failure of settlement.* If HUD cannot resolve the complaint through settlement, it may make a formal determination that the Act or this part has been violated and begin enforcement procedures, as provided in § 146.39. HUD shall inform the recipient and complainant in writing that the matter cannot be resolved through settlement.

**§ 146.39 Enforcement procedures.**

(a) HUD may enforce the Act this regulation by:

(1) Termination of a recipient's financial assistance from HUD under the program or activity involved, if the recipient has violated the Act or this part. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an Administrative Law Judge. If the financial assistance consists of a Community Development Block Grant, the requirements of section 109(b) of the Housing and Community Development Act of 1974, 42 U.S.C. 5309, must also be satisfied before the termination of financial assistance. Cases settled in mediation or before hearing will not involve termination of a recipient's Federal financial assistance from HUD.

(2) Any other means authorized by law, including, but not limited to:

(i) Referral to the Department of Justice for proceedings to enforec any rights of the United States or obligations of the recipient created by the Act or this part;

(ii) Use of any requirement of, or referral to, any Federal, State or local government agency that will have the effect of correcting a violation of the Act or this part.

(b) Whenever the Secretary determines that a State or unit of general local government which is a recipient of Federal financial assistance under Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301–5317, has failed to comply with requirements of the Age Discrimination Act or this part with respect to a program or activity funded in whole or in part with such assistance, he or she shall notify the Governor of such State or the chief executive officer of such unit of general local government of the noncompliance and shall request the Governor or chief executive officer to secure compliance. If within a reasonable period of time, not to exceed 60 days, the Governor or chief executive officer fails or refuses to secure compliance, the Secretary is authorized to take the action specified in (a) of this section, exercise the powers and functions provided for in section 111(a) of the Housing and Community Act of 1974, 42 U.S.C. 5311(a), or take such other action as may be provided by law.

(c) HUD shall limit any termination under § 146.35 to the particular recipient and particular program or activity HUD finds to be in violation of this part. HUD shall not base any part of a termination on a finding with respect to any program or activity of the recipient which does

not receive Federal financial assistance from HUD.

(d) HUD shall take no action under paragraph (a) of this section until:

(1) The Secretary has advised the recipient of its failure to comply with the Act or this part and has determined that voluntary compliance cannot be achieved.

(2) Thirty days have have elapsed after the Secretary has submitted a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. A report shall be filed whenever any action is taken under paragraph (a) of this section.

(e) (1) The Secretary may defer the provision of new Federal financial assistance to a recipient when termination proceedings under this section are initiated.

(2) New financial assistance from HUD includes all assistance for which HUD requires an application, approval, or submissions under the Community Development Block Grant program including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New financial assistance from HUD does not include increases in funding as a result of changed computation for formula awards or assistance approved before the beginning of a hearing under this section.

(3) HUD shall not impose a deferral until the recipient has received a notice of an opportunity for a hearing under this section. HUD shall not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Secretary. HUD shall not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding that the recipient has violated that Act or this part.

**§ 146.41 Prohibition against intimidation or retaliation.**

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by this part; or

(b) Cooperates in any mediation, investigation, hearing, or other part of HUD's investigation, settlement, and enforcement process.

**§ 146.43 Hearing, decisions, post-termination proceedings.**

Certain HUD procedural provisions applicable to the enforcement of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–1 shall apply to HUD enforcement of this part. These provisions are contained in 24 CFR 1.9 through 1.12 and 24 CFR Part 2.

**§ 146.45 Exhaustion of administrative remedies.**

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and HUD had made no finding with regard to the complaint; or

(2) HUD issues any finding in favor of the recipient.

(b) If HUD fails to make a finding within 180 days or issues a finding in favor of the recipient, HUD shall:

(1) Promptly advise the complainant of this fact;

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That he or she may bring a civil action only in a United States District Court for the district in which the recipient is located or transacts business;

(ii) That a complianant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action, the complainant must give 30 days' notice by registered mail to the Secretary of HUD, the Secretary of Health and Human Services, the Attorney General of the United States, and the recipient;

(iv) That the notice must state: the alleged violation of the Act, the relief requested, the court in which the complainant is bringing the action, and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

**§ 146.47 Remedial and affirmative action by recipients.**

(a) Where the Secretary finds that a recipient has unlawfully discriminated on the basis of age, the recipient shall take any action that the Secretary may require to overcome the effects of the discrimination. If another recipient exercises control over a subrecipient that has unlawfully discriminated, the Secretary may require both recipients to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

(c) If a recipient operating a program which serves the elderly or children in addition to persons of other ages provides special benefits to the elderly or children, the provision of those benefits shall be presumed to be voluntary affirmative action, provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

**§ 146.49 Alternate funds disbursal procedure.**

(a) Except as otherwise provided in this paragraph and to the extent authorized by law, the Secretary may redisburse funds withheld or terminated under this part directly to an alternate recipient, including any public or non-profit private organization or agency, State or political subdivision of the State. Under Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301, funds withheld because of a reduction or withdrawal of a recipient's Community Development Block Grant must be reallocated in the succeeding fiscal year, in accordance with the applicable regulations governing that program.

(b) The Secretary shall require the alternate recipient to demonstrate:

(1) The ability to comply with the regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

Dated: July 31, 1986.

**William E. Wynn,**

*Acting General Deputy Assistant Secretary For Fair Housing and Equal Opportunity.*

[FR Doc. 86-28288 Filed 12-16-86; 8:45 am]

BILLING CODE 4210-28-M

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Fair Housing and Equal Opportunity**

**[Docket No. N-86-1662; FR-2259]**

# Guidelines for Application of Standards for Determining Age Discrimination

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

**ACTION:** Notice.

**SUMMARY:** This notice sets forth guidelines for application of the standards to be used to determine age discrimination that is prohibited by the Age Discrimination Act of 1975.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Myra Kennedy, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5230, Washington, DC 20410. Telephone (202) 755-5904. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Age Discrimination Act of 1975, 42 U.S.C. 6101-6107, prohibits any person from being excluded from participation in, deprived of the benefits of, or subjected to discrimination under, any program or activity receiving Federal financial assistance. The Act does not apply to age distinctions established under authority of any law that provides benefits or establishes criteria for participation on the basis of age or age-related terms, nor does it apply when an explicit age distinction is necessary to the normal operation of a program or to the achievement of the statutory objective of a program.

The Act mandated that the Department of Health and Human Services (HHS) publish a general regulation to guide the development of specific regulations by each Federal agency that administers programs of financial assistance. HHS has published a final general regulation at 45 CFR Part 90.

In compliance with the Act and in keeping with the HHS government-wide regulation, on November 4, 1980, HUD published in the **Federal Register** (45 FR 73454) a notice of proposed rulemaking proposing to add to Title 24 of the Code of Federal Regulations a new Part 146, Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance. A final rule was developed after consideration of the public comments received. The final rule is being published in today's issue of the **Federal Register**. This document provides guidelines on application of the standards for determining age discrimination.

Subpart B of Part 146 cites the standards from the government-wide regulation for determining what kind of conduct constitutes age discrimination. The application of these standards is critical to effective enforcement of the Age Discrimination Act. Set out below is the text of each standard, and a discussion of important points about the standards.

## A. Rules Against Age Discrimination

(Text of the government-wide regulation—see 45 CFR 90.12.)

*General Rule*

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

*Specific Rule*

A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

*Discussion*

The prohibition against age discrimination does not include an absolute prohibition against separate or different treatment on the basis of age.

As a general rule, separate or different treatment which denies or limits services from, or participation in, a program receiving Federal financial assistance, would be prohibited by this regulation. On the other hand, this regulation does not automatically invalidate the provision of services through separate or different treatment on the basis of age. Separate or different treatment necessary to normal operation or to the achievement of a statutory objective would qualify for an exception under this regulation. [See 45 CFR 90.13 through 90.16.]

## B. Age Distinctions "Established Under Authority of Any Law"

(Text of the government-wide regulation—see 45 CFR 90.3)

The Age Discrimination Act of 1975 does not apply to: (1) The age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age:

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

*Discussion*

The Age Discrimination Act covers all programs and activities that receive assistance from HUD. However, it does not apply to age distinctions "established under the authority of any law" that provides benefits or establishes criteria for participation on the basis of age or in age-related terms. The government-wide regulation has defined the term "any law" to mean age distinctions which are contained in a Federal statute, a State statute, or a local statute or ordinance adopted by an elected, general purpose legislative body. This provision exempts only age distinctions which provide benefits, establish criteria for participation or describe intended beneficiaries. This provision does not provide an automatic exemption to age distinctions that are contained in regulations or in ordinances enacted by bodies which are not elected or are special purpose even though elected, such as Commissioners or members of Housing Authority Boards.

