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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Parts 1745 and 1749

General Policies, Types of Loans, Loan Requirements—Telephone Program; Preloan Procedures and Requirements—Telephone Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration hereby amends 7 CFR Chapter XVII by adding Part 1745, General Policies, Types of Loans, Loan Requirements, and Part 1749, Preloan Procedures and Requirements. These new parts consolidate, revise, and clarify the policies, requirements, and procedures contained in the following existing REA Bulletins:

320–1 Preloan Procedures for Rural Telephone Cooperatives
320–4 Preloan Procedures for Telephone Loan Applicants
320–14 Loans for Telephone System Improvements and Extensions
320–22 Guarantee of Loans for Telephone Facilities
321–2 Loan Security Requirements for Telephone Loans
322–1 Area Coverage Survey
322–2 Rural Area Coverage—Telephone Loans
323–1 Determination by Administrator with Respect to Nonduplication of Lines, Facilities, or Systems
324–1 Loans for Refinancing Outstanding Indebtedness of Telephone Borrowers
325–1 Financing Lines, Facilities, or Systems Outside of Rural Areas
326–1 Acquisitions of Telephone Facilities and Systems
360–1 Checklist for Review of a Supplemental Loan Proposal or an Area Coverage Design
385–5 Loans to Finance Radio Equipment for Subscriber Service

Bulletins 320–1, 320–14, 322–1, 324–1, and 360–1 will be rescinded upon publication of the final rules. The other Bulletins listed above contain certain policies, requirements, and procedures that will be incorporated into other CFR parts. When that is accomplished, those Bulletins will also be rescinded.

These new parts contain the provisions and requirements of the Rural Electrification Act, as amended (RE Act), and the administrative policies, requirements, and procedures of the REA telephone program for first time applicants and existing borrowers seeking financial assistance from REA to furnish and improve telephone service in rural areas. The primary objectives of the final rules are to update, consolidate, clarify, and simplify REA policies and procedures; to facilitate the loan application process; and to decrease processing time by REA.

EFFECTIVE DATE: These final rules are effective April 3, 1989, except that the provisions of §§ 1745.22(f), 1745.43(a), and 1745.43(b) with respect to the 2 year principal deferral period and the 5 year loan advance period shall not apply to loans currently in process for which REA has, as of the effective date of these rules, sent a loan characteristics letter to the borrower and the borrower has concurred in said characteristics and other conditions specified in said letter and so notified REA in writing within 20 days of the effective date of these rules.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2250, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–8530. The Final Regulatory Impact Analysis describing the options considered in developing these rules and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: These rules are issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and therefore has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of these rules would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in these final rules have been approved by the Office of Management and Budget (OMB). The OMB approval number for these requirements is 0572–0079.

Public reporting burden of this collection of information is estimated to average 7.8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0572–0079), Washington, DC 20503.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

Currently, the policies and requirements concerning telephone loans and the administrative policies, requirements and procedures covering preloan activities are contained in numerous REA Bulletins, several sections of the REA Telecommunications Engineering and Construction Manual (TE&CM) and the REA Telecommunications Operations Manual (TOM), and REA Staff Instructions (internal instructions for REA personnel). Many of these are outdated and contain conflicting information. It is necessary to consolidate the information and make it available to the public by publishing it in the **Federal Register.**

There is currently considerable confusion over what constitutes an Area Coverage Design (ACD) or a Supplemental Loan Proposal (SLP). These are replaced with a streamlined Loan Design (LD) which will be the basis for determining the amount and purposes of all loans. Most of the items included in the LD are similar for all loans. There are, however, certain data requirements that apply only to initial loans and loans to serve areas not previously financed by REA, and other data requirements that apply to subsequent loans.

Some supplementary information is also required to support a loan application. Currently, this information is often submitted over a period of time. In the future, it will all be submitted at one time, with the LD. This will end confusion over the status of an application and when all of the required information is to be completed and submitted. REA office engineers and loan specialists will be able to prepare a cost study and loan recommendation without having to wait for a large amount of additional information to be submitted. With all the information required to process a loan received at one time, financial and statistical data will all be as of the same date, simplifying processing. As necessary, REA staff will continue to assist borrowers during the preloan period.

These rules eliminate some reporting requirements and streamline others, reducing the borrowers' burden. Generally, borrowers will be required to submit only the year-end Financial and Statistical Report (REA Form 479). They will no longer have to submit June 30 reports as are now required when the loan is made 9 or more months after the date of the last year-end report. Borrowers will be required to submit only rate schedules, and not their entire tariff. Borrowers are currently required to submit their tariff to the Area Office. This can be quite a large document, and to send a copy to REA costs a borrower a significant amount for copying and postage. The rate schedules normally are only a few pages and generally provide all the tariff information necessary to prepare a feasibility study. Borrowers will still be required to have their tariff available for review by the REA field representative, as necessary.

Joint use agreements will no longer have to be submitted to REA for review and approval. REA Form 809, "Fundamental Plan Information," is eliminated. Certain of the information on this form will be shown on the trunking diagram required as an exhibit to the LD. The rest of the information is no longer needed. Many borrowers now produce equivalents of REA Forms 569, "Area Coverage Survey Report;" 495, "Construction Cost Estimates;" and 494, "Loan Design Summary." These equivalents will now be accepted by REA, which will save the borrower the time and expense of transferring the data to the REA forms.

Recognizing the growing experience of borrowers and their familiarity with REA design criteria and construction standards, greater reliance will be placed on certifications provided by borrowers and their engineers. Currently, a principal of the engineering firm, the borrower and the REA field representative all sign the same certification as to the correctness and reasonableness of the LD. In the future, only the engineer and borrower will sign the certification, which has been expanded to include the certification that "this Loan Design adheres to REA engineering and construction standards and practices." This places a greater responsibility on the borrower and engineer, and provides REA greater loan security. The REA field representative will now review and recommend acceptance of the LD as the basis for REA financing. Final approval of the LD will rest with the Area Director.

If a recommended LD and the required supplementary information are not submitted within 1 year of the date of the loan application, the application generally will be cancelled by REA. There currently is no formal procedure for determining when a loan application should be cancelled. The borrower will now be given a time limit to complete its loan application. One year is an ample amount of time in which to prepare a LD.

The present maximum loan period is 35 years, with a 32-year amortization period. With rapidly changing technology, obsolescence is occurring more quickly; therefore, borrowers are depreciating their facilities at a faster rate. New plant facilities, especially digital central offices, are generally depreciated at a higher rate than the plant replaced. About 95 percent of REA telephone borrowers have composite depreciation rates for all plant of at least 4 percent; about 84 percent have a rate of at least 4.5 percent. The median for all REA telephone borrowers is now 5.6 percent.

If plant financed by an REA loan is retired and replaced by new plant before the loan is repaid, earnings from this new plant will have to be used to pay the old loan and any new loan used to finance the replacement facilities. If the loan period is longer than the depreciation period and the capital recovered through depreciation is not used to replace plant, the loan could be undercollateralized and the borrower's rate base would be eroded.

The loan period will now approximate the anticipated useful life of the facilities financed. The maximum loan period for all loans will remain at 35 years, with a 32-year amortization period.

The principal deferment period will be reduced to 2 years. Currently, on advances of loan funds within 3 years of the date of the note representing a loan, borrowers do not begin repaying principal until the first basis date. This is 3 years after the date of the note. For funds advanced from that date until the second basis date, 6 years after the date of the note, borrowers do not begin repaying principal until that second basis date. All funds advanced during a particular basis date period are amortized at the same rate. Unless a new basis date agreement is executed, the borrower cannot draw down any unadvanced loan funds after the second basis date.

The new system would set the basis date 2 years after the date of the note and defer the start of principal repayments until then. There would be no second basis date. Principal repayments on all funds advanced after the basis date would begin with the first billing after the advance. Thus, each of these advances would have a different amortization rate. At the Administrator's discretion, the 2-year deferment could be altered.

This change is being made because a significant portion of loan funds should be advanced within 2 years of the date of the note. The retention of a deferment period allows the borrower to have a substantial portion of the new plant in place and earning revenues with which to repay the loan.

Under the current form of note, the Government is not obligated to advance funds after 6 years. The final rule changes this to 5 years and established a procedure for extending this period in certain circumstances.

7 CFR Part 1745 supersedes any sections of REA Bulletin 320–12, "Loan Payments and Statements", with which it is in conflict.

Currently, there is no minimum for REA loans. The Rural Telephone Bank has had a $50,000 minimum for a number of years. Recognizing the increase in plant costs, the borrowers' expenses for system design, and REA's administrative costs, REA will no longer consider applications for loans of less than $50,000.

Subsidized loans are provided to telephone borrowers for the purpose of providing and improving telephone service in rural areas. These subsidies are not provided for purposes beyond those unauthorized by the RE Act.

In accordance with REA Bulletins 320–1, 320–4, and 320–14, REA generally does not finance (1) headquarters facilities other than warehouse and garage facilities, (2) office equipment, (3) vehicles and other work equipment, (4) furniture, and (5) station apparatus and associated inside wiring. REA will continue to finance the first four items only in cases of financial hardship, as determined by the Administrator. REA will no longer finance the last item. These changes are based on considerations of loan security and the borrowers' net worth and financial strength.

Station apparatus and inside wiring have been deregulated and generally are not capitalized. Borrowers are no longer obligated to provide these items. To improve the security of REA's loans and the borrowers' financial position, borrowers are encouraged to invest internally generated funds in the five items listed above.

REA will continue to not finance any duplicative facilities. Additionally, REA will not finance facilities to serve subscribers outside the local exchange service areas of the borrower unless those facilities are necessary to furnishing or improving telephone service in rural areas. This restriction is aimed primarily at preventing the financing of services that are outside of a borrower's territory and which primarily serve nonrural subscribers. REA will still finance those portions serving subscribers within the borrower's territory.

For many years REA has had a policy of not making a loan for the same purposes twice. The intent of this policy was to prevent a borrower from rescinding a loan solely for the purpose of refinancing the loan. This policy is now being codified in clarified form.

Based on loan security considerations, REA will now require that before a loan is approved by REA a borrower must meet certain Times Interest Earned Ratio (TIER) requirements, except when the Administrator determines that the borrower would experience financial hardship. For a loan made solely by REA, a borrower must have a TIER of at least 125 percent on all of its outstanding and proposed loans from REA and all other lenders as determined by the feasibility study prepared in connection with the loan, unless the borrower is subject to the provisions discussed in the next paragraph. The mortgage will contain a provision requiring the borrower to maintain a TIER of at least 125 percent. The borrower will also be expected to demonstrate progress toward achieving a TIER of 150 percent.

For a loan guaranteed by REA, made concurrently by REA and RTB, or made entirely by RTB, a borrower must have a TIER of at least 150 percent on all of its outstanding and proposed loans from REA and all other lenders as determined by the feasibility study prepared in connection with the loan. The mortgage will contain a provision requiring the borrower to maintain a TIER of 150 percent.

A new policy will allow REA, for loan security purposes, to require a new applicant to increase its net worth as a percentage of assets to the highest level not to exceed 40 percent, recorded at the end of any calendar quarter since 2 years prior to the receipt by REA of the borrower's loan application form (REA Form 490). This restoration to the higher level of net worth shall take place before REA will determine the feasibility of the proposed loan.

REA believes these revised policies, requirements, and procedures will lessen the burden on borrowers and permit REA to maintain the security of the Government's loans.

Comments

In the proposed rules published August 24, 1988 (53 FR 32235), the Rural Electrification Adminstration invited interested parties to file comments on or before September 23, 1988.

Comments were received from: 37 Members of Congress, 7 Telephone Trade Associations, 68 Borrowers, 2 Other Interested Parties.

The comments received addressed the following issues and Sections of the Rules:

Extension of Time for Comments

Several respondents requested an extension of the 30 day time period for submission of written comments on proposed rules 7 CFR Parts 1745 and 1749. The 30 day public comment period was chosen because of the time constraints imposed by Pub. L. 100–203.

Section 1745.2(e) Definitions—Rural Areas

One respondent stated that the definition of "rural area" should make it clear that "rural area" includes territories and possessions of the United States. Accordingly we have clarified the definition of "rural area" in §§1745.2 and 1749.2 to read: "Rural area" means any area of the United States, its territories and insular possessions not included within the boundaries * * *.

The language of this section has also been modified to clearly indicate that the data sources listed are not intended to be exclusive sources.

Section 1745.2(g) Definitions—Times Interest Earned Ratio

One respondent noted two technical corrections in this definition that would put it in conformance with the way the term is generally defined by the financial community. The first is that a time period, namely 1 year, needs to be included in the definition. The second is that only interest on debt with a maturity greater than one year should be included in the definition.

Several respondents objected to the definition of "Times Interest Earned Ratio" being on a pre-tax basis. They note that Section 408(b)(4)(ii) of the RE Act uses a TIER based on "net income or margins before interest" and interpret this phrase to mean after taxes. They also note that the RTB has historically used an after tax TIER in its feasibility computation.

The technical corrections have been made as suggested. In view of the historical use of an after tax TIER by the RTB as a pro forma feasibility test, the definition has been modified to an after tax TIER for purposes of Section 408(b)(4)(ii) of the RE Act.

Section 1745.10 General

One respondent requested that §1745.10 be modified to recognize that REA provides funds for refinancing as well as financing to furnished and improve telephone service in rural areas. As refinancing is addressed in detail under §1745.21, no change has been made.

Section 1745.11 Area Coverage

Thirteen respondents objected to the use of the phrase "on a cost effective basis" in the section on area coverage. The comments state that "cost effective" is not defined and that the phrase places a new requirement on borrowers which will result in fewer loans and limit access to the program. It was not the intent of REA to change the area coverage policy as stated in the Act. The phrasing of the Act has always been interpreted to mean on a "cost effective basis". These words were used to reflect the historic practice of REA and consequently do not impose any new requirement on borrowers or limit access to the program.

To impose the area coverage provision when the costs would be exorbitant would be burdensome to borrowers and counter productive to achieving the objectives of the RE Act. We have none the less deleted the phrase "cost effective" because it is not necessary. The provisions of the loan contract will cover the implementation of the area coverage policy.

*Section 1745.13 Location of Facilities * * * Nonrural Subscribers*

Several respondents objected to the inclusion of "incidental" as a test for financing facilities in nonrural areas. The test for financing facilities in nonrural areas reflects REA interpretation of the Act as it has been consisently applied since the inception of the REA loan program. Section 201 of the Act provides:

> When it is determined by the Administrator to be necessary in order to furnish or improve telephone service in rural areas, such loans may be made for the improvement, expansion, construction, acquisition and operation of telephone lines, facilities, or systems without regard to their geographical location.

Pursuant to this provision the Administrator has included in loans funds to finance urban facilities only where the primary purpose of the loan is furnishing and improving service to rural areas and the financing of urban facilities serves only as an incidental means to the accomplishment of this primary purpose. This determination has and can be made only on a case-by-case basis considering such matters as subscriber ratios and cost ratios. A discussion of the legal principals underlying this interpretation of the Act as well as its application in specific cases is set forth in a series of opinions to the Administrator from the Office of General Counsel, Department of Agriculture.

One respondent suggested that clarification be added to indicate that financing of facilities to benefit nonrural subscribers is not limited to the examples cited. Clarification has been added.

Section 1745.14 Borrower Eligibility

One respondent pointed out that the last sentence of §1745.14 inadvertently omits start-up telephone systems that propose to serve new areas. REA agrees that new systems are eligible for loans, as stated in the first sentence of §1745.14, and has therefore changed the last sentence to read * * * To be eligible for a loan, a borrower must provide or propose to provide the basic local exchange telephone service needs of rural areas, and it must be incorporated.

Section 1745.17(b) Facilities Financed

A number of respondents objected to the restriction placed on financing of facilities listed in this section stating that the Act clearly allows financing of said facilities. This section is a restatement of existing regulations that have been in effect for a number of years. The section does not eliminate financing of the facilities but only limits financing to cases of financial hardship. REA has determined that this restriction is appropriate considering that the facilities covered generally are non-revenue producing or have short economic lives, or are highly mobile and represent poor collateral.

Section 1745.17(c) Facilities Financed

A number of respondents objected to eliminating financing of the facilities listed in this section arguing that the Act provides for such financing.

REA considers furniture, which is generally expensed rather than capitalized, and is highly mobile and thus affords poor collateral, to be an inappropriate item for long term financing. However, it has been removed from this list of items not eligible for financing and added to the list of items limited to financing in cases of financial hardship.

Since deregulation of station apparatus and associated inside wiring, it is the responsibility of the subscriber and not the borrower to provide station apparatus and associated inside wiring. As the borrower no longer needs to purchase said items to provide telephone service, REA is no longer financing such items.

A number of respondents questioned the provision that REA does not finance duplicative toll facilities. REA agrees that toll facilities should not be singled out and the wording has been changed to "any duplicative facilities."

Section 1745.17(d) Facilities Financed

Several respondents objected to this section on the basis that it could potentially deny benefits to intended beneficiaries of the Act. The purpose of this policy has always been to prevent borrowers from rescinding loans in order to reapply for a loan that may have more favorable terms. This would result in a wasteful and unnecessary use of REA's annual lending authority and an abuse of the program. REA considers this policy necessary for the effective application of the eligibility criteria set forth in the Act for the various loan programs administered by the Agency. To clearly state this policy § 1745.17(d) has been modified and § 1745.47, rescission of loans has been added. Section 1747.47(a) is a statement of existing policy based on the requirements of the loan documents.

Section 1745.18 Additional Equity

Several respondents opposed § 1745.18, believing the additional equity requirement to be arbitrary in terms of time frame and unnecessary in light of the telephone program's no-default history. Most respondents assumed this section would apply to all borrowers. However, the section was intended to apply only to initial loan applicants and wording to clarify this has been added. The section is needed to prevent a new applicant, who would not be subject to REA mortgage controls, from intentionally or unintentionally degrading the viability of the system and the security of the facilities to be mortgaged prior to approval of the loan. A cap of 40 percent has been set on the net worth restoration required in this section to be consistent with the maximum net worth provision of existing mortgages.

Section 1745.19 Mergers and Consolidations

There were two comments on § 1745.19. One comment requested that the rule state that additional loans are dependent upon continued eligibility, or be deleted while the other recommended the section be eliminated. REA believes this section to be necessary and clearly worded. The comment suggesting the rule be clarified objected to the phrase "REA will consider making loans * * *." REA has retained this phrase because loans made by REA are dependent on all aspects of eligibility and thus it is inappropriate to state that REA will make a loan without

"considering" all aspects of a surviving company's eligibility.

Section 1745.20 Acquisitions

Several respondents objected to the inclusion of a "necessary and incidental" test for acquisitions. The test for financing acquisitions reflects REA's interpretation of the Act as it has been consistently applied since the inception of the REA loan program. Section 201 of the Act, which explicitly permits loans for the acquisition of telephone facilities, provides that the primary purpose of the loan must be to furnish and improve telephone service in rural areas. Pursuant to section 201, the Administrator has approved loans which include funds for acquiring facilities only where the Administrator determined that financing the acquisition of facilities is a necessary and incidental means to accomplishing the primary purpose of the loan—furnishing and improving telephone service in rural areas. This determination can be made only on a case-by-case basis taking into account such matters as subscriber ratios and cost ratios. The legal principals underlying this interpretation and its application to certain specific cases are set forth in several opinions to the Administrator from the Office of General Counsel, Department of Agriculture.

Section 1745.21(b) Refinancing Loans

Two respondents objected to the provision prohibiting refinancing solely to enable borrowers to lower interest rates, arguing that this is not a limitation authorized by the RE Act. One of the test specified by the RE Act is that the refinancing must be necessary to furnishing or improving telephone service in rural areas. If a borrower can carry the debt service requirements of existing indebtedness without jeopardizing the viability of the proposed loan project, refinancing is not "necessary" as provided by the RE Act. Thus, this section is clearly within the terms of the RE Act.

One respondent objected to the provision that REA could require the borrower to liquidate existing indebtedness with its own funds. This provision is necessary in conjunction with the other provision of this section to prevent REA from being required to refinance indebtedness that does not meet the requirements of the RE Act or REA regulations. Without this control a borrower could claim eligibility for purposes clearly outside the intent of the Act by first financing them with non-REA loans and then invoking the refinancing of the Act.

Section 1745.21(c) Refinancing Loans

Several respondents expressed concern that this section does not recognize that REA may accommodate or subordinate its lien to permit other lenders to provide financing to borrowers. REA's policy on lien accommodation and subordination is contained in 7 CFR Part 1747. Paragraph (c) of § 1745.21 applies to situations not covered under 7 CFR Part 1747, or when the other lender is unwilling to accommodate or subordinate its lien.

Section 1745.21 (d) and (e) Refinancing Loans

Several respondents objected to the restriction on refinancing contained in these parts. Parts (d) and (e) rather than being restrictive, allow REA flexibility to determine other situations where refinancing could be "necessary" under the RE Act.

Section 1745.22(f) Loan Security—TIER

A majority of respondents objected to this provision. They claim that it would disqualify a large number of borrowers from additional financing. Others noted that the RE Act does not specifically provide for such requirement.

The TIER requirements in the final rule of 1.25 for REA loans and 1.5 for RTB loans will not have the severe impact suggested by these comments. For example, with respect to the proposed requirements on TIER (times interest earned ratio), the vast majority of our borrowers already meet this requirement. Ninety-five percent of our borrowers have a TIER of 125 or greater, 93 percent have a TIER of 150 or greater. Those borrowers that have a TIER below these minimums appear to be about average in comparison to our other borrowers in terms of economic and financial characteristics, such as subscriber density (number per route mile), net profit per subscriber, operating expense per subscriber, etc. It appears that most of these borrowers would not have any more difficulty in meeting the minimum requirements for TIER than those borrowers that already meet the requirements.

Moreover, under this rule the Administrator would have the authority to waive the TIER requirements if they would impose a financial burden on the borrower.

The Rural Electrification Act (RE Act) requires that a borrower must be able to meet a TIER of 150 to be eligible for a RTB loan. The rule simply provides assurance that RTB borrowers will continue to maintain a 150 TIER. Nor is a 150 TIER requirement new to REA. For years the electric program has required its borrowers to maintain a 150 TIER. Moreover, a minimum TIER of 150 for telephone loans is required by the Rural Telephone Finance Cooperative, which is owned by REA borrowers, as well as by virtually all other private lenders. For these reasons the final rule includes the TIER requirements as proposed.

Section 1745.22(f) and (g) Loan Security—Net Worth

A majority of respondents objected to the provisions for a minimum net worth requirement. REA has concluded that this additional security requirement is not needed at this time. Consequently § 1745.22(g) has been deleted from the final rule.

Section 1745.31 RTB Loans

Several respondents objected to the provision in this section RTB loans be made in preference to REA loans. Such preference is required by section 408(b)(2) of the RE Act.

One respondent questioned the legal authority to make RTB loans concurrently with a guaranteed loan. REA concluded that such concurrent loans can be made under the Act.

Section 1745.32(a) Guaranteed Loans

One respondent found "no basis for determining that applications requiring $7 million should be approved as loan guarantees." The regulation does not state that all applications over $7 million will be approved as guaranteed loans. This level is only one criterion for considering the application as a guarantee. The $7 million level is a restatement of existing policy as published in a **Federal Register** notice dated September 8, 1975, Vol. 40, No. 174.

Section 1745.32 (a) and (b) Guaranteed Loans

One respondent expressed concern that these parts would prohibit borrowers from obtaining a loan guarantee. REA did not intend such restriction and has added language to make this clear.

Section 1745.42 Automatic Rescissions

The majority of commentators objected to the inclusion of § 1745.42 which institutes automatic rescissions of all telephone loan funds not encumbered 5 years after the date of the note. This provision has been deleted and § 1745.42 has been retitled *Extension of Advances.* The wording of § 1745.42(b) has been retained in modified form to provide for extension of advances past a 5-year period (currently 6 years) provided for in the notes.

It should be understood that the loan contract currently used by REA contains a provision allowing the Administrator to terminate advances of loan funds three years after the date of the loan contract or most recent amendment thereto. Also under the current form of note, the Government is not obligated to advance funds after 6 years. In the final rule this period is 5 years.

Section 1745.43(a) Payment on Loans

A majority of respondents objected to both the matching of the loan maturity to the economic life of the facilities and the reduction of the maximum loan period to 22 years. The final rule establishes that the repayment period will be based on the approximate useful life of the facilities financed. Collateral for REA loans rests on the value of the facilities financed. REA relies on the revenues produced by the facilities financed for repayment of the loans. If the loan repayment period is greater than the economic life of the facilities financed the long term results can be undercollateralization and rate base erosion.

A number of respondents argued that reducing the loan amortization period from 35 years to the actual depreciation period would increase borrowers' capital costs and thus increase rates to subscribers. As the regulation ties the loan amortization period to the borrowers' actual depreciation period, the capital recovered through depreciation is sufficient to meet the principal payments without any increase in rates. In fact, if the loan period exceeds the depreciation period, interest costs over the life of the loan are increased and these costs are ultimately borne by the ratepayer.

It is general practice for lenders making loans for capital assets to set the amortization period of the loan equal to the expected economic life of the items financed. Consequently, REA is not seeking to establish a unique requirement in this area. In fact, when the term for REA loans was originally established at 35 years, the expected economic life of typical telephone facilities closely approximated this period. REA is updating its policy to recognize changes in the industry that have resulted in shorter economic lives for many types of telecommunications equipment.

Section 1745.43(b) Payment on Loans

A majority of respondents objected to a single two-year deferment period on principal repayments since the typical construction period is generally longer.

This provision is entirely consistent with the intent of the RE Act. The existing principal deferment provision was established nearly 40 years ago when many new telephone cooperatives were being started from scratch, and these systems did not have an ongoing operation generating sufficient revenues during the first years to meet payments on both principal and interest. That situation has changed greatly. All loans made today are either to existing borrowers or new borrowers that have established telephone systems and thus have the cash flow from the beginning to meet both principal and interest payments. In the past 25 years, REA has financed the establishment of only three new telephone systems, two cooperatives in Alaska (1980) and a system owned by an Indian tribe in Arizona (1985). In the event any new systems are financed in the future, the Administrator could increase the 2-year deferment period for these loans. It should also be noted that the principal deferment period is 2 years in the electric program.

Section 1745.46 Loan Security Documents

One respondent stated that § 1745.46 was too vague regarding the sharing of collateral with other lenders. Part 1745 is intended to state only the general policies and requirements of the REA telephone program. The specific policy on sharing collateral with other lenders is contained in 7 CFR Part 1747, Lien Accommodations. Section 1745.46 has been revised to reference the chapter on lien accommodation and subordination.

Section 1745.51 Required Findings

Four respondents objected to the factors listed for considering the security of a proposed loan on the basis that they are not objective and/or would exclude numerous borrowers from obtaining loans. The RE Act requires that "Loans under this section (201) shall not be made unless the Administrator finds and certifies that in his *judgment* (emphasis added) the security therefore is reasonably adequate * * *". This section lists the factors the Administrator may consider in making a judgment about security and is clearly within the authority granted to the Administrator by the RE Act.

Section 1745.51(a)(3) Required Findings

Two respondents objected to the "appropriate" local service rate provision on the grounds it lacked objectivity and that REA lacks the authority to regulate rates.

This section recognizes that REA may consider whether local service rates will yield adequate revenues to support the proposed loan. If REA determines that an increase in revenues is necessary to support the loan, the borrower can be required to seek said increases as a condition of the loan.

Section 1749.2(f) Definitions—Interim Financing

One respondent requested a clearer definition of interim financing to reference the fact that the borrower has applied for REA financing to replace the interim financing. Accordingly, we have changed the definition to clarify this point. Further explanation of the interim financing process is contained in 7 CFR Part 1749, Subpart E, "Interim Financing of Construction of Telephone Facilities."

Section 1749.2(h) Definitions—Rural Areas

See § 1745.2(e).

Section 1749.20 The Loan Application Form

Several respondents objected to the cancellation of loan applications after 1 year if the Loan Design and supplementary information have not been received. We have added language to clarify that the application is cancelled without prejudice and that the prospective borrower may reapply at any time for the same or other loan purposes. The intent of this section is to encourage borrowers to promptly pursue completion of preloan requirements and to effectively manage the distribution of the workload amongst REA staff.

Section 1749.31(e) Area Coverage Survey

Several respondents requested that this section be changed to require REA action within a specified time frame.

REA will carry out its responsibilities in a timely manner. Due to the different conditions and characteristics of each loan proposal, it is not possible to set specific time frames that would be appropriate for all circumstances.

Section 1749.40 General (Interim Financing

One respondent requested that this subpart be deleted and borrowers be given the latitude to incur short-term interim debt as they see fit.

We agree that borrowers should have the flexibility to construct plant when they need to. However, if the construction must proceed prior to loan funds becoming available, a method has to be establishing to allow this to happen and yet assure REA that the construction will be qualified for REA financing in accordance with the same

rules that pertain to all post-loan funded construction.

If a borrower does proper long-range financial and construction planning, the need for interim financing should be minimal.

We feel the establishment of Subpart E provides more flexibility for borrowers to meet their obligations on a timely basis.

Section 1749.41(c)(3) Interim Financing

One respondent objected to the open-ended nature and lack of objectivity of this restriction. This provision is necessary because every situation of interim financing that might jeopardize loan security or other Act requirements can't be identified in advance.

List of Subjects in 7 CFR Parts 1745 and 1749

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA amends 7 CFR Chapter XVII by adding the following new Parts 1745 and 1749:

PART 1745—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELEPHONE PROGRAM

Subpart A—General

Sec.

1745.1 General statement.
1745.2 Definitions.
1745.3 Availability of forms.

Subpart B—Loan Purposes and Basic Policies

1745.10 General.
1745.11 Area coverage.
1745.12 Nonduplication.
1745.13 Location of facilities and service for nonrural subscribers.
1745.14 Borrower eligibility.
1745.15 Civil rights.
1745.16 Minimum loan amount.
1745.17 Facilities financed.
1745.18 Additional equity.
1745.19 Mergers and consolidations.
1745.20 Acquisitions.
1745.21 Refinancing loans.
1745.22 Loan security.

Subpart C—Types of Loans

1745.30 Insured loans.
1745.31 Rural telephone bank loans.
1745.32 Guaranteed loans.

Subpart D—Terms of Loans

1745.40 General.
1745.41 Notes.
1745.42 Extension of advances.
1745.43 Payments on loans.
1745.44 Prepayment premiums.
1745.45 Extension of payments.
1745.46 Loan security documents.
1745.47 Rescission of loans.

Subpart E—Requirements for Loan Approval

1745.50 Administrative findings.
1745.51 Required findings.
1745.52 Findings required for particular loan purposes.

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

Subpart A—General

§ 1745.1 General statement.

This CFR part supersedes all portions of the following REA Bulletins which are in conflict with it:

320–4 Preloan Procedures for Telephone Loan Applicants
320–22 Guarantee of Loans for Telephone Facilities
321–2 Loan Security Requirements for Telephone Loans
22–2 Rural Area Coverage—Telephone Loans
323–1 Determination by Administrator with Respect to Nonduplication of Lines, Facilities, or Systems
325–1 Financing Lines, Facilities, or Systems Outside of Rural Areas
326–1 Acquisitions of Telephone Facilities and Systems
385–5 Loans to Finance Radio Equipment for Subscriber Service

§ 1745.2 Definitions.

As used in this part:

(a) "Administrator" means the Administrator of REA.

(b) "Borrower" means any organization which has an outstanding loan made or guaranteed by REA, or which is seeking such financing.

(c) "Feasibility study" means the pro forma financial analysis performed by REA to determine the economic feasibility of a loan. See 7 CFR Part 1751.

(d) "Loan" means any loan made or guaranteed by REA.

(e) "Rural area" means any area of the United States, its territories and insular possessions (including any area within the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau) not included within the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 1,500. The population figure is obtained from the most recent data available, such as from the Bureau of the Census and Rand McNally and Company. For purposes of the "rural area" definition, the character of an area is determined as of a time the initial loan for the system is made.

(f) "Telephone service" means any communication service for the transmission of voice, sounds, signals, pictures, writing, or signs of all kinds through the use of electricity between the transmitting and receiving apparatus, and includes all telephone lines, facilities, or systems used to render such service. It does not mean (1) message telegram service, (2) community antenna television system services or facilities other than those intended exclusively for educational purposes, or (3) radio broadcasting services or facilities within the meaning of section 3(o) of the Communications Act of 1934, as amended.

(g) "Times Interest Earned Ratio" (TIER) means the ratio of a borrower's net income plus interest expense plus taxes based upon income, all divided by interest expense, except that for the purposes of section 408(b)(4)(ii) of the geRE Act taxes shall not be included in the numerator of the TIER ratio. For the purpose of this calculation, all amounts will be annual figures and interest expense will include only interest on debt with a maturity greater than one year.

§ 1745.3 Availability of forms.

Single copies of REA forms and publications cited in this part are available from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250. These REA forms and publications may be reproduced.

Subpart B—Loan Purposes and Basic Policies

§ 1745.10 General.

The Rural Electrification Administration (REA) makes loans for the purpose of financing the improvement, expansion, construction, acquisition, and operation of telephone lines, facilities, or systems to furnish and improve telephone service in rural areas. Loans made or guaranteed by the Administrator of REA will be made in conformance with the Rural Electrification Act of 1936 (RE Act), as amended (7 U.S.C. 901 et seq.), and 7 CFR Chapter XVII. REA provides borrowers specialized and technical accounting, engineering, and other managerial assistance in the construction and operation of their facilities when necessary to aid the development of rural telephone service and to protect loan security.

§ 1745.11 Area coverage.

Borrowers must make adequate telephone service available to the widest practical number of rural subscribers during the life of the loan. Both the nature of the service area and the cost per subscriber must be fully considered. The borrower must seek to provide service to all interested potential subscribers in the service area. Borrowers are not required to extend

service in situations where the costs would be exorbitant. The loan contract shall contain appropriate provisions to effect this requirement. See 7 CFR 1749.11(a), Preapplication Determinations: Area to be Served.

§ 1745.12 Nonduplication.

(a) In states having a state regulatory body with authority to regulate telephone service and to require certificates of convenience and necessity, the borrower must obtain such a certificate before REA will make a loan. Facilities or services not specifically covered by such certificate will be subject to the provisions of § 1745.12(b).

(b) In states where there is no such regulatory body, a loan will not be made unless the Administrator determines that no duplication of lines, facilities, or systems already providing reasonably adequate services shall result from such a loan.

(c) REA shall consider the following criteria in determining whether service is reasonably adequate:

(1) Availability of telephone service to commercial establishments, professional offices, essential community services, and residences in the community.

(2) Reasonable audibility and clarity of sound transmission and reception.

(3) Absence of frequent interruptions.

(4) Adequacy of line circuits and central office facilities to permit reasonably frequent subscriber use without unreasonable delay.

(5) Availability of connections with other exchanges and with the interexchange facilities of the Nation.

(6) Any other criteria the Administrator determines to be applicable to the particular case.

§ 1745.13 Location of facilities and service for nonrural subscribers.

(a) When it is determined by the Administrator to be necessary in order to furnish or improve telephone service in rural areas, loans may be made for the improvement, expansion, construction, acquisition, and operation of telephone lines, facilities, or systems without regard to their geographical location.

(b) To the greatest extent practical, loans are limited to providing telephone facilities that serve subscribers in rural areas. In order to furnish and improve service to rural subscribers it may at times be necessary to provide loan funds to finance telephone facilities which (1) will also serve nonrural subscribers, or (2) are located in nonrural areas. Loans may be approved to finance such facilities if the Administrator determines, on a case-by-case basis, that (i) the primary purpose of the loan is to provide service to rural areas and (ii) the financing of facilities for nonrural subscribers is necessary and incidental to furnishing or improving telephone service in rural areas.

(c) Loan funds may be approved for facilities to serve nonrural subscribers only if (1) the principal purpose of the loan is to furnish and improve rural service and (2) the use of loan funds to serve nonrural subscribers is necessary and incidental to the principal purpose of the loan. The following are examples of purposes for which such loans may be made (such loans are not limited to these examples):

(i) In the case of construction of a new system, if the loan would not be economically feasible and self-liquidating unless the nonrural as well as the rural portions of the telephone service area are included in the proposed system, the loan may include funds for both portions.

(ii) Where the acquisition of an existing system located in and serving a nonrural area is necessary to serve as the nucleus of an expanded system to furnish area coverage service in rural areas, the loan may include funds to finance the acquisition.

(iii) When a system is being converted to modern service for rural subscribers, the loan may include funds for the conversion of the nonrural facilities, if the rural service will be improved as a result of such nonrural improvements and it is impractical to finance and serve the nonrural and rural areas separately.

(4) A loan may include funds to serve nonrural subscribers located in community centers frequently called by the rural subscribers if the construction to serve such nonrural subscribers will be incidental to, and contribute substantially to, the provision of adequate service for the rural subscribers.

§ 1745.14 Borrower eligibility.

REA makes loans to:

(a) Entities providing, or who may hereafter provide, telephone service in rural areas,

(b) Public bodies providing telephone service in rural areas as of October 28, 1949, and

(c) Cooperative, nonprofit, limited dividend, or mutual associations. REA does not make loans to individual subscribers. REA gives preference to those borrowers (including initial loan applicants) already providing telephone service in rural areas, and to cooperative, nonprofit, limited dividend, or mutual associations. To be eligible for a loan, a borrower must provide or propose to provide the basic local exchange telephone service needs of rural areas, and it must be incorporated.