## C. Age Distinctions that are Necessary to Normal Operation or to the Achievement of a Statutory Objective

(Text of the government-wide regulation—see 45 CFR 90.13 and 90.14.)

Definitions of "normal operation" and "statutory objective." The terms "normal operation" and "statutory objective" shall have the following meanings:

(a) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(b) "Statutory objective" means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

Exceptions to the rules against age discrimination. Normal operation or

statutory objective of any program or activity.

A recipient is permitted to take an action otherwise prohibited if the action reasonably takes into account age as a factor necessary to the normal operation or statutory objective of any program or activity. An action reasonably takes into account gas as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximately of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

*Discussion*

These sections of the government-wide regulation establish a four-part test for explicit age distinctions which are claimed to be necessary to the normal operation of a program or activity, or to the achievement of a statutory objective. HUD will use the HHS four-part test to scrutinize age distinctions.

If the age distinction in question fails any part of the four-part test, the recipient of Federal funds may not continue to use that age distinction.

The four-part test is designed to require careful scrutiny of age distinctions in programs receiving Federal financial assistance. The four-part test is designed to weed out age distinctions that are neither directly related to an essential characteristic of a program nor are based on explicitly stated objectives of a law. It is not intended to serve as a basis for permitting continued use of age distinctions for the sake of administrative convenience, if this results in denial or limitation of services on the basis of age.

HUD encourages its recipients to apply every age distinction flexibly, that is, to permit a person, upon a proper showing of the necessary characteristics, to participate in the activity or program even though he or she would otherwise be barred by the age distinction. Other things being equal, an age distinction is more likely to qualify under any of the statutory exceptions if it does not automatically bar all those who do not meet the age requirements.

**D. The Use of Factors Other Than Age**

(Text of the government-wide regulation—see 45 CFR 90.15).

A recipient is permitted to take an action otherwise prohibited . . . which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

*Discussion*

The Age Discrimination Act permits a recipient of Federal funds to take an action otherwise prohibited by the Act if the action is based on "reasonable factors other than age," even though that action may have a more severe effect on one age group than on another. To justify rules or operating procedures that disadvantage any age group when age is not explicity mentioned, HUD recipients must demonstrate that these procedures have a "direct and substantial" relationship to specific program objectives.

**E. The Use of Special Benefits for Children and the Elderly**

(Text of the government-wide regulations—see 45 CFR 90.49(c)).

If a recipient operating a program which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to the children, the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

*Discussion*

The government-wide regulation permits a recipient operating a program that serves the elderly or children in addition to persons of other ages to provide special benefits for children or the elderly if, by doing so, the recipient does not exclude others who are eligible from participating in the federally-assisted program.

The special benefits provision resulted from HHS's belief that Congress did not intend to disturb the practices of recipients who provide special benefits to children or the elderly in programs that are also available to a wider age range of the population. These special benefits often take the form of special discounts, or special seating arrangements.

The government-wide regulation leaves to the recipient the definition of who qualifies as "children" or "elderly" for purposes of receiving a special benefit. However, HUD does not intend this provision to be used to justify a program that provides services only to children or to the elderly.

Dated: July 31, 1986.

**William E. Wynn,**

*Acting General, Deputy Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 86-28289 Filed 12-16-86; 8:45 am]

BILLING Code 4210-28-M

federal register

Wednesday
December 17, 1986

Part V

# Department of Education

**Planning Grants for the National Center for Research in Vocational Education; Notice**

## DEPARTMENT OF EDUCATION

### Planning Grants for the National Center for Research in Vocational Education

**AGENCY:** Department of Education.

**ACTION:** Notice of Priority, Required Activities, and Selection Criteria.

**SUMMARY:** The Secretary establishes a funding priority, required activities, and selection criteria for planning grants for fiscal year 1987. The planning grants will be supported to increase the quality and quantity of applications received for the National Center for Research in Vocational Education.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Mary Lovell, Project Officer, Program Improvement Systems Branch, Division of Innovation and Development, Office of Vocational and Adult Education, U.S. Department of Education (Room 519 Reporters Building), 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 732-2371.

**SUPPLEMENTARY INFORMATION:** A "Notice of Proposed Priority, Required Activities, and Selection Criteria" was published in the **Federal Register** on September 16, 1986 (51 FR 32882) describing the proposed priority, required activities, and selection criteria and requesting public comment. No comments were received on the notice, and the Secretary has adopted the priority, activities, and criteria in that notice with one minor technical change in criterion (a), as set forth below:

#### Program Information

Section 404 of the Carl D. Perkins Vocational Education Act ("Act"), 20 U.S.C. 2404, authorizes the Secretary to designate, on the basis of solicited applications, a National Center for Research in Vocational Education ("National Center") once every five years. The Act redirects and expands the research objectives and activities of the new National Center, which will begin its first full five-year funding cycle under the Act in January 1988.

#### Priority and Required Activities

*Priority.*

In order to assist prospective applicants to develop innovative approaches for implementing the expanded activities of the National Center and in order to increase the number of quality applications for the new National Center, the Secretary reserves funds to support planning grants under the authority provided in sections 401 and 402 of the Act. The regulations implementing this authority are contained in 34 CFR Part 416 of the Vocational Education Regulations published in the **Federal Register** on August 16, 1985 (50 FR 33265). A copy of this section may be obtained from the Project Officer.

*Activities*

Since the planning grants are intended to help applicants prepare applications for the National Center grant, the Secretary requires the following funding condition under this priority. Each recipient of a planning grant either must be eligible for the National Center grant, or must conduct its planning with the participation of a public or private nonprofit university which is prepared to make a substantial financial contribution toward the establishment of the National Center in accordance with 20 U.S.C. 2404(a)(2). Receipt of a planning grant in no way affects eligibility to submit an application in the subsequent competition for the National Center grant.

#### Selection Criteria

The Secretary uses the following selection criteria, rather than the selection criteria set forth in 34 CFR 416.31, for reviewing the applications for the planning grants. The maximum possible points for each criterion are indicated in parentheses after the heading for each criterion.

(a) *Understanding of the educational settings and issues in vocational education.* (15 Points)

The Secretary reviews each application to determine the extent to which the applicant understands the educational settings and issues in vocational education, including—

(1) Knowledge of the strengths and needs of vocational education systems—public and private, secondary, postsecondary, and adult;

(2) An understanding of significant trends expected to influence vocational education over the next decade; and

(3) Knowledge of the capabilities of existing organizations that provide research and technical assistance services to vocational education agencies.

(b) *Understanding of the mission of the National Center.* (15 Points)

The Secretary reviews each application to determine the extent to whch the applicant understands the mission of the National Center as required by 20 U.S.C. 2404(a)(2), including—

(1) Conducting applied research and development;

(2) Providing leadership development;

(3) Disseminating the results of research;

(4) Providing information to facilitate national planning;

(5) Providing technical assistance;

(6) Acting as a clearinghouse;

(7) Working with the States in developing methods of planning and evaluating programs; and

(8) Reporting annually to Congress regarding coordination under the Carl D. Perkins Vocational Education Act and the Job Training Partnership Act.

(c) *Organizational ability to conduct planning and design tasks.* (10 Points)

The Secretary reviews each application to determine the organizational ability of the applicant to conduct the required planning and design tasks, including—

(1) Successful experience in planning or conducting national activities related to vocational education research and development; and

(2) Relationships that give the applicant access to important groups of clients who can contribute to cooperative planning activities.

(d) *Plan of operation.* (30 Points)

The Secretary reviews each planning grant application to determine the quality of the plan for developing an application for the National Center, including—

(1) The quality of the plan and procedures which will be used to develop the application for the National Center;

(2) The quality of the plan to ensure that mechanisms will be developed for the National Center to work with the public and private sectors; and

(3) The quality of the plan to address potential problems in operating and managing a National Center.

(e) *Quality of key personnel.* (15 Points)

The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the planning project, including, as appropriate, the personnel's—

(1) Planning competencies;

(2) Management competencies;

(3) Applied research and development competencies;

(4) Program improvement competencies; and

(5) Knowledge of vocational education and related delivery systems.

(f) *Budget and cost effectiveness.* (5 Points)

The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the planned activities and objectives of the project.

(g) *Commitment and capacity.* (5 Points)

The Secretary reviews each application to determine the extent of the applicant's financial commitment to the project, the capacity of the applicant to develop an application for the National Center, and the likelihood that the applicant will apply for the grant to establish the National Center.

(h) *Postsecondary institutions.* (5 Points)

The Secretary gives five (5) points to applications submitted by public and private postsecondary institutions, that are conducting vocational education research, in accordance with section 402(c) of the Act.