§ 1745.15 Civil rights.

Borrowers are required to comply with certain regulations on nondiscrimination and equal employment opportunity. See REA Bulletin 320–19 and REA Bulletin 320–15, respectively.

§ 1745.16 Minimum loan amount.

Recognizing plant costs, the borrower's cost of system design, and REA's administrative costs, REA will not consider applications for loans of less than $50,000.

§ 1745.17 Facilities financed.

(a) REA makes loans to finance the improvement, expansion, construction, acquisition, and operation of telephone lines, facilities or systems to furnish and improve telephone service in rural areas.

(b) Except in cases of financial hardship, as determined by the Administrator, REA does not make loans to finance the following items:

(1) Headquarters facilities, other than warehouse and garage facilities.

(2) Office equipment, including computers.

(3) Vehicles and other work equipment.

(4) Furniture.

(c) REA will not make loans to finance the following items:

(1) Station apparatus and associated inside wiring.

(2) Any duplicative facilities. See 7 CFR 1745.12.

(3) Facilities to serve subscribers outside the local exchange service area of the borrower unless those facilities are necessary to furnishing or improving telephone service in rural areas.

(d) If an unadvanced loan, or portion thereof, is rescinded, a new loan shall not be made for the same purposes as in the rescinded loan, except as provided in § 1745.47.

§ 1745.18 Additional equity.

If determined by the Administrator to be necessary for loan security, a borrower applying for an initial loan shall increase its net worth as a percentage of assets to the highest level recorded, not to exceed 40 percent, at the end of any calendar quarter in the period beginning 2 years prior to the receipt by REA of the borrower's loan application form (REA Form 490). This restoration to the higher level of net worth shall take place before REA will

determine the feasibility of the proposed loan.

§ 1745.19 Mergers and consolidations.

REA does not make loans for the sole purpose of merging or consolidating telephone organizations. After a merger or consolidation, REA will consider making loans to the telephone system to finance the improvement or extension of telephone service in rural areas. See REA Bulletins 320–4, 321–2, 325–1, and 326–1.

§ 1745.20 Acquisitions.

(a) REA finances the acquisition by a borrower of another system, lines, or facilities only when the acquisition is necessary and incidental to furnishing or improving rural telephone service. See 7 CFR 1745.13.

(b) REA determines the amount it will lend for each acquisition. If the acquisition price exceeds this amount, the borrower shall provide the remainder.

(c) For additional policies on acquisitions, see REA Bulletins 320–4, 321–2, 325–1, and 326–1.

§ 1745.21 Refinancing loans.

(a) REA makes loans to refinance outstanding indebtedness of corporations furnishing telephone service when such refinancing is necessary and incidental to furnishing or improving telephone service in rural areas. Refinancing may not constitute more than 40 percent of the loan.

(b) Loans for refinancing are not made solely to enable borrowers to obtain a lower interest rate or a longer amortization period. REA requires borrowers, to the greatest extent possible, to liquidate outstanding indebtedness through the use of nonloan funds.

(c) If deemed necessary by REA to provide itself with adequate security, REA will consider loans for refinancing outstanding indebtedness secured by a lien on property offered as security for the loan, if the property covered by the lien is integral to the operation of the system.

(d) REA will consider loans for refinancing when the borrower would otherwise be unable to meet payments on both the outstanding indebtedness and the loan as they become due.

(e) REA may consider loans for refinancing in other situations.

§ 1745.22 Loan security.

(a) REA makes loans only if, in the judgment of the Administrator, the security therefor is reasonably adequate and the loan will be repaid within the time agreed. See 7 CFR 1745.18 and 7 CFR 1745.51.

(b) REA generally requires that borrowers provide it with a first lien on all of the borrower's property. See 7 CFR 1745.46.

(c) In the case of loans that include the financing of telephone facilities that do not constitute self-contained operating systems or units (such as lines switched by other systems), the borrower shall, in addition to the mortgage lien on all of the borrower's telephone facilities, furnish adequate assurance, in the form of contractual or other security arrangements, that continuous and efficient telephone service will be rendered.

(d) The borrower shall provide REA with a satisfactory Area Coverage Survey. See 7 CFR 1749.30 and 1749.31.

(e) REA makes loans only if the borrower's entire system, including the facilities to be constructed with the proceeds of the loan, is economically feasible, as determined by REA.

(f) To obtain a loan after April 3, 1989, a borrower shall meet the following Times Interest Earned Ratio (TIER) requirements, except when the Administrator determines that the borrower would experience financial hardship.

(1) For a 100 percent REA loan, that is, a loan made solely under Section 305 of the RE Act, a borrower must have a TIER of at least 125 percent on all of its outstanding and proposed loans from REA and all other lenders as determined by the feasibility study prepared in connection with the loan, unless the borrower has received a loan subject to the provisions of 7 CFR 1745.22(f)(2). In the latter case, the borrower must continue to meet the TIER requirements of 7 CFR 1745.22(f)(2). The mortgage will contain a provision requiring the borrower to maintain a TIER of at least 125 percent. The borrower will also be expected to demonstrate progress toward achieving a TIER of 150 percent.

(2) For a loan guaranteed by REA or made concurrently by REA and the Rural Telephone Bank (RTB) (and for a 100 percent RTB loan), a borrower must have a TIER of at least 150 percent on all of its outstanding and proposed loans from REA and all other lenders as determined by the feasibility study prepared in connection with the loan. The mortgage will contain a provision requiring the borrower to maintain a TIER of 150 percent.

(g) Additional financial, investment, and managerial controls appear in the loan contract and mortgage required by REA.

Subpart C—Types of Loans

§ 1745.30 Insured loans.

(a) REA makes insured loans under section 305 of the RE Act. These loans bear interest at an annual rate of five percent, unless the Administrator finds that the borrower:

(1) Has experienced extreme financial hardship; or

(2) Cannot, in accordance with generally accepted management and accounting principles and without charging rates to its subscribers so high as to create a substantial disparity between its rates and the rates charged for similar service by others in the same or nearby areas, provide service consistent with objectives of the RE Act.

(b) If the Administrator makes a finding in accordance with paragraph (a)(1) or (a)(2) of this section, REA may make an insured loan at an interest rate lower than 5 percent, but not less than 2 percent.

§ 1745.31 Rural telephone bank loans.

(a) RTB makes loans under Section 408 of the RE Act. Rules and regulations of the RTB are contained in Chapter XVI of this title.

(b) Loans shall be made by RTB in preference to being made by REA, if the borrower is eligible for such a loan and funds are available therefor.

(c) Notwithstanding paragraph (b) of this section, if a borrower has an average subscriber density of three or fewer per route mile of line, an RTB loan can be made only at the election of the borrower.

(d) RTB loans may be made concurrently with either insured loans or guaranteed loans.

§ 1745.32 Guaranteed loans.

(a) *General.* REA provides loan guarantees pursuant to Section 306 of the RE Act to enable borrowers to secure major telephone loans from non-REA sources. A major telephone loan is a loan requiring over 7 million dollars or such other sum as may be determined from time to time by the Administrator. Guaranteed loans may be made concurrently with insured loans or RTB loans. REA will consider guaranteeing a loan if the borrower meets all requirements set forth in regulations applicable to a loan made by REA. No fees or charges are assessed for any guarantee of a loan provided by REA. In view of the Government's guarantee, REA generally obtains a first lien on all assets of the borrower; see 7 CFR 1745.46. REA will consider applications less than $7 million for a loan guarantee

when the borrower specifically requests a guarantee.

(b) *New worth requirements.* REA generally requires that borrowers seeking guaranteed loans have a net worth in excess of 20 percent of assets. For the purpose of this section, the term "net worth" means "Total Retained Earnings or Margins and Capital Credits" plus either "Total Capital Stock Outstanding and Subscribed" or "Total Membership and Capital Certificates" as reported to REA pursuant to REA Telecommunications Operations Manual Section 1800. REA will consider loan guarantees for borrowers with a net worth less than 20 percent.

(c) *Full amount guaranteed.* Loans are guaranteed in the full amount of principal and interest. Because of the Government's full faith and credit 100 percent guarantee of these loans, only REA obtains a mortgage on the borrower's assets.

(d) **Federal Register** *notice.* After REA has reviewed an application and determined that it shall consider guaranteeing a loan for the proposed project, it shall publish a Notice in the **Federal Register**. The Notice will include a description of the proposed project, the estimated total cost, the estimated amount of the guaranteed loan, a statement that the Federal Financing Bank (FFB) has a standing loan commitment agreement with REA, and the name and address of the borrower to which financing proposals may be submitted.

(e) *Qualified lenders.* REA considers loan guarantees on a case by case basis for loans made by the FFB and any other legally organized lending agency or by a combination of lenders that the Administrator determines to be qualified to make, hold and service the loan. "Legally organized lending agency" and "lender" include commercial banks, trust companies, mortgage banking firms, insurance companies, and any other institutional investor authorized by law to loan money. The borrower is responsible for evaluating all proposals received from lenders other than FFB. The borrower furnishes REA with a report on the evaluations and its choice of proposals. However, at the request of the borrower, the guaranteed loan shall be made by the FFB.

(f) *Interest rate.* Guaranteed loans shall bear interest at the rate agreed upon by the borrower and lender. Guaranteed FFB loans shall be at a rate of interest that is not more than the rate of interest applicable to other similar loans then being made or purchased by FFB.

(g) *Condition of guarantee.* REA will not guarantee a loan if the income from the loan or the income from obligations issued by the holder of the loan, when the obligations are created by the loan, is excluded from gross income for the purpose of Chapter I of the Internal Revenue Code of 1954.

(h) *Contract of guarantee.* If REA is satisfied with the engineering and economic feasibility of the project and approves the borrower's choice of proposal, subject to the submission of satisfactory financing documents and to the satisfaction of other pertinent terms and conditions, REA will prepare a contract of guarantee to be executed by the borrower, the lender, and REA within a specified time. The lender, or its representative, shall have the right to examine the borrower's application and supporting data submitted to REA in support of its request for financial assistance.

(i) *Loan servicing.* The contract of guarantee will require that arrangements satisfactory to REA be made to service the loan. Required servicing by the lender will include:

(1) Determining that all prerequisites to each advance of loan funds by the lender under the terms of the contract of guarantee, all financing documents, and all related security instruments have been fulfilled. Such determinations may be met by obtaining REA approval of each advance.

(2) Billing and collecting loan payments from the borrower.

(3) Notifying the Administrator promptly of any default in the payment of principal and interest on the loan and submitting a report, as soon as possible thereafter, setting forth its views as to the reasons for the default, how long it expects the borrower will be in default, and what icorrective actions the borrower states it is taking to achieve a current debt service position.

(4) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, contract of guarantee, or related security instruments, or conditions of which the lender is aware which might lead to nonpayment, violation, or other default.

(j) *Payments under the contract of guarantee.* Upon receipt of the notification required in § 1745.32(i)(3) of this section, REA will pay the lender the amount in default with interest to the date of payment. When REA has made a payment under a contract of guarantee, it will establish in its accounts the amount of the payment as due and payable from the borrower, with interest at the rate of interest specified in the lending agreement. REA will work with the borrower and the lender in an effort to eliminate the borrower's default as soon as possible. REA may also proceed with other remedies available under its security instruments.

(k) *Pledging of contract of guarantee.* Subject to applicable law, REA will consider, on a case by case basis, permitting pledging of the contract of guarantee in order to facilitate the obtaining of funds by the lending agency to make the guaranteed loan.

Subpart D—Terms of Loans

§ 1745.40 General.

Terms and conditions of loans are set forth in a mortgage, note, and loan contract. Provisions of the mortgage and loan contract are implemented by provisions in REA Bulletins and Regulations. Forms of the mortgage, note, and loan contract can be obtained from REA.

§ 1745.41 Notes.

Loans are represented by one or more notes. Interest accrues only on funds advanced. There are no loan commitment fees or charges. See REA Bulletin 320–12 (or 7 CFR Part 1785) for additional information. This CFR Part supersedes those portions of REA Bulletin 320–12 "Loan Payments and Statements" with which it is in conflict.

§ 1745.42 Extensions of advances.

The Administrator may agree to an extension of the obligation of the Government to advance funds (see § 1745.43(b)) if the borrower demonstrates to the satisfaction of the Administrator that the loan funds will be needed for approved loan purposes. To apply for an extension, borrowers must send to the Area Office, at least 120 days before the Government's obligation to advance loan funds terminates, the following: (a) A certified copy of a board resolution requesting an extension of the obligation of the Government to advance unencumbered loan funds, (b) evidence that those loan funds continue to be needed for approved loan purposes, and (c) notice of the estimated date for completion of construction and complete drawdown of the loan funds. If the Administrator approves a request for an extension, the Administrator shall notify the borrower in writing of the extension and the terms and conditions thereof.

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§ 1745.43 Payments on Loans.

(a) Generally, loans approved after April 3, 1989, must be repaid with interest within a period, up to a maximum of 35 years, that approximates

the expected useful life of the facilities to be financed. The expected useful life shall be based on the composite depreciation rates that the borrower proposes for the facilities financed by the loan, provided that these rates are deemed appropriate by REA. In states where the borrower must obtain state regulatory commission approval of depreciation rates for rate making purposes, the depreciation rates used shall be the rates currently approved by the state commission or rates for which the borrower shall seek state commission approval, provided that these rates are deemed appropriate by REA. In cases where a state regulatory commission does not approve depreciation rates, if the rates proposed by the borrower are not deemed appropriate by REA, REA shall base expected useful life on accepted industry standards. Borrowers may request a repayment period that is shorter than the expected useful life of the facilities financed. The Administrator may approve a longer period, up to 35 years, if the borrower would otherwise experience financial hardship.

(b) Principal and interest will be repaid in accordance with the terms of the notes. Generally, interest is payable each month as it accrues. Principal payments on each note generally are scheduled to begin 2 years after the date of the note. After this deferral period, interest and principal payments on all funds advanced during this 2-year period are scheduled in equal monthly installments. Principal payments on funds advanced 2 years or more after the date of the note will begin with the first billing after the advance. The interest and principal payments on each of these advances will be scheduled in equal monthly installments. Notes for refinancing and acquisitions generally provide for a 6-month deferral of principal payments. Notes will generally contain a provision that the Government will not be obligated to advance funds five years after the date of the note unless the time is extended in accordance with § 1745.42. This CFR part supersedes those portions of REA Bulletin 320–12, "Loan Payments and Statements" with which it is in conflict.

§ 1745.44 Prepayment premiums.

The loan documents normally provide that REA insured loans may be repaid in full at any time without prepayment preimums. Depending upon the lender, there may be prepayment premiums on loans guaranteed by REA. See 7 CFR Part 1610 for prepayment premiums on RTB loans. See REA Bulletin 320–12 (or 7 CFR Part 1785) for additional information. This CFR part supersedes those portions of REA Bulletin 320–12, "Loan Payments and Statements", with which it is in conflict.

§ 1745.45 Extension of payments.

REA may extend the time of payment of principal or interest on a loan. Under section 12 of the Rural Electrification Act, as amended, this extension may be up to 5 years after such payment is due. Under section 236 of the Disaster Relief Act of 1970 (Pub. L. 91–606) payment may be deferred by the Secretary of Agriculture as long as necessary in disaster situations so long as the final maturity date is not later than 40 years after the date of the loan. See REA Bulletin 320–2 for additional information.

§ 1745.46 Loan security documents.

Loans are to be repaid according to their terms. REA generally obtains a first lien on all assets of the borrower. This lien shall be in the form of a mortgage by the borrower to the Government or a deed of trust made by and between the borrower and a trustee, satisfactory to the Administrator, together with such security agreements, financing statements, or other security documents as REA may deem necessary in a particular case. Where a borrower is unable by reason of pre-existing encumbrances, or otherwise, to furnish a first mortgage lien on its entire system the Administrator may, if he determines such security to be reasonably adequate and the form and nature thereof otherwise appropriate, accept other forms of security. See REA Bulletins 320–4, 320–22, 321–2, 322–2, 323–1, and 326–1 for details. See 7 CFR Part 1747 for information on lien accommodations and subordinations.

§ 1745.47 Rescission of loans.

(a) Rescissions of a loan may be requested by a borrower at any time. REA may initiate rescission of a loan at a time 3 years or more after the date of the last amendment of the loan contract. The party initiating the rescission must demonstrate (1) that the purposes of the loan being rescinded have been completed, (2) that sufficient funds are available from sources other than REA, RTB or FFB to complete the purposes of the loan being rescinded or (3) the purposes of the loan are no longer required to extend or improve telephone service in rural areas. (b) REA may also terminate advances, after one year for initial loans and after three years for subsequent loans as provided in the loan contract. (c) Borrowers submitting loan applications containing purposes previously covered by a loan that has been rescinded shall include in the application an explanation satisfactory to REA, of the change of conditions since the rescission that re-establishes the need for these purposes.

Subpart E—Basic Requirements For Loan Approval

§ 1745.50 Administrative findings.

The RE Act requires that the Administrator make certain findings to approve a telephone loan or loan guarantee. The borrower shall provide the evidence determined by the Administrator to be necessary to make these findings. Details on the information required to support these findings are included in 7 CFR Part 1749.

§ 1745.51 Required findings.

(a) *Feasibility of and security for the Loan.* The borrower shall provide REA with satisfactory evidence to enable the Administrator to determine that the security for the loan is reasonably adequate and the loan will be repaid on time. This finding is based on the following factors:

(1) Self-liquidation of the loan within a period specified by REA; this requires that there be sufficient revenues from the borrower's system, in excess of operating expenditures (including maintenance and replacement), to repay the loan with interest.

(2) Reasonable assurance of achieving the telephone market projections upon which the loan is based.

(3) Economic feasibility (based on projected revenues, expenses, net income, maximum debt service, and rate of return on investment) for the proposed system using local service rate schedules appropriate for the area served.

(4) Impact of the proposed loan and construction on the ratio of the borrower's secured debt to assets.

(5) Projected growth in the borrower's equity.

(6) Satisfactory experience and reputation of the system's principal owners and manager.

(7) A first lien on the borrower's total system or other adequate security.

(8) Fair market value of the borrower's assets as represented in its financial reports to REA.

(9) Appropriate financial and managerial controls included in the loan documents.

(10) Other factors determined to be relevant by REA.

(b) *Area coverage.* The borrower shall provide REA with satisfactory evidence to enable the Administrator to determine that adequate telephone

service will be made available to the widest practical number of rural users during the life of the loan.

(c) *Nonduplication or certificate requirement.* The borrower shall provide REA with satisfactory evidence to enable the Administrator to determine that no duplication of service shall result from a particular loan for those borrowers not required by the state regulatory commission to have a certificate of convenience and necessity (or its equivalent). For borrowers required to have a certificate of convenience and necessity, all portions of the existing and proposed system must be covered by the certificate.

§ 1745.52 Findings required for particular loan purposes.

(a) *Refinancing.* For loans that include funds to refinance outstanding indebtedness of the borrower, the borrower shall provide REA with satisfactory evidence to enable the Administrator to determine that the inclusion in the loan of such funds shall be necessary and incidental to furnishing or improving telephone service in rural areas. See 7 CFR 1745.21.

(b) *Facilities for nonrural areas.* Whenever a borrower proposes to use loan funds for the improvement, expansion, construction, or acquisition of telephone facilities within or for nonrural areas, the borrower shall provide REA with satisfactory evidence to enable the Administrator to determine that such funds shall be necessary and incidental to furnishing or improving telephone service in rural areas.

PART 1749—PRELOAN PROCEDURES AND REQUIREMENTS—TELEPHONE PROGRAM

Subpart A—General

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Subpart E—Interim Financing of Construction of Telephone Facilities

Sec.

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Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

Subpart A—General

§ 1749.1 General statement.

This part prescribes policies, procedures and responsibilities relating to applications for REA loans to finance the improvement and extension of telephone service in rural areas. Requirements for both initial and subsequent loans are discussed, with differences pointed out.

§ 1749.2 Definitions.

As used in this part:

(a) "Administrator means the Administrator of REA.

(b) "Area Coverage" means the provision of adequate telephone service to the widest practical number of rural users during the life of the loan.

(c) "Borrower" means any organization which has an outstanding loan made or guaranteed by REA, on which is seeking such financing.

(d) "Initial loan" means the first loan made to a borrower.

(e) "Interim construction" means the purchase of equipment or the conduct of construction under an REA-approved plan of interim financing.

(f) "Interim financing" means funding for a project which REA has acknowledged will be included in a loan, should said loan be approved, but for which REA loan funds have not yet been made available.

(g) "Loan" means any loan made or guaranteed by REA.

(h) "Rural area" means any area of the United States, its territories and possessions (including any area within the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau) not included within the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 1,500. The population figure is obtained from the most recent data available, such as from the Bureau of the Census and Rand McNally and Company. For purposes of the "rural area" definition, the character of an area is determined as of a time the initial loan for the system is made.

(i) "Subsequent Loan" means any loan to a borrower which has already received a loan.

§ 1749.3 Availability of REA forms.

Single copies of REA forms and publications cited in this Part are available from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250. These REA forms and publications may be reproduced.

Subpart B—Preapplication Stage

§ 1749.10 Initial contact.

Initial loan applicants seeking assistance should write the Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250. A field representative will be assigned by REA to visit the applicant and discuss its financial needs and eligibility. Existing borrowers initiate the contact directly with their assigned field representative. Borrowers consult with REA field representatives and headquarters staff, as necessary.

§ 1749.11 Preapplication determinations.

Before submitting an application to REA, the borrower should consider the following:

(a) *Area to be served.* The proposed service area should neither include subscribers already receiving adequate service from another telephone system nor leave out unserved pockets of potential subscribers who have indicated an interest in service and are located between the proposed system and neighboring systems. See 7 CFR 1745.11 on Area Coverage and 7 CFR 1745.12 on Nonduplication. In establishing service area boundaries, borrowers should consider the location of adjoining systems, natural boundaries such as rivers and mountains, and economic and cultural features such as trading and community centers.

(b) *Number of subscribers.* The borrower must estimate the number of subscribers that will request service from the proposed system.

(c) *Acquisitions.* A borrower considering an acquisition should refer to 7 CFR 1745.20 and REA Bulletins 320–4, 321–2, 325–1, and 326–1.

(d) *Mergers and consolidations.* A borrower considering a merger or consolidation should refer to 7 CFR 1745.19.

(e) *Refinancing.* Restrictions on the use of loan funds for refinancing are contained in 7 CFR 1745.21.

(f) *Service for nonrural subscribers.* In some situations, REA loan funds may be used to finance facilities to serve nonrural subscribers. See 7 CFR 1745.13.

(g) *Loan amount.* The initial loan request is based on the borrower's best estimate of financing needs. REA requires detailed studies by the

borrower to complete the application and the initial estimate is subject to revision.

(h) *Loans for partial systems.* If it is impractical in a single loan to provide adequate service throughout the borrower's entire telephone service area, REA will consider a loan application to finance improvements to a portion of a borrower's system.

Subpart C—The Loan Application

§ 1749.20 The loan application form.

REA Form 490, "Application for Telephone Loan or Loan Guarantee," shall be used to apply to REA for a loan. The application must be submitted in duplicate. A sketch or map showing the existing and proposed service areas must be attached to the form. (Where there have been no changes in the service area since the last loan application was submitted, and none are proposed, the map may be omitted.) Form 490 serves as formal notice to REA of the borrower's application for REA financing and provides information REA uses to make a preliminary determination of the borrower's eligibility for a loan. If the borrower fails to submit a Loan Design recommended by the REA field representative and all required supplementary information within 1 year of submission of the Form 490, the application generally will be cancelled and returned to the borrower. Extensions of time will be granted when the borrower can demonstrate that it is actively pursuing completion of all items required to support the application. Cancellations under this section are without prejudice. Borrowers may reapply at any time for the same or other loan purposes.

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§ 1749.21 The completed loan application.

(a) The completed loan application consists of four parts:

(1) A completed REA Form 490.

(2) A market survey called the Area Coverage Survey (ACS).

(3) The plan and associated costs for the proposed construction, called the Loan Design (LD).

(4) Various supplementary information specified in 7 CFR 1749.22.

(b) The REA field representative assists the borrower in assembling this information. Certain information is required from initial loan applicants but usually not from borrowers seeking subsequent loans.

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§ 1749.22 Supplementary information.

REA requires additional information in support of the loan application form. The information listed in paragraphs (a), (b), and (c) of this section must be submitted with the Loan Design.

(a) The following must be submitted by all initial loan applicants. Borrowers seeking subsequent loans must submit any changes in these items since they were last submitted.

(1) Name of attorney and manager, and certified copies of board resolutions selecting them.

(2) Certified copy of articles of incorporation showing evidence of filing with the Secretary of State and in county records.

(3) Certified copies of bylaws and board minutes showing their adoption.

(4) Certified sample stock certificates.

(5) Amounts of common and preferred stock issued and outstanding.

(6) Names, addresses, business affiliations, and stockholdings of the manager, officers, directors, and other principal stockholders (those owning at least 20 percent of borrower's voting stock).

(7) Certified copies of real estate deeds showing all recording information.

(8) Service agreements, such as for management or system maintenance.

(9) Certified copies of existing leases, except those for vehicles, furniture and office equipment, and computer equipment.

(10) Certified copies of existing franchises.

(11) Information on any franchises required as a result of the proposed loan project.

(12) Federal Communications Commission (FCC) authorizations.

(13) Certified copy of a certificate of convenience and necessity (or its equivalent), or information demonstrating the nonduplication of reasonably adequate facilities, for all areas in the loan project.

(14) For toll, operator office, traffic, and EAS agreements, the names of all parties to the agreement, the type of agreement, and the effective and termination dates of the agreement and annexes, and the exchanges involved.

(15) Copies of rate schedules. (A copy of the tariff must be available for review by the REA field representative.)

(16) Executed copy of REA Form 291, "Certification of Nonsegregated Facilities".

(b) The following must be submitted by all initial loan applicants and borrowers seeking subsequent loans:

(1) Certified financial statements for the last 3 years.

(2) Toll settlement statements and related data.

(3) Present exchange rates and any pending changes.

(4) Borrower's Environmental Report (BER)—See 7 CFR Part 1794.

(5) Any other supporting data required by the Administrator.

(c) The following must be submitted for all borrowers requesting funds for refinancing:

(1) Copies of all bonds, notes, mortgages, and contracts covering outstanding indebtedness proposed to be refinanced.

(2) For each note or bond, the name of the creditor, original amount of debt and amount as of last year-end, purpose of debt, dates incurred and due, interest rates, and repayment terms.

(3) Justification for refinancing and evidence that the use of loan funds is necessary and incidental to furnishing or improving rural telephone service. See 7 CFR 1745.21.

(d) Borrowers requesting loan funds for acquisitions should refer to REA Bulletins 320–4, 321–2, 325–1, and 326–1 for requirements.

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Subpart D—Preloan Studies—Area Coverage Survey and Loan Design

§ 1749.30 General.

In support of a loan application, the borrower shall prepare and submit to REA: (a) A market forecast to determine service requirements (the Area Coverage Survey) and (b) engineering studies to determine the system design that provides service most efficiently (the Loan Design). The REA field representative confers with the borrower and its engineer to schedule the completion and submission of these studies.

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§ 1749.31 Area Coverage Survey (ACS).

(a) The Area Coverage Survey (ACS) is a market forecast of service requirements of subscribers in a proposed service area.

(b) The objective of the ACS is to determine the location, number and telephone service requirements of subscribers in a service area. REA will use the ACS to appraise the proposed plan for area coverage and to determine the largest practical number of rural subscribers which can be served on an economically feasible basis. Preparation of the ACS requires:

(1) A field survey of the service area to locate and identify on maps all

business and residential establishments, whether currently served or not. The location and identification of future establishments are also recorded on the maps.

(2) A forecast of the number of telephone subscribers, in the entire service area, by exchange, grade and class of service, projected for the end of the 5-year study period.

(c) The results of the survey and forecast shall be:

(1) Shown on maps (maps for those service areas previously financed by REA do not have to be included in the ACS provided that the borrower's records contain sufficient information as to subscriber development to enable cost estimates for the proposed facilities to be prepared);

(2) Tabulated on REA Form 569 "Area Coverage Survey Report," or its equivalent; and

(3) supported by a narrative (see § 1749.32(f)(1)(ii)) containing information on the bases for the service requirement forecasts in each exchange.

(d) Guidelines on preparing an ACS are provided in REA Telecommunications Engineering and Construction Manual Section 205.

(e) The REA field representative reviews and approves the borrower's ACS. The borrower should make sure this is done before proceeding with the Loan Design in order to prevent unnecessary expense should the ACS not be approved. The borrower's engineer must use the REA-approved ACS in preparing the Loan Design.

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§ 1749.32 Loan design (LD).

(a) A loan application requires supporting data collectively called a "Loan Design." The LD contains a forecast of service requirements and a narrative with supporting exhibits. Most of the items included in the LD are similar for all loan applications. However, as noted below, there are certain additional requirements for initial loans and for any exchange areas not previously financed by REA, and other additional requirements for subsequent loans for areas previously financed by REA.

(b) Because of the importance and complexity of the engineering studies necessary for the LD, it should be prepared by a competent experienced telecommunications engineer. While the LD is subject to REA approval, the borrower's selection of an engineer to perform preloan work is not. Note: The borrower's selection of an engineer to perform position work *is* subject to REA approval. This should be considered when selecting a preloan engineer, if the same individual or company is to perform both services. See 7 CFR 1763.

(c) An LD for initial loans or for any exchange areas not previously financed by REA requires an Outside Plant Design that provides:

(1) The most economical and practical design for a telephone system that meets immediate service demands; and

(2) The basis for orderly expansion of the system to serve the widest practical number of rural establishments.

(d) The LD for a subsequent loan (which only includes areas previously financed by REA) does not require a detailed Outside Plant Design. The detailed Outside Plant Design for these subsequent loans may be completed for REA review and approval after loan approval, but before staking is started and plans and specifications are prepared. By scheduling preparation of the outside plant design closer to preparation for construction, the need for redesign resulting from changing conditions and its attendant costs are reduced.

(e) Guidelines on preparing an LD are provided in REA Telecommunications Engineering and Construction Manual Section 205.

(f) The LD shall include a narrative, several exhibits, and a certification, as explained below:

(1) *Narrative.* This section discusses the following topics, as appropriate.

(i) *General.* The purposes and amount of the proposed construction and both immediate and long range plans must be covered. The source and amount of any nonloan funds to be used for this construction must be discussed.

(ii) *Subscriber data.* The basis for the subscriber forecast, including any unusual factors expected to influence growth, must be discussed. Reasons for growth projections which vary from historic trends must be explained.

(iii) *Proposed construction.* All proposed construction must be described fully. Reference to the BER must be made here.

(iv) *Service area.* For subsequent loans only, proposed construction which is not within the boundaries of prior loan projects must be discussed. New areas to be served (even if from existing exchanges) must be shown on maps submitted with the proposal.

(v) *Toll and EAS.* Proposed new toll or extended area service (EAS) facilities, including any changes from the existing trunking arrangements, must be described fully. Minutes of meetings and correspondence with connecting companies, and connecting company concurrences, if any, must be included.

(vi) *Radio telephone service.* Proposed radio telephone service must be discussed. Results of studies demonstrating demand and/or need most be included as an exhibit.

(vii) *Special projects.* Facilities involving investment in excess of $100,000 for any single subscriber must be discussed fully. Contractual arrangements with the subscriber, including a termination agreement providing for (A) the full recovery by the borrower of its capital costs of the facilities no later than the maturity date of the note representing the loan, (B) the immediate repayment of all remaining capital costs, if terminated, and (C) repayment to REA of the outstanding amount of the special note shall be submitted. Usually a separate short-term note is prepared for loans to finance Special Projects.

(viii) *Investment in nonrural areas.* (A) For initial loans or loans for areas not previously financed by REA, proposed improvements or expansions in an exchange serving a community of over 1,500 population (a nonrural area), must be discussed fully. The name of the community, the number of existing and projected new subscribers by grades of service within the community, detailed cost estimates of the facilities involved, and information sufficient to establish the necessity for the use of loan funds must be provided.

(B) For subsequent loans, proposed improvements or expansions in an exchange serving a community of over 1,500 population (a nonrural area) which had more than 1,500 at the time facilities to serve the community were first financed by REA, must be discussed as in paragraph (f)(1)(viii)(A) of this section. The population determination is based on the corporate limits or boundaries of unincorporated areas in existence at the time the facilities to serve the community were first financed by REA.

(C) For subsequent loans, the borrower shall state whether the population of a community which currently is more than 1,500 was 1,500 or less at the time REA first financed facilities to serve the community. Detailed cost estimates are not required if the population was 1,500 or less at the time REA first financed facilities to serve the community.

(ix) *Prior loan project.* For subsequent loans only, the reason for and amount of additional loan funds needed to complete construction in progress which was part of a prior loan project in central office areas not included in the current LD must be discussed fully.

(x) *Route miles.* Route miles of outside plant in central office areas not shown on REA Form 495 must be provided.

(xi) *Future plans.* Where the loan application is to finance part of a system-wide upgrading plan, plans for those remaining exchanges not included in the current loan proposal must be discussed.

(2) *Exhibits.* (i) An REA Form 569, "Area Coverage Survey Report," or its equivalent shall be included for the total system and for each exchange in which system improvements or additions are proposed. (ii) An REA Form 495, "Construction Cost Estimates," or its equivalent shall be prepared for each exchange in which system improvements or additions are proposed. An explanation of the method used in developing these cost estimates must be included.

(iii) REA Form 494, "Loan Design Summary," or its equivalent shall be prepared for each loan. This must show all expected 5-year construction costs, loan and nonloan.

(iv) A schematic trunking diagram shall be included showing the number and type, length, ownership and makeup of existing and proposed toll and EAS trunks, plus transmission and traffic data for each trunk group.

(v) Detailed outside plant design maps must be submitted for all central office areas of initial loan applicants and for areas not previously served by existing borrowers or financed by REA. These design maps must be in sufficient detail to substantiate the construction cost estimates.

(vi) For subsequent loans only, if a change in system boundaries is proposed, a map must be furnished showing present and proposed boundaries, and existing establishments and subscribers in the new areas.

(vii) Any other special exhibits needed to support particular items in the loan proposal must be included.

(3) *Certification.* The following certification shall be signed by a principal of the engineering firm and the borrower:

We, the undersigned, certify that the data in this Loan Design are correct to the best of our knowledge and belief and reasonably reflect the cost to serve the subscribers as proposed on the Forms 569, "Area Coverage Survey Report," which are integral parts hereof, and that this Loan Design adheres to REA engineering and construction standards and practices.

(g) The REA field representative shall review and make a recommendation on each LD.

(1) After completion of the LD, the borrower arranges a meeting with its engineer and REA's field representative to review:

(i) Design and cost estimates.

(ii) Reserves available from prior loans, if any, or internally generated funds which may be applied against the requirements of the current application.

(2) One copy of REA Form 567, "Checklist for Review of Loan Design," completed and signed by the borrower's engineer must be attached to the LD submitted to the REA field representative.

(3) The REA field representative recommends acceptance of the LD as the basis for REA financing.

(4) Three copies of the final LD with the REA field representative's recommendation are then sent to the relevant Area Office in REA. A fourth copy is retained by the REA field representative.

(5) A transmittal letter from the borrower must accompany the LDs, requesting that the application previously submitted be amended so as to be consistent with the approved LD.

(6) Final approval of the LD is given by the relevant Area Office in REA. To be approved, the LD must be cost effective, include appropriate technology, and provide area coverage.

(7) Upon receipt of the LD and any other required information, REA makes a preliminary analysis of the loan proposal. Before final consideration of the loan, REA reviews the results of its preliminary analysis with the borrower.

(Approved by the Office of Management and Budget under control number 0572–0079)

Subpart E—Interim Financing of Construction of Telephone Facilities

§ 1749.40 General.

(a) Under special circumstances a borrower may request that REA approve interim financing for interim construction. This subpart describes the circumstances in which REA will consider approving interim financing of construction, the information to be submitted to REA to support the borrower's request, REA's requirements relating to interim construction, and related matters.

(b) For a borrower to preserve the option of obtaining loan funds for reimbursement of interim financing, it must obtain prior REA approval of its interim financing plan and follow the procedures in 7 CFR 1749.41 and 7 CFR 1749.42.

(c) REA will approve interim financing only for projects which must be performed immediately.

(d) REA approval of interim financing is not a commitment that REA will make loan funds available.

(e) Equal employment opportunity requirements apply to interim construction. See REA Bulletin 320–15.

§ 1749.41 Procedure for obtaining approval.

(a) The borrower shall submit to the REA Area Office a written request for approval of interim financing. This request shall include:

(1) A description of the construction proposed under interim financing.

(2) An explanation of the urgency of proceeding with the proposed construction.

(3) An estimate of the cost.

(4) The source of funds to be used for interim financing.

(Approved by the Office of Management and Budget under control number 0572–0079).

(b) REA will not approve interim financing until it has reviewed and found acceptable the following documents:

(1) The loan application (REA Form 490).

(2) The Loan Design (LD), or the portion thereof that covers the proposed construction if the completed LD is not available. See 7 CFR 1749.32.

(3) Evidence that the borrower has satisfied the requirements of 7 CFR Part 1794 applying to the proposed interim construction.