[Program Authority: 20 U.S.C. 2402]

(Catalog of Federal Domestic Assistance Number 84.051) (National Vocational Education Research Program and the National Center for Research in Vocational Education)

Dated: December 1, 1986.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 86-28286 Filed 12-16-86; 8:45 am]

BILLING CODE 4000-01-M

Federal Register

Wednesday
December 17, 1986

Part VI

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Community Planning and Development**

**24 CFR Part 575**

**Emergency Shelter Grants Program; Proposed Rule**

**Delegation and Redelegation of Authority With Respect to Emergency Shelter Grants Program; Notices**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Community Planning and Development**

**24 CFR Part 575**

**[Docket No. R-86-1316; FR-2298]**

## Emergency Shelter Grants Program

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

**ACTION:** Proposed rule and program requirements for fiscal year 1987.

**SUMMARY:** This proposed rule would implement the Emergency Shelter Grants Program contained in HUD's appropriation for fiscal year 1987. The Program authorizes HUD to make grants to States, units of general local government, and private nonprofit organizations, for the rehabilitation or conversion of buildings for use as emergency shelters for the homeless, and for the payment of certain operating and social service expenses in connection with emergency shelter for the homeless.

The purpose of the Program is to help improve the quality of emergency shelters of the homeless, to help make available additional emergency shelters, and to help meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, so that these individuals have access not only to safe and sanitary shelter, but also to the supportive services and other types of assistance they need to improve their situations.

**DATE:** Comments must be received by February 17, 1987.

**ADDRESSES:** *Comments on rule:* Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

*Comments on information collection:* Comments on the information collection requirements contained in this proposed rule should be submitted to the HUD Rules Docket Clerk at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20504, attention Desk Officer for HUD. They should contain the docket number and date of publication.

**FOR FURTHER INFORMATION CONTACT:** James R. Broughman, Director, Entitlement Cities Division, Room 7282, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-5977. For matters relating to Emergency Shelter Grants to States, James N. Forsberg, Director, State and Small Cities Division, Room 7184, telephone (202) 755-6322. (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:**

### Background

Title V of HUD's appropriation for fiscal year 1987 [1] enacted two new programs to assist the homeless. Part B of Title V contains the Transitional Housing Demonstration Program and Part C, the Emergency Shelter Grants Program. This proposed rule would implement Part C, the Emergency Shelter Grants Program.

In accordance with subsection 525(a) of the Program, this proposed rule serves a dual purpose. First, it seeks public comment to assist the Department in developing final regulations that may take effect within 12 months of the Program's enactment—October 18, 1987. Second, it establishes the requirements necessary to carry out the Program until the final rule can be made effective.

Specifically, subsection 525(a) directs the Secretary to publish a **Federal Register** notice establishing such requirements as may be necessary to carry out the provisions of Part C by December 17, 1986, and makes these requirements subject to 5 U.S.C. 553. It also directs that the Secretary issue requirements based on the initial notice by October 18, 1987. Subsection 525(b) requires that HUD notify each State, metropolitan city, and urban county of its grant allocation by December 17, 1986, and provides that the grants must be allocated, and may be used, notwithstanding any failure on HUD's part to issue requirements under subsection 525(a).

The pertinent legislative history makes it clear that section 525 is intended to enable the Secretary to carry out the Program without benefit of effective rules, while at the same time developing final rules through the normal procedure of seeking public comment. In describing the rulemaking requirements of what is now section 525, the Senate Committee on Banking, Housing, and Urban Affairs stated: "The Committee clearly intends that the program not be delayed while regulations are being developed." (S. Rep. No. 314, 99th Cong. 2d Sess., 17 (1986). This Report accompanied S. 2507, 99th Cong. 2d Sess., reported by the Banking Committee on May 29, 1986, which at Title IV, Part D, contained an Emergency Shelter Grants Program identical to the enacted Program.)

In compliance with subsection 525(b), HUD has notified the affected States, metropolitan cities, and urban counties of their respective allocations for fiscal year 1987. These entities must comply with the procedural and substantive requirements contained in this proposed rule in order to obtain and carry out activities with emergency shelter grants.

### Program description

The Program authorizes HUD to make grants for the renovation, major rehabilitation, or conversion of buildings for use as emergency shelters for the homeless, and for the payment of certain operating and social service expenses in connnection with emergency shelter for the homeless. Eligible activities are set forth in § 575.21(a), and emergency shelter grant amounts may be used only for the activities listed. Specifically, grant amounts may not be used: (1) To acquire an emergency shelter for the homeless; (2) to pay rent for commercial, transient accommodations, such as hotels or motels; (3) to pay for staff involved in operating emergency shelters or administering an emergency shelter grant; or (4) to pay for rehabilitation services, such as preparation of work specifications, loan processing, or inspections. (§ 575.21(b))

Amounts available for the Program are allocated to metropolitan cities, urban counties, and States in proportion to their previous year's allocation under the Community Development Block Grant Program (24 CFR Part 570). If the allocation of emergency shelter grant amounts for any metropolitan city or urban county is less than $30,000, the amount is added to the allocation for the State in which the city or county is located. (§ 575.31)

Section 575.33 sets forth the timing for submitting, and the content of, the application that is required to receive a grant under a § 575.31 allocation. Specifically, § 575.33(b) provides that a State, metropolitan city, or urban county must submit a homeless assistance plan describing the proposed use of funds, as well as certifications and assurances that it will comply with the requirements

[1] Section 101(g), Pub. L. 99-500 (approved October 18, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess (1986).

of the Program and other applicable Federal laws (including those relating to nondiscrimination and equal opportunity). HUD will approve applications as soon as practicable but, in any event, within 30 days of receipt, unless it determines that the application was late or incomplete, or failed to comply with Program and other applicable requirements. (§ 575.35) HUD expects that it will generally process applications within one week of receipt.

Section 575.37 sets deadlines for the use of grant amounts. These deadlines are designed to ensure prompt use of grant amounts and to establish a method for identifying unused grant amounts. Each State must make available to its units of general local government (State recipients) all grant amounts that it was allocated, within 65 days of the grant award by HUD. Each State recipient must have all of its grant amounts obligated by 180 days after the grant amounts are made available to it from the State. If a State recipient fails to meet this deadline, the State must make the unobligated grant amounts available to other units of general local government or return them to HUD. Each metropolitan city or urban county must have all grant amounts that it was allocated obligated by 180 days after grant availability. Any grant amounts that are not made available by a State or obligated by a metropolitan city or an urban county within these time periods will be reallocated by HUD.

The rule defines the term "obligated" to mean that the grantee or State recipient, as appropriate, has placed orders, awarded contracts, received services or entered similar transactions that require payment from the grant amount. Grant amounts that are awarded by a unit of general local government to a private nonprofit organization are obligated.

Section 575.41 implements the statutory mandate that HUD reallocate returned or unused grant amounts at least twice a year. Specifically, § 575.41 provides that amounts that are not used or are returned to HUD reallocated periodically to (1) units of general local government demonstrating extraordinary need or having large numbers of homeless individuals; (2) private nonprofit organizations providing assistance to the homeless; and (3) to meet other needs consistent with the purpose of the Program. HUD will make reallocations by direct notification or **Federal Register** Notice that will identify the amount of funds available and set forth the terms and conditions under which grant amounts are reallocated and grant awards are to be made. Details on the application and review procedures for the reallocation of returned grant amounts are set out at § 575.41(c). HUD expects to use State and local boards established under FEMA's Emergency Food and Shelter Program as a resource to help identify potential applicants for reallocated grant amounts.

For purposes of the proposed rule, emergency shelter grant amounts are "returned" when a prospective grantee does not execute a grant agreement with HUD for them. Examples of returned grant amounts include when a State elects not to distribute amounts allocated to it, when a State, metropolitan city or urban county fails to meet the application deadlines under § 575.33(a), or has its application disapproved under § 575.35(b), or its grant amount reduced as a result of a sanction under § 575.69. Grant amounts are considered "unused" when a grantee has executed a grant agreement with HUD for them, but: either (1) the State fails to make grant amounts available to State recipients, as provided in § 575.37(a)(1); (2) a State recipient fails to obligate grant amounts within the time period specified in § 575.37(a)(2), and the State makes these grant amounts available to HUD for reallocation; (3) a metropolitan city or urban county fails to obligate grant amounts within the time period specified in § 575.37(b); (4) a grantee of reallocated grant amounts fails to obligate them within the time specified in its grant agreement; or (5) HUD recaptures grant amounts through the sanctions in § 575.69 (other than a reduction) or at grant closeout.

The proposed rule provides for a different reallocation process for returned, as distinguished from unused grant amounts. HUD will attempt to keep *returned* amounts in the same jurisdiction to which they were initially allocated. Thus, grant amounts that were allocated to a State will be made available first to units of general local government within the State and then to private nonprofit organizations within the State. Returned grant amounts that were originally allocated to a metropolitan city or urban county will be made available first to units of general local government serving the city or county and then to private nonprofit organizations serving the homeless in the city or county, as applicable.