(c) REA will not approve a borrower's request for approval of interim financing if, in REA's judgment:

(1) The proposed interim financing does not comply with the requirements of this Subpart.

(2) The proposed interim construction will not qualify for REA financing.

(3) The proposed interim financing presents unacceptable loan security risks to REA, or otherwise is not in the best interests of REA.

§ 1749.42 Procedure for construction.

(a) If REA approves the interim financing, interim construction shall be conducted in accordance with 7 CFR Part 1763, 7 CFR 1788, REA Bulletin 320–15, and REA Bulletins 381–1, 381–2, 381–4, 381–7, 381–8, 381–9, 381–10, 381–11, 381–13, 382–1, 382–2, 382–3, 383–1, 383–4, 384–1, 384–2, 384–3, 385–1, 385–2, 385–3, 385–4, 385–5, 385–6, 387–1, 387–2, 387–3, 387–4, and 387–5) except for the following:

(1) All sellers and contractors invited to bid must be informed that funds from sources other than REA will be used to pay for construction.

(2) Contracts involving the interim construction must contain a provision, in form and substance satisfactory to REA, stating that REA is not committed to

lend or advance funds to finance the project.

(3) Contracts will not be approved by REA will the borrower demonstrates to REA's satisfaction that funds from sources other than REA will be available when needed to pay invoices submitted in accordance with contract payment terms.

(4) The borrower shall not begin interim construction until all necessary licenses, permits, and other governmental approvals have been obtained.

(b) After REA loan funds are released, the borrower can obtain reimbursement for interim financing by submitting a Financial Requirement Statement. See 7 CFR Part 1754 (or REA Bulletin 327–1).

(1) The first advance of loan funds to a borrower that has received interim financing approval generally will be limited to funds to repay any interim financing indebtedness and such additional amounts as REA deems necessary. REA will make no further advances of loan funds until the borrower has submitted evidence, in form and substance satisfactory to the Administrator, that (i) any indebtedness created by the interim financing and any liens associated therewith have been fully discharged of record and (ii) the borrower has satisfied all other conditions on the advance of additional loan funds.

(2) If the source of funds for interim financing is the borrower's internally generated funds, the borrower may request reimbursement of those funds along with advances for other purposes on the first Financial Requirement Statement.

Date: March 28, 1989.

Jack Van Mark,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 89–7459 Filed 3–31–89; 8:45 am]

BILLING CODE 3410–45–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245a

[INS Number: 1020R–89]

Adjustment of Status for Certain Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule.

SUMMARY: This rule addresses the submission of applications by temporary resident aliens to adjust their status to aliens lawfully admitted for permanent resident. At present applicants can only submit their applications up to 60 days prior to their eligibility to file date. As a convenience to the public and to eliminate confusion as to when to submit an application, this rule will allow the submission of applications at anytime after an alien is granted temporary residence.

EFFECTIVE DATE: Interim rule is effective April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond B. Penn, Assistant Commissioner, Legalization. (202) 786–3658.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603 was enacted on November 6, 1986. The Service published implementing regulations at 52 FR 16205, May 1, 1987, and amending regulations at 52 FR 43843, November 17, 1987; 53 FR 9274, March 21, 1988; 53 FR 9862, March 28, 1988; 53 FR 23382, June 22, 1988, and at 54 FR 6504, February 13, 1989.

The Service is currently completing work on the final rule addressing the adjustment of status of temporary resident aliens to permanent residence and is presently operating under the provisions set forth in an interim rule published at 53 FR 43984 on October 31, 1988.

It has been determined, for the reasons set forth below, to publish this interim rule affecting the provisions of § 245a.3(a). As a result of operational developments in the Legalization Program and the receipt of numerous comments in response to the interim rule published at 53 FR 43984 on October 31, 1988, the Service will amend § 245a.3(a) to provide for submission of applications at anytime after the granting of lawful temporary residence but prior to the end of an applicant's twelve month period of eligibility to apply for adjustment to permanent resident status.

Summary of the Interim Rule

Due to the statutory construction of the Immigration Reform and Control Act of 1986, an applicant is not eligible to apply for permanent residence until after an 18-month period of temporary residence is completed. The Service has been operating under § 245a.3(a) since November 7, 1988, by accepting the submission of permanent resident application up to 60 days prior to an applicant's eligibility to file date.

Aliens adjusted to temporary residence were provided with a temporary resident card (I–688). The card served as proper identification and employment authorization for an alien throughout the temporary residence period and the eligibility to file for permanent residence period. The card was prepared with an issuance date that reflected the date of filing for temporary residence and was valid for a period of 31 months. The 31 month validity period was arrived at by combining the 18 month period of temporary residence and the 12-month eligibility to file for permanent residence period, plus one month. Toward the end of the application period for temporary residence (April 1988), the Service experienced problems with certain automated systems which allowed for the generation of cards with inaccurate issuance dates that did not reflect the filing dates for temporary residence. The inaccurate dates on the cards has led to confusion for those affected temporary residents and their representatives, since the date temporary residence was to have been considered granted was to have been the same as the original filing date of the application, thus enabling the temporary resident to easily determine the eligibility date for permanent residence. It was estimated that less than 5–6% of the legalization temporary resident population was affected before corrective action was taken.

Notwithstanding the aforementioned situation, the Service received numerous comments from national community agencies, attorney organizations, and the public in general that it was going to be difficult for the temporary resident population to understand when they were supposed to apply for permanent residence. A temporary resident failing to apply for permanent residence would not only lose the opportunity for permanent residence, but would also lost the status of temporary resident and revert to an unlawful status. It was not, and is not the Service's intention to see eligible aliens lose the opportunity for permanent residence through no fault of their own. Therefore, the Service will, for the mutual benefit of all parties, accept applications at any time between the date an alien is granted temporary residence and the end of the alien's one-year eligibility period.

The Service is publishing this interim rule in order to implement the procedure as soon as possible. The final rule addressing the adjustment from temporary to permanent residence will be published in the near future.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service (INS) certifies that this rule does not have a significant adverse economic impact on a

substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The Information Collection Requirements contained in this regulation have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. OMB control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status, Permanent resident status.

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

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB. L. 99-603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUB. L. 100-204, SECTION 902

1. The authority citation for Part 245a continues to read as follows:

Authority: 8 U.S.C. 1103, 1255a, 1255a note, and 8 CFR 2.1.

2. Section 245a.3(a) is revised to read as follows:

§ 245a.3 Application for Adjustment from temporary to permanent resident status.

(a) *Application period for permanent residence.* An application for permanent residence under section 245a(b) of the Act may be submitted with fee anytime subsequent to the granting of lawful temporary residence but prior to the end of the alien's twelve-month period of eligibility to apply for permanent resident status. Applications received at the Regional Processing Facilities prior to the beginning of an alien's twelve-month application period will be administratively processed and held by the Service, but will not be considered filed until the beginning of the applicant's eligibility period.

* * * * *

Dated: March 28, 1989.

Richard E. Norton,

Associate Commissioner, Examinations.

[FR Doc. 89-7844 Filed 3-31-89; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN: 3150-AC72

Flow Control Conditions for the Standby Liquid Control System in Boiling Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The NRC is amending its regulations to set forth conditions and considerations for determining reactivity control capacity for boiling water reactor standby liquid control systems. The changes are necessary to clarify the existing regulation.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: William R. Pearson, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3764.

SUPPLEMENTARY INFORMATION: On Monday, October 24, 1988, the Commission published in the **Federal Register** (53 FR 41607) a proposed rule, entitled "Flow Control Conditions for the Standby Liquid Control System in Boiling Water Reactors," that proposed amendments to 10 CFR 50.62. Interested parties were invited to submit written comments within a 60-day comment period, which ended on December 23, 1988. One comment was received, which agreed with the proposed clarification.

No change to the proposed rule was suggested in the public comment received by the NRC. The Commission believes that the proposed rule adequately clarifies reactivity control conditions for boiling water reactor standby liquid control systems (SLCS), thus, a final rule is being issued adopting the proposed rule without modification.

Environmental Impact: Categorical Exclusion

The NRC has determined that this rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(2). Thus, neither an environmental impact statement nor an environmental assessment has been prepared.

Paperwork Reduction Act Statement

This rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget under control number 3150-0011.

Regulatory Analysis

Because this rule is of a clarifying nature and does not substantially change existing regulatory requirements, the regulatory analysis prepared for the final rule entitled "Reduction of Risk from Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants," published June 26, 1984 (49 FR 26036) is still valid for this rule. The analysis is available for inspection in the Public Document Room, 2120 L Street NW., Washington, DC, Lower Level. Single copies of the analysis may be obtained from William R. Pearson, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3764.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities and that therefore a regulatory flexibility analysis is not needed. This rulemaking action affects only licensees that own and operate nuclear utilization facilities licensed under sections 103 and 104 of the Atomic Energy Act of 1954, as amended. These licensees do not fall within the definition of small businesses set forth in section 3 of the Small Business Act (15 U.S.C. 632) or within the Small Business Size Standards set forth in the regulations issued for the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, that a backfit analysis is not required, because these amendments do not involve any provisions which impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 50

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553,

the NRC is adopting the following amendment to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13 and 50.54(dd) also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91 and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50–81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.46(a) and (b), and 50.44(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.7(a), 50.10 (a)–(c), 50.34(a) and (e), 50.44(a)–(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a),(i), (i)(1), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201 (i)); and §§ 50.49(d), (h), and (j), 50.54(w),(z),(bb),(cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)–(c) and (e), 50.72(a), 50.73(a), and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.62, paragraph (c)(4) is revised to read as follows:

§ 50.62 Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants.

* * * * *

(c) * * *

(4) Each boiling water reactor must have a standby liquid control system (SLCS) with the capability of injecting into the reactor pressure vessel a borated water solution at such a flow rate, level of boron concentration and boron-10 isotope enrichment, and accounting for reactor pressure vessel volume, that the resulting reactivity control is at least equivalent to that resulting from injection of 86 gallons per minute of 13 weight percent sodium pentaborate decahydrate solution at the natural boron-10 isotope abundance into a 251-inch inside diameter reactor pressure vessel for a given core design. The SLCS and its injection location must be designed to perform its function in a reliable manner. The SLCS initiation must be automatic and must be designed to perform its function in a reliable manner for plants granted a construction permit after July 26, 1984, and for plants granted a construction permit prior to July 26, 1984, that have already been designed and built to include this feature.

* * * * *

Dated Rockville, Maryland, this 21st day of March, 1989.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 89–7822 Filed 3–31–89; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

20 CFR Part 217

RIN: 3220–AA16

Application for Annuity or Lump Sum

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends Part 217 of its regulations to incorporate amendments made to the Railroad Retirement Act in 1981 and 1983. In addition, the Board amends this part to incorporate internal procedures with respect to applications for benefits under the Railroad Retirement Act and to make various changes in terminology and technical changes for purposes of consistency throughout the part.

EFFECTIVE DATE: April 3, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4945 (FTS 386–4945).

SUPPLEMENTARY INFORMATION: Part 217 was added to the Railroad Retirement Board's regulations effective February 22, 1982, and was intended to update the regulations pursuant to the requirements imposed under the Railroad Retirement Act of 1974 (Act). Amendments to the Act in 1981 and 1983 require amendment of Part 217. In addition, the Board has determined that certain internal procedures concerning applications for benefits which were not yet established when Part 217 was published should be incorporated into this part.

On October 19, 1988, the Board published this rule as a proposed rule and invited comments for 30 days ending on November 18, 1988 (53 FR 40901–40903). No comments were received.

Public Law 97–35, the Omnibus Budget Reconciliation Act of 1981, provided for the first time for benefits for divorced spouses, surviving divorced spouses, and remarried widow(er)s which are like those provided under the Social Security Act. Sections 217.8 and 217.9(b)(2) are amended to reflect these additional categories of applicants.

The Railroad Retirement Solvency Act of 1983 (Public Law 98–76) narrowed the category of student beneficiaries under the Railroad Retirement Act to those who are less than 19 years old and full-time elementary or secondary school students. Section 217.17(a) is amended to delete the present second sentence, which permits a parent or person standing in place of a parent to sign an application for a student under 22 years of age.

Under authority conferred on the Board by section 7(d) of the Railroad Retirement Act (45 U.S.C. 231f(d)), an application for an employee disability annuity under that Act is also considered to be an application for a period of disability under the provisions of the Social Security Act. Section 217.9(c)(4) reflects regulations of the Social Security Administration concerning when an application for a period of disability must be filed.

Section 217.17 currently establishes who may sign an application for benefits under the Railroad Retirement Act. The current regulation does not recognize "good cause" to allow for someone other than a competent claimant or the claimant's representative (in the case of an incompetent claimant) to sign an application, when necessary, to prevent loss of benefits. This lack of a provision for signature by another person for good cause has been a source of trouble which has resulted in a number of unfavorable decisions over the years. The regulations of the Social Security Administration, which administers a benefit program similar to that administered by the Board, do recognize good cause to allow for someone other than the claimant to sign an application. Typically, illness of the claimant is cited as the reason for good cause, and good

cause can only be invoked when a loss of benefits would otherwise result. Usually, it is the claimant's spouse or friend who is allowed to sign the application. Thus, a new paragraph (e) is added to § 217.17 in order to permit someone other than the claimant to sign an application where good cause is established.

A new paragraph (c) is added to § 217.20 so as to provide for the preparation of a written statement by Board personnel on behalf of a claimant who telephones a Board office but who cannot actually file an application before the end of the month. The regulation would allow the date of the telephone contact to be used to protect the application filing date when it appears that a loss of benefits would otherwise result. This amendment reflects an internal Board procedure which has been in effect since 1983.

Finally, a number of changes in terminology have been made so that references to the various categories of applicants are uniform throughout Part 217. Section 217.1 is amended to clarify that part 217 deals only with applications.

The information collections imposed by the amendments to Part 217 have been approved by the Office of Management and Budget under control numbers 3220–0002, 3220–0030, 3220–0031, and 3220–0042.

The Board has determined that this is not a major rule under Executive Order No. 12291; therefore, no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 217

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Title 20, Chapter II of the Code of Federal Regulations is amended as follows:

PART 217—APPLICATION FOR ANNUITY OR LUMP SUM

1. The authority citation for Part 217 is revised to read as follows:

Authority: 45 U.S.C. 231d and 45 U.S.C. 231f.

2. Section 217.1 is revised to read as follows:

§ 217.1 Introduction.

This part prescribes how to apply for an annuity or lump-sum payment under this chapter. It contains the rules for the filing and cancellation of an application and the period of time the application is in effect. Eligibility requirements for an annuity and for a lump-sum payment are found respectively in Parts 216 and 234 of this chapter.

3. Section 217.8 is amended by revising paragraph (d); by redesignating and revising paragraph (j) as paragraph (s); by revising paragraphs (e) through (i) and redesignating them as paragraphs (f), (h), (i), (j) and (k), respectively; and by adding new paragraphs (e), (g), and (l) through (r) to read as follows:

§ 217.8 When one application satisfies the filing requirement for other benefits.

* * * * *

(d) A widow(er)'s annuity if the widow(er) was entitled to a spouse annuity in the month before the month the employee died.

(e) A widow(er)'s annuity if the widow(er) was included in the computation of the employee's annuity under the social security overall minimum provision of the Railroad Retirement Act in the month before the month the employee died.

(f) A child's annuity if the spouse of the employee had the child "in care" and was entitled to a spouse annuity in the month before the month the employee died.

(g) A child's annuity or child's full-time student annuity if the child of the employee was included in the computation of the employee's annuity under the social security overall minimum provision of the Railroad Retirement Act in the month before the month the employee died.

(h) A widow(er)'s annuity based on age if the widow(er) was entitled to a widow(er)'s annuity based on disability in the month before the month in which he or she attains age 60.

(i) A widow(er)'s annuity based on age or disability if a widow(er), who was receiving an annuity because he or she had the employee's child "in care", is eligible for an age or disability annuity when he or she no longer has an eligible child "in care".

(j) A spouse annuity based on age if a spouse, who was receiving an annuity because he or she had the employee's child "in care", is eligible for an unreduced age annuity when he or she no longer has an eligible child "in care".

(k) A widow(er)'s annuity based upon having the employee's child "in care" if during the time the widow(er) is entitled to an annuity based on disability, he or she has "in care" a child of the deceased employee.

(l) A divorced spouse annuity if the divorced spouse was entitled to a spouse annuity reduced for age in the month before the month of the effective date of the final decree of divorce.

(m) A divorced spouse annuity if the divorced spouse was entitled to a spouse annuity not reduced for age in the month before the month of the effective date of the final decree of divorce and would also be entitled to a divorced spouse annuity not reduced for age.

(n) A surviving divorced spouse annuity if the surviving divorced spouse was entitled to a divorced spouse annuity in the month before the month the employee died.

(o) A remarried widow(er)'s annuity if the remarried widow(er) was entitled to a widow(er)'s annuity in the month before the month of remarriage.

(p) A remarried widow(er)'s annuity or a surviving divorced spouse annuity based on age or disability if the remarried widow(er) or surviving divorced spouse, who was receiving an annuity because he or she had the employee's child "in care", is eligible for an age or disability annuity when he or she no longer has an eligible child "in care".

(q) A remarried widow(er)'s annuity or a surviving divorced spouse annuity based on age if the remarried widow(er) or the surviving divorced spouse was entitled to an annuity based on the disability in the month before the month in which he or she attains age 65.

(r) A remarried widow(er)'s annuity or a surviving divorced spouse annuity based on age if the remarried widow(er) or surviving divorced spouse, who was receiving an annuity based on disability, is 60 years old or older when he or she recovers from the disability.

(s) A benefit under Title II of the Social Security Act unless the applicant restricts the application only to an annuity payable under the Railroad Retirement Act.

4. In § 217.9, paragraph (b)(2) is revised, and paragraph (c)(4) and an OMB number are added to read as follows:

§ 217.9 Effective period of application.

* * * * *

(b) * * *

(2) *Application for disability annuity.* If the Board determines that a claimant for a disability annuity is disabled under Part 220 of this chapter, beginning with a date after the application is filed and before a final decision is made, the application is treated as though it were filed on the date the claimant became disabled. The claimant may be an employee, widow(er), surviving divorced spouse, remarried widow(er), or surviving child.

(c) * * *

(4) *Application for a period of disability.* In order to be entitled to a period of disability under Part 220 of this chapter, an employee must apply while he or she is disabled under Part 220 or

not later than 12 months after the month in which the period of disability ends except that an employee who is unable to apply within the 12-month period after the period of disability ends because his or her physical condition limited his or her activities to the extent that he or she could not complete and sign an application or because he or she was mentally incompetent, may apply no later than 36 months after the period of disability ends.

(Approved by the Office of Management and Budget under control number 3220–0002)

5. In § 217.10, the introductory paragraph is removed and paragraph (c) is revised to read as follows:

§ 217.10 Application filed after death.

* * * * *

(c) A widow(er) or surviving divorced spouse may file an application for a spouse or divorced spouse annuity after the death of the employee if the widower(er) or surviving divorced spouse was eligible for a spouse or divorced spouse annuity in any month before the month the employee died. The spouse or divorced spouse annuity is payable from the beginning date set forth in Part 218 of this chapter.

6. Section 217.17 is amended by revising paragraph (a) and adding paragraph (e) and an OMB number to read as follows:

§ 217.17 Who may sign an application.

* * * * *

(a) A claimant who is 18 years old or older, competent (able to handle his or her own affairs), and physically able to sign the application, must sign in his or her own handwriting, except as provided in paragraph (e) of this section. A parent or a person standing in place of a parent must sign the application for a child who is not yet 18 years old, except as shown in paragraph (d) of this section.

* * * * *

(e) If it is necessary to protect a claimant from losing benefits and there is good cause for the claimant not personally signing the application, the Board may accept an application signed by someone other than a person described in paragraphs (a), (b), (c), and (d) of this section. A person who signs an application for someone else will be required to provide evidence of his or her authority to sign the application for the person claiming benefits under the following rules:

(1) If the person who signs is a court-appointed representative, he or she must submit a certificate issued by the court showing authority to act for the claimant.

(2) If the person who signs is not a court-appointed representative, he or she must submit a statement describing his or her relationship to the claimant. The statement must also describe the extent to which the person is responsible for the care of the claimant.

(3) If the person who signs is the manager or principal officer of an institution which is responsible for the care of the claimant, he or she must submit a statement indicating the person's position of responsibility at the institution.

(4) The Board may, at any time, in its sole discretion require additional evidence to establish the authority of a person to sign an application for someone else.

(Approved by the Office of Management and Budget under control numbers 3220–0002, 3220–0030, 3220–0031 and 3220–0042)

7. Section 217.20 is amended by adding paragraph (c) to read as follows:

§ 217.20 When a written statement is used to establish the filing date.

* * * * *

(c) *Telephone contact with the Board.* If an individual telephones a Board office and advises a Board employee that he or she intends to file an application but cannot do so before the end of the month, the Board employee will prepare and sign a written statement which may be used to establish the filing date of an application if all of the following requirements are met:

(1) The inquirer expresses a clear and positive intent to claim benefits for himself or herself or for some other person;

(2) The prescribed application cannot be filed by the end of the current month;

(3) The inquirer is either the potential claimant or the person who will file an application as representative payee therefor;

(4) The inquiry is received by an office of the Board no more than 3 months before eligibility exists;

(5) It appears that a loss of benefits might otherwise result;

(6) The telephone inquirer files an application with the Board on one of the forms described in Part 200 of this chapter within 90 days after the date a notice is sent advising the person of the need to file an application; and

(7) The claimant is alive when the application is filed, except as provided in § 217.10 of the part.

Dated: March 23, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89–7864 Filed 3–31–89; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF STATE

22 CFR Part 34

Collection of Debts by the Government Under the Debt Collection Acts

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State adds Part 34 of 22 CFR establishing rules for the collection of debts owed to the State Department and the United States. These rules are published pursuant to 31 U.S.C. 3711(e)(1) and implement the collection procedures authorized by the Federal Claims Collection Act (31 U.S.C. 3701–3719) as amended by the Debt Collection Act of 1982 (Pub. L. 97–365 Stat. 1749). These laws have been implemented by the Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice (4 CFR Parts 101–105), regulations issued by the Office of Personnel Management (5 CFR Part 550) and the procedures prescribed by the Office of Management and Budget in Circular A–129 (revised) of November 25, 1988. The proposed rules as published on November 21, 1988 received no comments by deadline of January 5, 1989.

EFFECTIVE DATE: April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Ramon A. Evon, United States Department of State, Room 4709, Annex 15, Washington, DC 20520, phone (703) 875–6880.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (the Act) authorizes procedures for the collection of debts owed to the United States, including (1) contracting for collection services to recover debts pursuant to section 13 of the Debt Collection Act (codified at 31 U.S.C. 3718); (2) administrative offset pursuant to section 10 of the Debt Collection Act (codified at 31 U.S.C. 3716); and (3) salary offset pursuant to section 5 of the Debt Collection Act (codified at 5 U.S.C. 5514). Although these are separate procedures, any procedure may be used by itself or in conjunction with other procedures.

Executive Order 12291

This rule is not a "major rule" as defined under Executive Order 12291 as

it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

State finds this rule will have no significant economic impact upon a substantial number of small entities within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 605(b)). This conclusion has been reached because the rule does not in itself impose any additional requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), any reporting recordkeeping provisions that are included in this rule have been submitted for approval to the Office of Management and Budget (OMB).

List of Subjects in 22 CFR Part 34

Administrative practices, procedures, debt, claims. Accordingly Title 22 CFR, Subchapter D is amended by the addition of Part 34 which reads as follows:

PART 34—COLLECTION OF DEBTS

Subpart A—General Provisions

Sec.

34.1 Purpose.
34.2 Scope.
34.3 Definitions.
34.4 Interest, penalty and administrative charges.
34.5 Exceptions.
34.6 Use of procedures.
34.7 Other procedures or actions.

Subpart B—Administrative Offset and Referral to Collection Agencies

Sec.

34.8 Demand for payment.
34.9 Collection by administrative offset.
34.10 Administrative offset against amounts payable for Civil Service Retirement and Disability Fund.
34.11 Collection in installments.
34.12 Exploration of compromise.
34.13 Suspending or terminating collection action.
34.14 Referrals to the Department of Justice or the General Accounting Office.
34.15 Collection services.

Subpart C—Salary Offset

Sec.

34.16 Scope.
34.17 Coordinating offset with another federal agency.
34.18 Notice requirements before offset.
34.19 Request for a hearing.
34.20 Hearings.
34.21 Review of STATE records related to the debt.
34.22 Written agreement to repay as alternative to salary offset.
34.23 Procedures for salary offset.
34.24 Non-waiver of rights by payments.
34.25 Refunds.

Authority: 31 U.S.C. 3701-3719; 5 U.S.C. 5514; 22 U.S.C. 2658; 22 U.S.C. 3926; 4 CFR Parts 101-105; 5 CFR Part 550

Subpart A—General Provisions

§ 34.1 Purpose.

These regulations prescribe the procedures to be used by the United States Department of State (STATE) in the collection of claims owed to STATE and to the United States.

§ 34.2 Scope.

(a) Applicability of Federal Claims Collection Standards (FCCS). Except as set forth in this part or otherwise provided by law, STATE will conduct administrative actions to collect claims (including offset, compromise, suspension, termination, disclosure and referral) in accordance with the FCCS of the General Accounting Office and Department of Justice, 4 CFR Parts 101-105.

(b) This part is not applicable to:

(1) Claims against any foreign country or any political subdivision thereof, or any public international organization.

(2) Claims where the STATE Comptroller or his designee determines that the achievement of the purposes of any provision of law administered by STATE require a different course of action.

§ 34.3 Definitions.

(a) A "debt" or "claim" refers to an amount of money which has been determined to be owed to the United States from any person, organization or entity, except another Federal Agency. A debtor's liability arising from a particular contract or transaction shall be considered a single claim for purposes of the monetary ceilings of the FCCS.

(b) "Delinquent" means a debt that has not been paid by the date specified in STATE's written notification or applicable contractual agreement, unless other satisfactory arrangements have been made by that date, or that has not been in accordance with a payment agreement with STATE.

(c) "Disposable pay" means the amount that remains from an employee's Federal pay after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits and such other deductions that are required by law to be withheld including garnishments.

§ 34.4 Interest, penalty, and administrative charges.

(a) Except as otherwise provided by statute, contract or excluded in accordance with FCCS, STATE will assess:

(1) Interest on unpaid claims in accordance with existing Treasury rules and regulations.

(2) Penalty charges at 6 percent a year on any portion of a claim that is delinquent for more than 90 days.

(3) Administrative charges to cover the costs of processing and calculating delinquent claims.

(4) Late payment charges shall be computed from the date of mailing or hand delivery of the notice of the claim and interest requirements.

(5) When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and then to outstanding principal.

(6) Waiver. STATE shall consider waiver of interest, penalty charges and/or administrative charges in accordance with the FCCS, 4 CFR 102.13(g).

§ 34.5 Exceptions.

(a) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated, or settled in accordance with the regulations published under 31 U.S.C. 3726 (see 41 CFR Part 101-41).

(b) Claims arising out of acquisition contracts subject to the Federal Acquisition Regulation (FAR) shall be determined, collected, compromised, terminated, or settled in accordance with those regulations (see 48 CFR Part 32).

(c) Claims based in whole or in part on conduct in violation of the antitrust laws, or in regard to which there is an indication of fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, shall be referred to the Department of Justice for compromise, suspension, or termination of collection action.

(d) Tax claims are excluded from the coverage of this regulation.

§ 34.6 Use of procedures.

Procedures authorized by this regulation (including but not limited to referral to a debt collection agency, administrative offset, or salary offset) may be used singly or in combination.

§ 34.7 Other procedures or actions.

(a) Nothing contained in this regulation is intended to require STATE to duplicate administrative proceedings required by contract or other laws or regulations.

(b) Nothing in this regulation is intended to preclude utilization of informal administrative actions or remedies which may be available.

(c) Nothing contained in this regulation is intended to deter STATE from demanding the return of specific property or from demanding the return of the property or the payment of its value.

(d) The failure of STATE to comply with any provision in this regulation shall not serve as defense to the debt.

Subpart B—Administrative Offset and Referral to Collection Agencies

§ 34.8 Demand for payment.

(a) A total of three progressively stronger written demands at approximately 30-day intervals will normally be made, unless a response or other information indicates that additional written demands would either be unnecessary or futile. When necessary to protect the Government's interest, written demand may be preceded by other appropriate actions under the FCCS, including immediate referral for litigation and/or offset.

(b) The initial written demand for payment shall inform the debtor of:

(1) The basis of the claim;

(2) The amount of the claim;

(3) The date when payment is due 30-days from the date of mailing or hand delivery of the initial demand for payment;

(4) The provision for late payment (interest), penalty and administrative charges, if payment is not received by the due date.

§ 34.9 Collection by administrative offset.

(a) Offset will be used whenever feasible and not otherwise prohibited. Offset is not required to be used in every instance and consideration should be given to the debtor's financial condition and the impact of offset on STATE programs or projects.

(b) The procedures for offset in this section do not apply to the offset of Federal salaries under 5 U.S.C. 5514.

(c) Before offset is made, STATE will provide the debtor with written notice informing the debtor of:

(1) The nature and amount of the claim;

(2) The intent of STATE to collect by administrative offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date or has not made an arrangement for payment by the payment due date;

(3) The right of the debtor to inspect and copy STATE's records of the claim;

(4) The right of the debtor to a review of the claim within STATE. If the claim is disputed in full or part, the debtor shall respond to the demand in writing by making a request by the payment due date stated within the notice to the billing office for a review of the claim within STATE. The debtor's written response shall state the basis for the dispute. If only part of the claim is disputed, the undisputed portion must be paid by the date stated in the notice to avoid late payment, penalty and administrative charges. If STATE either sustains or amends its determination, it shall notify the debtor of its intent to collect the claim, with any adjustments based on the debtor's response by administrative offset unless payment is received within 30-days of the mailing of the notification of its decision following a review of the claim.

(5) The right of the debtor to offer to make a written agreement to repay the amount of the claim.

(6) The notice of offset need not include the requirements of paragraphs (c) (3), (4), or (5) of this section if the debtor has been informed of the requirements at an earlier stage in the administrative proceedings, e.g., if they were included in a final contracting officer's decision.

(d) STATE will promptly make requests for offset to other agencies known to be holding funds payable to a debtor and, when appropriate, place the name of the debtor on the "List of Contractors Indebted to the United States". STATE will provide instructions for the transfer of funds.

(e) STATE will promptly process requests for offset from other agencies and transfer funds to the requesting agency upon receipt of the written certification that the person owes the debt and that, if a Federal employee, the employee has been given the procedural rights required by 5 USC 5514 and 5 CFR Part 550, Subpart K.

§ 34.10 Administrative offset against amounts payable for Civil Service Retirement and Disability fund.

(a) Unless otherwise prohibited by law, STATE may request that monies that are due and payable to a debtor from the Civil Service Retirement and Disability Fund, Federal Employee Retirement Fund, or the Foreign Service Retirement Fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments, debts owed the United States by the debtor. Such requests shall be made to the appropriate officials of the respective fund servicing agency in accordance with such regulations as may be prescribed by the Director of that agency.

(b) When making a request for administrative offset under paragraph (a) of this section, STATE shall include written statements that:

(1) The debtor owes the United States a debt, including the amount of the debt.

(2) STATE has complied with the applicable statutes, regulations, and procedures of the respective fund servicing agencies.

(3) STATE has complied with the requirements of § 34.9 of this part.

(c) Once STATE decides to request offset under paragraph (a) of this section, it will make the request as soon as practical after completion of the applicable procedures in order that the fund servicing agency may identify the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the fund. This will satisfy any requirements that offset will be initiated prior to expiration of the applicable statute of limitations.

(d) If STATE collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, STATE shall act promptly to modify or terminate its request for offset under paragraph (a) of this section.

(e) This section does not require or authorize the fund servicing agency to review the merits of the STATE determination relative to the amount and validity of the debt, its determination on waiver under an applicable statute, or its determination whether to provide an oral hearing.

§ 34.11 Collection in installments.

Whenever feasible, and except as required otherwise by law, debts owed to the United States, together with interest, penalties, and administrative costs as required by this regulation, should be collected in one lump sum. This is true whether the debt is being collected under administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment

may be accepted in regular installments. If STATE agrees to accept payment in installments, it will obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of the payments should bear a reasonable relation to the size of the debt and ability of the debtor to pay. If possible the installment payments should be sufficient in size and frequency to liquidate the Government's claim within 3 years.

§ 34.12 Exploration of compromise.

STATE may attempt to effect compromise in accordance with the standards set forth in Part 103 of the FCCS (4 CFR Part 103).

§ 34.13 Suspending or terminating collection action.

The suspension or termination of collection action shall be made in accordance with the standards set forth in Part 104 of the FCCS (4 CFR Part 104).

§ 34.14 Referrals to the Department of Justice or the General Accounting Office.

Referrals to the Department of Justice or the General Accounting Office shall be made in accordance with the standards set forth in Part 105 of the FCCS (4 CFR Part 105).

§ 34.15 Collection services.

(a) STATE has authority to contract for collection services to recover delinquent debts in accordance with 31 U.S.C. 3718(c) and Part 102 of the FCCS (4 CFR Part 102).

(b) STATE may disclose delinquent debts, other than delinquent debts of current Federal employees, to consumer reporting agencies in accordance with 31 U.S.C. 3711(f) and the FCCS.

(c) STATE will not use a collection agency to collect a debt owed by a currently employed or retired Federal employee, if collection by salary or annuity offset is available.

Subpart C—Salary Offset

§ 34.16 Scope.

(a) This subpart sets forth STATE's procedures for the collection of a Federal employee's pay by salary offset to satisfy certain valid and past due debts owed the United States Government.

(b) This subpart applies to:

(1) Current employees of STATE and other agencies who owe debts to STATE;

(2) Current employees of STATE who owe debts to other agencies.

(c) This subpart does not apply to debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.); the Social Security Act (42 U.S.C. 301 et seq.); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g. travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(d) This subpart does not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay or ministerial adjustments in pay, if the amount to be recovered was accumulated over four pay periods or less.

(e) These regulations do not preclude an employee from:

(1) Requesting waiver of erroneous payment of salary, travel, transportation or relocation expense and allowances;

(2) Requesting waiver of any other type of debt, if waiver is available by statute; or

(3) Questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office.

(f) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under Subpart A or other regulations.

§ 34.17 Coordinating offset with another federal agency.

(a) When STATE is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until STATE provides the agency with a written certification that the debtor owes STATE a debt (including the amount and basis of the debt and the due date of payment) and that STATE has complied with these regulations.

(b) When another agency is owed the debt, STATE may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such request must be accompanied by a certification that the person owes the debt (including the amount and basis of the debt and the due date of payment) and that the agency has complied with its regulations as required by 5 U.S.C. 5514 and 5 CFR Part 550, Subpart K.

§ 34.18 Notice requirements before offset.

Except as provided in § 34.16, salary offset deductions will not be made unless STATE first provides the employee with a written notice that he/she owes a debt to the Federal Government at least 30 calendar days before salary offset is to be initiated. When STATE is the creditor agency, this notice of intent to offset an employee's salary shall be hand-delivered or sent by certified mail to the most current address that is available to the Department and will state:

(a) That STATE has reviewed the records relating to the debt and has determined that the debt is owed, its origin and nature, and the amount due;

(b) The intention of STATE to collect the debt by means of deduction from the employee's current disposable pay until the debt and all accumulated interest are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) The requirement to assess and collect interest, penalties, and administrative costs in accordance with § 34.4, unless excused in accordance with § 34.4(d);

(e) The employee's right to inspect and copy any STATE records relating to the debt, or, if the employee or their representative cannot personally inspect the records, to request and receive a copy of such records;

(f) The opportunity (under terms agreeable to STATE) to enter into a written agreement establishing a repayment schedule of the debt in lieu of offset;

(g) The right to a hearing conducted by an official (administrative law judge or a hearing official not under the control of STATE) with respect to the existence of the debt, the amount of the debt, or the repayment schedule (i.e. the percentage of disposable pay to be deducted each pay period), so long as a request for a hearing is filed by the employee as prescribed in § 34.19;

(h) That the timely filing of a request for hearing within 30 calendar days after receipt of the notice of intent to offset will stay the commencement of collection proceedings;

(i) That the Department will initiate procedures to implement a salary offset, as appropriate, (which may not exceed 15 percent of the employee's disposable pay) not less than thirty (30) days from the date of receipt of the notice of debt, unless the employee files a timely petition for a hearing;

(j) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the request for a hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(k) That any knowingly false or frivolous statements, representation, or evidence may subject the employee to

disciplinary procedures (5 U.S.C. Chapter 75, 5 CFR Part 752 or other applicable statutes or regulations); penalties (31 U.S.C. 3729–3731 or other applicable statutes or regulations); or criminal penalties (18 U.S.C. 286, 287, 1001, and 1002 or other applicable statutes or regulations);

(l) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(m) That the amounts paid on or deducted from the debt which are later waived or found not owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary;

(n) The method and time period for requesting a hearing; and

(o) The name and address of the STATE official to whom communications should be directed.

§ 34.19 Request for a hearing.

(a) Except as provided in paragraph (c) of this section, an employee must file a request for a hearing that is received by STATE not later than 30 calendar days from the date of STATE's notice described in § 34.18 if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) STATE's proposed offset schedule.