On the other hand, *unused* amounts will be available, in HUD's discretion, for periodic reallocation to one or more of the grantees eligible for reallocated grants under § 575.41(b) located in any State. The various sources of unused grant amounts and the sporadic manner in which they can be expected to become available for reallocation make it administratively difficult to provide a more formalized method for reallocating grant amounts.

Reallocated amounts generally will be awarded on the basis of the following selection factors:

(1) The nature and extent of the unmet homeless need within the jurisdiction in which the entity proposes to use the grant amounts;

(2) The extent to which the proposed activities address this need; and

(3) The ability of the entity to carry out the proposed activities promptly.

The rule contains several provisions dealing with who may be a grantee and who may carry out eligible activities. Grantees are entities that execute a grant agreement with HUD, and are (1) States, metropolitan cities, and urban counties that receive an allocation under § 575.31; and (2) any unit of general local government, private nonprofit, or other entity that receives reallocated grant amounts under § 575.41.

All grantees (except States) and State recipients may carry out activities with emergency shelter grant amounts. All of a State's allocation under § 575.31 must be made available to State recipients within the State. Unlike the Community Development Block Grant Program, States may make grant amounts available to any unit of general local government in the State, including metropolitan cities and urban counties. (§ 575.23(a))

All units of general local government—both grantees and State recipients—may carry out emergency shelter grant activities directly themselves or may distribute all or part of their grant amounts to nonprofit organizations providing assistance to the homeless. These nonprofit recipients may use the amounts distributed to them to carry out emergency shelter grant activities. (§ 575.23(b))

The grantee is the entity responsible for carrying out activities in accordance with the requirements of the proposed rule. Where the grantee makes grant amounts available to State recipients or nonprofit recipients, the grantee is responsible for ensuring that the recipient carries out its activities in accordance with rule's requirements. (§ 575.61)

The rule (§§ 575.51–.59) contains a number of Program and other Federal requirements. These include requirements that each grantee (1) supplement the assistance provided under the Program with an equal

amount of funds from other sources; (2) ensure that any building for which assistance is provided will continue to be used as a homeless shelter for specified periods; (3) ensure that assisted rehabilitation is sufficient to make the structure safe and sanitary; (4) assist homeless individuals in obtaining appropriate supportive services and other available assistance; and (5) meet other generally applicable requirements, such as nondiscrimination and equal opportunity.

To satisfy the matching requirement, grantees need not commit funds at a higher level than they have provided for the homeless; they need only make the necessary level of resources available for that purpose after the date of the grant award. A grantee that makes grant amounts available to State recipients or to nonprofit recipients may meet the matching requirement itself, or through matching funds or efforts provided by the recipient. In calculating the amount of the match, there may be included the value of any donated material or building; the value of any lease on a building; any salary paid to staff of the grantee or to any State recipient or nonprofit recipient (as appropriate) in carrying out the emergency shelter program; and time and services contributed by volunteers to carry out the emergency shelter program, determined at the rate of $5 per hour. The grantee will determine the value of any donated material or building, or any lease, using any method reasonably calculated to establish a fair market value.

Finally, Subpart F of the proposed rule contains provision for payment of grant amounts, reporting, recordkeeping, and sanctions that HUD may impose upon entities that violate the rule's requirements.

**Environmental Considerations and Site Selection**

A fundamental objective of the Emergency Shelter Grants Program is to enable emergency shelter activities to move ahead as quickly as possible. To avoid the delays associated with complying with various environmental authorities, the selection of emergency shelter activities should avoid or minimize adverse impacts on the human environment and environmental resources, and give preference to sites that essentially are free from environmental hazards and adverse conditions. The regulations, therefore, encourage grantees and their recipients to select sites and program activities that will not affect environmental resources and that will not require, or entail the delay of, compliance with environmental authorities listed in § 50.4 of HUD's environmental regulations (24 CFR Part 50) (or comparably in § 58.5 of 24 CFR Part 58).

In furtherance of these objectives, § 575.33(b)(4)(i) requires the application to contain an assurance that no assisted renovation, major rehabilitation, or conversion activities will affect specific types of resources, including historic property, floodplains, and endangered species. This assurance also requires that certain activities not be inconsistent with HUD standards (24 CFR Part 51), and with any applicable State's Coastal Zone Management Plan.

However, lest program benefits be denied where no practicable alternatives to sites that would affect particular environmental resources can reasonably be found, § 575.33(b)(4)(ii) provides two exceptions to the policy of assuring impact-avoidance. First, HUD will not require submission of the assurance if HUD finds, based on information from the applicant, that an environmental review previously completed under another HUD program (under 24 CFR Part 50 or 58) applies to the activities for which emergency shelter grant amounts are to be used. If this condition is not present, HUD will also consider an applicant's request for a conditional grant, where the only feasible locations for program activities will result in an effect on cited environmental resources that has not been subject to the required review and thus will require further review under the relevant environmental authorities. A grant conditioned on environmental grounds will be considered only if HUD finds that a meaningful program in fiscal year 1987 can be carried out after the compliance process is completed.

HUD emphasizes that the nature of eligible activities generally will not have significant environmental impact within the meaning of the National Environmental Policy Act of 1969 (NEPA). Further, HUD has determined, in consultation with the Council on Environmental Quality, that the emergency nature of this program makes the funding and carrying out of program activities exempt from the requirements of NEPA. However, HUD emphasizes that renovation, major rehabilitation, or conversion activities funded under this part could have potential environmental effects which, unless avoided in particular activities, may require compliance with environmental laws and authorities other than NEPA. Where these authorities apply to a particular activity, compliance with them is HUD's responsibility and must be satisfied before grant amounts may be committed to these activities and before the funded activities may be commenced. Even here, however, by early and careful attention to environmental considerations and by the selection of problem-free sites, applicants can expedite the approval process.

**Nondiscrimination**

Two of the nondiscrimination requirements with which use of emergency shelter grants must comply as provided in § 575.59(a) are Title VIII of the Civil Rights Act of 1968 and Executive Order 11063 which prohibit discrimination in housing on the basis of race, color, religion, sex, or national origin. It may well be that some emergency shelters assisted under this program would not actually be covered under these authorities. The prohibitions against discrimination in Title VIII relate only to a "dwelling", which is defined in section 802(b) of that Act to mean, in part, "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, . . ." (the word "family" includes a single individual). Judicial interpretations (e.g., *United States v. Hughes Memorial Home)*, 396 F. Supp. 544 (W.D. Va. 1975)) regarding whether a temporary residence is a "dwelling" within the meaning of Title VIII appear to turn on whether the occupants of a place intend to remain for a substantial period of time or whether the place is rather one of temporary sojourn or transient visit. A similar issue also arises under Executive Order 11063 which covers certain "housing and related facilities". Since the operation and usage of emergency shelters may vary greatly across the nation, it seems prudent to deem these authorities generally applicable to shelters assisted under this program. In any event, under § 575.59(a) all such shelters are subject to the Federal statutory proscriptions against discrimination with respect to race, color, national origin, age and handicap in programs involving Federal financial assistance.

**Constitutional Limitations on the Use of Emergency Shelter Grant Funds by Primarily Religious Organization**

Private nonprofit organizations may receive grant amounts to provide assistance to the homeless either directly from HUD through reallocation of grant amounts or through distributions from units of general local government. Under section 502 of the statute, the term "private nonprofit organization" is defined to mean secular and religious organizations which

qualify under section 501(c) of the Internal Revenue Code of 1954 for tax exemption and which meet certain specified criteria.

The First Amendment of the Constitution provides that "Congress shall make no law respecting an establishment of religion." In accordance with this constitutional principle, the Supreme Court has directed that statutes affording public assistance must have a primary effect that neither advances nor inhibits religion. (See *Lemon* v. *Kurtzman*, 403 U.S. 603 (1971). In *Hunt* v. *McNair*, 413 U.S. 734 (1973) the Court stated:

> Aid normally may be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission or when it funds a specifically religious activity in an otherwise substantially secular setting.

*Id.* at 742.

The determination for Constitutional compliance thus requires an examination of the extent to which religion pervades an entity's functions. In addressing this issue, Justice Blackmun speaking for the majority in *Roemer* v. *Maryland Public Works Board*, 426 U.S. 736 (1976) declared:

> To answer the question whether an institution is so "pervasively sectarian" that it may receive no direct State aid of any kind, it is necessary to paint a general picture of the institution.

*Id.* at 758.

In accordance with these principles, § 575.21(b)(2) prohibits the use of emergency shelter grant funds to renovate, rehabilitate, or convert buildings owned by pervasively sectarian organizations (referred to in the text as "primarily religious organizations"). While buildings owned by churches are clearly covered by this provision, not all section 501(c) tax exempt organizations would fall within the pervasively sectarian classification, even though they may be church-related, or have certain religious affiliations or purposes. Determinations in this regard will generally turn on the extent to which religion is infused in the organization's functions, as reflected in its charter, by-laws, publications or other evidence related to its stated purposes, organization, control, membership and operations, including the nature of, and eligibility for participation in, the activities, services and benefits it provides.

In addition, it should be noted that, consistent with the Department's administration of the section 202 housing program, buildings owned by independent nonprofit entities established by pervasively sectarian organizations for secular purposes could be assisted. Finally, it should be understood that § 575.21(b)(2) does not prohibit a private nonprofit organization deemed pervasively sectarian from carrying out eligible activities permitted by § 575.21(a) (1) and (2) (essential services and maintenance and specified activities) so long as such activities are carried out in a manner free from religious influences pursuant to conditions prescribed in the assistance agreement.

**Displacement**

The Department expects, by the very nature of the program, that grantees and State and nonprofit recipients will avoid involuntarily displacing lower income persons, but that if such displacement is unavoidable, they will take action to mitigate any adverse effects on these persons.

**Other Information**

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

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

In accordance with provisions of 5 U.S.C. 605(b), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because most statutorily eligible grantees and State recipients are relatively larger cities, urban counties or States. In addition, the grant amount to be made available to any ultimate user of a grant is relatively small.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 27, 1986 (51 FR 38424), under Executive Order 12291 and the Regulatory Flexibility Act.

A Catalog of Federal Domestic Assistance program number for the Emergency Shelter Grants Program is CFDA No. 14.231.

**List of Subjects in 24 CFR Part 575**

Grant programs—Housing and community development, Emergency shelter grants, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to add a new 24 CFR Part 575 as follows:

## PART 575—EMERGENCY SHELTER GRANTS PROGRAM

**Subpart A—General**

Sec.



**Subpart B—Eligible Activities**



**Subpart C—Allocations**



**Subpart D—Reallocations**



**Subpart E—Program Requirements**



**Subpart F—Grant Administration**



**Authority:** Sec. 101(g), Pub. L. 99–500 (approved October 18, 1986), making appropriations as provided for in sec. 525(a)

of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H.R. Rep. No. 977, 99th Cong., 2d Sess. (1986); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

## Subpart A—General

### § 575.1 Applicability and purpose.

(a) *General.* This part implements the Emergency Shelter Grants Program contained in section 101(g), Pub. L. 99–500 (approved October 18, 1986), making appropriations as provided for in Part C of Title V of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H.R. Rep. No. 977, 99th Cong., 2d Sess. (1986). (Pub. L. 99–591, approved October 30, 1986, revised Pub. L. 99–500, but did not affect this program.) The Program authorizes the Secretary of Housing and Urban Development to make grants to States, units of general local government, and private nonprofit organizations, for the rehabilitation or conversion of buildings for use as emergency shelters for the homeless, and for the payment of certain operating and social service expenses in connection with emergency shelter for the homeless.

(b) *Purpose.* The Program is designed to help improve the quality of existing emergency shelters for the homeless, to help make available additional emergency shelters, and to help meet the costs of operating emergency shelters and of providing certain essential social services to homeless individuals, so that these persons have access not only to safe and sanitary shelter, but also to the supportive services and other kinds of assistance they need to improve their situations.

### § 575.3 Definitions.

*Conversion* means a change in the use of a building to an emergency shelter for the homeless under this part, where the cost of conversion and any rehabilitation costs exceed 75 percent of the value of the building before conversion.

*Emergency shelter grant amounts* and *grant amounts* mean grant amounts made available under this part.

*Grantee* means the entity that executes a grant agreement with HUD under this part. For purposes of this part, "grantee" is

(a) Any State, metropolitan city, or urban county that receives a grant allocation under § 575.31;

(b) Any unit of general local government that receives a grant based on a reallocation under § 575.41(b)(1);

(c) Any private nonprofit organization that receives a grant on a reallocation under § 575.41(b)(2);

(d) Any entity that receives a grant based on a reallocation under § 575.41(b)(3).

*Homeless* means families and individuals who are poor and have no access to either traditional or permanent housing.

*HUD* means the Department of Housing and Urban Development.

*Major rehabilitation* means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.

*Metropolitan city* means a city that was classified as a metropolitan city under section 102(a)(4) of the Housing and Community Development Act of 1974 for the fiscal year immediately before the fiscal year for which emergency shelter grant amounts are made available.

*Nonprofit recipient* means any private nonprofit organization providing assistance to the homeless, to which a unit of general local government distributes emergency shelter grant amounts.

*Obligated* means that the grantee or State recipient, as appropriate, has placed orders, awarded contracts, received services or entered similar transactions that require payment from the grant amount. Grant amounts that are awarded by a unit of general local government to a private nonprofit organization providing assistance to the homeless are obligated.

*Private nonprofit organization* means a secular or religious organization described in section 501(c) of the Internal Revenue Code of 1954 which

(a) Is exempt from taxation under subtitle A of the Code,

(b) Has an accounting system and a voluntary board, and

(c) Practices nondiscrimination in the provisions of assistance.

*Rehabilitation* means labor, materials, tools, and other costs of improving buildings, including repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancement of, existing buildings, including improvements to increase the efficient use of energy in buildings.

*Renovation* means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

*State* means any of the several States, the District of Columbia, or the Commonwealth of Puerto Rico.

*State recipient* means any unit of general local government to which a State makes available emergency shelter grant amounts.

*Unit of general local government* means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

*Urban county* means a county that was classified as an urban county under section 102(a)(6) of the Housing and Community Development Act of 1974 for the fiscal year immediately before the fiscal year for which emergency shelter grant amounts are made available.

*Value of the building* means the monetary value assigned to a building by an independent real estate appraiser, or as otherwise reasonably established by the grantee or the State recipient.

### § 575.5 Waivers.

The Secretary of HUD may waive any requirement of this part that is not required by law, whenever it is determined that undue hardship will result from applying the requirement, or where application of the requirement would adversely affect the purposes of the Emergency Shelter Grants Program.

## Subpart B—Eligible Activities

### § 575.21 Eligible and ineligible activities.

(a) *Eligible activities.* Emergency shelter grant amounts may be used for one or more of the following activities relating to emergency shelter for the homeless:

(1) Renovation, major rehabilitation, or conversion of buildings for use as emergency shelters for the homeless.

(2) Provision of essential services, including (but not limited to) services concerned with employment, health, substance abuse, education, or food. Grant amounts provided to a unit of general local government may be used to provide an essential service only if—

(i) The service is a new service or a quantifiable increase in the level of a service above that which the unit of general local government provided during the 12 calendar months immediately before it received the grant amounts; and

(ii) Not more than 15 percent of the grant amounts is used for these services.

(3) Payment of maintenance, operation (including rent, but excluding staff), insurance, utilities, and furnishings.

(b) *Ineligible activities.* (1) Emergency shelter grant amounts may not be used for activities other than those authorized under paragraph (a) of this section. For example, grant amounts may not be used for:

(i) Acquisition of an emergency shelter for the homeless;

(ii) Renting commercial transient accommodations for the homeless (such as hotel or motel rooms);

(iii) Any administrative or staffing costs other than those permitted in paragraph (a) of this section (*e.g.*, essential services, maintenance); or

(iv) Rehabilitation services, such as preparation of work specifications, loan processing, or inspections.

(2) Grant amounts may not be used to renovate, rehabilitate, or convert buildings owned by primarily religious organizations or entities.

**§ 575.23 Who may carry out eligible activities.**

(a) *Grantees and State recipients.* All grantees (except States) and State recipients may carry out activities with emergency shelter grant amounts. All of a State's formula allocation must be made available to units of general local government in the State, which may include metropolitan cities or urban counties.

(b) *Nonprofit recipients.* Units of general local government—both grantees and State recipients—may distribute all or part of their grant amounts to nonprofit recipients to be used for emergency shelter grant activities.

## Subpart C—Allocations

**§ 575.31 Allocation of grant amounts**

(a) *Allocation grantees.* HUD will initially allocate amounts available for emergency shelter grants to States, metropolitan cities, and urban counties.

(b) *Calculation of allocations.* In determining the amount of the allocation for each State, metropolitan city, and urban county, HUD will provide that the percentage of the total amount available for allocation to any State, metropolitan city, or urban county is equal to the percentage of the total amount available for section 106 of the Housing and Community Development Act of 1974 for the prior fiscal year that was allocated to such State, metropolitan city, or urban county.

(c) *Reallocation to State.* If an allocation to a metropolitan city or urban county would be less than $30,000, the amount is added to the allocation to the State in which the city, or county is located.

(d) *Notification of allocation amount.* HUD will notify each State, metropolitan city, and urban county that is entitled to receive an allocation under this section, of the amount of its allocation.