(b) The request must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the request should state the objection and the reasons for it.

(c) The employee must also specify whether an oral or paper hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(d) If the employee files a request for hearing later than the required 30 calendar days as described in paragraph (a) of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

(e) An employee waives the right to a hearing and will have his or her disposable pay offset if the employee fails to file a petition for a hearing as prescribed in paragraph (a) of this section or fails to appear at the scheduled hearing.

§ 34.20 Hearings.

(a) If an employee timely files a request for a hearing under § 34.19, STATE shall select the time, date, and location of the hearing.

(b) Hearings shall be conducted by a hearing official not under the control or authority of STATE.

(c) Procedure.

(1) After the employee requests a hearing, the hearing official or administrative law judge shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official or administrative law judge by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(2) Oral hearing. An employee who requests an oral hearing shall be provided an oral hearing if the hearing official or administrative law judge determines that the matter cannot be resolved by review of documentary evidence alone (e.g. when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official or administrative law judge, in which the employee and agency representative will be given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings with an interview of the employee; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(3) Paper hearing. If the hearing official or administrative law judge determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record (5 U.S.C. 5514).

(4) Record. The hearing official must maintain a summary record of any hearing provided by this subpart. See 4 CFR 102.3. Witnesses who testify in oral hearings will do so under oath or affirmation.

(5) Content of decision. The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(6) Failure to appear. In the absence of good cause shown (e.g. excused illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. If the representative of the creditor agency fails to appear, the hearing official shall schedule a new hearing date upon the request of the agency representative. Both parties shall be given reasonable notice of the time and place of the new hearing.

§ 34.21 Review of STATE records related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy agency records related to the debt must send a letter to the official designated in § 34.18(o) stating his or her intention. The letter must be received by STATE within 30 calendar days after receipt of the notice of intent to offset.

(b) *STATE's response.* In response to a timely notice submitted by the debtor as described in paragraph (a) of this section, STATE will notify the employee of the location and time when the employee may inspect and copy STATE records related to the debt.

§ 34.22 Written agreement to repay as alternative to salary offset.

(a) Notification by employee. The employee may propose, in response to the notice of intent to offset, a written agreement to repay the debt as an alternative to salary offset. The proposal shall admit the existence of the debt and set forth a proposed repayment schedule. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by STATE within 30 calendar days of the notice.

(b) STATE's response. STATE will notify the employee whether the proposed written agreement for repayment is acceptable. It is within STATE's discretion to accept a repayment agreement instead of proceeding by offset.

(c) Procedures. If the employee and STATE enter into a written agreement to repay instead of salary offset, the debt will be repaid in accordance with the agreement provisions and the procedures of § 34.23 will not apply.

§ 34.23 Procedures for salary offset.

Unless STATE agrees and regulations do not provide otherwise, the following procedures apply:

(a) *Method.* Salary offset will be made by deduction at one or more officially established pay intervals from the

current pay account of the employee without his or her consent.

(b) *Source.* The source of salary offset is current disposable pay which is that part of current basic pay, special pay, retainer pay, or in the case of an employee not entitled to pay, other authorized pay remaining after the deduction of any amount required by law to be withheld.

(c) *Types of collection*—(1) *Lump sum payment.* Ordinarily debts will be collected by salary offset in one lump sum if possible. However, if the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, the collection by salary offset must be made in installment deductions.

(2) *Installment deductions.* (i) The size of installment deductions must bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible the size of the deduction will be that necessary to liquidate the debt in no more than 1 year. However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, except as provided by other regulations or unless the employee has agreed in writing to a greater amount.

(ii) Installment payments of less than $25 per pay period will be accepted only in the most unusual circumstances.

(iii) Installment deductions will be made over a period of not greater than the anticipated period of employment.

(d) *When deductions may begin.* (1) Salary offset will begin on the date stated in the notice as provided in § 34.18, unless a hearing is requested.

(2) If there has been a timely request for a hearing, salary offset will begin as of the date stated in the written decision.

(e) *Additional offset provisions*—(1) *Liquidation from final check.* If employment ends before salary offset is completed, the remaining debt will be liquidated by offset from payment of any nature due the employee from STATE (e.g. final salary payment, lump-sum leave, etc.).

(2) *Offset from other payments.* If the debt cannot be liquidated by offset from any final check, the remaining debt will be liquidated by offset from later payments of any kind due the former employee from the United States, inclusive of retirement or disability funds pursuant to § 34.10 of this regulation.

§ 34.24 Non-waiver of rights by payments.

So long as there are no statutory or contractual provision to the contrary, no employee payment (of all or a portion of a debt) collected under this subpart will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

§ 34.25 Refunds.

(a) STATE will refund promptly to the appropriate individual amounts offset under this regulation when:

(1) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(2) STATE is directed by an administrative or judicial order to make a refund.

(b) Refunds do not bear interest unless required or permitted by law or contract.

February 3, 1989.

Elizabeth A. Gibbons,

Associate Comptroller, Financial Management.

[FR Doc. 89-7736 Filed 3-31-89; 8:45 am]

BILLING CODE 4710-37-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 646

Railroads; Authority Correction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical correction.

SUMMARY: This document corrects the authority citation on railroads that appeared at page 9039 in the **Federal Register** of Friday, March 3, 1989 (54 FR 9039). This action is necessary to remove the reference to 23 U.S.C. 405 which was repealed by section 135(c) of Pub. L. 94-280, 90 Stat. 442.

EFFECTIVE DATE: April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Michael J. Laska, Office of the Chief Counsel, 202-366-1383. Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

PART 646—[AMENDED]

The FHWA hereby amends 23 CFR 646 by correcting the authority citation to read as follows:

Authority: 23 U.S.C. 109(e), 120(d), 130, and 315; 49 CFR 1.48(b).

Issued on: March 29, 1989.

Michael J. Laska,

Deputy Assistant Chief Counsel for Legislation and Regulations, Federal Highway Administration.

[FR Doc. 89-7761 Filed 3-31-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 80

[DoD Instruction 6060.2]

Child Development Programs

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document establishes policies, assigns responsibilities and prescribes standards and operational requirements for child care programs for eligible minor children of the Department of Defense military and civilian personnel. Included in this part are procedures for inspection and certification of child development programs, establishment of parent advisory groups, and facility requirements. Also to ensure quality care is provided at both center based and family child care and/or day care homes, this part establishes standards as well as caregiver-per-child ratios.

EFFECTIVE DATE: March 3, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. A. Mahboubi, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 3A272, the Pentagon, Washington, DC 20301, telephone 202-697-7191.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 80

Child care; Military and civilian personnel.

Accordingly, Title 32, Subchapter B, is amended to add Part 80 to read as follows:

PART 80—CHILD DEVELOPMENT PROGRAMS

Sec.

80.1 Purpose.
80.2 Applicability.
80.3 Definitions.
80.4 Policy.
80.5 Responsibilities.

Appendix A—DoD Standards for the Establishment and Operation of Child Development Programs

Appendix B—DoD Standards for the Establishment and Operation of Family Child Care/Family Day Care Homes

Authority: 10 U.S.C. 2809 and 40 U.S.C. 490b.

§ 80.1 Purpose.

This document: (a) Establishes policies, assigns responsibilities, and prescribes standards and operational requirements for child development services for eligible minor children of DoD military and civilian personnel in accordance with references in DoD Directives 1342.17,[1] 4001.1,[2] and 5124.2.[3]

(b) Authorizes the publication of child development service manuals under DoD 6060.1–M, consistent with DoD 5025.1–M.

§ 80.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff, the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "DoD Components"). The term "Military Service," as used herein, refers to the Army, Navy, Air Force, Marine Corps, and the Coast Guard when it is operating as a Service of the Navy, or when it is operating as a Service of the Department of Transportation (DoT) by agreement with the DoT.

§ 80.3 Definitions.

Certification Process. See Appendix A, section F.

Child Development Services. Child care services for DoD personnel provided in child development centers, family child care/family day care homes, and alternative child care options. The care provided is on a full-day, part-day, or hourly basis. Care is designed to protect the health and safety of children and promote their physical, social, emotional, and intellectual development.

(a) *Full-day care.* This care meets the needs of parents requiring child care services 5 hours or more per day on a regular basis.

(b) *Part-day care.* This care meets the needs of parents requiring child care services on a seasonal or regularly scheduled part-day basis.

(c) *Hourly care.* This care meets the needs of parents requiring short-term child care services on an intermittent basis.

(d) *Alternative care.* On- and off-post child care programs and services that augment and support child development centers and family day care/family child care home programs to increase the availability of child care for military and civilian DoD employees. These may include, but are not limited to, resource and referral services, parent co-ops, off-post consortiums and interagency initiatives.

Child Development Center. An installation facility or part of a facility used for child care.

Developmental Program. A planned program of developmentally appropriate activities which promotes the social, emotional, physical, and intellectual development of children in each age group. Activities shall include child-initiated and staff-directed activities.

DoD Facilities. All or any portion of buildings occupied by DoD personnel.

DoD Installation. A group of DoD facilities located in the same vicinity that supports particular functions. A local geographical area under the jurisdiction of a military commander.

Family Advocacy Program. As defined in DoD Directive 6400.1[4].

Family Child Care/Family Day Care. Quarters-based child care provided in Government quarters, owned or leased, in which care is provided on a regular basis for compensation, usually for more than 10 hours a week, to one or more (up to six) children, including the provider's own children under 8 years of age.

Family Child Care/Family Day Care Coordinator. The individual responsible for administering the family day care program. This individual shall be either the child development center director or an employee of the child development program and shall have professional expertise in family day care. In large family child care/family day care programs, additional program monitors shall be supervised by the coordinator.

Family Child Care/Family Day Care Provider. An individual who provides care in his or her Government quarters with the approval and certification of the Commanding Officer on a reimbursable basis and has responsibility for planning and carrying out a program that meets the children's needs at the various stages of development and growth.

Handicapped Person. As defined in DoD Instruction 1020.1[5].

Staff-Per-Child Ratio. The number of children for whom one caregiver or provider will be responsible. Staff-per-child ratio varies according to different age groups (Appendices A and B).

Support Staff. Person(s) responsible for providing services that are not directly related to caregiver services, such as, but not limited to, janitorial, food service, clerical, and administrative duties.

§ 80.4 Policy.

It is DoD policy that on military installations and in their DoD facilities and for the benefit of military and civilian dependents:

(a) Child development services shall be provided as needed for effective operation and for accomplishment of assigned mission and tasks.

(b) Child development services shall promote the intellectual, social, emotional, and physical development of children.

(c) Child development services shall be provided by competent and trained personnel under safe and sanitary conditions.

(d) Child development services that are staffed and operated by DoD personnel shall comply with DoD Directive 6400.1 and DoD 6060.1–M–18. This is consistent with DoD policy to provide comprehensive and coordinated programs to prevent child abuse and promote early identification and intervention in case of alleged child abuse.

(e) The need for child development services for military members and DoD civilian employees shall be determined by local needs and such factors as:

(1) The number of military and civilian personnel needing child care services.

(2) The need to support readiness by addressing military child care needs during deployments, mobilization, and other missions of the military installation.

(3) Problems in recruitment or retention of military and civilian personnel resulting from a lack of child care services.

(4) Absenteeism or productivity problems that could be alleviated by reliable child care services.

(5) Availability of comparable services at comparable rates in the private sector.

(f) The primary sources for DoD-sponsored child development services shall be child development centers and family child care/family day care homes. Alternative child care options should be encouraged and may include, but are not limited to, resource and referral services regarding availability of care, before and after school programs, and parent cooperatives.

(g) Programs and activities conducted under this Instruction shall comply with DoD Directive 1020.1. No handicapped person who meets the essential eligibility requirements for receiving

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[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

[2] See footnote 1 to § 80.1(a).

[3] See footnote 1 to § 80.1(a).

[4] See footnote 1 to § 80.1(a)

[5] See footnote 1 to § 80.1(a)

services under DoD Directive 1020.1 may, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to, discrimination with regard to such services when such programs and activities can reasonably accommodate the special needs of the child.

(h) Child development centers that are staffed and operated by DoD personnel are Category B, "Morale, Welfare, and Recreation Activities," in accordance with DoD Directive 1015.6,[6] and shall be operated, maintained, and funded by a substantial amount of appropriated fund support, but shall retain the ability to generate nonappropriated fund revenues from parent user-fees. Appropriated funds shall be used for child development center construction; renovation; meeting such operating costs as equipment, supplies, utilities, custodial and maintenance services, administrative and supervisory personnel; training and travel; and other authorized uses.

(i) Under 10 U.S.C., section 2809 DoD Components may consider, apply for, or, as appropriate, contract for the construction, management, and operation of child development centers in response to the need for child care facilities for personnel at DoD installations and facilities. Appropriated fund support of such child development centers may include, but not be limited to, provision of the building and those services permitted under 40 U.S.C. 490b.

(j) Components, except for those in the National Capital Region (NCR), shall be authorized, in accordance with 40 U.S.C., Section 490b, to apply to the General Services Administration (GSA) for building space for use in providing child care for DoD personnel when such activities are housed in GSA facilities. The GSA is authorized, in accordance with 40 U.S.C., Section 490b, to provide space within GSA-leased or -managed facilities for use in supporting child care operations for DoD personnel when at least 50 percent of those receiving services are DoD personnel or other Federal employees. Space, furnishings, and accompanying services such as maintenance, lighting, heating, cooling, and electricity may be made without charge to the center. Likewise, space in DoD buildings may be made available to support child care services under this same authority. DoD Components in the NCR shall utilize the space acquisition procedures contained in DoD Instruction 5305.5 [7] to gain the assignment of space, either Government-owned and or -leased, from the GSA.

(k) Service Secretaries, Agency Directors, or their duly delegated representatives shall be responsible for approving and funding all child development centers located in non-DoD-owned facilities. In such locations, the necessary space allocations for these centers may, with the approval of the appropriate level space manager, safety officer, building manager, and lessor, be located within existing space allocations. If additional leased space is necessary to accommodate such facilities, this requirement shall be managed, processed, and acquired in accordance with the lease acquisition procedures of the local area.

(l) All child development services provided in GSA facilities or DoD-leased buildings shall comply with the standards and operational requirements prescribed in this part and, when required, with all the applicable State and local standards and operational requirements.

(m) All child development services provided on DoD installations or in DoD facilities receiving DoD funding or oversight shall comply with the standards and operational requirements prescribed in Appendix A and those of the Service with responsibility for the installation or facility where the child care services are provided. Service military design construction criteria or acceptable state and local standards shall be used when child development centers are constructed under the authority of 10 U.S.C., section 2809 or 40 U.S.C., Section 490b. Child development centers, provided and operated by service contract under the authority of 10 U.S.C., section 2809 or 40 U.S.C., section 490b, shall comply with the standards and operational requirements prescribed in this part and, when required, with all the applicable State and local standards and operational requirements.

§ 80.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)), or designee, shall prescribe policies and guidelines for child development services on DoD installations, monitor compliance with child development standards, and ensure that all DoD manuals are published in accordance with this part and DoD 5025.1–M.

(b) The *Heads of DoD Components*, except the Joint Staff and the Unified and Specified Commands, shall ensure that:

(1) Child development services are operated in accordance with this part and shall periodically monitor local compliance with DoD and Service standards and guidelines.

(2) DoD Manuals issued pursuant to this part are distributed or otherwise made available to all child development personnel on military installations and in DoD facilities and that these manuals are used in the conduct of periodical regional and inter-Service workshops, seminars, and training sessions.

Appendix A—DoD Standards for the Establishment and Operation of Child Development Programs

A. Facility Requirements

1. Capacity

a. Child development centers may be established to provide child development and care for children 6 weeks to 12 years of age for full-day, part-day, and hourly care. Each facility shall accommodate no fewer than 25 children and no more than 305. Centers' programs may provide room/space for infants, toddlers, preschool-age, and school-age children; isolation/toilet; lobby/reception; food service/kitchen, offices, children's toilets, staff/public toilet; laundry; janitorial service; storage (indoor/outdoor); and mechanical/electrical.

b. Facility capacity shall be validated through a needs assessment that includes a survey of installation population and an examination of installation demographics, to include historical data; i.e., waiting list, unset demand, projected installation population, alternative care available, changes in mission, and planned requirement based on the mobilization role of the installation.

c. There shall be 35 square feet (SF) of usable space per child in activity rooms used for care. A minimum of 75 square feet of outdoor play area shall be provided per child using the playground during any period. This area shall be capable of supporting a minimum of 50 percent of the children in a center with a capacity of 100 or more children and all the children in smaller centers.

d. Additional SF may be added to accommodate administrative requirements for family child care/family day care, alternative care, program oversight, and/or consolidation of installation child development services.

2. Fire, Safety, and Health

All child development facilities must be in compliance with applicable Service fire, safety, and health standards or when required with all applicable State and local standards.

B. Program for Child Development Activities

Each child development center shall establish a planned program of developmentally appropriate activities that promote the intellectual, social, emotional, and physical development of the children it serves. The planned program shall be in writing and shall be made available to parents. The plan shall contain a description of activities children engage in and an explanation of how these activities meet their developmental needs. Implementing

[6] See footnote 1 to § 80.1(a).

[7] See footnote 1 to § 80.1(a).

documents shall include, but not be limited to, requirements for equipment and supplies, staffing plans that provide for continuity of staff, parental involvement plans, facilities, child guidance techniques, and daily activities schedules that promote the intellectual, social, emotional, and physical development of the children.

C. Child Development Program Standards

1. Staff-Per-Child Ratios

a. In child development centers the number of children assigned to each caregiver shall be limited. The following staffing requirements apply to all child development centers.

Age of child	Maximum number of children per caregiver
6 weeks to 12 months	4
12 months to 24 months	5
24 months to 3 years	7
3 to 5 years	12
5 to 9 years	15
9 to 12 years	18

b. Child development centers shall meet the staffing requirement for each age group of children, except during rest time. During rest time, the child-per-staff ratio may be doubled except for infants aged 6 weeks to 12 months if the staff required for the above ratios are involved in staff or program development in the building in which children are sleeping or resting. Volunteers and student help under 18 years of age may not be counted in determining compliance with staff-per-child ratios.

c. Child development centers shall meet the staffing requirements for the age of the youngest child in the group if children in the youngest age category make up 20 percent or more of the group. If children in the youngest age category make up less than 20 percent of the group, the staff-per-child ratio requirement for the next higher category shall be used. At least two caregivers must be present with each group of children at all times. When this is not possible, due to limited room capacity, children must be supervised through closed circuit television or other comparable observation measures taken to ensure oversight by more than one adult. This does not alter the required staff-per-child ratio.

2. Group Size

a. The number of children assigned to a group shall be limited. The following group size requirements shall be met at all times of the day, except during arrival and departure times, rest time, and special activities (such as field trips and playground activities).

Age of child	Maximum group size
6 weeks to 12 months	8
12 months to 24 months	10
24 months to 36 months	14
3 to 5 years	24
5 to 9 years	30
9 to 12 years	36

b. For mixed age groups, a child development center shall meet the group size requirement for the age of the youngest child in the group if the children in the youngest age category make up 20 percent or more of the group. If children in the youngest age category make up less than 20 percent of the group, the group size requirement for the next higher age category shall be used. If more than one group occupies a single room, each group must have its own clearly defined physical space.

3. Qualifications of Staff

a. Staff shall be selected on their demonstrated ability to work with children in a group and their understanding of children's needs. All personnel shall be screened to ensure that they are suitable to provide services under this Instruction. Personal, professional, and educational references for all staff members shall be checked prior to employment. Police and other pertinent records shall be examined for conviction of crimes reflecting upon the applicant's suitability.

b. Caregivers shall be at least 18 years of age; hold a high school diploma or equivalent; and have the ability to speak, read, and write English. Caregivers shall be able and willing to undergo prescribed training. It is DoD policy that training, education, and experience shall influence progression from entry level to positions of greater responsibility.

c. All newly hired center directors shall have at a minimum a baccalaureate degree from an accredited college in child development, early childhood education, or a related field including, but not limited to, education, social work, home economics, or psychology, or with 3 years' equivalent experience. Each Military Department shall implement a plan for ensuring that all newly hired center directors meet the above requirement within 2 years from the date of this Instruction. Military Departments shall implement plans to provide training to center directors on the unique requirements of the military environment.

4. Staff Training

a. Caregivers providing child development services in DoD-operated child development centers shall receive training and periodic updates on the latest child care techniques and procedures for providing safe developmental care.

b. Each Military Department shall ensure that a training program is developed for all center staff. The program must specify the nature and extent of the training required for caregiving personnel and address, at a minimum, the subjects listed below and alternatives for delivery of the training. DoD Components shall direct center directors to encourage regular volunteers to undergo prescribed caregiving staff training. Each DoD Component shall biennially assess its training program to ensure it includes:

(1) Applicable regulations
(2) Child growth and development
(3) Child care programming and activities
(4) Health practices, first aid, and cardiopulmonary resuscitation
(5) Nutrition and meal service
(6) Design and use of physical space
(7) Working with parents
(8) Safety and emergency procedures
(9) Child guidance techniques
(10) Child abuse and/or neglect prevention, detection, and reporting

c. Each caregiver shall regularly participate in specialized training related to child care. All newly hired caregivers shall receive an orientation covering the subjects listed in paragraph C.4.b, above, before working with children.

d. Center directors and supervisors shall participate in training related to the latest techniques and procedures in child care, to include family advocacy programs and center administration/management.

D. Food Services

Child development centers shall provide adequate and nutritious meals that follow United States Department of Agriculture (USDA) guidelines, prepared in a safe and sanitary manner. When cost-effective, each military installation shall participate in the USDA child care food program. Each Military Department must ensure that the nutritional and health needs of children are met and that the food service program contributes to the development of good eating habits.

E. Funding of Child Development Centers

1. Child development programs are Category B, "Morale, Welfare, and Recreation (MWR) activities," and, when operated and staffed by DoD personnel, shall be constructed and funded in accordance with DoD Directive 1015.6.

2. Fees and Charges. Quality care shall be provided in child development centers for reasonable fees and shall be made affordable to lower ranking personnel and hardship cases. In child development centers that are staffed and operated by DoD personnel, fees shall not be established to earn a profit (i.e., net income) or to provide for capital requirements (buildings and equipment). Fees and charges shall be set to cover nonappropriated fund operational costs. Nonappropriated funds generated outside child development centers (e.g., military exchange dividends or dividends from civilian recreation and/or welfare funds) and contributions or donations from individuals or private organizations may be used to provide supplementary funding or for special equipment or supplies.

3. Funding of child development centers, operated in accordance with 10 U.S.C. 2809, shall be the responsibility of the installation commander and/or the major command. The installation commander may, subject to availability of appropriations and consistent with DoD policy and Federal statutes and regulations, use operations and maintenance funds for such contracts, which term may not exceed 32 years. When computing the contract term, contracting officers should review applicable depreciation schedules to determine the most advantageous situation for the Government.

4. The Secretaries of the Military Departments may provide support for child development centers for the children of civilian employees by authorizing the allotment of space under their control in Government buildings and may do so without charge. The support provided may include the cost of making the space suitable for child care facilities, including the cost of renovations, modification, or expansion of existing Government-owned or -leased space

and may include payment for utilities and maintenance. Further, this authority extends to the expansion of existing space in military child development centers in Government buildings to accommodate the children of civilian employees. Installation commanders are encouraged, within the constraints of efficient fiscal management and appropriate utilization levels, to provide services during inactive duty training to members of the Guard and Reserve. Any and all lease charges or fees incurred in the acquisition, design, and construction of child development facilities in non-Government owned space shall be the responsibility of the requesting DoD Component or as designated by the Secretary of Defense.

F. Certification of Child Development Programs

Secretaries of the Military Departments shall establish procedures for inspection of Child Development Programs and certify compliance with the standards established in this Instruction. Initial inspections and certifications shall take place within 2 years of the date of this Instruction and be repeated thereafter on a biennial basis. These initial and subsequent biennial certifications and inspections shall be unannounced on-site visits by higher headquarters staff. Results of inspection and certification visits shall be forwarded within 90 days of completion to ASD(FM&P) for review. In addition, installation commanders shall, on an annual basis, forward a confirmation of compliance with standards to Service Headquarters. If at any time it is determined that a program is not in compliance with this Instruction, the Services shall notify the ASD(FM&P) or designee and advise the installation that it must meet the standards in the time specified by the Service. DoD shall periodically, but at least twice annually, make unannounced visits to selected installations to review compliance with this part. ASD(FM&P) may use other means in addition to the procedures in this section to monitor child development programs and ensure compliance with standards.

G. Parent Advisory Group

Each DoD child development program shall establish an advisory group that includes parents who have children using the program on a regular basis. A majority of the members must be parents. One parent shall be selected as chairperson. The center director, family advocacy program manager, installation commander or designee, and other representatives of installation offices may be included. The group shall act only in an advisory capacity, providing recommendations for improving services and operations and input on the center's operations. The group's recommendations shall be forwarded through the program director to the installation commander for review and disposition. Parent advisory groups are not advisory committees under the Federal Advisory Committee Act (reference (n)), pursuant to section 805 of the Military Family Act of 1985, as amended, (10 U.S.C. 113 note).

Appendix B—DoD Standards for the Establishment and Operation of Family Child Care/Family Day Care Homes

A. DOD Components shall regulate family child care/family day care to include, but not be limited to, the following:

1. Screening of all potential providers and their family members to ascertain suitability for providing care. This screening shall include at a minimum a review of mental health and criminal records and a determination of any history of drug or alcohol abuse.

2. Training of potential providers on child development and guidance, health and safety, nutrition, child abuse identification and reporting, first aid, and cardiopulmonary resuscitation. Training of providers should be updated at least annually. Training of those responsible for program management on program administration, observation, and interviewing of potential providers, adult education, communication, nutrition, health and safety, and child growth and development.

3. Establishing fire, safety, structural, and other requirements for quarters to be utilized for family child care/family day care and procedures for unannounced and annual inspections of all approved homes.

4. Providing operational oversight of family child care/family day care homes including conducting unannounced inspections and periodic recertification. In order to ensure adequate supervision, the number of homes assigned per family child care/family day care staff member may not exceed 40. Ensuring headquarters oversight of installation family child care/family day care programs including periodic on-site and unannounced inspections of the conduct of the programs.

5. Requiring providers to be at least 18 years of age; have the ability to speak, read, and write English; be physically and mentally capable of providing care for children; and be free of communicable diseases. Services must establish procedures for ensuring that only the best qualified among those who meet the minimum standards are certified as providers. Providing child care in military quarters is a privilege which may be extended to family members of military members at the discretion of the local commander.

6. Requiring that providers serve meals and snacks that meet the United States Department of Agriculture Child Care Food Program standards and facilitate their participation in food subsidy programs, where they are available.

B. Appropriated fund support for family child care/family day care is authorized for provider training, toys, resource library, miscellaneous expenses, and for operational oversight provided by a coordinator or program monitor.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 28, 1989.

[FR Doc. 89-7768 Filed 3-31-89; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 169

[DoD Directive 4100.15]

Commercial Activities Program

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense revised its rules regarding the Commercial Activities Program to incorporate substantive changes to Part 169 required by Office of Management and Budget (OMB) Circular A-76, "Performance of Commercial Activities," August 3, 1983. The Department of Defense reaffirms the Government's general policy of reliance on the private sector for commercial activities while recognizing that Government personnel must perform intrinsic governmental functions and must consider cost effectiveness.

EFFECTIVE DATE: March 10, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Dom Miglionico, Office of the Assistant Secretary of Defense (Production and Logistics) Installations Support Division, Pentagon, Washington, DC 20301-8000. Telephone (202) 325-0537.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-2248, appearing in the **Federal Register** (53 FR 3218) on February 4, 1988, the Office of the Secretary of Defense published part 169 as a proposed rule to provide changes required by Pub. L. 100-180, "National Defense Authorization Act for Fiscal Years 1988 and 1989" December 4, 1987, section 1111 and Executive Order 12615, "Performance of Commercial Activities," November 19, 1987. The Office of the Secretary of Defense previously published Part 169 in FR Doc. 67-10186 (32 FR 12607) August 31, 1967; 69-6119 (34 FR 14184) May 23, 1969; 71-10943 (36 FR 14184) July 31, 1971; 80-8173 (45 FR 17138 March 18, 1980 and 85-22064 (50 FR 37527) September 16, 1985. Some comments and editorial changes received from the private sector and internal DoD Components were incorporated into the final rule.

List of Subjects in 32 CFR Part 169

Armed Forces, Government procurement.

Accordingly, 32 CFR Part 169 is revised as follows:

PART 169—COMMERCIAL ACTIVITIES PROGRAM

Sec.

169.1 Purpose.
169.2 Applicability and Scope.
169.3 Definitions.

Sec.
169.4 Policy.
169.5 Responsibilities.

Authority: 5 U.S.C. 301 and 552 and Pub. L. 93–400.

§ 169.1 Purpose.

This document:

(a) Revises 32 CFR Part 169.

(b) Updates DoD policies and assigns responsibilities for commercial activities (CAs) as required by E.O. 12615, Pub. L. 100–180, Sec 1111, and OMB Circular A–76.

§ 169.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) Encompasses DoD policy for CAs in the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Is not mandatory for CAs staffed solely with DoD civilian personnel paid by nonappropriated funds, such as military exchanges. However, this part is mandatory for CAs when they are staffed partially with DoD civilian personnel paid by or reimbursed from appropriated funds, such as libraries, open messes, and other morale, welfare, and recreation (MWR) activities. When related installation support functions are being cost-compared under a single solicitation, a DoD Component may decide that it is practical to include activities staffed solely with DoD civilian personnel paid by nonappropriated funds.

(d) Does not apply to DoD governmental functions as defined § 169.3.

(e) Does not apply when contrary to law, Executive orders, or any treaty or international agreement.

(f) Does not apply in times of a declared war or military mobilization.

(g) Does not provide authority to enter into contracts.

(h) Does not apply to the conduct of research and development, except for severable in-house CAs that support research and development, such as those listed in enclosure 3 of DoD Instruction 4100.33 [1] (32 CFR Part 169a).

(i) Does not justify conversion to contract solely to avoid personnel ceilings or salary limitations.

(j) Does not authorize contracts that establish an employer-employee relationship between the Department of Defense and contractor employees, as described in FAR 37.104.

§ 169.3 Definitions.

Commercial Activity Review. The process of evaluating CAs for the purpose of determining whether or not a cost comparison will be conducted.

Commercial Source. A business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico that provides a commercial product or service.

Conversion to Contract. The changeover of a CA from performance by DoD personnel to performance under contract by a commercial source.

Conversion to In-House. The changeover of a CA from performance under contract to performance by DoD personnel.

Core Logistics. Those functions identified as core logistics activities pursuant to section 307 of Pub. L 98–525 and section 1231 of Pub. L. 99–145, codified at section 2464, Title 10 that are necessary to maintain a logistics capability (including personnel, equipment, and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situation, and other emergency requirements.

Cost Comparison. The process of developing an estimate of the cost of performance of a CA by DoD employees and comparing it, in accordance with the requirements in DoD Instruction 4100.33 to the cost of performance by contract.

Direct-Conversion. Conversion to contract performance of an in-house commerical activity based on a simplified cost comparsion or the conversion of an in-house commercial activity performed exclusively by military personnel.

Displaced DoD Employee. Any DoD employee affected by conversion to contract operation (including such actions as job elimination, or grade reduction). It includes both employees in the function converted to contract and employees outside the function who are affected adversely by conversion through reassignment or the exercise of bumping or retreat rights.

DoD Commercial Activity (CA). An activity that provides a product or service obtainable (or obtained) from a commerical source. A DoD CA may be the mission of an organization or a function within the organization. It must be type of work that is separable from other functions or activities so that it is suitable for performance by contract. A representative list of the functions performed by such activities is provided in enclosure 3 of DoD Instruction 4100.33. A DoD CA falls into one of two categories:

(a) Contract CA. A DoD CA managed by a DoD Component, but operated with contractor personnel.

(b) In-House CA. A DoD CA operated by a DoD Component with DoD personnel.

DoD Employee. Civilian personnel of the Department of Defense.

DoD Governmental Function. A function that is related so intimately to the public interest as to mandate performance by DoD personnel. These functions include those that require either the exercise of discretion in applying Government authority or the use of value judgment in making the decision for the Department of Defense. Services or products in support of Governmental functions, such as those listed in enclosure 3 of DoD Instruction 4100.33, are CAs and are subject to this part and its implementing Instructions. Governmental functions normally fall into two categories:

(a) *Act of Governing.* The discretionary exercise of Governmental authority. Examples include criminal investigations, prosecutions, and other judicial functions; management of Government programs requiring value judgments, as in direction of the national defense; management and direction of the Armed Services; activities performed exclusively by military personnel who are subject to deployment in a combat, combat support, or combat service support role; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers, and other natural resources; management of natural resources on Federal Property; direction of intelligence and counterintelligence operations; and regulation of industry and commerce, including food and drugs.

(b) *Monetary Transactions and Entitlements.* Refers to such actions as tax collection and revenue disbursements; control of treasury accounts and the money supply, and the administration of public trusts.

DoD Personnel. Military and civilian personnel of the Department of Defense.

Expansion. The modernization, replacement, upgrading, or enlargement of a DoD CA involving a cost increase exceeding either 30 percent of the total capital investment or 30 percent of the annual personnel and material costs. A consolidation of two or more CAs is not

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, ATTN: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

an expansion, unless the proposed total capital investment or annual personnel and material costs of the consolidation exceeds the total of the individual CAs by 30 percent or more.

Installation. An installation is the grouping of facilities, collocated in the same vicinity, that supports particular functions. Activities collocated and supported by an installation are considered to be tenants.

Installation Commander. The commanding officer or head of an installation or a tenant activity, who has budget and supervisory control over resources and personnel.

New Requirement. A recently established need for a commerical product or service. A new requirement does not include interim in-house operation of essential services pending reacquisition of the services prompted by such action as the termination of an existing contract operation.

Preferential Procurement Programs. Preferential procurement programs include mandatory source programs such as Federal Prison Industries (FPI) and the workshops administered by the Committee for Purchase from the Blind and Other Severely Handicapped under Pub. L. 92–98. Small, minority, and disadvantaged businesses; and labor surplus area set-asides and awards made under Pub. L. 85–536, section 8(a) and Pub. L. 95–507 are included under preferential procurement programs.

Right of First Refusal of Employment. Contractors provide Government employees, displaced as a result of the conversion to contract performance, the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

§ 169.4 Policy.

(a) *Ensure DoD Mission Accomplishment.* When complying with this part and its implementing Instruction, DoD Components shall consider the overall DoD mission and the defense objective of maintaining readiness and sustainability to ensure a capability for mobilizing the defense and support structure.

(b) *Achieve Economy and Quality through Competition.* Encourage competition with the objective of enhancing quality, economy, and performance. When performance by a commerical source is permissible, a comparsion of the cost of contracting and the cost of in-house performance shall be performed to determine who shall provide the best value for the Government, considering price and other factors included in the solicitation. The restriction of a solicitation to a preferential procurement program does not negate the requirement to perform a cost comparison. Performance history will be considered in the source selection process, and high quality performance should be rewarded.

(c) *Retain Governmental Functions In-House.* Certain functions that are inherently governmental in nature, and intimately related to the public interest, mandate performance by DoD personnel only. These functions are not in competition with commercial sources: therefore, these functions shall be performed by DoD personnel.

(d) *Rely on the Commercial Sector.* DoD Components shall rely on commercially available sources to provide commercial products and services except when required for national defense, when no satisfactory commercial source is available, or when in the best interest of direct patient care. DoD Components shall not consider an in-house new requirement, an expansion of an in-house requirement, conversion to in-house, or otherwise carry on any CAs to provide commercial products or services if the products or services can be procured more economically from commercial sources.

(e) *Delegate Decision Authority and Responsibility.* DoD Components shall delegate decision authority and responsibility to lower organization levels, giving more authority to the doers, and linking responsibility with that authority. This shall facilities the work that installation commanders must perform without limiting their freedom to do their jobs. When possible, the installation commanders should have the freedom to make intelligent use of their resources, while preserving the essential wartime capabilities of U.S. support organizations in accordance with DoD Directive 4001.1.[2]

(f) *Share Resources Saved.* When possible, make available to the installation commander a share of any resources saved or earned so that the commander can improve operations or working and living conditions on the installation.

(g) *Provide Placement Assistance.* Provide a variety of placement assistance to employees whose Federal jobs are eliminated through CA competitions.

§ 169.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Production and Logistics)* (ASD (P&L)), or designee, shall:

(1) Formulate and develop policy consistent with this part for the DoD CA program.

(2) Issue Instructions to implement the policies of this part.

(3) Maintain an inventory of in-house DoD CAs and the Commercial Activities Management Information System (CAMIS).

(4) Establish criteria for determining whether a CA is required to be retained in-house for national defense.

(5) Approve or disapprove core logistics waiver requests.

(b) The *Comptroller of the Department of Defense* (C, DoD) shall provide inflation factors and/or price indices and policy guidance to the DoD Components on procedures and systems for obtaining cost data for use in preparing the in-house cost estimate.

(c) The *Heads of DoD Components* shall:

(1) Comply with this part and DoD Instruction 4100.33.

(2) Designate an official at the Military Service Assistant Secretary level, or equivalent, to implement this part.

(3) Establish an office as a central point of contact for implementing this part.

(4) Encourage and facilitate CA competitions.

(5) Delegate, as much as practicable, broad authority to installation commanders to decide how best to use the CA program to accomplish the mission. Minimally, as prescribed by P.L. 100–180, section 1111 and E.O. 12615, installation commanders shall have the authority and responsibility to carry out the following:

(i) Prepare an inventory each fiscal year of commercial activities carried out by Government personnel on the military installation in accordance with DoD Instruction 4100.33.

(ii) Decide which commercial activities shall be reviewed under the procedures and requirements of E.O. 12615, OMB Circular A–76, and DoD Instruction 4100.33. This authority shall not be applied retroactively. Cost comparisons and direct conversions initiated, as of December 4, 1987, shall be continued.

(iii) Conduct a cost comparison of those commercial activities selected for conversion to contractor performance under OMB Circular A–76.

(iv) To the maximum extent practicable, assist in finding suitable employment for any DoD employee displaced because of a contract entered into with a contractor for performance of a commercial activity on the military installation.

[2] See footnote 1 to § 169.2(h)

(6) Develop specific national defense guidance consistent with DoD Instruction 4100.33.

(7) Establish administrative appeal procedures consistent with DoD Instruction 4100.33.

(8) Ensure that contracts resulting from cost comparisons conducted under this part are solicited and awarded in accordance with the FAR and the DFARS.

(9) Ensure that all notification and reporting requirements established in DoD Instruction 4100.33 are satisfied.

(10) Ensure that the Freedom of Information Act Program is complied with in responding to requests for disclosure of contractor-supplied information obtained in the course of procurement.

(11) Ensure that high standards of objectivity and consistency are maintained in compiling and maintaining the CA inventory and conducting the reviews and cost comparisons.

(12) Provide, when requested, assistance to installation commanders to ensure effective CA program implementation and technical competence in management and implementation of the CA program.

(13) Ensure that maximum efforts are exerted to assist displaced DoD employees in finding suitable employment, to include, as appropriate:

(i) Providing priority placement assistance for other Federal jobs.

(ii) Training and relocation when these shall contribute directly to placement.

(iii) Providing outplacement assistance for employment in other sectors of the economy with particular attention to assisting eligible employees to exercise their right of first refusal with the successful contractor.

(14) Maintain the technical competence necessary to ensure effective and efficient management of the CA program.

(15) Ensure, once the cost comparison is initiated, that the milestones are met, and completion of the cost comparison is without unreasonable delay.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 28, 1989.

[FR Doc. 89-7769 Filed 3-31-89; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 372

[DoD Directive 5122.10]

American Forces Information Service

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY. 32 CFR Part 372 is revised to reflect the transfer of the Current News Analysis and Research Service from the Air Force to the staff supervision of the Assistant Secretary of Defense (Public Affairs) and operational control of the Director, American Forces Information Service.

EFFECTIVE DATE: March 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. R. Furtner, Office of the Director for Administration and Management, Washington, DC 20301-1155, telephone 202-695-4281

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 372

Organization and function (government agencies).

Accordingly, 32 CFR Part 372 is revised to read as follows:

PART 372—AMERICAN FORCES INFORMATION SERVICE

Sec.

372.1 Purpose.
372.2 Applicability.
372.3 Definitions.
372.4 Mission.
372.5 Organization and management.
372.6 Responsibilities and functions.
372.7 Relationships.
372.8 Authorities.
372.9 Administration.

Appendix A—Delegations of Authority

Authority: 10 U.S.C. 131.

§ 372.1 Purpose.

Under the authority vested in the Secretary of Defense by Title 10, United States Code, this part revises 32 CFR part 372 to update the mission, functions, authorities, and relationships of the American Forces Information Service (AFIS) and is the authority for the existence of the Department of Defense Internal Information Program. This part also reestablishes the American Forces Information Council (AFIC) and adds the mission of operating and managing the Current News Analysis and Research Service (CNARS).

§ 372.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Defense Agencies, and the Department of Defense Field Activities (hereafter referred to collectively as "DoD Components").

§ 372.3 Definitions.

Acquisition. The process through which equipment, programs, materials, products, and services are obtained from public and commercial sources.

AFRTS Activity. Any activity in support of AFRTS broadcast operations; i.e., centralized management elements, regional production centers, program duplicating facilities, etc. "Support" can be in many forms—administrative, logistical, equipment maintenance, etc.

AFRTS Broadcast Center. A field activity of the AFIS located in Los Angeles, CA, that provides information and entertainment programming to AFRTS outlets.

AFRTS Mini-TV. A self-contained videotape playback system used in remote or isolated areas not accessible to an AFRTS television signal.

AFRTS Network. Two or more AFRTS stations, authorized by the Director, AFIS, to disseminate programming through interconnecting broadcast-quality transmission circuits.

AFRTS Outlet. Any facility authorized by the Director, AFIS, in accordance with policy to disseminate radio or television programming. An outlet includes AFRTS radio and television stations and networks, relay sites, translators, Navy and Military Sealift Command ships using AFRTS program materials, mini-TV sites, and any other AFRTS broadcast facility.

AFRTS Regional Production Center. Regional production centers (RPCs) are radio and television spot production facilities located in the two major overseas theaters (Pacific and Europe) and managed by the Air Force Broadcasting Service (AFBS). RPCs produce internal information spot announcements appropriate to their respective theaters to supplement the DoD (AFIS) worldwide spot production effort. Subjects, concept treatments, and scripts are coordinated through the appropriate Unified Command and approved by AFIS before final production and release.

Armed Forces Radio and Television Service (AFRTS). A worldwide broadcast organization that comprises an AFRTS headquarters element within AFIS, the AFRTS centralized management elements within the Military Departments, AFRTS outlets and activities around the world, and the AFRTS Broadcast Center in Los Angeles, CA.

Audiovisual (AV). A subset of VI relating to produced motion media with sound.

Broadcast Equipment. Items of a durable nature used for recording, producing, mixing, reproducing, and

broadcasting, and all items commonly used in the broadcasting and television industry for the recording, processing, distribution, reproduction, and transmission of radio and TV signals.

Internal Information. All information that is intended to keep DoD military and civilian personnel and their family members well-informed on matters concerning national defense, readiness, military benefits, American and military heritage, and issues affecting their own morale and well-being. This includes information disseminated through periodicals and other publications, radio, television, motion pictures, videotape, and related media.

Joint Visual Information Service (JVIS). A VI service operated and maintained by a DoD Component to support more than one DoD Component.

Military Department Broadcasting Service. Centralized management staff elements within the Departments of the Army, Navy, and Air Force, that are responsible for the day-to-day management and operational control of all AFRTS outlets and activities that have been assigned to the executive agency of their Department.

Print Media. Printed publications issued in support of the internal information program of the Department of Defense. This includes, but is not limited to, newspapers, periodicals, pamphlets, booklets, posters, magazines, newsletters, news summaries, and news bulletins.

Visual Information (VI). Use of one or more of the various visual media with or without intrinsic sound. VI includes still photography, motion picture photography, video recording (with or without sound), graphic arts, visual aids, models, displays, visual presentation services, and the support processes.

§ 372.4 Mission.

(a) The AFIS shall:

(1) Advise and act for the Assistant Secretary of Defense (Public Affairs) (ASD(PA)) in the:

(i) Management of DoD internal information programs.

(ii) Development of policies, guidelines, and standards for the management of DoD visual information (VI) activities and programs.

(iii) Development of policies, guidelines, and standards for the management of Armed Forces Radio and Television Service (AFRTS) outlets and activities.

(iv) Operation and management of the CNARS.

(2) Provide joint-interest print, radio, film, and television materials for use in the internal information programs of the Military Departments and other DoD Components.

(b) The AFIC shall provide a forum for the exchange of information and advice on DoD internal information matters.

§ 372.5 Organization and management.

(a) The AFIS is established as a DoD Field Activity under the direction, authority, and control of the ASD(PA). It shall consist of a Director and such subordinate organizational elements as are established by the Director to accomplish the AFIS mission within resources assigned by the Secretary of Defense.

(b) The AFIC is established as a policy committee reporting to the ASD(PA). It shall consist of the following:

(1) Director, AFIS, who shall serve as Chairman.

(2) The Chief of Public Affairs of each of the Military Departments.

(3) A representative of the Chairman, Joint Chiefs of Staff (CJCS).

(4) An Executive Secretary, who shall be designated by the Director, AFIS.

§ 372.6 Responsibilities and functions.

(a) The *Director, American Forces Information Service* (AFIS), shall:

(1) Organize, direct, and manage the AFIS and all assigned resources.

(2) Serve as Director of AFRTS.

(3) For print media internal information programs:

(i) Develop and oversee the implementation of policies and procedures pertaining to the management, content, and publications of periodicals, pamphlets, armed forces newspapers, and civilian enterprise publications, including the provisions 32 CFR Parts 248 and 297.

(ii) Serve as DoD point of contact (POC) in the United States for Unified Command newspaper editorial and business policy, business guidance and assistance, and other matters.

(iii) Serve as DoD POC with the Congressional Joint Committee on Printing and other congressional entities for matters pertaining to DoD periodicals, armed forces newspapers, and civilian enterprise publications.

(iv) Develop, publish, or procure appropriate internal information materials of a DoD-wide, joint-interest nature.

(v) Operate and manage the functions of CNARS.

(4) For AFRTS radio and television internal information programs:

(i) Designate geographic areas of responsibility for the operation of Military Department AFRTS outlets and activities, and exercise program management control of AFRTS.

(ii) Develop and oversee the implementation of policies and procedures pertaining to the management and operation of radio and television outlets and activities, including the provisions of 32 CFR Part 372a.

(iii) Exercise fiscal and manpower resource control through the Planning, Programming, and Budgeting System (PPBS). Provide guidance on, review, and approve or revise proposed resource programs; formulate budget estimates; recommend resource allocations; and monitor the implementation of approved programs.

(iv) In conjunction with the CJCS, coordinate contingency and wartime requirements with the Commanders in Chief (CINCs).

(v) Administer centralized management information and resource management systems, in accordance with DoD Directive 7750.5 [1] and DoD Directive 5000.11.[2]

(vi) Establish guidelines for and authorize the establishment of new stations, disestablishment of existing stations, and configuration of broadcast networks.

(vii) Develop and maintain a program for the standardization of broadcast equipment. Establish broadcast equipment technical specifications and performance standards, and certify equipment for use.

(viii) Establish manning standards for outlets and overhead staffs, and qualification standards for broadcast and technical support personnel. Review and concur or nonconcur in the selection of network commanders.

(ix) Negotiate for, acquire, and provide commercial program materials, including a free flow of general and military news, sports, and current events programs. Under normal circumstances, this function shall be carried out by the Commander, AFRTS Broadcast Center, Los Angeles, CA, under the authority, direction, and control of the Director, AFIS.

(x) Develop, produce, and procure spot announcements and public service announcements (PSAs) in support of the DoD internal information program.

(5) For VI activities and programs:

(i) Develop, promulgate, and monitor the implementation of policies, procedures, and programs, and establish management responsibilities for DoD VI

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

[2] See footnote 1 to § 372.6(a)(4)(v).

activities and resources consistent with DoD Directive 5040.2.[3]

(ii) Operate the Federal Audiovisual Contract Management Office (FACMO) as Executive Agent for the Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB).

(iii) Manage necessary information systems to support those requirements.

(iv) Develop common VI formats and standardization guidelines.

(6) Exercise management oversight of the Joint Visual Information Services (JVIS) consistent with DoD Directive 5040.3 in addition to the responsibilities established in § 372.6(a)(5) to:

(i) Review JVIS plans, programs, actions, and taskings to assure that JVIS programs and systems accommodate operational requirements.

(ii) Serve as program review authority for JVIS-related Program Objectives Memorandum (POM) and budget submissions.

(iii) Oversee contract quality control and assurance responsibility for audiovisual (AV) productions obtained under the Federal AV contract management system.

(7) Develop and provide DoD information training requirements, policy, and guidance, and provide training and management oversight and assistance on behalf of the ASD(PA) for the Defense Information School (DINFOS) established under DoD Directive 5160.48.[4]

(8) Provide assistance to other joint-service VI training programs.

(9) Perform other related internal information functions that the ASD(PA) may assign.

(b) The *Assistant Secretary of Defense (Public Affairs)* (ASD(PA)) shall:

(1) Develop broad policy guidelines and objectives for DoD internal information programs.

(2) Provide policy and operational direction to the Director, AFIS.

(c) The *Secretaries of the Military Departments* shall:

(1) Conduct internal information activities pertaining to their Department's programs, operations, and activities.

(2) Operate and maintain AFRTS outlets and activities in designated geographic areas. Continue to sustain broadcast operations, and provide maintenance and administrative support for these outlets and activities during contingencies when their operational control has been temporarily assumed by a Unified Commander in accordance with § 372.6(e) (1) and (2).

(3) Centrally manage and control all AFRTS outlets and activities of their Department.

(4) Centrally manage and control all VI activities of their Department.

(5) Operate VI activities in support of assigned missions.

(d) The *Secretary of the Air Force* shall provide printing and distribution support to CNARS through an inter-service support agreement (ISSA) with AFIS.

(e) The *Commanders of the Unified Commands* (CINCs) shall:

(1) Develop plans for and assume operational control of assigned AFRTS facilities within their respective geographic areas of responsibility during periods of military contingency, as required to ensure a coordinated internal information effort.

(2) Ensure that requirements for the provision of AFRTS service are considered and integrated into all military contingency and deliberate wartime planning guidance within their respective geographic areas of responsibility.

(3) Expeditiously notify the Secretaries of the Military Departments, the CJCS, and the ASD(PA) of military contingency occurrences requiring the implementation of plans for assuming operational control of AFRTS outlets, and again upon the termination of the contingency situation. Return control of AFRTS outlets to the Military Departments immediately upon termination of the contingency situation.

(4) Provide advice with respect to host-country sensitivities concerning the nature and content of radio and television programs.

(5) Conduct internal information activities on joint matters within assigned areas of operation.

(f) The *Members of the American Forces Information Council* shall meet periodically to:

(1) Consider questions of policy and advise the ASD(PA) about internal information programs.

(2) Exchange information among the membership.

§ 372.7 Relationships.

(a) In the performance of assigned functions, the Director, AFIS, shall:

(1) Coordinate actions with other DoD Components having collateral or related functions in the field of assigned responsibilities.

(2) Maintain appropriate liaison with DoD Components and other governmental and non-Government Agencies for the exchange of information and advice on programs in the field of assigned responsibilities.

(3) Make use of established facilities and services in the Department of Defense and other Government Agencies to avoid duplication and achieve maximum efficiency and economy.

(b) Heads of DoD Components shall coordinate with the Director, AFIS, on all matters related to the mission, responsibilities, and functions of AFIS.

§ 372.8 Authorities.

The Director, AFIS, is authorized to:

(a) Obtain from DoD Components, consistent with the policies and criteria of DoD Directive 7750.5, information, advice, and assistance necessary to carry out AFIS programs and activities.

(b) Communicate directly with the Military Departments and other DoD Components on matters related to AFIS responsibilities, programs, and activities.

(c) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out the functions assigned under this part.

(d) Communicate with representatives of foreign governments and commercial broadcast agencies regarding broadcast frequencies and the rights to broadcast for AFRTS outlets and activities.

(e) Exercise the administrative authorities contained in Appendix A of this part.

§ 372.9 Administration.

(a) The Director, AFIS, shall be selected by the ASD(PA).

(b) The AFIS shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense considers necessary.

(c) The Military Departments shall assign military personnel to AFIS in accordance with approved authorizations and established procedures for assignment to joint duty.

(d) Administrative support for AFIS shall be provided by DoD Components through inter-service support agreements in accordance with DoD Directive 4000.19.[5]

Appendix A—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Director, AFIS, or, in the absence of the Director, the person acting for the Director, is

[3] See footnote 1 to § 372.6(a)(4)(v).

[4] See footnote 1 to § 372.6(a)(4)(v).

[5] See footnote 1 to § 372.6(a)(4)(v).

hereby delegated authority, as required in the administration and operation of AFIS, to:

1. Perform the following functions in accordance with 5 U.S.C. 7532; Executive Orders 10450, 12333, and 12356; and DoD Directive 5200.2, "DoD Personnel Security Program," December 20, 1979:

a. Designate the security sensitivity of positions within AFIS.

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in AFIS for a limited period for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

c. Authorize the suspension, but not terminate the services, of an employee in the interest of national security in positions within AFIS.

2. Authorize and approve overtime work for AFIS civilian employees, in accordance with 5 U.S.C. Chapter 55, Subchapter V, and applicable Office of Personnel Management regulations.

3. Develop, establish, and maintain an active and continuing records management program, pursuant to 44 U.S.C. 3102 and DoD Directive 5015.2, "Records Management Program," September 17, 1980.

4. Authorize the publication of advertisements, notices, or proposals in public periodicals, as required for the effective administration of AFIS, consistent with 44 U.S.C. 3702.

5. Establish and maintain, for the functions assigned, an appropriate publication system for the promulgation of common supply and service regulations, instructions, reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1–M, "Department of Defense Directives System Procedures," April 1981.

6. Approve Joint Service Achievement Medals (JSAMs) for personnel assigned under the direct organizational authority of the Director, AFIS, as delegated by ASD(PA) under Chapter 3, subparagraph D.5.c.(2), DoD 1348.33–M, "Manual of Military Decorations and Awards," August 1985.

7. Authorize and approve normal duty hours for AFIS civilian employees in accordance with the diverse mission requirements of AFIS organizational activities.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 28, 1989.

[FR Doc. 89–7770 Filed 3–31–89; 8:45 am]

BILLING CODE 3810–01–M

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32 CFR Part 384

[DoD Directive 5124.2]

Assistant Secretary of Defense (Force Management and Personnel)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document is issued to identify the Assistant Secretary of Defense (Force Management and Personnel) charter. It also shows additional responsibilities that include the DoD counter-drug program and coordination of interagency detection and monitoring of maritime and aerial transit of illegal drugs.

EFFECTIVE DATE: March 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, Office of the Director for Administration and Management, Washington, DC 20301–1155, telephone 202–697–0709.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 384

Organization and management.

Accordingly, Title 32 of the Code of Federal Regulations, Subchapter R, is amended to add Part 384 as follows:

PART 384—ASSISTANT SECRETARY OF DEFENSE (FORCE MANAGEMENT AND PERSONNEL)

Sec.

384.1 Purpose.
384.2 Definitions.
384.3 Responsibilities.
384.4 Functions.
384.5 Relationships.
384.6 Authorities.
Appendix A—Delegations of Authority

Authority: 10 U.S.C. 136

§ 384.1 Purpose.

Under Title 10 U.S.C., this document establishes the position of Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)), with responsibilities, functions, relationships, and authorities, as prescribed herein.

§ 384.2 Definitions.

DoD Components. The Office of the Secretary of Defense (OSD); the Military Departments; the Joint Chiefs of Staff (JCS); the Joint Staff; the Unified and Specified Commands; the Office of the Inspector General, Department of Defense (OIG, DoD); the Defense Agencies, and the DoD Field Activities.

Reserve Components. Refers collectively to the Army National Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, and Coast Guard Reserve. The term "National Guard and Reserve" is synonymous with the term "Reserve components."

Total Force. The organizations, units, and manpower that comprise the Defense Department's resources for meeting the military strategy. It includes the manpower resources of DoD Active and Reserve military personnel, DoD civilian personnel, contractor staff, and host-nation support personnel.

§ 384.3 Responsibilities.

The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)), as the Principal Staff Assistant and advisor to the Secretary of Defense for Total Force management, military and civilian manpower, military and civilian personnel matters, military and civilian family matters, manpower requirements for weapons support, and DoD drug policy and enforcement support shall:

(a) Develop policies, conduct analyses, provide advice, make recommendations, and issue guidance on DoD plans and programs.

(b) Develop systems and standards for the administration and management of approved DoD plans and programs.

(c) Develop and promulgate plans, programs, actions, and taskings to ensure adherence to DoD policies and national security objectives, including military manpower and personnel mobilization preparedness objectives and Total Force planning objectives, and to ensure that military and civilian manpower and personnel programs and systems efficiently and effectively support operational requirements and manpower readiness and sustainability of the Total Force.

(d) Review and evaluate plans and programs to ensure adherence to approved policies and standards.

(e) Participate in planning, programming, and budgeting activities related to ASD(FM&P) functions.

(f) Promote coordination, cooperation, and mutual understanding within the Department of Defense and between the Department of Defense and other Federal Agencies, State and local governments, and the civilian community.

(g) Serve on boards, committees, and other groups pertaining to assigned functional areas and represent the Secretary of Defense on manpower and personnel matters outside the Department.

(h) Set manpower requirements determination policies, procedures, and standards.

(i) When acting as the functional proponent or participating when a system has a major impact on FM&P functional responsibilities, review and evaluate the requirements for major automated information systems in coordination with other members of the Major Automated Information System Review Council (MAISRC).

§ 384.4 Functions.

The ASD(FM&P) shall carry out the responsibilities described in § 384.3, for

the following functional areas for the Total Force:

(a) Total Force structure analysis as related to quantitative and qualitative manpower requirements, utilization, readiness, and support.

(b) The allocation of the Total Force structure among DoD Components and between the Active and Reserve components within the Military Departments.

(c) Development of civilian and military manpower, personnel, training, education, and safety programs and data bases to meet peacetime readiness, wartime sustainability, and system acquisition requirements of the Department of Defense.

(d) Military and civilian manpower mobilization planning guidance and coordination of manpower mobilization plans and their execution.

(e) Military and civilian manpower requirements analysis and related resource distribution in support of peacetime operations and mobilization needs.

(f) Administration and implementation of controls on military manpower strengths.

(g) Recruiting, advertising, processing, and retaining military personnel of the Armed Forces of the United States.

(h) Compensation, retired pay, per diem, travel, and transportation allowances for military and civilian personnel.

(i) Taxation of military personnel compensation and benefits.

(j) Personnel management systems.

(k) Labor-management relations.

(l) Nonappropriated fund instrumentalities.

(m) Commercial affairs, commissaries, and post exchanges.

(n) Morale, discipline, and welfare.

(o) Personnel requirements and utilization.

(p) Community services for DoD personnel and their dependents.

(q) Equal opportunity, and DoD contractor compliance with equal employment opportunity requirements in Government contracts.

(r) Career Development.

(s) DoD focal point for the provision of DoD resources to other agencies for law enforcement and refugee control.

(t) Review and evaluation of the requirements of Defense System Acquisition Review Council weapons programs and proposed weapons systems for manpower, personnel, training, and safety implications, and the implications of weapon system maintainability for qualitative and quantitative manpower requirements.

(u) Accident prevention, occupational health, and safety.

(v) Economic adjustment.

(w) Dependents education.

(x) Manpower, personnel, and training research and development.

(y) Employee motivation policies and programs, including efficiency reviews, to improve overall workforce productivity.

(z) Development of programs, initiatives, and tools to enhance productivity of DoD operations, including the Productivity-Enhancing Capital Investment Program.

(aa) Family support policy and programs.

(bb) Defense Explosives Safety Program.

(cc) Coordination and direction of the DoD counter-drug support programs, to include demand reduction programs within the Department of Defense, coordination and direction of DoD support of civilian drug-law enforcement, and coordination of inter-Agency detection and monitoring of maritime and aerial transit of illegal drugs into the United States.

(dd) Development of Defense Guidance and program and budget for the DoD mission involving drug detection and monitoring in coordination with cognizant OSD officials; the Chairman, Joint Chiefs of Staff (CJCS); the Military Departments; and appropriate Defense Agencies.

(ee) Equal opportunity management training.

(ff) Inter-Agency and intergovernmental activities stemming from the previous functions, and special projects or external requests that create a demand for DoD manpower resources.

(gg) Productivity improvement initiatives.

§ 384.5 Relationships.

(a) In the performance of assigned functions, the ASD(FM&P) shall:

(1) Coordinate and exchange information with other officials in the Department of Defense exercising collateral or related functions.

(2) Use existing facilities and services of the Department of Defense or other Federal Agencies, whenever practicable, to avoid duplication and to achieve maximum efficiency and economy.

(3) Exercise direction, authority, and control over the Department of Defense Dependents Schools, Armed Forces Chaplains Board, Armed Forces Tax Council, DoD Explosives Safety Board, Defense Equal Opportunity Council, Defense Equal Opportunity Management Institute, Defense Advisory Committee on Women in the Services, Per Diem, Transportation and Allowance Committee, Office of Economic Adjustment, and the activities of the President's Economic Adjustment Committee.

(4) Provide policy guidance, goal-setting, and management supervision for the Defense Manpower Data Center, DoD Office of the Actuary, DoD Wage Fixing Authority, NAF Personnel Office, DoD Centralized Referral Activity, DoD Military Entrance Processing Command, Joint Recruiting and Advertising Program, Defense Productivity Program Office, Defense Training and Performance Data Center, and Defense Activity for Non-Traditional Education Support.

(b) Other OSD officials and heads of DoD Components shall coordinate with the ASD(FM&P) on all matters related to the functions in § 384.4.

§ 384.6 Authorities.

The ASD(FM&P) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M that implement policies approved by the Secretary of Defense in the functions assigned to the ASD(FM&P). Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to Unified and Specified Commands shall be issued through the JCS.

(b) Establish and distribute civilian manpower authorization of the DoD Components and review and approve military and civilian manpower authorization changes during program execution.

(c) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5 as necessary, in carrying out assigned functions.

(d) Communicate directly with the heads of DoD Components. Communications to Commanders of the Unified and Specified Commands shall be coordinated with the JCS.

(e) Establish arrangements for DoD participation in nondefense governmental programs for which the ASD(FM&P) is assigned primary DoD cognizance.

(f) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(g) Exercise authorities contained in Appendix A of this part.

Appendix A—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DoD policies, Directives,

and Instructions, the ASD(FM&P), or in the absence of the ASD(FM&P), the person acting for the ASD(FM&P) is hereby delegated authority to:

1. Serve for the Secretary of Defense as Chairman of the President's Economic Adjustment Committee in accordance with Executive Order (E.O.) 12049, March 27, 1978.

2. Exercise the authorities of the Secretary of Defense to assist in meeting the cost of providing increased municipal services and facilities to the residents of communities located near major new DoD installations (DoD Instruction 3030.2, May 24, 1983).

3. Establish advisory groups for oversight of morale, welfare, and recreation activities (DoD Directive 1015.1, August 19, 1981).

4. Monitor vending facilities for the blind on Federal property and suspend or terminate a permit to operate a vending facility (DoD Directive 1125.3, April 7, 1978).

5. Review annually deviations from Armed Services Exchange Regulations granted by the Military Department Secretaries (DoD Directive 1330.9, December 15, 1986).

6. Act for the Secretary of Defense as the Secretary's representative on the Consumer Affairs Council (DoD Directive 5030.56, August 12, 1982).

7. Extend to other Military Departments the action taken by an installation commander to deny or revoke the privileges of a company and its agents to conduct commercial solicitation activities, after consultation with the Department concerned (DoD Directive 1344.7, February 13, 1986).

8. Act as the official liaison between the Department of Defense and the American Red Cross (DoD Directive 1330.5, August 16, 1969).

9. Act as liaison between the Department of Defense and the Federal Bureau of Investigation and other government and civil law enforcement agencies on absentee and deserter policy matters (DoD Directive 1325.2, August 20, 1979).

10. Act as the official DoD liaison on policy matters concerning relationships between the Department of Defense and the United Service Organizations as prescribed in DoD Directive 1330.12, November 9, 1987.

11. Suspend the forward movement of DoD noncombatants to any danger area abroad (DoD Directive 5100.51, October 11, 1966).

12. Act for the Secretary of Defense to approve or disapprove all recommendations for the Defense Superior Service Medal other than those for personnel assigned to the JCS (DoD 1348.33-M, August 26, 1985).

13. Determine acts or operations that warrant award of the Humanitarian Service Medal (DoD 1348.33-M, August 26, 1985).

14. Award the Joint Meritorious Unit Award for joint activities that report to a Principal Staff Assistant, to the Secretary of Defense, or for which the Secretary of the Military Department concerned has been designated as executive agent (DoD 1348.33-M, August 26, 1985).

15. Act for the Secretary of Defense to approve or disapprove recommendations for the Secretary of Defense Award for Productivity Excellence.

16. Establish educator positions; develop, adopt, and adjust compensation schedules; and develop regulatory guidance regarding orientation of educators employed in the DoD Dependents Schools System (DoD Directive 1400.13, July 8, 1976).

17. Prescribe initial clothing allowances for enlisted personnel (DoD Instruction 1338.18, July 29, 1985).

18. Approve uniform burial allowance (DoD Directive 1344.8, September 25, 1978).

19. Act for the Secretary of Defense in conducting a review of the military compensation system pursuant to Secretary of Defense Memorandum, August 18, 1982.

20. Act for the Secretary of Defense in the administration of the Defense Advisory Committee on Women in the Service (DoD Directive 5120.14, April 3, 1987).

21. Determine that recruiting personnel are being barred from the premises of institutions of higher learning as prescribed in Public Law (Pub. L.) 92-436, Department of Defense Authorization Act, 1973, September 26, 1972 (DoD Directive 1322.13, May 9, 1984).

22. Issue DoD issuances pertaining to the management of commissioned officers that are required to be issued by the Secretary of Defense under those sections of Title 10, United States Code, added by Pub. L. 96-513, Defense Officer Personnel Management Act, December 12, 1980, as amended by Pub. L. 97-22, Defense Officer Personnel Management Act Technical Corrections Act, July 10, 1981, except when such delegation is specifically prohibited (Secretary of Defense Delegation Memorandum, March 5, 1982).

23. Resolve all conflicting issues among the Discharge Review Boards (DRBs) of the Military Departments, ensure uniformity in rights afforded applicants in the discharge review process, modify enclosures or supplements to governing Directives, and maintain the index of DRB decisions (DoD Directive 1332.28, August 11, 1982).

24. Conduct military base reuse studies and make grants, conclude cooperative agreements, and supplement funds made available under other Federal programs to assist State and local governments in planning community adjustment pursuant to Title 10, United States Code, service 2391 (DoD Instruction 3030.2, May 24, 1983).

25. Coordinate appropriate DoD Federal development programs and activities in the United States with State and local governments and Federal Agencies, and encourage State and local governments and Federal Agencies to coordinate their programs and activities with the Department of Defense (DoD Directive 4165.61, August 9, 1983).

26. Act for the Secretary of Defense as the designated safety and occupational health official prescribed in E.O. 12196, February 26, 1980; DoD Directive 1000.3, March 29, 1979; and DoD Directive 6055.9, November 25, 1983, in carrying out the provisions of Pub. L. 91-596, Occupational Safety and Health Act of 1970, December 29, 1970 (Title 29, United States Code, section 651 *et seq.*), and is promulgating explosive safety standards pursuant to Title 10, United States Code, section 172.

The ASD(FM&P) may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or prohibited by law or regulation.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 28, 1989.

[FR Doc. 89-7767 Filed 3-31-89; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 392

[DoD Directive 5134.3]

Director of Small and Disadvantaged Business Utilization

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document implements 15 U.S.C. 644(k) that establishes the Director Small and Disadvantaged Business Utilization as an office in the Department of Defense under the director, authority, and control of the Under Secretary of Defense (Acquisition), and identifies the responsibilities, functions, relationships, and authorities assigned to the Director of Small and Disadvantaged Business Utilization pursuant to 15 U.S.C. 644(k) and the authority vested in the Secretary of Defense by 10 U.S.C. 113.

EFFECTIVE DATE: March 17, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. H. Becker, Office of the Director for Administration and Management, Washington, DC 20301-1155, telephone 202-695-4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 392

Organization and function (government agencies).

Accordingly, Title 32, Subchapter R is amended to add Part 392 to read as follows:

PART 392—DIRECTOR OF SMALL AND DISADVANTATED BUSINESS UTILIZATION

Sec.

392.1 Purpose.
392.2 Definition
392.3 Responsibilities.
392.4 Functions.
392.5 Relationships.
392.6 Authorities.

Authorities: 10 U.S.C. 133

§ 392.1 Purpose.

This part: (a) Implements 15 U.S.C. 644(k) that establishes the position of Director of Small and Disadvantaged Business Utilization (Director, SADBU) under the direction, authority, and

control of the Under Secretary of Defense (Acquisition) (USD(A)).

(b) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the Director, SADBU, pursuant to the authority vested in the Secretary of Defense under section 10 U.S.C. 113.

§ 392.2 Definition.

DoD Components. The Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff (JCS), the Joint Staff, the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities.

§ 392.3 Responsibilities.

The *Director of Small and Disadvantaged Business Utilization* shall serve as the principal staff assistant and advisor to the USD(A) for ensuring that a fair share of goods and services procured by the Department of Defense is acquired from small, small disadvantaged, and women-owned small businesses. In this capacity, the Director, SADBU, shall:

(a) Implement and execute the functions and duties assigned by 15 U.S.C. 636 and 644, as they relate to the Department of Defense.

(b) Conduct analyses, develop policies, provide advice, make recommendations, and issue guidance on DoD plans, programs, and requirements.

(c) Develop plans, programs, procedures, goals, and objectives, and initiate actions and taskings to ensure adherence to DoD policies.

(d) Develop systems and standards for the administration of approved policies, plans, and programs.

(e) Conduct reviews (including compliance reviews of DoD Components and major prime contractors) and evaluate programs to ensure adherence to approved policies and standards.

(f) Participate in the Planning, Programming, and Budgeting System (PPBS) and the Defense Acquisition System, and in development of the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS).

(g) Keep appropriate organizations and officials informed of significant trends or initiatives.

(h) Promote coordination, cooperation, and mutual understanding within the Department of Defense and between the Department of Defense, congressional committees, other Government Agencies, and the public.

(i) Serve on boards, committees, and other groups and represent the Secretary of Defense and USD(A) outside the Department of Defense.

(j) Perform other duties as the Secretary of Defense and the USD(A) may prescribe.

§ 392.4 Functions.

The Director, SADBU, shall carry out the responsibilities in § 392.3 for the following functional areas:

(a) Prime contracts, subcontracts, and research and development contracts for small, small disadvantaged, and women-owned small businesses.

(b) Labor Surplus Area Program.

(c) Historically Black Colleges and Universities and Minority Institutions.

(d) Small and Disadvantaged Business Subcontracting Program.

(e) Small Business Research and Development Program, to include the Small Business Innovation Research Program.

(f) Blind and Other Severely Handicapped Program.

(g) Procurement Technical Assistance Program.

(h) Small Business Set Aside Program.

(i) Small Disadvantaged Business Development Program.

(j) DoD procurement outreach publications.

(k) Programs in support of Area Small Business Councils; Federal procurement conferences sponsored by members of Congress in their constituencies; economic development entities of States, counties, and municipalities; and industry trade associations promoting the growth of small businesses, small disadvantaged businesses, and women-owned small businesses.

§ 392.5 Relationships.

(a) In the performance of the above functions, the Director, SADBU, shall:

(1) Coordinate and exchange information with officials of other DoD Components having collateral or related functions.

(2) Use existing systems, facilities, and services of the Department of Defense and other Federal Agencies, whenever practicable, to achieve maximum efficiency and economy.

(3) Operate a Central Procurement Information Office for the Department of Defense.

(b) Other OSD officials and the Heads of DoD Components shall coordinate with the Director, SADBU, on all matters related to the functions in § 392.4.

§ 392.6 Authorities.

The Director, SADBU, is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M, that implement policies approved by the Secretary of Defense in the functions assigned to the Director, SADBU. Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to Unified and Specified Commands shall be issued through the Chairman, JCS (CJCS).

(b) As authorized by Section 15 U.S.C. 644(k)(4), exercise supervisory authority over DoD personnel to the extent that their functions and duties relate to the functions and duties assigned to the Director, SADBU, by 15 U.S.C. Sections 637 and 644.

(c) Assign small business technical advisers to the DoD Components in accordance with 15 U.S.C. Section 644(k)(6).

(d) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5, as necessary, in carrying out assigned functions.

(e) Communicate directly with the Heads of the DoD Components. Communication to Commanders of the Unified and Specified Commands shall be coordinated with the CJCS.

(f) Establish arrangements for DoD participation in non-Defense governmental programs for which the Director, SADBU, is assigned primary staff cognizance.

(g) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 28, 1989.

[FR Doc. 89–7765 Filed 3–31–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–89–12]

Regulations for Marine Event: Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, Virginia, Saturday Night Alive Fireworks Displays

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the Saturday Night Alive Fireworks Displays. The fireworks displays will be launched from Banana Landmass Parking Lot, Town Point Park, Norfolk, Virginia, on the Elizabeth River,

adjacent to "Waterside", between the Norfolk and Portsmouth downtown areas, every Saturday night from 9:45 p.m. to 10:00 p.m. from June 10, 1989 to July 29, 1989, and every other Saturday night from 9:45 p.m. to 10:00 p.m. from July 29, 1989 to August 26, 1989. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 8:45 p.m. to 11:00 p.m. on the following dates: June 10, 17, and 24, 1989. July 1, 8, 15, 22, and 29, 1989. August 12 and 26, 1989.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Norfolk Festevents, Ltd. submitted an application on January 19, 1989 to hold a fireworks display every Saturday night from 9:45 p.m. to 10:00 p.m. from June 10, 1989 to July 29, 1989, and every other Saturday night from 9:45 p.m. to 10:00 p.m. from July 29, 1989 to August 26, 1989 in the "Waterside" area of the Elizabeth River between downtown Norfolk, and Portsmouth, Virginia. Since many spectator vessels are expected to be in the area to watch the fireworks display, the regulations in 33 CFR 100.501 are being implemented for these events. The fireworks will be launched from within the regulated area. The waterway will be closed during the firworks display. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted.