**§ 575.33 Application requirements.**

(a) *Application deadlines*—(1) *Metropolitan cities and urban counties.* A metropolitan city or urban county that elects to receive an emergency shelter grant on the basis of the allocation in § 575.31 must submit the application referred to in paragraph (b) of this section to the responsible HUD field office, no later than 45 days after the date of the notification to the city or county of its grant allocation under § 575.31(d).

(2) *States.* A State must provide written notification to the responsible HUD field office of its intention to participate in the Emergency Shelter Grants Program within 45 days of the date of the notification under § 515.31(d) to the State of its grant allocation. A State that elects to participate in the Program must submit the application referred to in paragraph (b) of this section to the responsible HUD field office, no later than 30 days after the end of the 45-day election period referred to in the preceding sentence.

(b) *Application.* To receive an emergency shelter grant, a State, metropolitan city, or urban county must submit:

(1) A Standard Form 424.

(2) A Homeless Assistance Plan, which describes the proposed use of the emergency shelter grant. In the case of a metropolitan city or urban county, the Plan must also identify the respective grant amounts proposed to be used for each of the three categories of eligible activities set forth in § 575.21(a) (1), (2), and (3). In the case of a State, the proposed use of funds must consist of a description of the method by which the grantee will make the grant amounts available to units of general local government.

(3) The following certifications and assurances:

(i) A certification that the State, metropolitan city or urban county, will provide the matching supplemental funds required by § 575.51. The certification must describe the sources and amounts of the supplemental funds. A State's matching supplemental funds certification is to be submitted with its interim performance report, as provided by § 575.65.

(ii) A certification that the metropolitan city or urban county will comply, and that the State will ensure that its State recipients comply, with:

(A) The requirements of § 575.53 concerning the continued use of buildings, for which emergency shelter grant amounts are used, as emergency shelters for the homeless;

(B) The building standards requirements of § 575.55; and

(C) The requirements of § 575.57 concerning assistance to the homeless.

(iii) A certification that the metropolitan city or urban county will conduct its emergency shelter grant activities, and that the State or unit of general local government (as appropriate) will ensure that State recipients or nonprofit recipients conduct their activities in conformity with the nondiscrimination and equal opportunity requirements contained in § 575.59(a) and the other requirements of this part and of other applicable Federal law.

(4)(i) An assurance by the State, metropolitan city, or urban county that no renovation, major rehabilitation, or conversion activity funded under this part will:

(A) Involve adverse alterations to a property that is listed on the National Register of Historic Places, is located in an historic district or is immediately adjacent to a property that is listed on the Register, or is deemed by the State Historic Preservation Officer to be eligible for listing on the Register;

(B) Take place in any 100-year floodplain designated by map by the Federal Emergency Management Agency;

(C) Jeopardize the continued existence of an endangered or threatened species, as designated by the Department of the Interior (Fish and Wildlife Service) or the Department of Commerce (National Marine Fisheries Service), or affect the critical habitat of such a species; and

(D) Be inconsistent with HUD environmental standards in 24 CFR Part 51 or with the State's Coastal Zone Management plan.

(ii) In lieu of the assurance required by paragraph (b)(4)(i) of this section, renovation, major rehabilitation, or conversion of a building may be carried out with emergency shelter grant amounts *if:*

(A)(*1*) The State, metropolitan city, or urban county informs HUD that an environmental review of the area in which the proposed activities are to be located

(*i*) Was previously completed for the purposes of another HUD program under 24 CFR Part 50 or 58, and

(*ii*) Addressed properties, activities, and effects comparable to those proposed for assistance under this part; and

(*2*) HUD finds that the prior review applies to the proposed activities; *or*

(B) The State, metropolitan city, or urban county

(*1*) Determines that the only feasible locations for the assisted activities preclude one or more of the assurances

in paragraph (b)(4)(i) of this section, and that paragraph (b)(4)(ii)(A) of this section does not apply, and

(2) Requests a conditional grant in accordance with § 575.35(c)(2).

(5) A certification by the State, metropolitan city, or urban county that the submission of the application required by this paragraph (b) is authorized under State and local law (as applicable), and that the grantee possesses the legal authority to carry out emergency shelter grant activities in accordance with the provisions of this part.

**§ 575.35 Review and approval of applications.**

(a) *Time for approval.* An application from a State, metropolitan city, or urban county will be processed and approved as expeditiously as possible, and will be deemed approved 30 days after HUD receives it, unless within that period, HUD notifies the grantee that its application is not approved.

(b) *Review of applications.* HUD will approve an application, unless it determines that the application:

(1) Was not received or postmarked within the applicable time period specified in § 575.33(a);

(2) Does not contain the items required by § 575.33(b); or

(3) Does not otherwise comply with the requirements of this part or of other Federal law.

(c) *Conditional grant.* HUD may make a conditional grant restricting the obligation and use of emergency shelter grant amounts. Conditional grants may be made:

(1) Where there is substantial evidence that there has been, or there will be, a failure to meet the requirements of this part. In such a case, the reason for the conditional grant, the action necessary to remove the condition, and the deadline for taking those actions will be specified. Failure to satisfy the condition may result in imposition of a sanction under § 575.69 or in any action authorized under any other applicable Federal law.

(2) Where the State, metropolitan city, or urban county requests a conditional grant because the only feasible program sites for renovation, major rehabilitation, or conversion activities assisted under this part preclude one or more of the assurances in § 575.33(4)(i), and § 575.33(b)(4)(ii)(A) does not apply. In such a case, HUD must comply with applicable environmental authorities before grant amounts may be committed and assisted activities may be commenced.

(d) *Grant agreement.* The grant will be made by means of a grant agreement executed by HUD and the grantee.

(e) *Reallocation amounts.* Any emergency shelter grant amounts that are returned to HUD because of a failure to meet the application deadlines under § 575.33(a) or an application disapproval under paragraph (b) of this section will be reallocated under § 575.41.

(f) *Letter to proceed.* Upon request of a metropolitan city or urban county, at any time after submission of an application, HUD may authorize the city or county to incur costs for subsequent reimbursement when the grant is approved.

**§ 575.37 Deadlines for using grant amounts.**

(a) *States and State recipients.* (1) Each State must make available to its State recipients all emergency shelter grant amounts that it was allocated under § 575.31, within 65 days of the date of the grant award by HUD.

(2) Each State recipient must have all its grant amounts obligated by 180 days after the date on which the State made the grant amounts available to it.

(b) *Metropolitan cities and urban counties.* Each metropolitan city and urban county must have all grant amounts that it was allocated under § 575.31 obligated by 180 days after the grant award by HUD.

(c) *Reallocation amounts.* (1) Any emergency shelter grant amounts that are not made available or obligated within the time periods specified in paragraph (a)(1) or (b) of this section, respectively, will be reallocated for use under § 575.41.

(2) The State must recapture any grant amounts that a State recipient does not obligate within the time period specified in paragraph (a)(2) of this section. The State, at its option, must make these grant amounts available (as soon as practicable) to other units of general local government for use within the time period specified in paragraph (a)(2) of this section, or to HUD for reallocation under § 575.41.

## Subpart D—Reallocations

**§ 575.41 Reallocation of grant amounts.**

(a) *General.* From time to time, HUD will reallocate emergency shelter grant amounts that are returned or unused, as those terms are defined in paragraph (f) of this section. HUD will make reallocations by direct notification or Federal Register notice that will set forth the terms and conditions under which the grant amounts are to be reallocated and grant awards are to be made. HUD may use State and local boards established under FEMA's Emergency Food and Shelter Program as a resource to identify potential applicants for reallocated grant amounts.

(b) *Grantees.* Reallocations may be made to:

(1) Units of general local government demonstrating extraordinary need of large numbers of homeless individuals;

(2) Private nonprofit organizations providing assistance to the homeless; and

(3) Units of general local government, private nonprofit organizations and other entities, to meet other needs that HUD determines are consistent with the purposes of the Emergency Shelter Grants Program.

(c) *Reallocation—returned grant amounts.* HUD will endeavor to reallocate returned emergency shelter grant amounts within the jurisdiction to which the amounts were orginally allocated under § 575.31.

(1) Returned grant amounts that were allocated to a State will be made available, first, to units of general local government within the State and if any grant amounts remain, then to private nonprofit organizations that are providing assistance to the homeless and are located within the State.

(2) Returned grant amounts that were allocated to a metropolitan city or urban county will be made available for use in the city or urban county, first, to units of general local government that are authorized under applicable law to carry out activities under this part in the city or urban county and then, if grant amounts remain, to private nonprofit organizations.

(3) The field office will announce the availability of returned grant amounts. The announcement will establish deadlines for submitting applications and will set out other terms and conditions relating to grant award, consistent with this part. The announcement will specify the application documents to be submitted which include:

(i) A Standard Form 424,

(ii) A Homeless Assistance Plan containing the type of information required from a metropolitan city or urban county under § 575.33(b)(2), and

(iii) Certifications and assurances similar to those required from a metropolitan city or urban county under §§ 575.33(b) (3), (4) and (5), as appropriate.

(4) The field office may establish maximum grant amounts, considering the grant amounts available.

(5) The field office will rank the applications using the criteria in paragraph (e) of this section.

(6) HUD may make a grant award for less than the amount applied for or for fewer than all of the activities identified in the application, based on competing demand for grant amounts and the extent to which the respective activities address the needs of the homeless.

(7) HUD will endeavor to make grant awards within 30 days of the application deadline or as soon thereafter as practicable.

(d) *Reallocation—unused grant amounts.* Unused grant amounts (including any amounts that remain after reallocation under paragraph (c) of this section) will be available, in HUD's discretion, for reallocation from time to time to one or more grantees specified in paragraph (b) of this section.

(e) *Selection criteria.* HUD will award grants under paragraphs (c) and (d) of this section based on consideration of the following criteria:

(1) The nature and extent of the unmet homeless need within the jurisdiction in which the grant amounts will be used;

(2) The extent to which the proposed activities address this need; and

(3) The ability of the grantee to carry out the proposed activities promptly.

(f) *When grant amounts are returned or unused.* (1) For purposes of this section, emergency shelter grant amounts are considered "returned" when they become available for reallocation because a grantee does not execute a grant agreement with HUD for them, *e.g.*, when a grantee for which an allocation is made under § 575.31 fails to meet the application deadlines under § 575.33(a), or has its application disapproved under § 575.35(b) or approved with a reduced grant amount in accordance with § 575.69.

(2) For purposes of this section, emergency shelter grant amounts are considered "unused" when they become available for reallocation by HUD after a grantee has executed a grant agreement with HUD for them: *e.g.*, where

(i) A State fails to make its grant amounts available to State recipients within the time period specified in § 575.37(a)(1);

(ii) A metropolitan city or urban county fails to obligate grant amounts, within the time period specified in § 575.37(b);

(iii) A State recaptures grant amounts from a State recipient and makes them available to HUD as provided in § 575.37(c)(2);

(iv) Grant amounts become available as a result of imposition of a sanction (other than a reduction of grant amounts) under § 575.69 or the close-out of a grant;

(v) A grantee referred to in paragraph (b) of this section fails to obligate grant amounts within the time period specified in its grant agreement.

## Subpart E—Program Requirements

### § 575.51 Matching funds.

(a) *General.* Each grantee must supplement its emergency shelter grant amounts with an equal amount of funds from sources other than under this part. These funds must be provided after the date of the grant award to the grantee. A grantee may comply with this requirement by providing the supplemental funds itself, or through supplemental funds provided by any State recipient or nonprofit recipient (as appropriate).

(b) *Calculating the matching amount.* In calculating the amount of supplemental funds, there may be included the value of any donated material or building; the value of any lease on a building; any salary paid to staff of the grantee or to any State or nonprofit recipient (as appropriate) in carrying out the emergency shelter program; and the time and services contributed by volunteers to carry out the emergency shelter program, determined at the rate of $5 per hour. For purposes of this paragraph (b), the grantee will determine the value of any donated material or building, or any lease, using any method reasonably calculated to establish a fair market value.

### § 575.53 Use as an emergency shelter.

(a) *General.* Any building for which emergency shelter grant amounts are used must be maintained as a shelter for the homeless for not less than a three-year period, or for not less than a 10-year period if the grant amounts are used for major rehabilitation or conversion of the building.

(b) *Calculating the applicable period.* The three- and 10-year periods referred to in paragraph (a) of this section begin to run:

(1) In the case of a building that was not operated as an emergency shelter for the homeless before receipt of grant amounts under this part, on the date of initial occupancy as an emergency shelter for the homeless.

(2) In the case of a building that was operated as an emergency shelter before receipt of grant amounts under this part, on the date that grant amounts are first obligated on the shelter.

### § 575.55 Building standards.

Any building for which emergency shelter grant amounts are used for renovation, conversion, or major rehabilitation must meet the local government standard of being safe and sanitary condition.

### § 575.57 Assistance to the homeless.

Homeless individuals must be given assistance in obtaining:

(a) Appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(b) Other Federal, State, local, and private assistance available for such individuals.

### § 575.59 Other Federal requirements.

Use of emergency shelter grant amounts must comply with the following additional requirements:

(a) *Nondiscrimination and Equal Opportunity.* (1) The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2002d–1) and implementing regulations issued at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(3) The requirements of Executive Order 11246 and the regulations issued under the Order at 41 CFR Chapter 60; and

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (see § 570.607(b) of this Chapter); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this part.

(b) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–87 and A–102, as they relate to the acceptance and use of emergency shelter grant amounts by States and units of general local government, and Nos. A–110 and A–122, as they relate to the acceptance and use of emergency shelter grant amounts by private nonprofit organizations.

(c) *Uniform Federal Accessibility Standards.* For major rehabilitation or

conversion, the Uniform Federal Accessibility Standards at 24 CFR Part 40, Appendix A.

(d) *Lead-based paint.* The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35.

(e) *Conflicts of interest.* In addition to conflict of interest requirements in OMB Circular A–102 and A–110, no person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, State recipient, or nonprofit recipient (or of any designated public agency) that receives emergency shelter grant amounts and who exercises or has exercised any functions or responsibilities with respect to assisted activities or who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for him or herself or those with whom he or she has family or business ties, during his or her tenure or for one year thereafter. HUD may grant an exception to this exclusion as provided in §§ 570.611 (d) and (e) of this chapter.

(f) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(g) *Flood insurance.* No site proposed on which renovation, major rehabilitation, or conversion of a building is to be assisted under this part, other than by grant amounts allocated to State, may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR Parts 59 through 79) or less than a year has passed since FEMA notification regarding such hazards, and the grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*).

(h) *Audit.* The financial management system used by a State or unit of general local government that is a grantee or State recipient shall provide for audits in accordance with 24 CFR Part 44. A private nonprofit organization is subject to the audit requirements of OMB Circular A–110.

## Subpart F—Grant Administration

### § 575.61 Responsibility for grant administration.

Grantees are responsible for ensuring that emergency shelter grant amounts are administered in accordance with the requirements of this part and other applicable laws. In the case of States making grant amounts available to State recipients, and in the case of units of general local government distributing grant amounts to nonprofit recipients, the States and the units of local government are responsible for ensuring that their respective recipients carry out their emergency shelter grant programs in compliance with all requirements that apply to their programs.

### § 575.63 Method of payment.

Payments are made to a grantee upon its request and may include a working capital advance for 30 days' cash needs or an advance of $5,000, whichever is greater. If a grantee requests a working capital advance, it must base the request on a realistic, firm estimate of the amounts required to be disbursed over the 30-day period in payment of eligible activity costs. Payments with respect to grants of $120,000, or more, will be made by letter of credit, if the grantee meets the requirements of OMB Circular A–102.

### § 575.65 Performance reports.

(a) *Interim performance report*—(1) *Timing of report.* (i) A metropolitan city or urban county must submit its interim performance report to HUD no later than 30 days after the end of the 180-day period allowed for the obligation of grant amounts under § 575.37(b), or 30 days after the date when all grant amounts are obligated, whichever comes first.

(ii) A State must submit its interim performance report not later than 90 days after the date of the grant award by HUD. A grantee referred to in § 575.41, Reallocation of funds, must submit its interim performance report to HUD within the period specified in its grant agreement.

(2) *Report content.* (i) In the case of a grantee other than a State, the interim performance report must contain information on the amount of funds obligated for each of the three categories of eligible activities described in § 575.21(a)(1), (2) and (3).

(ii) A State report must provide this information for each State recipient.

(3) *Matching funds certification.* A State grantee must submit with its interim performance report the matching funds certification required by § 575.33(b)(3)(i).

(b) *Annual performance report*—(1) *Content.* A grantee other than a State must provide HUD with an annual performance report on the obligation and expenditure of funds for each of the three categories of eligible activities described in § 575.21(a)(1), (2) and (3). A State must provide this information for each State recipient.

(2) *Timing.* The annual performance report is due one year from the date of the grant award, and a grantee must continue to submit this annual report until all emergency shelter grant amounts are expended.

### § 575.67 Recordkeeping.

Each grantee and State recipient must maintain records necessary to document compliance with the provisions of this part.