Date: March 24, 1989.

A.D. Breed,

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

[FR Doc. 89–7845 Filed 3–31–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3548–1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: In an April 13, 1988, (53 FR 12161) notice of proposed rulemaking, USEPA proposed to disapprove two site-specific revisions to the Ohio State Implementation Plan (SIP) for ozone. These revisions are: (1) A permanent relaxation for two fabric coating lines (K001 and K002) at the B.F. Goodrich Company (B.F. Goodrich); and (2) a permanent relaxation for two fabric coating lines at the Goodyear Tire and Rubber Plant I (Goodyear Plant I). These facilities are both located in Summit County, Ohio.

In today's Final Rulemaking, USEPA is disapproving the SIP revision for B.F. Goodrich because its facility is located in an area lacking a current federally approved ozone attainment demonstration. In addition, USEPA is withdrawing its rulemaking on the Goodyear Plant I revision because this facility has been shut down since April 5, 1985. Therefore, no revisions to the SIP for this facility are warranted, and Ohio has withdrawn the revision.

EFFECTIVE DATE: This final rulemaking becomes effective on May 3, 1989.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan, (312) 886–6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, Columbus, Ohio 43216.

A copy of today's revision to the Ohio SIP is available for inspection at: Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: On August 19, 1983, the Ohio Environmental Protection Agency (OEPA) submitted a site-specific revision to its ozone SIP for the B.F. Goodrich facility in Summit County, Ohio. This revision consists of a facility-specific redefinition of reasonably available control technology (RACT),[1] which would be a relaxation from the present SIP limits.

I. Emission Limits

USEPA approved Ohio's RACT I and RACT II rules as meeting the Clean Air Act RACT requirements on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097), respectively. In lieu of the requirements mentioned above, OEPA has requested a relaxation of the SIP for B.F. Goodrich. Under this revision, the combined emissions from K001 and K002 can neither exceed 500 pounds per day, nor 50 tons per year.

Under the existing federally approved SIP, each fabric coating line (K001 and K002) at B.F. Goodrich is subject to the control requirements contained in OAC Rule 3745–21–09(G) of 2.9 pounds of VOC per gallon of coating. OAC Rule 3745–21–04(C)(6) required final compliance by April 1, 1982.

II. SIP Deficiency—Summit County

On February 24, 1984, the USEPA notified the Governor of Ohio, pursuant to section 110(a)(2)(H) of the Clean Air Act, that the Ohio SIP is inadequate to achieve the national ambient air quality standards (NAAQS) for ozone in Summit County. The basis for the finding of inadequacy is USEPA's conclusion that, even through this area is covered by a fully approved Part D Plan which assured attainment of the ozone NAAQS by 1983, Summit County, is still experiencing ozone NAAQS violations. In the SIP inadequacy letter, USEPA called upon the State to correct the inadequate by revising the SIP within 1 year from the date of the letter. To date, the State of Ohio does not have a re-approved SIP for Summit County.

On May 26, 1988, USEPA notified the Governor of Ohio, that the ozone SIP for the Cleveland area (which, as proposed by USEPA would include Summit County) is substantially inadequate to assure the attainment of the ozone

[1] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

NAAQS. This was based on 1985–1987 monitoring data. In addition, multiple exceedances of the ozone NAAQS were recorded in Summit County in 1988.

III. Policy for Review of SIP Relaxations

Under USEPA's July 29, 1983, SIP revision policy memorandum entitled "Source Specific SIP Revisions" from Sheldon Meyers, Director, Office of Air Quality Planning and Standards, sources which are located in areas lacking a current federally approved ozone attainment demonstration cannot be considered for relaxations, until the SIP has been revised to demonstrate attainment and maintenance of the NAAQS for ozone. In addition, the State must demonstrate reasonable further progress (RFP).

IV. Proposed SIP Revision

In an April 13, 1988, (53 FR 12161) notice of proposed rulemaking, USEPA proposed to disapprove two site-specific revisions to Ohio State Implementation Plan (SIP) for ozone. These revisions are: (1) A permanent relaxation for two fabric coating lines (K001 and K002) at the B.F. Goodrich; and (2) a permanent relaxation for two fabric coating lines at the Goodyear Plant I.[2]

V. Comments and USEPA's Response

Comments on this notice of proposed rulemaking were received from the OEPA. These comments and USEPA's response are provided below.

A. OEPA's Comments

Comment 1: This Agency submitted a revised ozone SIP for the Akron area on July 29, 1985, (in response to a **Federal Register** notice of May 3, 1984), and submitted additional data on April 11, 1986, (in response to USEPA's request of March 4, 1986). The SIP submittal contained the site-specific revision for the B.F. Goodrich Company. In September of 1986, Region V had recommended approval of the revised ozone SIP. Under section 110(a)(2) of the Clean Air Act, the USEPA Administrator is required to approve or disapprove a SIP revision within 4 months after the date required for submission of the SIP revision.

USEPA Response: Although OEPA has submitted a revised ozone SIP for the Akron area which includes this revision for B.F. Goodrich, the revised SIP has not been approved by USEPA and is not expected to be approved. See USEPA's May 26, 1988, notice of SIP deficiency. Although section 110(a)(2) of the Clean Air Act establishes a 4 month requirement for the original State plans submitted pursuant to section 110(a)(1), subsequent revisions are governed by section 110(a)(3)(A), which imposes no statutory deadline. In light of the absence of a mandatory review deadline for such revisions, the Agency contends that its obligation under the Clean Air Act is to act within a reasonable time, as determined by the Administrator.

Comment 2: The site-specific revision meets the recommendations contained in USEPA's July 29, 1983, policy memorandum from Sheldon Meyers, Director, Office of Air Quality Planning and Standards. For VOC relaxations in nonattainment areas, that memorandum recommends ". . . a data base and modeling demonstration consistent with that applied in extension areas." This Agency has submitted the data base and modeling demonstration, as indicated in OEPA's Comment 1.

USEPA Response: As discussed in the response to Comment 1, the demonstration submitted by OEPA for Summit County has not been approved by USEPA. Therefore, the revision does not satisfy the July 29, 1983, policy.

Comment 3: The site-specific revision meets the following statements contained in the September 1, 1983, letter to this Division from David Kee, Director, Air Management Division: ". . . a State is required to submit a modeling demonstration and data base consistent with that required for extension areas." and ". . . any SIP revision request in such an area must also consider the 1983 quality assured ozone monitoring data in the analysis."

USEPA Response: The statement contained in the letter referenced above refers to the requirements of the July 29, 1983, policy. As discussed in the response to Comment 1, this policy has not been satisfied.

Comment 4: There is no USEPA requirement that an area must be currently attainment in order to process a SIP relaxation. The SIP is required to demonstrate attainment in a planning sense. This issue of planning is described in USEPA's November 24, 1987, proposed policy on post-1987 ozone SIPs (52 FR 45044).

USEPA Response: USEPA does not require areas to be in attainment before a SIP relaxation can be approved. However, a nonattainment area must have an up-to-date approved demonstration of attainment for a relaxation to be approved.

Comment 5: A SIP relaxation based on a case-by-case demonstration of infeasibility (i.e., site-specific RACT) should be allowed, as envisioned in USEPA's April 28, 1978, policy memorandum entitled "Development of Regulations for HC RACT from CTG's" from Walter C. Barber, Director, Office of Air Quality Planning and Standards.

USEPA Response: Site-specific RACT determinations to relax a SIP can be approved based on a case-by-case demonstration of infeasibility, provided that a demonstration is made that such a relaxation will not jeopardize attainment or RFP. This requirement is the basis of the July 29, 1983, policy. OEPA has not made such a demonstration.

Comment 6: The revised ozone SIP for the Akron area contains a commitment on RFP. This Agency submitted RFP reports to Region V on September 23, 1987 and April 11, 1988.

USEPA Response: Although Ohio's revised plan does contain an analysis RFP, it has not yet been approved by USEPA.

Conclusion: USEPA is disapproving this SIP revision for B.F. Goodrich because this facility is located in an area which is lacking a current federally approved ozone attainment demonstration. It is withdrawing its rulemaking concerning Goodyear Tire and Rubber.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 2, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Carbon monoxide, Hydrocarbon, Intergovernmental offices.

Dated: March 17, 1989.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 89–7795 Filed 3–31–89; 8:45 am]

BILLING CODE 6560–50–M

[2] USEPA is withdrawing its rulemaking on the Goodyear Plant I today because this facility has been shut down since April 5, 1985. OEPA has withdrawn the revision and therefore, no revision to the SIP for this facility is still applicable.

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40 CFR Part 60

[AD–FRL–3548–4]

Review of Standards of Performance for New Stationary Sources; Coal Preparation Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Review of standards.

SUMMARY: The EPA is required by the Clean Air Act to review standards of performance for new, modified, or reconstructed stationary sources every 4 years. A second review of the existing new source performance standards (NSPS) for coal preparation plants (40 CFR Part 60, Subpart Y) has been completed to determine if changes are needed. The Agency has concluded that no revision to the standards is appropriate at this time.

ADDRESSES: *Information Document:* The document summarizing information gathered during the review may be obtained from the EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Second Review of New Source Performance Standards for Coal Preparation Plants" (EPA–450/3–88–001).

Docket: Docket No. A–87–08, containing supporting information gathered during the review, is available for public inspection and copying between 8:00 a.m. and 3:30 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Grainger, Industrial Studies Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5435.

SUPPLEMENTARY INFORMATION:

I. Background

The current NSPS for coal preparation plants have remained unchanged since they were proposed in 1974 and reviewed in 1981. The primary purpose of the NSPS was to control particulate emissions from thermal coal dryers. The NSPS limit particulate emissions from coal dryers to 0.031 grains per dry standard cubic foot (gr/dscf) and 20 percent opacity, based on the use of venturi scrubbers. They also limit particulate emissions from pneumatic coal cleaning equipment to 0.018 gr/dscf and 10 percent opacity, based on the use of fabric filters, and limit fugitive particulate emissions from coal process and conveying equipment, coal storage systems, and coal transfer and loading systems to 20 percent opacity. The NSPS apply to all facilities that process at least 200 tons of coal per day.

The Clean Air Act Amendments of 1977 require that the Administrator review and, if appropriate, revise established standards of performance for new stationary sources at least every 4 years (section 111(b)(1)(B)). A review of the coal preparation plant standards was conducted previously in 1981 (46 FR 21769). No revisions to the NSPS were made as a result of the 1981 review. As part of this second review, EPA Regional Offices, other Federal agencies, State agencies, and companies with plants subject to the NSPS were contacted to gather available information on the numbers and locations of facilities subject to the NSPS, control equipment performance and costs, and the results of compliance tests. In addition, site visits were made to eight plants to observe actual operating conditions. From these sources, an information document was prepared covering the current status of control technology, compliance test data, cost, and cost effectiveness for representative control systems at various types of coal preparation plants. A summary of the review findings follows.

II. Findings

Industry Growth

The production of coal in the United States has been growing at an average annual rate of about 3 percent since promulgation of the NSPS in 1976. However, current projections by the U.S. Department of Energy indicate that growth will decline to an average annual rate of 2.3 percent through 1995. Based on the number of new coal preparation plants and increases in annual coal production from 1980 to 1985, it is projected that approximately 85 new coal preparation plants per year for the period of 1985 to 1995 will be constructed.

The economics of coal preparation technology favors the use of mechanical dewatering rather than thermal drying for eastern coals. Western coals are not typically dried either thermally or mechanically. In 1974, a growth rate of nine new thermal dryers per year was estimated. Actual construction of thermal dryers averaged three per year during the period covered by the previous review (1974–1979), and has averaged only two per year during the period covered by the current review (1980–1986), even though 360 new coal preparation plants were constructed during that time period. Current projections are for a continued decline in the construction of new thermal dryers.

The use of pneumatic coal cleaning equipment has also been declining. Only three pneumatic coal cleaning facilities have been constructed since promulgation of the NSPS. None were constructed during the period covered by this review and no new pneumatic coal cleaning facilities are projected.

Control Technology

The current NSPS specify emission limits for particulate matter from thermal dryers and pneumatic coal cleaning equipment. No changes have occurred in the types of control technology for thermal dryers and pneumatic cleaning equipment since promulgation of the NSPS. The best demonstrated technology (BDT) for thermal dryers consists of centrifugal collectors followed by the use of high-efficiency venturi-type wet scrubbers. The BDT for pneumatic coal cleaning equipment consists of centrifugal collectors followed by fabric filtration.

The current NSPS also regulate the opacity of fugitive emissions from coal processing and conveying equipment, coal storage systems, and coal transfer and loading systems. Historically, compliance with this limit has been achieved by the use of wet suppression techniques and/or enclosing potential sources of fugitive particulate emissions. During this review, however, several of the coal preparation plants visited were found to be controlling sources of fugitive emissions by enclosing the source and ventilating the captured emissions to a particulate control device.

Emission Levels Achievable with Demonstrated Control Technology

The principal control device applied to thermal dryers is a cyclone followed by a wet scrubber. Cyclones, which are installed more for product recovery than for pollution control, are capable of collecting up to 95 percent of the entrained particulate matter. This material is returned to the coal product. Cyclones, however, have low collection efficiencies for particles smaller than 10 microns. Consequently, additional particulate emission control is accomplished with high-efficiency venturi-type wet scrubbers. Venturi scrubbers associated with thermal dryers normally operate at pressure differentials of 15 to 40 inches water gauge. Water entrained by exhaust gases from the scrubbers is removed using mist eliminators.

An average particulate matter uncontrolled emission for fluid-bed dryers equipped with cyclones is 3.0 gr/dscf. Well-controlled thermal dryers with high efficiency venturi-type wet scrubbers are capable of 99 percent control and reduce particulate emissions to less than or equal to the NSPS, which is 0.031 gr/dscf. The 10 dryers found to be subject to the NSPS were in

compliance, with measured emissions ranging from 0.005 to 0.024 gr/dscf.

Emissions from pneumatic coal cleaning equipment consist entirely of particulate matter. Typically, cyclones are used for process control and emission control is achieved by a fabric filter. The existing standard of performance for pneumatic coal cleaning equipment is 0.018 gr/dscf. No new pneumatic coal cleaning facilities have become subject to the current NSPS during the period covered by this review and none are projected.

Fugitive emissions for coal processing and conveying equipment, storage systems, and transfer and loading facilities may not exhibit 20 percent or greater opacity under the existing NSPS. Historically, these sources have been controlled by applying wet suppression techniques and/or enclosing the source. This is still generally true for most plants processing eastern (bituminous) coal. However, some eastern and western plants are now applying controls consisting of local hooding and ventilation systems for emissions capture and particulate control devices for collection. The test data available for fabric filter control of fugitive air emissions from crushers, dryers, storage silos, truck dumps, and conveyor transfer points indicate that particulate grain loadings ranging from 0.001 gr/dscf to 0.005 gr/dscf are achievable. While no formal Method 9 visible emissions data are available for these facilities, informal observations by State and EPA personnel indicate that no visible emissions have been observed at the fugitive emission capture points and no visible emissions have been observed at the exhausts of the control devices controlling these fugitive emissions.

Fugitive emission controls which are appropriate at one plant may be unnecesary or inappropriate at another. During this review, EPA found a wide range of coal types and numerous processing methods that may be used by the approximately 1,400 coal preparation plants operating in the United States. For example, some western lignite plants control fugitive particulate emissions from coal crusher and conveyer transfer points using hooding, ventilation, and fabric filters. By contrast, coal processed at many eastern locations comes wet from underground mines, thus fugitive emissions upstream of the dryer appear to be negligible and may require no further control.

Any revised regulation established to limit fugitive emissions from coal preparation plant should accommodate selection of either properly implemented wet suppression techniques or another control strategy of comparable effectiveness (e.g., hooding followed by fabric filter or scrubber control). A limit on visible emissions or opacity, which is the format of the existing standards, could achieve this objective. In addition, if applied to the small fabric filters which are typical of many dry control applications, such a regulation would also eliminate much of the expenses of compliance testing as compared with testing of mass emissions under a regulation that specifies a limit on the mass concentration of particulate emissions. Consequently, the regulation of fugitive emissions from transfer, storage, and handling operations on the basis of visible emissions or opacity is appropriate.

Since some plants are controlling visible emissions from transfer, handling, and storage to a greater degree than required by the 20 percent opacity provision, consideration was given to revising the standard to increase the stringency of the regulation. This would need to be supported by conducting visible emission measurements at several well-controlled eastern and western facilities using the two control techniques. Since these data are not available now, a project to revise the NSPS would require a resource commitment from the Agency approximating the resources needed to develop new NSPS.

Lowering the opacity limit for transfer, handling, and storage facilities to less than 10 percent would result in an industry-wide emissions reduction of an estimated 200–1,500 tons of particulate matter per year, or 2–18 tons per year per plant (assuming approximately 85 plants per year will become subject to the NSPS). The EPA also considered the impact that the contemplated revision would have on public exposure to emissions of particulate matter smaller than 10 microns (PM_{10} emissions). No coal preparation plants subject to the NSPS were found to be located in areas identified by EPA as likely to exceed the PM_{10} levels for the ambient air quality standard ("Group 1" areas).

As discussed above, improvements in the control of fugitive emissions within the industry since promulgation of the NSPS indicate that the current NSPS level of 20 percent opacity may not reflect best demonstrated control. Considering the need to conserve resources and the priorities among the Agency's standards setting activities, the Agency intends to base further assessments of revised standards on qualified emission data that are developed during compliance testing, compliance investigations, or continuous compliance monitoring at sources which may be subject to this NSPS. Accordingly, the Agency will assure that opacity data are collected and recorded in all future compliance test reports for these sources so that data will be available to characterize best demonstrated control of emissions from coal transfer, handling and storage operations at coal preparation plants. This will make it possible to identify any revisions that are appropriate without the expenditure of EPA resources to develop new field data. Opacity measurements historically have not been collected during initial performance testing of many facilities subject to NSPS. To remedy this, EPA promulgated amendments to the opacity provisions of 40 CFR 60.11 on December 27, 1985. These amendments require that official EPA opacity measurements be performed before compliance status is granted.

Cost Effectiveness of the NSPS

Data supplied by the plants surveyed show that emissions from thermal dryers are currently controlled at a cost of $10 to $15 per ton of particulate captured. These data are for dryers which use scrubbers to control particulate matter. The analysis of cost and emissions captured did not include particulate captured by the cyclones which are considered part of the process rather than part of the emission control system. Due to the high concentrations of particulate matter collected by the control equipment and the attendant product recovery credits, this cost effectiveness is at the low end of the cost effectiveness range encountered for most NSPS particulate matter controls. The methods of controlling fugitive emissions from transfer, handling and storage operations vary nationwide depending on the state of the coal. Hence, methods of fugitive emission control range from wet suppression to fabric filtration. The cost effectiveness for controlling fugitive emissions from transfer, handling and storage operations to meet a 20-percent opacity requirement is estimated from about $100/ton of particulate captured for large plants to about $500/ton for small plants. Because only three pneumatic coal cleaning facilities have been built since the NSPS were promulgated, the cost effectiveness for controlling particulate emissions from this equipment has not been calculated.

Monitoring, Recordkeeping, and Reporting Requirements

The NSPS as currently written does not define an excess emission with regard to the required monitoring of

thermal dryers. Therefore, the need for defining excess emissions was investigated. Because pressure drop is a control device parameter for which the regulation currently requires continuous monitoring, excess emissions could be based upon any significant decrease in the pressure drop across the scrubber. However, the environmental benefits associated with a revision that would require reports of excess emissions appear to be small. This conclusion is based on the fact that thermal drying is declining at coal preparation plants and few new dryers are expected to be built in the future. Also, for the dryers subject to the NSPS, there is no history of compliance problems. Since little environmental benefit would be realized by defining excess emissions for a source where there is low growth potential and for which there is no indication of non-compliance, the Agency has concluded that the monitoring and recordkeeping requirements should remain unchanged.

III. Conclusions

Based on the above findings, EPA is recommending no changes at this time to the level of control required by the NSPS for coal preparation plants. A review of the cost effectiveness of the NSPS found that the costs relative to the emissions controlled are reasonable. Also, the monitoring, recordkeeping and reporting requirements are reasonable. Therefore, EPA has concluded that the emission limits for particulate matter and opacity from coal preparation plants should remain at the current NSPS level, and that the existing monitoring, recordkeeping, and reporting requirements should not be changed. However, special attention will be given to enforcement and documentation of the opacity limit for coal transfer and handling and storage operations, so that the data will be available for the next 4-year review. This will provide a better basis for assessing the need for revision of this opacity limit, and should provide the emission data for implementing any appropriate revisions.

IV. Paperwork Reduction Act

The information collection requirements (ICR) for the standards were recently reapproved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2060–0122. The expiration date of the ICR is January 31, 1992.

List of Subjects in 40 CFR Part 60

Air pollution control, Coal, Coal preparation plants, Intergovernmental relations, Reporting and recordkeeping.

Date: March 3, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89–7793 Filed 3–31–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Change in List of Species in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animal and plant species. Appendices I, II, and III of the Convention list those species for which trade is controlled. This notice announces a recent decision of the Parties to the Convention to amend the annual export quotas for the populations of the Nile crocodile (*Crocodylus niloticus*) in the Democratic Republic of Madagascar and the Republic of Malawi. The notice also declares that the U.S. Fish and Wildlife Service (Service) has decided not to recommend that the United States enter a reservation on these amendments.

DATES: The amendment described in this action entered into effect on February 18, 1989, under the terms of the Convention.

ADDRESSES: Please send correspondence concerning this final decision to the Chief, Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Department of the Interior; Washington, DC 20240. Background materials, as well as materials received, will be available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, in Room 750, 4401 Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane at the address given above or telephone (703) 358–1708.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates trade in certain animal and plant species. Appendices I, II, and III to the Convention list those species for which trade is controlled. Previous actions of the Parties have adopted the transfer of populations of the Nile crocodile (*Crocodylus niloticus*) in specific countries from Appendix I to Appendix II subject to specified annual export quotas adopted by the Parties.

Postal procedures for amending the lists of animal and plant species included in Appendices I and II of the Convention are provided in Article XV. Under this article, any Party may propose an amendment for consideration between the meetings of the Conference of the Parties. In response, any Party may transmit comments, information, and data to the Convention's Secretariat within 60 days of the date when the Secretariat communicated its recommendation on such a proposal to the Parties. As soon as possible thereafter, the Secretariat will communicate the replies received together with its own recommendations to the Parties. If the Secretariat receives no objection within 30 days of communicating these replies and recommendations, the proposal is adopted and enters into effect 90 days later. If any Party objects during the 30-day period, the proposal then could be adopted only by a two-thirds majority of those Parties casting an affirmative or negative vote, provided that at least one-half of all Parties cast a vote or indicate their abstention within 60 days.

The Democratic Republic of Madagascar and the Republic of Malawi proposed an increase in their export quotas for the Nile crocodiles in their countries. Currently, this quota for Madagascar is 1,000 in 1988 and 1,300 in 1989. Madagascar now has proposed increasing its quota to 3,784 specimens in 1988, and Malawi has proposed increases to 1,700 in 1988 and 2,300 in 1989.

The Convention's Secretariat supported the requests of both nations and recommended adoption of their proposed amendments. Although the species has declined in Madagascar during the 20th century, the proposal stated that it remains common in some places. The area in which commercial exploitation occurs was estimated to contain 20,000–30,000 individuals. This area was stated to encompass only a small part of the total range of the species in the country. Moreover,

Madagascar recently has taken several steps toward crocodile conservation and protection, as it was requested to do by the Convention's Conference of the Parties in July 1987.

The Malawi proposal would affect only the ranched population. The request for an increased quota is considered justified by a higher ranching production than expected. The portion of the quota consisting of wild animals will remain unchanged, i.e., 700 specimens.

Comments on these two proposals were solicited in the October 3, 1988, **Federal Register** (54 FR 39855). Comments solicited included information that might be useful in developing a response to the Secretariat and in developing the final United States position on the proposed amendments as well as whether the United States should enter a reservation if the export quota changes were adopted by the Parties. An assessment of the proposals was received from the Chairman of the Crocodile Specialist Group of the International Union for Conservation of Nature and Natural Resources. The Crocodile Specialist Group supported the proposals.

Comments received by the Secretariat were distributed to all Parties on October 21, 1988. Of the seven Parties submitting comments, one indicated it would abstain in any voting and the other six supported the proposal by Malawi. Four Parties supported the proposal by Madagascar and two did not support the proposal because they felt that adequate scientific data were not available. The Secretariat, in summarizing comments of others, noted that Madagascar had initiated new programs (including regulatory protection, licensing, censusing, and ranching) and has thereby demonstrated its commitment to developing a professional management program.

Following this notification from the Secretariat, the United States did not enter an objection, and no objections by other Parties were received by the Secretariat within the specified 30-day time period. Therefore, on November 24, 1988, the Secretariat notified the Parties that the amendment would enter into force on February 18, 1989.

Article XV of the Convention enables any Party to enter a reservation with respect to any amendment. Parties that enter reservations will be treated as States not a Party to the Convention with respect to trade in the species concerned. Resolution Conf. 4.25 adopted by the Conference of the Parties addresses the issue that Parties entering reservations on a transfer of species from Appendix II to Appendix I or additions to Appendix I are to treat the species as if on Appendix II. The significance of a reservation on an amendment to change the quota is uncertain.

Regardless of whether or not the United States were to enter a reservation, this would not alter the status of the species under the U.S. Endangered Species Act of 1973, as amended. Therefore, these stricter domestic measures continue to apply to possession and trade in this species. In the case of a nation that is a Party at the time an amendment is adopted, a reservation may be entered only during the period of 90 days after the Parties voted to place the species in Appendix I or II. The Service did not recommend that the United States enter a reservation with respect to the Nile crocodile populations affected by these recently adopted amendments.

Note.—The Department has determined that amendments to the Convention's appendices, which result from actions of the Parties to the Convention, do not require the preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321–4347). The Department also has determined that this listing action is not a rule for purposes of Executive Order 12291, and that the Regulatory Flexibility Act (5 U.S.C. 601) and the Paperwork Reduction Act of 1980 (Pub. L. 96–511) do not apply to this listing process.

This document announces changes in the annual export quotas of the Nile crocodile in the Democratic Republic of Madagascar and the Republic of Malawi in Appendices of the Convention that were accepted by the Parties and that the United States is bound to accept unless it enters a reservation. If the United States were to enter a reservation, the United States would be treated as a state not a Party to the Convention for this particular population. Even if the United States were to enter a reservation, under the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*) Convention export permits, certificates of origin, or certificates of re-export, as appropriate, may be required from other Parties that do not enter reservations, and these Parties may require similar certificates for exports from the United States. It is not the intent of the amendment or the desire of the Service to provide less protection than afforded by the listing in Appendix II.

The Department of State, as a matter of general policy, does not favor the United States taking reservations under any treaty except in those cases where absent a reservation, the treaty would conflict with U.S. law or be impossible to implement. The Service does not believe that implementation of these amendments would be contrary to the interests or law of the United States.

The listing of species in Appendices I, II, and III is codified in Part 23.23(f) of the Code of Federal Regulations. With regard to the listing of *Crocodylus niloticus* in Madagascar and Malawi, the listing reads "*C. niloticus* (populations in Botswana, Cameroon, Congo, Kenya, Madagascar, Malawi, Mozambique, Sudan, Tanzania, and Zambia subject to export quotas described by the Secretariat). The Secretariat has revised the Appendices to reflect the newly adopted annual export quotas; thus, no revision of the Code of Federal Regulations is warranted.

This notice was prepared by Dr. Charles W. Dane, Chief, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Date: March 16, 1989.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–7835 Filed 3–31–89; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 54, No. 62
Monday, April 3, 1989

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 TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego Reg 88-11]

Safety Zone Regulations; San Clemente Island, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule, withdrawal.

SUMMARY: Coast Guard published a notice of proposed rule making in the **Federal Register** on July 26, 1988 (53 FR 28019). The proposal was to establish a permanent safety zone in the vicinity of Castle Rock, on San Clemente Island, where the U.S. Navy was constructing a small arms range. No public comments were received about the proposal.

After further discussions on the issue, it is felt that it would not be in the best interest of the U.S. Navy, or the safety of the public, for the Coast Guard to establish a safety zone. Due to the remote location of San Clemente Island, enforcement of the safety zone would be difficult. Since the U.S. Navy would be the primary enforcement authority over such a zone, it was felt the public could best be served by the establishment of a U.S. Army Corps of Engineers restricted area or danger zone.

FOR FURTHER INFORMATION CONTACT: LT Tom Orzech, USCG c/o U.S. Coast Guard Captain of the Port, 2710 North Harbor Drive, San Diego, CA 92101-1064, telephone (619) 557-5877.

SUPPLEMENTARY INFORMATION: Drafting information: The drafters of this withdrawal are LT Tom Orzech, Project Officer for the Captain of the Port, and LCDR Gerald Wheatley, Project Attorney, Eleventh Coast Guard District Legal Office.

Dated: March 9, 1989.

J.W. Scarborough,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 89-7846 Filed 3-31-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3547-7]

Approval and Promulgation of Implementation Plans; Ohio State Implementation Plan; Extension of Comment Period

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking published February 14, 1989 (54 FR 6733), has been extended 30 days from the date of publication. This notice proposed to disapprove a request from the State of Ohio to revise the attainment status designation, at 40 Code of Federal Regulations 81.336, for Mahoning and Trumbull Counties in Ohio from nonattainment to attainment relative to the ozone National Ambient Air Quality Standards. USEPA is taking this action based on an extension request by a commentor.

DATE: Comments are now due on or before April 17, 1989.

FOR FURTHER INFORMATION PLEASE CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

Date: March 20, 1989.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 89-7798 Filed 3-31-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3548-6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Extension of public comment period.

SUMMARY: On January 24, 1989 (54 FR 3495), the USEPA proposed to disapprove a revision to the ozone portion of the Ohio State Implementation Plan for the Steel City Corporation in Youngstown, Ohio.

At the time of the proposed rulemaking, a 30-day comment period was provided. Steel City Corporation requested an extension of the public comment period. USEPA is extending the public comment period for an additional 30 days to March 27, 1989.

DATE: Comments must be postmarked on or before March 27, 1989.

ADDRESSES: If possible, please send an original and three copies of all comments. Comments should be submitted to: Gary Gulezian, Regulatory Analysis Section (5AR-26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6088.

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

Dated: March 23, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89-7791 Filed 3-31-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL 3547-8]

Approval and Promulgation of Implementation Plans; Wisconsin State Implementation Plan; Extension of Comment Period

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking published December 27, 1988 (53 FR 52202), has been extended an additional 30 days from that provided by a February 9, 1989 (54 FR 6307), public comment extension notice, which extended the comment period to February 27, 1989. The

December 27, 1988, notice proposed to approve a revision to the Wisconsin State Implementation Plan (SIP), which consists of the addition of Section Natural Resources 154.12(10) of the Wisconsin Administrative Code, Rothschild Reasonably Available Control Technology Sulfur Limitations, to the Wisconsin SIP. The revision sets sulfur dioxide emission limits for sources in the City of Rothschild and the Town of Weston. These sources are located in Marathon County, Wisconsin. USEPA is taking this action based on an extension request by a commentor.

DATE: Comments are now due on or before March 27, 1989.

FOR FURTHER INFORMATION PLEASE CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

Date: March 20, 1989.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 89-7797 Filed 3-31-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 89-65; FCC 89-82; RM-6512]

Amateur Radio Service; Proposed Amendment of the Amateur Service Rules Concerning Frequencies Authorized for Automatically-Controlled Stations in Beacon Operation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to relocate certain beacon operations in segments of the 2 meter (m) and 70 centimeter (cm) bands. The 2 m band beacon segment would be relocated from 144.05–144.06 MHz to 144.275–144.300 MHz and the 70 cm band segment would be relocated from 432.07–432.08 MHz to 432.300–432.400 MHz. The proposed rule change is necessary in order to lessen the possibility of interference to moonbounce and other weak-signal experimentation. The proposed rule change would allow experimenters to obtain propagation information that they regularly use in their operations.

DATES: Comments due June 12, 1989; Reply comments due to July 14, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted March 6, 1989, and released March 15, 1989. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendment, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendment, may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. The proposal to relocate automatically-controlled beacon operations in certain amateur subbands responds, in part, to a petition for rule making (RM-6512) filed by The American Radio Relay League, Inc. (ARRL). The ARRL had requested that segments for beacon operations in the 2 m, 1.25 m and 70 cm bands be relocated because the current segments are too close to segments where weak-signal experimentation takes place.

2. The Commission proposed to relocate the 2 m and 70 cm band segments for beacon operation in order to preclude interference to propagation information used for moonbounce and other weak-signal communications. The Commission declined, however, to propose a change for beacons in the 1.25 m band segment because the beacon segment requested by ARRL for relocation is between 220–222 MHz. That segment of the 220 MHz band is to be removed from the amateur service rules and incorporated into the land mobile service rules.

3. The Commission seeks comments on the proposed relocation of beacon operations in the 2 m and 70 cm bands.

4. The proposed rule is set forth at the end of this document.

5. This is a non-restricted notice and comment rule making proceeding. *See* Section 1.1206(a) of the Commission's Rules, 47 CFR 1.1206(a), for rules governing permissible *ex parte* contacts.

6. In accordance with section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small business entities because these entities may not use the amateur radio service for commercial radio communication. *See* 47 CFR 97.3(b).

7. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

8. This Notice of Proposed Rule Making and the proposed rule amendment are issued under the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

9. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 12, 1989, and reply comments on or before July 14, 1989. The Commission will consider all relevant and timely comments before taking final action in this proceeding.

10. A copy of this Notice of Proposed Rule Making will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Amateur radio, Frequencies.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rule

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations would be amended as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 would continue to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.87(e) would be revised to read as follows:

§ 97.87 Beacon operation.

* * * * *

(e) The following amateur frequency bands and emissions are available for

automatically-controlled beacon operation: 28.20–28–30 MHz, 50.06–50.08 MHz, 144.275–144.300 MHz, 220.05–220.06 MHz, 222.05–222.06 MHz and 432.300–432.400 MHz using type N0N, A1A, F1B, or J2A emissions (when type F1B or J2A emissions are employed in these bands, the radio or audio frequency shift, as appropriate, shall not exceed 1000 Hz). Additionally, all amateur frequency bands above 450 MHz are available for automatically-controlled beacon operation using emission types authorized under § 97.61, provided that the licensee is authorized to operate on the frequency under § 97.7.

* * * * *

[FR Doc. 89–7807 Filed 3–31–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 3

Federal Acquisition Regulation (FAR); Procurement Integrity; Correction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule published in the **Federal Register** on Monday, March 27, 1989 (54 FR 12556).

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION: In FR Doc. 89–7126 beginning on page 12556, make the following correction:

3.104–3 [Corrected]

1. On page 12557, in the first column, paragraph (a)(1) is corrected to read:

(a) * * *

(1) Make directly or indirectly, any offer or promise of future employment or business opportunity to, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any procurement official of such agency;

Dated: March 28, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

[FR Doc. 89–7746 Filed 3–31–89; 8:45 am]

BILLING CODE 6820-JC-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 350 and 390

[FHWA Docket No. MC–89–5]

RIN: 2125–AC27

Federal Motor Carrier Safety Regulations; General; Commercial Motor Vehicle Definition

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA issued an advance notice of proposed rulemaking (ANPRM) which was published in the **Federal Register** on February 17, 1989 (54 FR 7224). Through this ANPRM, the FHWA requested comments from all interested and/or affected parties regarding the issue of the gross vehicle weight rating (GVWR) criterion used to define a "commercial motor vehicle" subject to the Federal Motor Carrier Safety Regulations (FMCSRs). The comment period is presently scheduled to close on April 18, 1989. The FHWA has received a formal request from the Maryland Department of Transportation for extension of the comment period and has been advised that additional requests will be forthcoming. Because of the significance of this ANPRM, the FHWA is granting this request for an extension. The comment period is, therefore, being extended 60 days. No further requests for extensions will be considered on this rulemaking action.

DATE: Comments must be received on or before June 19, 1989.

ADDRESS: Submit written, signed comments to FHWA Docket No. MC–89–5, Room 4332, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with either word processing programs, Word Perfect or WordStar. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366–1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Maryland Department of Transportation has requested a 60-day extension. That agency stated also that an extension would provide each State individually, as well as the States collectively through the Commercial Vehicle Safety Alliance (CVSA), time to thoroughly study the impact of the proposed regulation and to provide more meaningful comments. Other informal commenters cited the perplexity and controversial nature of the rulemaking as the reasons for needing additional time to prepare substantive responses. The FHWA anticipates receiving similar requests from other States and organizations within the transportation industry.

This rulemaking action will greatly affect enforcement and compatibility of State and Federal regulations as well as establish a weight threshold for commercial motor vehicles in both intrastate and interstate commerce. The FHWA, therefore, concludes that the request to extend the comment period has merit. Accordingly, the comment period for this docket is being extended until Monday, June 19, 1989.