### § 575.69 Sanctions.

(a) *HUD sanctions.* If HUD determines that a grantee is not complying with the requirements of this part or of other applicable Federal law, HUD may (in addition to any remedies that may otherwise be available) take any of the following actions, as appropriate:

(1) Issue a warning letter that further failure to comply with such requirements will result in a more serious sanction;

(2) Condition a future grant;

(3) Direct the grantee to stop the incurring of costs with grant amounts;

(4) Require that some or all of the grant amounts be remitted to HUD;

(5) Reduce the level of funds the grantee would otherwise be entitled to receive; or

(6) Elect not to provide future grant funds to the grantee until appropriate actions are taken to ensure compliance.

(b) *State sanctions.* If a State determines that a State recipient is not complying with the requirements of this part or other applicable Federal laws, the State must take appropriate action,

which may include the actions described in paragraph (a) of this section. Any grant amounts that become available to a State as a result of a sanction under this section must, at the option of the State, be made available (as soon as practicable) to other units of general local government for use within the time periods specified in § 575.37(a)(2), or to HUD for reallocation under § 575.41.

(c) *Reallocations.* Any grant amounts that become available to HUD as a result of the imposition of a sanction under this section will be reallocated under *575.41.*

Dated: December 12, 1986.

Jack R. Stokvis,

*General Deputy Assistant Secretary for Community Planning and Development.*

[FR Doc. 86-28292 Filed 12-16-86; 8:45 am]

BILLING CODE 4210-29-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

[Docket No. D-86-827; FR-2298]

### Delegation of Authority With Respect to the Emergency Shelter Grants Program

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of concurrent delegation of authority.

**SUMMARY:** The Emergency Shelter Grants Program was authorized by section 101(g), Pub. L. 99-500 (approved October 18, 1986), making appropriations as provided in sec. 525(a) of H.R. 5313, 99th Cong., and 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H.R. No. 977, 99th Cong., 2d Sess. (1986). This Notice delegates to the Assistant Secretary and the General Deputy Assistant Secretary for Community Planning and Development the Secretary's power and authority with respect to this program, subject to specified exceptions.

**EFFECTIVE DATE:** December 12, 1986.

**FOR FURTHER INFORMATION CONTACT:** Don I. Patch, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6587. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** This notice states the scope of authority given to the Assistant Secretary and General Deputy Assistant Secretary for Community Planning and Development for the Emergency Shelter Grants Program. All of the Secretary's authority with respect to this program is delegated except the power to sue and be sued. The authority delegated includes the authority to redelegate to employees of the Department, except for the authority to issue rules and regulations.

The Emergency Shelter Grants Program is a new program authorized by Title V of HUD's appropriation for fiscal year 1987. A proposed rule, containing implementing regulations that also constitute the requirements necessary to carry out the program in fiscal year 1987, is published elsewhere in today's issue of the **Federal Register**. Accordingly, the Secretary delegates as follows:

#### Section A. Authority Delegated

The Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development are authorized individually to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the Emergency Shelter Grants Program as authorized by section 101(g), Pub. L. 99-300 (approved October 18, 1986), except as indicated in section B below. This includes the authority to issue or waive rules and regulations.

#### Section B. Authority Excepted

There is excepted from the authority delegated under section A the power to sue or be sued.

#### Section C. Authority to Redelegate

The Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development are authorized, individually, to redelegate to employees of the Department any of the power and authority delegated under section A, and not excepted under section B of this delegation. In addition, the Assistant Secretary and the General Deputy Assistant Secretary are not authorized to redelegate the authority to issue or waive (except with respect to the extension of grantee submission and obligation of grant amount deadlines) rules and regulations.

(Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Dated: December 12, 1986.

**Samuel R. Pierce, Jr.,**

*Secretary.*

[FR Doc. 86-28293 Filed 12-16-86; 8:45 am]

BILLING CODE 4210-32-M

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### Office of the Assistant Secretary for Community Planning and Development

[Docket No. D-86-828; FR-2298]

### Redelegation of Authority With Respect to the Emergency Shelter Grants Program

**AGENCY:** Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of redelegation of authority.

**SUMMARY:** The Assistant Secretary for Community Planning and Development is redelegating his power and authority with respect to the Emergency Shelter Grants Program to Regional Administrators, and Category A Field Office Managers, subject to certain specified exceptions.

**EFFECTIVE DATE:** December 12, 1986.

**FOR FURTHER INFORMATION CONTACT:** Don I. Patch, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6587. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Secretary has delegated this power and authority with respect to the Emergency Shelter Grants Program to the Assistant Secretary for Community Planning and Development, subject to certain exceptions; such exceptions include the authority to sue or be sued and the authority to redelegate responsibility and authority for the issuance or waiver of rules and regulations, published elsewhere in today's issue. In this redelegation, the Assistant Secretary for Community Planning and Development is redelegating to specified officials of HUD Field Offices his delegated authority with respect to the Emergency Shelter Grants Program, subject to additional exceptions. This redelegation is intended to maximize the authority of HUD Field Offices to administer the Emergency Shelter Grants Program within Departmental regulations, subject to the specific exception enumerated in section B of this notice.

Accordingly, the Assistant Secretary for Community Planning and Development redelegates as follows:

#### Section A. Authority Redelegated

Each Regional Administrator, and Category A Office Manager, and the Deputy of each such official, is authorized by the Assistant Secretary for Community Planning and Development to exercise the power and authority of the Assistant Secretary with respect to the Emergency Shelter Grants Program authorized by Title V of the Department's appropriation for fiscal year 1987, as contained in section 101(g), Pub. L. 99-500 (approved October 18, 1986), except as indicated in section B below.

#### Section B. Authority Excepted

There is excepted from the authority delegated under Section A, the authority to issue or waive (except with respect to the extension of up to 30 days of grantee submission and obligation of grant amount deadlines) rules and regulations to impose sanctions under 24 CFR 575.63 (other than to issue a warning letter), to reallocate grant amounts that are returned to HUD by a metropolitan city or urban county for use outside the respective jurisdiction, and to reallocate any grant amounts outside the State to which they were allocated.

(Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Dated: December 12, 1986.

**Jack R. Stokvis,**

*General Deputy Assistant Secretary for Community Planning and Development.*

[FR Doc. 86-38294 Filed 12-16-86; 8:45 am]

BILLING CODE 4210-29-M

federal register

Wednesday
December 17, 1986

Part VII

# The President

Proclamation 5591—National Drunk and Drugged Driving Awareness Week, 1986

Federal Register
Vol. 51, No. 242
Wednesday, December 17, 1986

# Presidential Documents

Title 3—

The President

**Proclamation 5591 of December 15, 1986**

## National Drunk and Drugged Driving Awareness Week, 1986

By the President of the United States of America

A Proclamation

Driving by people impaired by alcohol or other drugs is one of our Nation's most serious public health and safety problems. Each year, drunk and drugged drivers cause tens of thousands of highway fatalities and hundreds of thousands of injuries. In 1985, for instance, more than half of all highway deaths were alcohol-related.

Each of us must help reduce this carnage through an awareness of what can be done, a commitment to do the right thing, and a refusal to tolerate drunk and drugged driving. We need to detect and stop impaired drivers before they cause an accident. We must insist upon strict law enforcement and swift and sure penalties and ensure that the privilege of driving is withdrawn when a drunken driver deliberately endangers others. We must not wait until personal tragedy strikes to become involved.

Statistics show that a disproportionate number of our young people are involved in alcohol-related accidents and that raising the legal drinking age reduces alcohol-related crash involvement among young drivers. Most States commendably have raised their legal drinking age. The Federal government continues to encourage States to establish 21 as the minimum age at which individuals may purchase, possess, or consume alcoholic beverages. We can all be grateful for the efforts of dedicated citizen volunteers in creating the growing awareness that motor vehicle accidents are the leading cause of death among young people.

More and more informed, concerned citizens are getting involved in generating awareness, education, and action to remove drunk and drugged drivers from our roads and highways. With the continued involvement of private citizens working together, and action at all levels of government, we can begin to control the problem of drunk and drugged driving.

In order to encourage citizen involvement in prevention efforts and to increase awareness of the seriousness of the threat to our lives and safety, the Congress, by Public Law 99–447, has designated the week of December 14 through December 20, 1986, as "National Drunk and Drugged Driving Awareness Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of December 14 through December 20, 1986, as National Drunk and Drugged Driving Awareness Week. I call upon each American to help make the difference between the tragedy of alcohol-related motor vehicle accidents and the blessings of full health and life. I ask Americans to show concern and not to permit others to drink or take drugs and drive.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of December, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-28458
Filed 12-16-86; 10:56 am]
Billing code 3195-01-M

**Editorial note:** For the President's statement of December 15 on signing Proclamation 5591, see the *Weekly Compilation of Presidential Documents* (vol. 22, no. 51).

# Reader Aids

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Vol. 51, No. 242

Wednesday, December 17, 1986

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**Last listing: November 20, 1986.**

The listing will be resumed when bills are enacted into public law during the first session of the 100th Congress which convenes on January 6, 1987.

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