Authority: 49 U.S.C. 2391–2404; 49 U.S.C. App. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

List of Subjects in 49 CFR Parts 350 and 390

Grant Programs—transportation, Highway safety, Highways and Roads, Motor Carriers, Motor Vehicle Safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: March 28, 1989.

R. D. Morgan,

Executive Director.

[FR Doc. 89–7852 Filed 3–31–89; 8:45 am]

BILLING CODE 4910-22-M

Notices

Federal Register
Vol. 54, No. 62
Monday, April 3, 1989

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

Office of the Secretary

Privacy Act of 1974; Revision of an Existing System of Records

AGENCY: Department of Agriculture.

ACTION: Notice of revision; request for comments.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture (USDA), in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), proposes to revise an existing system of records known as USDA/FS–8, Check-Before-Using Pilot List, in its entirety. This revision is necessary to reflect changes in: (1) The system location, (2) routine uses, (3) storage procedures, (4) retrievability methods, (5) safeguard procedures, (6) system manager's mailing address, and (7) records source categories.

DATE: Public comments must be received in writing by May 3, 1989. Unless comments are received that would require a contrary determination, this amendment shall be effective as proposed without further notice on June 2, 1989. Although the Privacy Act requires only that the portion of the system which describes the "routine uses" of that system be published for comment, USDA invites comment on all aspects of this system of records as described in this notice.

ADDRESSES: Send written comments to: Eddie L. Wade, Privacy Act Officer, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090. The public may inspect comments received on this proposed notice in the Office of the Director, Information Systems Staff, Room 809 at 1621 North Kent Street, Rosslyn Plaza East, Arlington, Virginia 22209, between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Eddie L. Wade, Forest Service Privacy Act Officer, Information Systems Staff, (703) 235–2523 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) Circular A–130, Appendix I, requires government agencies to review annually each Privacy Act system of records to ensure that it accurately describes the system.

The purpose of the system of records, entitled USDA/FS–8, Check-Before-Using Pilot List, is to identify pilots who have performed unsatisfactorily while working under a federal contract for services. The system as proposed to be revised appears at the end of this notice.

Clayton Yeutter,
Secretary.
March 28, 1989.

USDA/FS–8

SYSTEM NAME:

USDA/FS–8, Check-Before-Using Pilot List.

SYSTEM LOCATION:

The records in this system are maintained at the USDA, Forest Service Headquarters, P.O. Box 96090, Washington, DC, 20090–6090; and Regional Offices as listed in 36 CFR 200.2, Subpart A.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Pilots who have performed unsatisfactorily while working under a federal contract for services.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of the pilot's name, social security number, FAA pilot's license number, and the Region or area which reported the unsatisfactory performance.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 301, and E.O. 9397.

PURPOSES:

The Department of Agriculture uses information in this system of records to identify pilots who have performed unsatisfactorily while working under a federal contract for services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

(1) The Department of Agriculture (USDA) may disclose information in this system of records to the Department of Justice (DOJ) for use in litigation, if USDA, or any component thereof, determines that the use of such records by DOJ is relevant and necessary to the conduct of the litigation and that disclosure of the information to DOJ is compatible with the purpose(s) for which the records were collected where any of the following are parties to the litigation or have interests that would be affected by the litigation:

(a) USDA, or any component thereof;

(b) Any USDA employee acting in an official capacity;

(c) Any USDA employee acting in an individual capacity whom DOJ has agreed to represent; or

(d) The United States, if USDA determines that the litigation is likely to affect USDA or any of its components.

(2) USDA may disclose information in this system of records in a proceeding before a court or other adjudicative body before which USDA is authorized to appear, if USDA or any component thereof determines that disclosure of the records to the court or other adjudicative body is a use that is compatible with the purpose(s) for which the records were collected, where USDA determines that the information is relevant and necessary to the conduct of the litigation and any of the following are parties to the proceeding or have interests that would be affected by the proceeding:

(a) USDA, or any component thereof;

(b) Any USDA employee acting in an official capacity;

(c) Any USDA employee acting in an individual capacity whom USDA has agreed to represent; or

(d) The United States, if USDA determines that the litigation is likely to affect USDA or any of its components.

(3) When available information indicates a violation or potential violation of civil, criminal, or administrative law arising by statute or rule, regulation, or order, USDA may refer any record within this system to the appropriate Federal, State, local, or foreign agency charged with the responsibility of investigating or prosecuting a violation of law or of enforcing or implementing a statute, or rule, regulation, or order issued pursuant thereto.

(4) USDA may disclose information from the record of an individual contained in this system in response to an inquiry from a congressional office made at the request of that individual.

(5) If USDA deems it desirable or necessary in order to determine whether particular records are required to be disclosed under the Freedom of Information Act, the Department may disclose the records to the Department of Justice for the purpose of obtaining its advice.

(6) USDA may disclose information from this system of records in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter at issue in a pending judicial or administrative proceeding.

(7) USDA may refer information from this system of records to the appropriate officials of the Department of the Interior, Office of Aircraft Services, for their use in monitoring pilot proficiency.

POLICY AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes, disk, or other format, as well as file folders.

RETRIEVABILITY:

Records are indexed by name, FAA pilot's license number, or social security number.

SAFEGUARDS:

All records containing personal information are maintained in secured file cabinets and secured computer rooms or tape library which can only be accessed by authorized personnel.

RETENTION AND DISPOSAL:

Records are retained or disposed of in accordance with the retention periods contained in Forest Service Handbook, FSH 6209.11, Records Management Handbook.

SYSTEMS MANAGER AND ADDRESS:

Director, Fire and Aviation Management, USDA Forest Service, P.O. Box 96090, Washington, DC 20090–6090, and the Regional Air Officers at Regional Offices as listed in 36 CFR 200.2, Subpart A.

NOTIFICATION PROCEDURE:

Individuals may request information regarding this system of records, or information as to whether the system contains records pertaining to them from the system manager listed in the preceding paragraph. A request for information should contain name, address, FAA pilot's license number, previous employer while performing services for the agency, and particulars involved (for example, the date of action giving rise to the inquiry or complaint).

RECORDS ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should submit a written request to the system manager as set forth in the preceding paragraph. The envelope and letter should be marked "PRIVACY ACT REQUEST."

CONTESTING RECORD PROCEDURES:

Same as records access procedures.

RECORD SOURCE CATEGORIES:

Information in this system comes from Regional Aviation Officers, Contracting Officers, and pilot inspectors.

[FR Doc. 89–7801 Filed 3–31–89; 8:45 am]

BILLING CODE 3410–11–M

Federal Grain Inspection Service

Designation Renewal of the Detroit (MI), Keokuk (IA), and Michigan (MI) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Detroit Grain Inspection Service, Inc. (Detroit), John H. Oliver, Inc., dba Keokuk Grain Inspection Service (Keokuk) and Michigan Grain Inspection Service, Inc. (Michigan), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: May 1, 1989.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that the Detroit, Keokuk, and Michigan designations terminate on April 30, 1989, and requested applications for official agency designation to provide official services within specified geographic areas in the November 1, 1988, **Federal Register** (53 FR 44052). Applications were to be postmarked by December 1, 1988. Detroit, Keokuk, and Michgan were the only applicants for designation in their area and each applied for designation renewal in the entire area currently assigned to each agency. The Service announced the applicant names in the January 4, 1989, **Federal Register** (54 FR 162) and requested comments on the applicants for designation. Comments were to be postmarked by February 21, 1989. No comments were received regarding Keokuk's and Michigan's designation renewal; one comment was received from a grain firm, which recommended Detroit for designation renewal.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Detroit, Keokuk, and Michgan are able to provide official services in the geographic areas for which the Service in renewing their designations. Effective May 1, 1989, and terminating April 30, 1992, Detroit, Keokuk, and Michigan are designated to provide official inspection functions in their specified geogrpahic areas, as previously described in the November 1 **Federal Register**.

Interested persons may obtain official service by contacting the agencies at the following telephone numbers: Detroit at (313) 395–2105, Keokuk at (319) 524–6482 and Michigan at (616) 781–2711.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Date: March 6, 1989.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 89–7802 Filed 3–31–89; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicant in the Geographic Area Currently Assigned to the Eastern Iowa (IA) Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the geographic area currently assigned to Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa).

DATE: Comments must be postmarked on or before May 18, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454. *Telemail* users may respond to [LLEBAKKEN/FGIS/USDA] telemail. *Telex* users may respond as follows:

TO: Lewis Lebakken
TLX:7607351, ANS:FGIS UC.

All comments receive will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the February 1, 1989, **Federal Register** (54 FR 5101). Applications were to be postmarked by March 3, 1989. Eastern Iowa was the only applicant for designation in that area and applied for designation renewal in the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicant for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertient data to support their views and comments. All cemments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed to the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: March 6, 1989.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 89–7803 Filed 3–31–89; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants to Provide Official Services in the Geographic Area Currently Assigned to the Fostoria (OH) Agency, and the States of Louisiana (LA) and North Carolina (NC).

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are Robert B. Whitta dba Fostoria Grain Inspection (Fostoria), Louisiana Department of Agriculture (Louisiana), and North Carolina Department of Agriculture (North Carolina).

DATE: Applications must be postmarked on or before May 3, 1989.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–l; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Fostoria, located at 626 West Fourth Street, Fostoria, OH 44830, North Carolina, located at 1 West Edenton St., Raleigh, NC 27601, and Louisiana, located at Highway 28 West, Rapides Parish Coliseum, Alexandria, LA 71301; were each designated under the Act as an official agency on October 1, 1986. Fostoria and North Carolina were designated to provide official inspection functions, and Louisiana was designated to provide official inspection and weighing functions.

The official agencies' designations terminate on September 30, 1989. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Fostoria, in the State of Ohio, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern and eastern Fulton County lines; the eastern Henry County line; the northern and eastern Wood County lines; the northern Sandusky County line east to State Route 590;

Bounded on the East by State Route 590 south to Seneca County; the northern Seneca County line east to State Route 53; State Route 53 south to Wyandot County; the northern Wyandot County line; the northern Crawford County line east to State Route 19; State Route 19 south to U.S. Route 30;

Bounded on the South by U.S. Route 30 west to the western Hancock County line; and

Bounded on the West by the western Hancock County line; the southern Henry County line west to State Route 108; State Route 108 north to U.S. Route 24; U.S. Route 24 southwest to the Henry County line; the western Henry and Fulton County lines.

The geographic area presently assigned to Louisiana, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Louisiana, except those export port locations within the State which are serviced by the Service.

The geographic area presently assigned to North Carolina, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of North Carolina, except those export port locations within the State which are serviced by the Service.

Interested parties, including Fostoria, Louisiana, and North Carolina, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning October 1, 1989, and ending September 30, 1992. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in

determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: March 6, 1989.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 89–7804 Filed 3–31–89; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

Katka Peak Timber Sales

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The notice is hereby given that the Forest Service is gathering information in order to prepare an Environmental Impact Statement (EIS) for a proposal to harvest timber and build roads in the Katka Peak area. The area is located approximately eight air miles east of Bonners Ferry, Idaho. Part of the proposed timber harvest and road construction are proposed within the Katka Peak Roadless Area (No. 1–157). These management activities would be administered by the Bonners Ferry Ranger District of the Idaho Panhandle National Forests in Boundary County, Idaho.

This EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area. The purpose and goal for the proposed action is to provide a sustained timber yield that is responsive to local industry and national needs.

The Forest Service also serves notice that the agency is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparing the Draft EIS. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed.

DATE: Comments concerning the scope of the analysis must be received by April 30, 1989.

ADDRESSES: Send written comments to District Ranger, Bonners Ferry Ranger District, Route 4, Box 4860, Bonners Ferry, ID 83805.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Allen Chrisman, Timber Management Assistant, Bonners Ferry Ranger District, Idaho Panhandle National Forests, Route 4, Box 4860, Bonners Ferry, ID 83805. Phone: (208) 267–5561.

SUPPLEMENTARY INFORMATION: Management activities under consideration would occur in an area encompassing approximately 29,000 acres of National Forest lands on the Bonners Ferry Ranger District. Included in the area of analysis are all or portions of the following: section 31, T62N, R3E; sections 35 and 36, T62N, R2E; sections 5–9, 15–22, and 27–34, T61N, R3E; sections 1, 2, 10–17, and 19–36, T61N, R2E; and sections 5–8, T60N, R2E, BM, Boundary County, State of Idaho. The Forest Plan provides the overall guidance for management activities in the potentially affected area through its Goals, Objectives, Standards and Guidelines, and Management Area direction. The potentially affected area is within the following Management Areas:

Management Area 2: Manage identified grizzly bear habitat to support a recovered grizzly bear population while providing for the long-term growth and production of commercially valuable wood products.

Management Area 3: Manage identified grizzly bear habitat to support the Idaho Panhandle National Forests' share of a recovered grizzly bear population (25 animals) while providing sufficient winter forage to support projected big game populations through scheduled timber harvest.

Management Area 9: Consists of non-forest lands or lands not capable of timber production. Management goals are to maintain and protect existing improvements and resource productive potentials. No timber harvest will occur, but roads constructed to access harvest areas in the other management areas may cross portions of this management area.

Management Area 16: Consists of lands that are comprised of an aquatic ecosystem and adjacent upland areas that have direct relationships with the aquatic system. Management goals are to manage riparian areas to feature riparian-dependent resources while producing other resource outputs at levels compatible with the objectives for dependent resources. Timber harvesting may occur, and roads constructed to access harvest areas in the other management areas may cross portions of this management area.

Management Area 19: Manage for a semi-primitive recreation setting while providing low levels of timber harvest with minimum standard roads.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which the roadless character of the Katka Peak Roadless Area would be maintained and timber harvest and associated road building would be deferred. Other alternatives will examine timber harvest and road construction in different locations and varied cutting methods and timber management intensities to achieve management area goals.

The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. This will include an analysis of the effects of the alternatives on the roadless character of the area affected. In addition, the EIS will contain an analysis of site-specific mitigation measures.

Public participation will be important during the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision; however, two periods of time are identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process (now until April 30, 1989) and during the review of the Draft EIS (September 1989).

The Fish and Wildlife Service, Department of the Interior, will be informally consulted throughout the analysis. To meet the requirements of the Endangered Species Act, the Fish and Wildlife Service will review the EIS and biological evaluation and, if necessary, render a formal Biological Opinion of the effects on the Threatened and Endangered Species, including the grizzly bear.

The Draft Environmental Impact Statement (DEIS) is expected to be available for public review in September 1989. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by June 1990. The Forest Service will

respond to the comments received in the FEIS. The District Ranger, who is the responsible official for this EIS, will make a decision regarding this proposal, considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Charles Prausa, District Ranger for the Bonners Ferry Ranger District, is the responsible official.

Charles Prausa,

District Ranger, Bonners Ferry Ranger District, Idaho Panhandle National Forests.

Date: March 24, 1989.

[FR Doc. 89-7857 Filed 3-31-89; 8:45 am]

BILLING CODE 3410-11-M

South Fork Salmon River Road Reconstruction Project, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement for reconstructing the South Fork Salmon River Road which is within the Krassel Ranger District and Cascade Ranger District, Payette National Forest and Boise National Forest, Valley County, Idaho.

The Payette National Forest Final Environmental Impact Statement and Forest Plan, released in May, 1988, directed that 19 miles of the South Fork Salmon River Road would be physically closed and converted to a trail. Several appeals were filed on the Forest Plan and EIS.

Through language of the Congress Committee Report supporting the 1989 Appropriations Act $8 million was appropriated to rehabilitate the South Fork Salmon River Road to reduce sediment production and maintain vehicle access. Through this Act of Congress, the decision to convert 19 miles of the Road to a trail was set aside by the Regional Forester Stan Tixier on December 16, 1988. The Payette Forest Supervisor was directed to conduct an environmental analysis for long term management of the road system to comply with the intent of Congress.

Analysis will focus on reconstructing the road so it can remain open to traffic year around, while reducing sediment production from the road to the greatest possible extent.

The Road Project begins at the Warm Lake Highway and continues to the rivers confluence with the East Fork of the South Fork Salmon River, approximately 33 miles. It includes the area from the river to the top of the cut slope.

Preliminary alternatives are to pave the road using a variety of design standards depending on the location, or to use a multi-surface treatment using a variety of design standards depending on the location. Snow plowing will be considered with each alternative.

Federal, State, and local agencies; potential users of the area; and other individuals or organizations who may be interested in, or affected by the decision are invited to participate in the scoping process by sending comments on concerns or issues. This process will include:

1. Identification of potential issues.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those which can not be applied due to the direction established, or through previous environmental review.

4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat.

Veto J. LaSalle, Payette Forest Supervisor and Dave Rittersbacher, Boise Forest Supervisor are the responsible officials.

The analysis is expected to take about three months. A draft environmental impact statement will be filed with the Environmental Protection Agency and be available for review in July. At that time the EPA will publish a notice of availability of the DEIS in the **Federal Register.** The comment period on the draft environmental impact statement would be 45 days from the date the EPA notice of availability appears in the **Federal Register.** The Final Environmental Impact Statement is scheduled to be completed by October.

DATE: Written comments and suggestions concerning the scope of the analysis must be received by April 21, 1989.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis or issues and concerns to John Hooper, Project Leader, Payette National Forest, P.O. Box 1026, McCall, ID, 83638.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to John Hooper, phone 208-634-8151.

Veto J. LaSalle,

Payette Forest Supervisor.

Date: March 22, 1989.

[FR Doc. 89-7858 Filed 3-31-89; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

District of Columbia Advisory Committee; Postponement of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission which was to have been convened at 1:30 p.m. and adjourned at 4:30 p.m. on March 30, 1989, in the 5th Floor Conference Room of the U.S. Commission on Civil Rights, 1121 Vermont Avenue NW., Washington DC, is postponed and will be rescheduled at a later date.

The original notice for the March 30, 1989 meeting was published at 54 FR 9537 (March 7, 1989). The new date and time for the meeting will be announced at a later date, and the location will be 5th Floor Conference Room, 1121 Vermont Avenue NW., Washington, DC. The business segment of the meeting will begin with orientation for new members and will be followed by activity planning.

Persons desiring additional information, should contact Chairperson James G. Banks or John I. Binkley, Director of the Eastern Regional Division of the Commission at (202/523-5264 or TDD 202/376-8117).

Dated at Washington, DC, March 28, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-7756 Filed 3-3-89; 8:45 am]

BILLING CODE 6335-01-M

New Hampshire Advisory Committee Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 6:00 p.m. on Thursday, April 20, 1989, at the McLane, Graf, Raulerson & Middleton Bldg., Conference Room, 40 Stark Street, Manchester, NH 03105. The purpose of the meeting is (1) to receive a briefing on the Regional Conference of SAC Chairs held in Atlanta, GA, on

November 4 and 5, 1988; (2) receive an update on Commission activities and regional program guidelines; and (3) plan a community forum on police community relations.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Robert A. Wells 603/625–6464 or John I. Binkley, Director of the Eastern Regional Division of the Commission at 202/523–5264. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the regional division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 28, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–7754 Filed 3–31–89; 8:45 am]

BILLING CODE 6335–01–M

New York State Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee to the Commisssion will convene at 12:30 p.m. and adjourn at 5:00 p.m. on April 27, 1989, in Room 238, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York. The purpose is to discuss: (1) A November 1988 Regional Conference in which the Advisory Committee was represented, and (2) topics being researched by neighboring Advisory Committees. Also on the agenda is the release of Census Undercounts and Preparations for the 1990 Census, a report on the New York State Advisory Committee's November 1987 forum, and a follow-up forum on the same subject which will begin at 1:30 p.m. in the same location.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Walter Y. Oi (716/275–9034) or John I. Binkley, Director of the Eastern Regional Division (202/523–5264 or TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting. The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, March 27, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–7755 Filed 3–31–89; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Presidential Decision; Plastic Injection Molding Machines, Section 232 National Security Import Investigation

AGENCY: Department of Commerce, Bureau of Export Administration, Export Administration, Office of Industrial Resource Administration.

ACTION: Announcement of Presidential Decision.

SUMMARY: The President has determined that no action is necessary to adjust imports of plastic injection molding machines under authority of section 232 of the Trade Expansion Act of 1962, as amended. Included herein is the Executive Summary of the Department of Commerce's January 1989 section 232 report to the President.

FOR FURTHER INFORMATION CONTACT: John A Richards, Deputy Assistant Secretary for Industrial Resource Administration, U.S. Department of Commerce, Washington, DC 20230, (202) 377–4506.

SUPPLEMENTARY INFORMATION: On January 11, 1988, the Domestic Injection Molding Machinery Trade Group of the Society of the Plastics Industry petitioned the Department of Commerce (DOC) to conduct an investigation under section 232 of the Trade Expansion Act of 1962, as amended, to determine the effect of imports of plastic injection molding machines on the national security.

The DOC announced its initiation of an investigation, and solicited public comments in the **Federal Register** on March 4, 1988.

On January 11, 1989, the Department submitted its investigation report to the President. The investigation found that, at the present time, supplies of plastic injection molding machines will be sufficient to meet anticipated requirements during a national security emergency. The Secretary, therefore, found that the machines were not being imported into the United States in such quantities or under such circumstances as to represent a threat to the national security, and recommended that the President take no action to adjust imports under authority of section 232 of the Trade Expansion Act of 1962, as amended. On February 17, 1989, the President announced that he accepted the Department's recommendation.

In a February 17, 1989 statement, Secretary of Commerce Mosbacher recommended that a number of steps be taken to support the industry's ability to respond to current and future defense requirements. First, he directed the DOC's National Institute of Standards and Technology to cooperate with the injection molding industry to develop sensors and an improved engineering understanding of the injection molding process. This would help to evaluate and control the microstructure and production accuracies of injection molded parts while still in the mold, increasing the industry's productivity and reliability.

Next, he will be working with the Attorney General to identify measures which American industry, including the plastic injection molding industry, can take to strengthen its international competitiveness. Finally, he is requesting that Defense Department officials meet with injection molding industry representatives to explore possible ways to support the industry's revitalization efforts.

The Executive Summary of Commerce's January 11, 1989, section 232 report is reproduced below. A declassified version of the Commerce report will be available for public review and duplication in the Bureau of Export Administration's Office of Security and Management Support, Room 4886, U.S. Department of Commerce, Washington, DC 20230, (202) 377–2593.

Paul Freedenberg,

Under Secretary for Export Administration.

Executive Summary

Background

On January 11, 1988, the Domestic Injection Molding Machinery Trade Group of the Society of the Plastics Industry, (SPI) of Washington, DC, petitioned the Department of Commerce (DOC) to conduct an investigation under Section 232 of the Trade Expansion Act of 1962, as amended, to determine the effect of imports of thermoplastic injection molding machines (PIMM) on the national security.

Under the statute, the President has authority to "adjust imports" based on recommendations from the Secretary of Commerce. Under then-existing law, the DOC had one year in which to complete its investigation and forward its report to the President. (Congress has recently

amended the statute to require that future investigations be completed within 270 days.)

In its petition, the SPI asserted that "import penetration has drastically endangered the health of the injection molding machinery industry . . . (and the) continued and uncontrolled importation (of injection molding machines) is a threat to the national security."

The Significance of PIMM's to National Security

Quantifying defense use of injection molded plastic products is extremely difficult. Many plastic parts may have military as well as commercial application, although military use may be minor relative to total peacetime consumption. One recent study found that the Department of Defense (DOD) is the largest single consumer of plastic parts (as it is for many industrial products), accounting for approximately four percent of the value of all parts consumed. Over one-third of DOD's consumption was of more sophisticated "specialty plastics," significantly higher than the three percent specialty plastics consumption in the economy as a whole. Injection molding machines are used to manufacture defense and essential civilian products in much the same ratio as in the economy as a whole.

Investigation Methodology

Available supply of PIMM's was determined by considering

- The ability of the domestic industry to expand production during emergency conditions;
- The ability to convert the existing stock of PIMM's from civilian to defense use;
- Imports available from reliable sources; and
- The ability to substitute other processes or products for injection molding.
- The ability to convert the existing stock of PIMMs from civilian to defense use;
- Imports available from reliable sources; and
- An evaluation of industry economic trends to determine whether it can be anticipated that the domestic production base will shrink, expand, or remain constant in the years ahead.

Unlike previous Section 232 investigations (machine tools, bearings) requirements (demand) for PIMMs are not directly obtainable from the 1984 NSC Stockpile Study. In order to estimate national security requirements in a one year mobilization period followed by one year of a major conventional conflict, the Department pursued the following approaches as the best means available to analyze demand for parts manufactured by PIMMs:

- Deriving PIMM requirements from Stockpile Study required outputs for the more aggregate Special Industry Machinery category, and from the Plastic Materials category which includes PIMM feedstocks;
- Estimating national security PIMM requirements by extrapolating from data on annual consumption of plastic resins;
- Conducting a series of focused interviews with PIMM users; and
- Consulting with the Department of Defense to estimate future trends in PIMM requirements expected to result from research and development and from projected weapon systems procurements.

Step II

If a supply shortfall is found, the Department then determines whether imports have been a significant cause of the industry's inability to meet national security requirements.

Significant Industry Trends

In order to determine the prospective production and technological capabilities of the domestic industry in the coming years, the Department evaluated recent trends that affect the industry's overall industrial competitiveness.

Domestic shipments have varied significantly from year to year. Shipments peaked in 1984, fell sharply in 1985 and have been static through 1987.

Employment has declined 11 percent since 1984. Employment of production workers has fallen 16 percent over the period, while the number of engineers increased by 8 percent.

Exports have been volatile, increasing since 1984 after bottoming out in 1983 and 1984. The largest markets for U.S. exports have continued to be our neighbors in Canada and Mexico.

Imports have increased dramatically since 1982, growing 700% by value and 350% by units. Import penetration appears to have stabilized, however, thus far in 1988. Japan currently supplies over 55 percent of imports in both unit and value terms, and has been responsibile for the overwhelming majority of increased import penetration in recent years.

Competitiveness

The domestic industry's competitiveness has deteriorated in recent years, particularly relative to Japanese manufacturers. There are encouraging signs, however, that this trend has begun to reverse.

Although quality and technical capabilities are believed to be the most important factors considered by PIMM purchasers, recent devaluation of the dollar should allow U.S. builders to increase their price competitiveness. The petitioner alleges that dumping by foreign suppliers has limited U.S. producers' ability to benefit from exchange rate fluctuations.

Recent introductions of new PIMM product lines by U.S. manufacturers have successfully sought to replicate Japanese success with building "standard" machines in large production runs. While the competitiveness of larger U.S. producers is expected to improve in the near to mid-term, smaller firms are likely to either remain successful in niche markets or see continuing deterioration.

Supply Shortfall Analysis

Using all the methods described above for determining defense requirements for PIMMs in a national emergency, no shortfalls in the availability of PIMMs were found. U.S. producers have the ability to expand production by about 100 percent within the one year of mobilization and one year of war, nearly meeting estimated defense requirements for PIMMs. When the approximately 80,000 existing machines currently used in produce non-critical items and reliable imports are included in the available supply, estimated defense requirements for PIMMs are easily met.

Finding

Therefore, we have determined that available supplies of plastic injection molding machines will be sufficient to meet anticipated requirements during a national security emergency. The Department, therefore finds that plastic injection molding machines are not being imported into the United States in such quantities or under such circumstances as to represent a threat to the national security.

Recommendation

The Department recommends that the President take no action to adjust imports under authority of Section 232 of the Trade Expansion Act of 1962, as amended.

[FR Doc. 89-7827 Filed 3-31-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-580-501]

Photo Albums and Filler Pages, From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 23, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on photo albums and filler pages from the Republic of Korea. The review covers eighteen purported manufacturers and/or exporters and one third-country reseller of this merchandise to the United States and the period July 16, 1985 through November 30, 1986.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of comments received, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/2923.

SUPPLEMENTARY INFORMATION: .

Background

On May 23, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 18322) the preliminary results of its administrative review of the antidumping duty order on photo albums and filler pages from the Republic of Korea (50 FR 51273, December 16, 1985). 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

The United States has developed a system of tariff classification based on the international system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of photo albums and photo album filler pages from the Republic of Korea. During the review period, such merchandise was classifiable under item 256.60, 256.87, 256.90 or 744.55 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item 3920, 3921, 3926.90, 4819.50, 4820.50, 4820.90 or 4823.90. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Binders which are not sold as components of unassembled Korean albums are not within the scope of the order. However, binders need not be shipped together with filler pages to be considered components of unassembled Korean albums and thus within the scope of the order. This clarifies our preliminary determination that binders which are not sold as components of unassembled albums are not within the scope of the order.

Albums which contain pages manufactured in Korea are included within the scope of the order.

The review covers eighteen purported manufacturers/exporters and one third-country reseller and the period July 16, 1985 through November 30, 1986.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received timely comments from two respondents, Three Leaf and Dong In, two importers, MBI and Pioneer and petitioners. At the request of Three Leaf and petitioners, we held a public hearing on June 27, 1988.

Comment 1: Three Leaf, MBI and Pioneer contend that photo albums "manufactured" in Taiwan and containing pages made in Korea are products of Taiwan and thus not subject to the AD order. They argue that if the pages are the essence of an album, as the Department's preliminary determination indicates, then pages should fall under the TSUSA classification for albums, which would be contrary to a previous judicial decision. The essence of a photograph album is, rather, that it is a book. Combining a binder with photo album pages creates an article different from pages themselves and having a tariff identity separate and distinct from pages. The merchandise at issue consists of albums and not merely pages. Further, calling these albums products of Korea dismisses the importance of the production of the binder and disregards the precept of customs law that goods must be treated for customs purposes in their condition as imported. Also, the ITC never made, as the Department suggests, a determination of country of origin based on the origin of the pages.

Petitioners argue that placing filler pages in binders does not substantially transform the pages, as Customs recognized when it determined that album covers imported into the U.S. were not substantially transformed by being assembled with other parts, and again when it determined that assembling albums in Taiwan with Korean pages did not transform the Korean pages into a Taiwanese album. The tariff classification of filler pages alone is irrelevant, since the tariff numbers for albums and for pages are cited in the scope of the order. Furthermore, the scope is defined in terms of the merchandise, not TSUSA classifications. Excluding albums with Korean pages would effectively allow circumvention by mere repackaging of pages in third countries. The Department recognized this problem in the Japanese EPROMS case and found that semiconductors assembled in third countries using Japanese components were within the scope of the antidumping order.

Department's Position: We agree with Three Leaf that photo albums and album pages are distinct articles. However, the fact that pages and albums have separate TUSUSA classifications has no bearing on our determination of the origin of an album. The issue is what single country should be considered the origin of albums having binders and pages of different origins. While Three Leaf claims we have dismissed the importance of the binder, Three Leaf itself appears to dismiss the importance of the pages. The pages provide the essential function of an album and are thus the essence of an album. Photo album filler pages have no purpose other than the function they provide in photo albums. Assembling pages in a binder is a simple operation which does not change the country of origin. Our reference to the ITC in the notice of preliminary results did not imply that the ITC made any determination of country of origin. We merely cited the ITC's characterization of the relationship between pages and albums.

Our decision in this case is in accordance with *EPROMS from Japan* (51 FR 39680, October 30, 1986), in which we determined that EPROMS assembled in third countries using wafers or dice processed in Japan were included within the scope of the investigation. We

determined that wafers and dice are not substantially transformed when assembled into EPROMS in part because a wafer or die is the essential active component which defines the merchandise (an EPROM).

Comment 2: Three Leaf, MBI and Pioneer argue that the Department failed to inform Three Leaf that albums with pages made in Korea are within the scope of the order. Despite MBI's request that deposits of estimated antidumping duties on photo albums exported by Three Leaf be refunded, Commerce gave no indication that it would deem photo albums manufactured in Taiwan with Korean pages to be of Korean origin. Three Leaf argues that manufacturers in third countries have no obligation to respond to questionnaires or otherwise to suffer legal disabilities by virtue of petitioners' acts urging the Department to include such products in the scope of the order. Should the Department maintain its position that albums containing Korean pages are subject to the order, Three Leaf requests that the Department provide it with a questionnaire and the opportunity to participate meaningfully in the review.

Petitioners argue that Three Leaf knew of Customs' ruling that albums with Korean pages were Korean albums and was aware that the Department might reach the same decision. Accordingly, Three Leaf had an opportunity to respond to the questionnaire and failed to do so.

Department's Position: The Department sent Three Leaf an antidumping questionnaire on August 7, 1987. Three Leaf's response to our questionnaire was merely a letter asserting that albums having Taiwanese binders and Korean pages are products of Taiwan, not Korea. Subsequently, on October 16, 1987 we informed Three Leaf that we had not yet determined whether albums assembled outside of Korea with Korean filler pages are within the scope of the order but that we required a questionnaire response to determine the amount of duties should our scope decision be affirmative. Three Leaf still failed to respond to the questionnaire. Therefore, we determined the dumping margins for Three Leaf's shipments based on the best information available, which was the rate for all firms published in the antidumping duty order (50 FR 51273, December 16, 1985).

Comment 3: Three Leaf, MBI and Pioneer argue that the Department failed to conduct a lawful inquiry to ascertain FMV and USP. Commerce must use Three Leaf's home market or third country sales, not those of a Korean producer, as the basis for foreign market value. The Department did not inform Three Leaf that its merchandise was within the scope of the order.

Petitioners argue that a dispute over the scope of an order does not justify a firm's refusal to respond. This would undercut the Department's ability to obtain information. Furthermore, Three Leaf's refusal to respond denied the Department information that might have been relevant to the scope decision.

Department's Position: We agree with the petitioners. We requested from Three Leaf information regarding its home market (Taiwan) and third-country sales. However, we could not use Three Leaf's home market or third-country sales as the basis of foreign market value since Three Leaf failed to submit a timely and verifiable response. See response to Comment 2.

Comment 4: Pioneer argues that the Department's use of the best information available with respect to Chinsung was arbitrary and capricious. Chinsung submitted a substantial response to Commerce's questionnaire, and Commerce merely requested certain clarifications and minor additional data. Chinsung's response contained 222 pages of detailed information, computer tapes with all information requested, computer printouts for release under administrative protective order, and replacement tapes to facilitate the Department's retrieval and analysis of data. Those actions are not those of an uncooperative party and certainly provide no basis for Commerce to use the best information available or to claim its efforts to complete the review were impeded.

Petitioners argue that Chinsung failed to correct deficiencies in its response and withdrew from the proceeding, disallowing verification. Chinsung's withdrawal caused the Department and petitioners to cease consideration of its information. In sum, Chinsung's information was flawed, incomplete and unverified. The Department has statutory authority to disregard such responses and has a practice of doing so.

Department's Position: We agree with the petitioners. Chinsung's questionnaire response was deficient, and we therefore requested additional information. Because Chinsung failed to remedy those deficiencies, we deemed the response inadequate. While some of the deficiencies may have been relatively minor, some seriously hindered our understanding of the information provided and proper use of that information. Therefore, we did not use any of the response.

Comment 5: Pioneer argues that, for Chinsung and Keywon, the best information available is the information submitted by Chinsung. Even if the Department considers Chinsung's response deficient, it should use, as the best information available, information submitted by Chinsung or by another producer, Dong In. Company-specific and industry-specific information should be preferred as the best information available.

Department's Position: Chinsung's response was inadequate and therefore none of it was used. (See response to Comment 4.) Keywon, another Korean exporter, is out of business. The rates for these firms were determined in accordance with our policy for determining rates for firms that refuse or are unable to provide information requested. The test information available for determining rates for those firms which did not or could not respond adequately in this review was each firm's own previous rate. Applying the responsive firm's rate to Chinsung would lower Chinsung's rate, thereby effectively rewarding Chinsung for its failure to respond fully. Such a policy would undermine the incentive for respondents to provide the information we require. For Keywon, we cannot presume that the average dumping margin is less than that determined for Keywon in the most recent prior period.

Comment 6: Petitioners argue that the Department should reject Dong In's submissions and use the best information available to assess antidumping duties. The facts and circumstances represent substantial evidence that Dong In either knew or should have known its albums and filler pages were being transshipped to the U.S. as part of a scheme to unlawfully circumvent the order.

A variety of evidence indicates widespread circumvention of the order. After the order went into effect, Korea began shipping unprecedented volumes of albums and pages to nontraditional markets in various Asian countries, while at the same time those countries began to increase dramatically their exports to the U.S. These new exporting countries lacked the capacity to produce the volume of albums and pages being sent to the U.S. Some third-country firms admitted transshipping Korean albums and pages, and an importer pleaded guilty to a charge of transshipping Korean albums and pages through Taiwan. Also, Canada imposed antidumping duties to prevent circumvention of its antidumping order.

The petitioners allege that, against this background, Dong In cannot escape responsibility for participating in schemes to circumvent the order by

claiming it had "no specific knowledge of whether or where a particular sale is further exported." The petitioners allege that Dong In's involvement is evidenced by (1) the motive to transship presented by antidumping duties imposed by both Canada and the United States, (2) the sudden emergency of major Asian markets where no previous market existed and none should exist, (3) the lack of any evidence that Dong In made efforts to develop these new markets, and (4) three instances where Hong Kong and Taiwan customers requested that no country-of-origin markings be put on albums.

Because of Dong In's direct or indirect circumvention of the AD order, the company lacks credibility. Although the Department verified selected details of Dong In's response, every detail cannot be verified, and the Department cannot accept a response from a firm that has evaded the order. The Department cannot allow firms to use a scheme of selling small quantities to the U.S. at carefully rigged prices to lower the dumping margin while transshipping their normal volumes and circumventing the order. Therefore, the Department should reject Dong In's response and use the best information available. The Department must send an unmistakable signal to unfair traders that evasion of an antidumping duty order will have serious consequences. Furthermore, the Department should not set an unreasonable evidentiary burden in view of limited time and resources. Rather, based on the history of this case, the unexplained surges in Dong In's shipments to nontraditional markets, and Dong In's willingness not to mark the country of origin on its products, Commerce should find that Dong In failed to meet its burden of establishing its credibility.

Dong In argues that it has no reason to know and no obligation to inquire about what third-country customers do with products purchased from Dong In. Petitioners' allegations of Dong In's involvement in circumvention are conjectural, being based on general circumstantial evidence and not on any information specifically implicating Dong In. Any evidence of circumvention is either misunderstood or equally susceptible of the view that Dong In acted appropriately. The Department verified Dong In's response and found no evidence that Dong In knew or should have known of transshipments to the U.S. Developments suggested by petitioners as reasons to suspect Dong In of involvement in circumvention of the order instead reflect appropriate behavior by Dong In. Effectively cut off from the Canadian and U.S. markets, Dong In reduced capacity and production and found new markets. New markets were found through both Korean trading companies and Dong In's own efforts, even though not noted in the verification report. Customers who requested no "made in Korea" markings may have sold no albums to the U.S. or, if they did, may have sold the unmarked albums to traditional customers in other countries without origin markings to conceal the source and maintain their traditional customer base. This would allow these firms to divert their own albums to the U.S.

Department's Position: Although there is evidence that suggests transshipment and false entry into the United States by some firms may have occurred, the evidence does not prove or otherwise persuade us to conclude that Dong In was involved in any circumvention of the order. It is plausible that albums from third countries were diverted to the U.S. market while Dong In's albums were used to supply markets previously supplied with third-country albums.

Furthermore, we satisfactorily verified Dong In's response. Therefore, we find no reason to conclude that Dong In's response lacks credibility and to reject that response. We have sent a signal to foreign firms and governments through other measures taken that we are serious about preventing circumvention. But we must balance this need with our interest in acting fairly and not harming legitimate trade. We will continue to request and examine information concerning the issue of transshipment, to cooperate with the Customs Service and to take any reasonable measures to prevent circumvention of the order.

All resales, including third-country resales of Dong In's albums, require a response from the reseller. Lacking such responses, merchandise purchased from Dong In and sold to the U.S. by resellers will be assessed antidumping duties based on the best information available. We did not receive responses from KMB and Ssangyong, two firms that resold Dong In's products to the U.S. Therefore, we have used the best information available to determine rates for Dong In's shipments through KMB and Ssangyong. Other resellers of Dong In's merchandise will be covered by the second preliminary and final results for this review period.

Comment 7: Petitioners argue that the Department should reject Dong In's response because the Department does not need to prove a company guilty of transshipment beyond a reasonable doubt, or even by clear and convincing evidence, nor to establish specific intent to circumvent the AD order. Antidumping investigations and administrative reviews are civil administrative proceedings, and therefore Commerce's decisions need only be supported by substantial evidence on the record. In Dong's case, the absence of normal commercial contacts and efforts to develop the sudden new markets it found is more probative than the absence of documentary evidence of Dong In's specific knowledge of transshipment. Improper application of criminal standards of proof will allow firms to circumvent the antidumping law by not leaving an obvious "paper trail," which would be a logical precaution under the circumstances.

Department's Position: We agree with the petitioners that the test for determining whether an order has been circumvented is substantial evidence in the record to support our determination. In this case, we conclude that there is not substantial evidence that any of Dong In's merchandise was transshipped to the U.S. and falsely entered to evade the order, much less that Dong In knew or should have known that circumvention of the order was taking place involving its merchandise. There is no evidence indicating that shipments to other Asian markets could not have been resold to other non-U.S. markets. In addition, we have made inquiries directly of third-country firms possibly involved in transshipment and will take appropriate actions with respect to those firms.

Comment 8: Petitioners argue that the Department should prevent Dong In from becoming a conduit for merchandise of other firms being shipped to the U.S. The final results of review should make clear that if Dong In ships another firm's merchandise as its own, the Department will regard that deception as grounds to reject any Dong In response submitted in a subsequent administrative review. In addition, the Department should request and verify detailed information about Dong In's capacity and shipment patterns and instruct Customs to monitor the level of entries from Dong In. Customs should immediately investigate quantities entered in excess of known capacity or contrary to traditional trade patterns and, where appropriate, collect estimated antidumping duties of 64.81 percent.

Dong In argues that it would not want to jeopardize its business advantage of having the lowest deposit rate by aiding other firms to export goods to the United States. There is nothing to suggest that Dong In would deceptively ship another

firm's merchandise as its own to avoid a higher duty rate nor that such action could not be discovered in a timely fashion if it occurred. In another case, the Department decided not to require claim-of-title certification to prevent misrepresentation of producer. [See *Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Japan* (53 FR 3227, February 4, 1988).] A similar requirement here, together with the draconian sanctions suggested by petitioners, would be a much more onerous restriction on trade. Furthermore, allowing Customs to change the deposit rate would be inappropriate because the Department's authority would be delegated to Customs and Dong In denied due process. There are no facts on the record justifying such action nor any authority under law permitting such a delegation.

Department's Position: Our acceptance of any future response by Dong In will be based on any verification of that response and the facts on the record of the administrative review being conducted. Even if imports from Dong In were monitored, it would be inappropriate to change the deposit rate without having completed an administrative review. Furthermore, any misrepresentation of facts concerning an entry into the U.S. is a violation of Customs regulations. Therefore, there is no need for the Department to take additional measures to prevent such actions.

Comment 9: Petitioners argue that the deposit rate for new exporters should be the rate established by the original investigation, not Dong In's substantially lower rate. The lower rate would create a loophole in the order that would make the order meaningless. It would create enormous potential for abuse by firms that change their names or crete shell corporations. To prevent such abuse, the deposit rate for new exporters should be set at 64.81 percent. Since the rate is only for deposits of estimated duties, any legitimate company can participate in an administrative review and establish a separate rate for itself. Illegitimate companies probably will not participate and should have the same rate as uncooperative firms in the original investigation. Second, neither the law nor Department practice requires the Department to apply Dong In's rate to new exporters. The Department's normal practice is to give new exporters the highest rate for firms with shipments the Department reviewed. Because Chinsung submitted a substantial response, Chinsung's rate, no matter how determined, may be used for new exporters. This is fundamentally different from cases in which the Department receives no information from nonresponding firms. Furthermore, because only one firm out of many provided a complete response, the Department has no basis for concluding that that response reflects a change in underlying economic conditions or the noncooperative attitude of the Korean industry generally. The Department cannot conclude that Dong In's particular experience will approximate the dumping by new exporters.

Department's Position: We disagree. The Department's practice is to determine the rate for new exporters based on the highest rate for firms that provide an adequate verifiable response. As petitioners point out, this rate initially is used only for deposit purposes. Any interested party, including petitioners, may request an administrative review, in accordance with our regulations, to determine the actual assessment of antidumping duties and future deposit rates. Exports from nonresponsive firms will be assessed duties based on the best information available.

We have made significant efforts to identify and remedy circumvention and have been working closely with the Customs Service on this case. Should the Department receive any information regarding possible fraudulent activity by firms manufacturing or exporting photo albums sold to the United States, the Department will immediately refer that information to the Customs Service for appropriate action. We view these actions as a more appropriate means of addressing potential fraudulent activity than disregarding our practice concerning the new exporter rate.

We also disagree with petitioners that Chinsung's situation is fundamentally different from that of a firm that submits no information and that Chinsung may be viewed as a responsive firm for purposes of determining the rate for new exporters. Chinsung's response was not adequate, and we used none of the information submitted in determining the dumping margins for shipments by Chinsung.

Comment 10: Dong In argues the Department double-counted certain direct selling expenses in its calculation of product costs..

Department's Position: Section 353.15 of the Commerce Regulations requires that we make adjustments for differences in circumstances of sale. Therefore, we added actual U.S. direct selling expenses to the constructed value of Dong In's merchandise. We were unable, however, to deduct the amount of direct selling expenses included in the constructed value. Dong In's questionnaire response did not indicate the amount of direct selling expenses included in the SGA portion of the cost of production, nor could we calculate the amount based on the information provided in the response to make the appropriate adjustments. In addition, we will not accept additional information that was submitted after publication of the preliminary results.

Final Results of the Review

Based on our analysis, the final results of review are the same as those presented in the preliminary results of review and we determine that the following margins exist:

Manufacturer/exporter/third-country reseller (country)	Margin (percent)
Chinsung	64.81
Donam	64.81
Dongbang	64.81
Dong In	**8.37
Dong In/KMB	64.81
Dong In/Ssangyong	64.81
Dong Won	64.81
Dongwoo*	*
Eunjin	64.81
Keywon	64.81
KMB	64.81
Korea Enterprise	64.81
Korea Transportation*	*
Sam Bang Trading	64.81
Samwang*	*
Ssangyong	64.81
Sunkyong	64.81
Three Leaf (Taiwan)	64.81
Western Assembly	64.81
Yangjisa	64.81
Yonsei Shipping*	*

* No shipments during the period. Not a known manufacturer or exporter.

** For entries of merchandise manufactured and exported by Dong In only.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For Dong In, individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

As provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for shipments from these firms. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1986 and who is unrelated to the reviewed firm, a cash deposit of 8.37 percent shall be required. These cash deposit requirements are effective for all shipments of Korean photo albums and

filler pages entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

As indicated in our notice of preliminary results, based on information that shipments of photo albums and filler pages from certain third countries may be merchandise of Korean origin for antidumping purposes, the Department requested the Customs Service to extend liquidation of entries of photo albums and filler pages exported from, or purported to be merchandise of, Taiwan, Singapore or Malaysia, and entries of photo albums and filler pages exported from Hong Kong but purported to be merchandise of another country. We requested information from certain firms in Taiwan, Singapore, Malaysia and Hong Kong to help us identify entries of Korean merchandise subject to the antidumping duty order. Certain firms listed in the notice of preliminary results as being nonresponsive or providing inadequate information have now provided adequate information or could not be located. The firms listed below, however, have not responded or have failed to provide adequate information. Therefore, as best information available, we will regard all photo albums and filler pages exported, or purported to be manufactured, by these firms as products of Korea and will instruct the Customs Service to suspend liquidation of entries of such photo albums and filler pages and to collect cash deposits of estimated antidumping duties of 65.81 percent for all such entries. This deposit requirement is effective on the date of publication of this notice for the following firms:

Taiwan

Bright Bag
Flomo Plastics
Pan Asiaworld
Walson Enterprises

Hong Kong

Aico Industries
Perfect Leatherware
S & C Import Export

Actual assessments of antidumping duties will be based on the final results of any administrative review requested in accordance with our regulations.

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).

Jan W. Mares,

Assistant Secretary for Import Adminstration.

Dated: March 24, 1989.

FR Doc. 89-7839 Filed 3-31-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-020]

Titanium Sponge From Japan; Final Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke in Part

AGENCY: International Trade Administrative/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and tentative determination to revoke in part.

SUMMARY: On July 11, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on titanium sponge from Japan. The review covers two manufacturers and their exporters of this merchandise and the period November 1, 1985 through October 31, 1986.

We gave interested parties an opportunity to comment on our preliminary results. A hearing was held on September 20, 1988. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results from those presented in our preliminary results of review.

As a result of the review, the Department has tentatively determined to revoke the antidumping duty order with respect to Osaka Titanium.

EFFECTIVE DATE: April 3, 1989.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/2923.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 26099) the preliminary results of its administrative review of the antidumping duty order on titanium sponge from Japan (49 FR 47053, November 30, 1984). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 et. seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of unwrought titanium sponge, which is a porous, brittle metal which has a high strength-to-weight ratio and is highly ductile. It is an intermediate product used to produce titanium ingots, slabs, billets, plates, and sheets. During the review period, such merchandise was classifiable under item 629.1420 of the Tariff Schedule of the United States Annotated. This merchandise is currently classifiable under HTS item 8180.10.50. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers two manufacturers and their exporters of Japanese titanium sponge to the United States and the period November 1, 1985 through October 31, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the petitioner, RMI Company ("RMI"), and two respondents, Osaka Titanium Co., Ltd. ("Osaka") and Toho Titanium Co., (Ltd.) ("Toho"). At the request of petitioner and respondents, we held a public hearing on September 20, 1988.

Comment 1: Petitioner argues that the Department erred in using the date of the long-term contract between Toho and its U.S. customer as the date of sale because the quantities to be purchased were not fixed until placement of the purchase order, and urges the Department to use as the date of sale the date of the purchase order. Petitioner bases its argument on the existence of a cancellation clause in the contract, which, in petitioner's view, causes the contract to be an options contract (rather than a contract for sale) by which Toho only offered to sell up to a certain amount of the product at a set price.

Petitioner additionally argues that, given these circumstances, the quantity factor in the contract is not fixed and,

therefore, the contract does not contain all of the necessary elements to constitute a sale for dumping purposes.

Toho maintains that the Department was correct in using the date of the contract as the date of sale, because it was bound to sell at least the minimum quantity but no more than the maximum quantity established in the contract. Toho contends that the contract sufficiently fixed quantity, and the Department should treat the minimum/maximum contract no differently than requirements contracts or contracts that establish a mechanism for determining price.

Department's Position: As we stated in the preliminary results, in order to resolve date of sale issues, the Department is guided primarily by the date when the essential terms of the sale, particularly quantity and price, are established, such that the parties have nothing left to negotiate or to agree on. Shipments by Toho to the United States during the review period were made pursuant to a long-term contract that predates the review period. In our preliminary results, we concluded that the date of sale for those shipments covered by the contract was the execution date of the contract because the essential terms were set when the parties entered into the contract. Specifically, we found that Toho was committed to a price, as well as a total volume, at the contract date.

After carefully considering the extensive comments received on this issue and examining the terms of Toho's long-term contract, we have determined that the date of the contract is the date of sale only for the minimum quantity specified in the contract; for any quantity sold above the minimum, we used the date of the delivery instructions (i.e., the purchase orders) as the date of sale. This decision is based on the fact that, although the contract provides for the sale of titanium sponge at a fixed price for each of the years covered by the contract (and thus the price terms were fixed as of the date of the contract), the quantity term was firmly established only as to the minimum amount of titanium sponge to be sold under the contract. The customer was obligated to purchase only the minimum quantity specified in the contract; any titanium sponge sold above the minimum, up to the maximum amount specified in the contract, was left to the customer's discretion. Thus, with regard to the minimum quantity, the amount was established at the time of execution of the contract and there was nothing left for the parties to negotiate or to agree on. On the execution date of the contract, however, the customer had not yet agreed to purchase any quantities above the minimum and the quantity actually purchased was not to be determined by factors outside the parties' control, such as market forces. See *Voss International Corp.* v. *United States*, 628 F.2d 1328 (CCPA 1980); *Brass Sheet and Strip from France*, 52 FR 812 (1987); *Cellular Mobile Telephones and Subassemblies from Japan*, 50 FR 45447 (1985).

Petitioner has placed much emphasis on the existence of a cancellation clause in the long-term contract at issue. The Department disagrees with Petitioner as to the significance of this clause, and indeed does not consider the cancellation clause to be a factor in determining the date of sale in this case. Under general contract law, a cancellation clause does not transform a contract for sale into an options contract or otherwise affect the validity of the contract. *See* 1A A. Corbin, *Corbin on Contracts* S 164 (1963); 1 S. Williston, *A Treatise on the Law of Contracts* S 105 (3d ed. 1957). Indeed, under California law, which governs this particular contract, a contract containing a provision that the buyer has a unilateral right to terminate on notice is a valid contract for sale and not an options contract when the parties do not intend to create an option. *Millgee Investment Co., Inc.* v. *Friedrich*, 254 Cal. App. 2d 602, 62 Cal. Rptr. 730 (1967). In this case, there is nothing to indicate that either party intended to enter into any type of agreement other than an agreement for sale. Moreover, an options contract would require further action on the part of the buyer to exercise the option to buy; in this case, no such further action is required as to the minimum quantity. Thus, the contract is a valid contract for sale.

Contrary to Toho's assertions, the contract at issue in this case is unlike a requirements contract in which the absolute quantity is not known but the quantity is "fixed" in the sense that all or some specified portion of what the customer "requires" must be purchased from the one supplier. Similarly, this case differs from those in which the price is not absolutely set but is pegged to a publicly quoted price to be used within a specified time frame. In cases involving both of those types of contracts, the Department has recognized the date of execution of the contract as the date of sale because, although the contract term at issue (i.e., price or quantity) was not firmly established in the contract, the contract provided a mechanism for determining price or quantity that was outside of the parties' control. *See Brass Sheet and Strip from France*, 52 FR 812 (1987); *Cellular Mobile Telephones and Subassemblies from Japan*, 50 FR 45447 (1985). In this case, however, the decision as to whether to order any titanium sponge above the minimum was totally left to the customer's discretion and, thus, was not determined by factors outside of the parties' control.

Comment 2: Petitioner argues that if the contract date is used as date of sale for entries pursuant to the long-term contract, the price established in the long-term contract should not be compared to home market prices for "spot" sales because spot sales are not comparable to sales under a long-term contract. Since home market sales thus provide an inadequate basis for calculating foreign market value, the Department can and should use constructed value as the basis of foreign market value.

Department's Position: Petitioner has not demonstrated that spot sales in the home market are out of the ordinary course of trade or not in usual commercial quantities. Therefore, we have no basis on which to use constructed value in the calculation of foreign market value. Although it might have been preferable to compare long-term contract sales in the United States to long-term contract sales in the home market, such a comparison was not possible in this instance.

Comment 3: Petitioner argues that Osaka's accounting system understates material loss when production is declining because (a) recycled materials are produced in sufficient quantities to replace losses in materials, and (b) crude titanium sponge work-in-process inventories may be converted to a final product at relatively little cost. Petitioner also argues that Osaka's accounting system understates its magnesium material loss rates, understates utilization rates, understates costs, and overstates output, when production is declining. Further, petitioner argues that Osaka based its utilization rates on production of crude titanium sponge before crushing and, as a result, has understated cost. Petitioner advocates certain adjustments to cost of production based on these concerns.

Department's Position: Osaka's reported costs accounted for all recycled materials used in titanium sponge production. Petitioner's assumptions regarding magnesium material loss rates do not include additions to raw materials associated with Osaka's subcontracting arrangements with a third party regarding magnesium chloride.

Contrary to petitioner's assertion, Osaka's accounting system does adjust for differences between beginning work-in-process inventory and ending work-in-process inventory; thus, it is clear that costs are not understated during a period of declining production. The respondent's accounting practice follows generally accepted accounting principles, and the Department has based its cost of production on verified actual costs.

Comment 4: Petitioner states that it cannot determine (1) whether the calculation of long-term financing expense matches the interest expense reported in the Ministry of Finance (MOF) reports, (2) whether the calculation of titanium sponge fixed assets relative to consolidated fixed assets is accurate, and (3) whether the selling expenses which Osaka reported as direct expenses have been captured as movement and packing expenses and been fully deducted from foreign market value and United States price.

Department's Position: The MOF reports do not show a breakdown of long-term financing expenses relative to titanium sponge. During verification, we selected representative expenses to trace from production records of MOF reports. We verified that the reported ratio of titanium sponge fixed assets to consolidated fixed assets was accurate. All movement and packing expenses have been appropriately deducted from foreign market value and United States price.

Comment 5: Osaka contends that the Department incorrectly allocated research and development expenses over titanium sponge sold only to outside third parties. First, research and development expense is more directly related to production activity than to sales activity, and thus should be allocated over production quantity. If the allocation is done on the basis of shipments from inventory, the allocation base should include all titanium sponge, whether sold to third parties or used internally.

Department's Position: We disagree that research and development expenses should be allocated on the basis of production during the period rather than sales during the period. Research and development expenses are treated as an element of selling, general and administrative expensesin Osaka's accounting records and, as such, are charged as an expense against sales occurring in the corresponding period. Moreover, allocation of period expenses on the basis of production rather than sales would result in assigning a portion of those expenses to goods remaining in inventory. If those goods are sold in the next period, the cost assigned to them in the current period will not be captured. We agree with Osaka, however, that the allocation base should include not only the current period's sales of titanium sponge, but also the current period's internal consumption of titanium sponge in the manufacture of titanium mill products. The Department has made this revision in the cost-of-production calculation for these final results.

Comment 6: Osaka argues that the Department erred in including selling, general and administrative expenses (SG&A) related solely to silicon production of its subsidiary with those expenses directly related to the titanium sponge production facility.

Department's Position: In this review, we allocated SG&A on the basis of sales revenue, because we had no reliable cost of sales figure for titanium sponge.

Because all of Kyushu's (Osaka's silicon manufacturing subsidiary) sales are made through Osaka, revenue from silicon sales is included in Osaka's unconsolidated revenues. There is no difference between sales revenue on the Osaka corporate level and sales revenue on the Kyushu—included consolidated basis. For the reason that the allocation base is consolidated, it is appropriate and reasonable to allocate all consolidated SG&A expenses.

Comment 7: Osaka contends that the Department erred in refusing to offset long-term interest expense by the corresponding interest income in the calculation of cost of production. It claims that the Department was wrong to have considered long-term interest income insufficiently related to the business of producing and selling titanium sponge, because long-term debt instruments are, in fact, available to finance daily operations.

Department's Position: Short-term interest income shown to be related to the ordinary course of business is accepted as an offset to short-term interest expense (*See* Final Results of Administrative Review, Titanium Sponge from Japan, February 17, 1987, 52 FR 4799). Long-term instruments generating income are typically more in the nature of investments and are not related to the financing of daily business activity. Therefore, it is not appropriate to adjust the cost of production for long-term interest income, and we have continued to deny Osaka's claim for such an adjustment.

Comment 8: Osaka maintains that because the calculation of its dumping margin for the preliminary results of this administrative review was based on ranged data from its public response for certain shipment information, the Department should correct such data to reflect the accurate verified information.

Department's Position: We agree, and have made the correction for the final results.

Comment 9: Osaka maintains that the Department should issue a tentative revocation with respect to Osaka. It is the Department's practice to issue tentative revocations based only upon preliminary results of a second annual review showing no margins or *de minimis* sales of less than fair value. Further, current information indicates that Osaka is not likely to make sales at less than fair value.

Petitioner contends that the Department correctly denied Osaka's request for a tentative revocation because Osaka has not changed its pricing practicing, but, rather, has demonstrated no less than fair value sales during the first and second review periods by manipulating its accounting data and by reducing per unit production costs through production for inventory. Petitioner also contends that the evidence suggests that if the older is revoked with regard to Osaka, it is likely that Osaka will resume sales at less than fair value. The data for the two most recently completed fiscal years show (1) below cost sales of titanium sponge by Osaka, (2) Japanese home market prices for titanium sponge that are higher than U.S. prices, (3) a rising value for the yen relative to the U.S. dollar, and (4) substantial inventories of titanium sponge.

Department's Position: Osaka has met the requirements set forth in § 353.54(b) of our regulations showing that it has made no less than fair value sales in the U.S. market for two years. The Department in its cost-of-production investigation did find below-cost sales for the last two years, but these sales were negligible when compared to Osaka's total home market sales for these review periods. Osaka adjusted its prices to compensate for any decline in the purchasing power of the dollar against the Japanese yen during this review period, and reduced its titanium sponge inventories substantially since the last review. Based on the foregoing, the Department has tentatively determined to revoke the order with respect to this firm. The Department will issue a final revocation only if satisfied that there is no likelihood that Osaka will resume sales at less than fair value.

Comment 10: Toho claims that the Department failed to deduct indirect selling expenses from the home market price up to the amount of the indirect selling expenses incurred on U.S. exporter's sales price (ESP) sales.

Department's Position: We agree that an adjustment to foreign market value should be allowed for indirect selling expenses incurred in the home market up to the amount of the indirect selling expenses incurred on its U.S. ESP sales. We have, therefore, revised our foreign market value calculation for the final results to include this adjustment.

Comment 11: Toho argues that the Department incorrectly interpreted its revocation request as relating to the third administrative review rather than the second administrative review, and requests that the Department issue a tentative determination to revoke the antidumping duty order with respect to Toho.

Department's Position: Toho's revocation request, dated March 31, 1988, referenced only the third administrative review covering the period November 1, 1986 through October 31, 1987. Moreover, since dumping margins of greater than *de minimis* were found on Toho's sales during the current review period, Toho has not met the requirements for requesting revocation as set forth in our regulations, which state that a party requesting a revocation must demonstrate that it made no sales at less than fair value for two years.

Final Results of the Review

As a result of the comments received, and correction of clerical errors, we have revised our preliminary results, and we determine that the following margins exist for the period November 1, 1985 through October 31, 1986:

Manufacturer/Exporter	Margin (Percent)
Toho Titanium/Mitsui	0.83
Osaka Titanium/Sumitomo	0

Osaka has requested that we revoke the antidumping duty order with respect to that firm.

As provided for in § 353.54(e) of the Commerce Regulations, Osaka has agreed in writing to an immediate suspension of liquidation and reinstatement of the order if circumstances develop which indicate that Japanese titanium sponge exported to the United States by Osaka is being sold at less than fair value. Osaka has had no sales at less than fair value for two years. Therefore, we tentatively determine to revoke the antidumping duty order on Japanese titamium sponge with respect to Osaka. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise produced by Osaka and exported to the United States entered or withdrawn from warehouse, for consumption, on or after October 31, 1987, the end of the subsequent administrative review period for Osaka.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above for Toho Titanium/Mitsui. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties shall be required on entries of this merchandise from Toho Titanium based on the above margin. Since the dumping margin for Osaka is zero, no cash deposit shall be required on entries of this merchandise from Osaka.

For any further entries of this merchandise from a new exporter not covered in this or the prior administrative review, whose first shipments occurred after October 31, 1986, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 0.83 percent shall be required. These cash deposit requirements are effective for all shipments of Japanese titanium sponge entered, or withdrawn 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, tentative revocation in part, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: March 24, 1989.

[FR Doc. 89-7840 Filed 3-31-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-802]

Antidumping Duty Order of Sales at Less Than Fair Value: 32.5" Microdisks and Coated Media Thereof From Japan

ACTION: Notice.

SUMMARY: In separate investigations concerning 3.5" microdisks and coated media thereof from Japan, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that 3.5" microdisks and coated media thereof from Japan are being sold at less than fair value and that sales of 3.5" microdisks and coated media thereof from Japan are materially injuring a U.S. industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals of 3.5" microdisks and coated media thereof for consumption from Japan, made on or after September 29, 1988, 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: April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen (202) 377-3530 or Louis Apple (202) 377-1769, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The products covered by this order are 3.5" microdisks and coated media thereof and are currently provided for under subheading 8523.20.0000 of the HTS. These products were previously provided for in item 724.4570 of the TSUSA.

A 3.5" microdisk is a tested or untested magnetically coated polyester disk with a steel hub encased in a hard plastic jacket. 3.5" microdisks are used to record and store encoded digital computer information for access by a 3.5" floppy disk drive. They include single-sided, double-sided or high density formats.

Coated media is the flexible recording material used in the finished microdisk. Media consists of a polyester base film to which a coating of magnetically charged particles is bonded. It is intended for use specifically in a 3.5" floppy disk drive.

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on February 6, 1989, the Department made its final determination that 3.5" microdisks and coated media thereof from Japan are being sold at less than fair value (54 FR 6433, February 10, 1989). On March 22, 1989, in accordance with section 735(d) of the Act, the ITC notified the

Department that such imports materially injure a U.S. industry.

Therefore, in accordance with section 736 of the Act (19 U.S.C. 1673e), 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 exceeds the United States price for all entries of 3.5" microdisks and coated media thereof from Japan. These antidumping duties will be assessed on all unliquidated entries of 3.5" microdisks and coated media thereof entered, or withdrawn from warehouse, for consumption on or after September 29, 1988, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (53 FR 38045).

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 margins noted below:

Manufacturers/producers/exporters	Weighted-average Margin percentages
Sony Corporation	51.00
Hitachi Maxell, Ltd.	27.73
Fuji Photo Film Company, Ltd.	50.52
All Others	42.95

This determination constitutes an antidumping duty order with respect to 3.5" microdisks and coated media thereof from Japan, pursuant to section 736(a) of the Act (19 U.S.C. 1673e(a)) 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 duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736(a) of the Act (19 U.S.C. 1673e(a)) and § 353.48 of the Commerce Regulations (19 CFR 353.48.)

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

Dated: March 28, 1989.

[FR Doc. 89-7841 Filed 3-31-89; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Nassau County Medical Center et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 89-082.
Applicant: Nassau County Medical Center, 2201 Hempstead Turnpike, East Meadow, NY 11554.
Instrument: Electron Microscope, Model EM109.
Manufacturer: Carl Zeiss, Inc., West Germany.
Intended Use: The instrument will be used for on-going research of tissues derived from patients with AIDS. In particular, liver specimens will be evaluated in order to identify the causative virus in the liver tissue and to characterize the iron-containing pigment in those patients with overt hemophagocytosis. These and related objectives of this research should help to clarify the role of Kupffer cells and other phagocytic cells in the liver as they may relate to the pathogenesis of hepatic structural and functional alterations in AIDS patients. In addition, the instrument will be used to educate pathology residents in the proper use of a transmission electron microscope.
Application Received by Commissioner of Customs: February 10, 1989.

Docket Number: 89-083.
Applicant: NOAA, National Ocean Service, 6010 Executive Boulevard, Rockville, MD 20852.
Instrument: Analytical Stereoplotter System.
Manufacturer: Ottico Meccanica Italiana, Italy.
Intended Use: The instrument will be used in experiments in support of the development of such capability as the utilization of imagery of the earth from any remote sensor in space for the purpose of digital mapping for nautical and aeronautical charts.
Application Received by Commissioner of Customs: February 14, 1989.

Docket Number: 89-084.
Applicant: St. Joseph's Hospital and Medical Center, Barrow Neurological Institute, 350 W. Thomas Road, Phoenix, AZ 85013.
Instrument: Electron Microscope, Model CM12.
Manufacturer: N.V. Philips, The Netherlands.
Intended Use: The instrument will be used for studies of biological specimens; mostly human (autopsy, biopsy) nerves, brain, spinal cord and neoplasms. These studies will involve investigations of the types of changes in the structural composition of cells and tissues in the course of a disease process. In addition, the instrument will be used for postgraduate training of neuropathology fellows and selected neurology and neurosurgery residents. The objectives will be to familiarize such fellows/residents with the various research applications of electron microscopy and neuroscience research with emphasis on morphometric applications in electron microscopy.
Application Received by Commissioner of Customs: February 14, 1989.

Docket Number: 89-085.
Applicant: Purdue University, West Lafayette, IN 47907.
Instrument: Plasma Desorption Mass Spectrometer, Model BIOION 20.
Manufacturer: Bio Ion Nordic AB, Sweden.
Intended Use: The instrument will be used in the analysis of polymers under 50kD, generally consisting of peptides, glycopeptides and oligosaccharides. The experiments to be conducted will include the following:

1. The identification of proteins and peptides separated by liquid chromatographic and capillary electrophoretic systems.
2. The analysis of ribose binding proteins involved in chemotaxis and transport.
3. Identification of modified amino acids in proteins.
4. The analysis of somatostatin and somatostatin analogues.
5. Analysis of phospholipids.
6. Plasma desorption mass spectrometry in the study of specific cleavage methods for peptides and proteins.
7. The analysis of hydrocarbon-DNA interactions.
8. The analysis of high molecular weight immunogens in insulin preparations.
9. The analysis of neuropeptides.

Application Received by Commissioner of Customs: February 17, 1989.

Docket Number: 89–087.
Applicant: West Virginia University, Division of Plant and Soil Sciences, 1090 Agriculture Science Building, P.O. Box 6108, Morgantown, WV 26506–6108.
Instrument: Insect Suction Trap, Model V1–12".
Manufacturer: Burkard Manufacturing Co., Ltd., United Kingdom.
Intended Use: The instrument will be used in studies to identify airborne mites, determine their seasonal and temporal activity, and determine their density in air. In addition, the instrument will be used in the courses Entomology 204—Principles of Entomology, and Entomology 309–C Acarology to teach students the principles of entomology and about mites.
Application Received by Commissioner of Customs: February 23, 1989.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 89–7842 Filed 3–31–89; 8:45 am]
BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by W. Harry Cone, Jr., From an Objection by the South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On March 13, 1989, W. Harry Cone, Jr. (Appellant) filed with the Secretary of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's (Department) implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the South Carolina Coastal Council (State) to the Appellant's consistency certification for a U.S. Army Corps of Engineers (Corps) permit to fill freshwater wetlands to reroute the flow of storm water runoff. The State's objection precludes the Corps from issuing the permit pending the outcome of the Appellant's appeal.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Sydney Anne Minnerly, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673–5200.

Date: March 27, 1989.

B. Kent Burton,
Assistant Secretary for Oceans and Atmosphere.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 89–7759 Filed 3–31–88; 8:45 am]
BILLING CODE 3510–08–M

Marine Mammals; Issuance of Modification; Sea-Arama, Inc (P84D)

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 622 issued to Sea-Arama, Inc., Galveston, Texas 77552 (53 FR 1814) is modified as follows:

Special Condition B.5 is added:

"5. Of the animals authorized in Section A.1 above, one (1) pregnant false killer whale (*Pseudorca crassidens*) may be imported as authorized by § 102(b) of the Marine Mammal Protection Act.

Issuance of this modification is based on a finding that the proposed taking is consistent with the puprposes and policies of the Marine Mammal Protection Act.

Documents associated with this modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs (F/PR1), National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland, 20910;

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7451; and

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington, 98115.

Date: March 27, 1989.

Nancy Foster,
Director, Office of Protected Resources and Habitat Programs.
[FR Doc. 89–7855 Filed 3–31–89; 8:45 am]
BILLING CODE 3510–22–M

Marine Mammals: Application for Permit: Sealand of Cape Cod, Inc. (P145B)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Sealand of Cape Cod, Inc., Route 6A, West Brewster, Massachusetts 02631
2. *Type of Permit:* Public Display
3. *Name and Number of Marine Mammals:* Four (4) bottlenose dolphins (*Tursiops truncatus*).
4. *Type of Take:* Capture and maintain for public display at Sealand of Cape Cod, Inc.
5. *Location and Duration of Activity:* Primarily within the area between Charlotte Harbor and Sarasota, Florida. If the area proves unsuitable at the time of collection, the operation will not extend further north than Crystal River, Florida. Duration of activity is requested for a period of three (3) years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above applications are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910;

Director, Northeast Region, National Marine Fisheries Service, NOAA, One

Blackburn Drive, Gloucester, Massachusetts 01920.

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: March 27, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89-7856 Filed 3-31-89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplements, Part 222, Acquisition of Labor Laws to Government Acquisition; DD Forms 879 and 1565; and OMB Control 0704-0213.

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: .81 hours.

Frequency of Response: On occasion.

Number of Respondents: 300.

Annual Burden Hours: 243.

Annual Responses: 300.

Needs and Uses: This request concerns information collection requirements related to compliance with various labor laws.

Affected Public: Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison

Written requests for copies of the information collection proposal may be obtained from Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 28, 1989.

[FR Doc. 89-7762 Filed 3-31-89; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Reimbursement Information, Psychiatric Residential Treatment Centers Serving Children and Adolescents; CHAMPUS Form 771

Type of Request: New Collection.

Average Burden Hours/Minutes Per Response: 12 hours.

Frequency of Response: One Time Basis.

Number of Respondents: 85.

Annual burden Hours: 1020.

Annual Responses: 85.

Needs and Uses: The Reimbursement Information, Psychiatric Residential Treatment Centers Serving Children and Adolescents is needed in order to obtain individual RTC data for a revised base period (July 1, 1987, through June 30, 1988).

The data collected from this form will be used in calculating new prospective all-inclusive per diem rates for CHAMPUS authorized RTCs and capped amount.

Affected Public: Businesses (Residential Treatment Centers).

Frequency: One Time Basis.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Excecutive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 28, 1989.

[FR Doc. 89-7763 Filed 3-31-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Advisory Panel on Government-Industry Relations; Subpanel Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Panel on Government-Industry Relations (DAPGIR), Subpanel on Self-governance and Ethics, is scheduled to be held from 9:15 a.m. to 5 p.m. on April 12, 1989. The meeting will be held at the U.S. Chamber of Commerce Building, 1615 H Street NW., Washington, DC. The agenda will focus on finalizing terms of reference and outlining study plans. An industry presentation will also be included.

The DAPGIR was established pursuant to Section 808, Pub. L. 100-456 to study and make recommendations to the Secretary of Defense on ways to enhance cooperation between the Department of Defense and industry regarding matters of mutual interest, including (1) procedures governing the debarment and suspension of contractors from doing business with the Department of Defense; (2) the role of self-governing oversight programs established by defense contractors; and (3) expanded use of alternative disputes resolution procedures. The Panel will also study and make recommendations on the desirability of establishing a permanent panel. Membership of the DAPGIR is comprised of senior government acquisition officials, prominent academicians and senior executives from private industry.

Persons desiring to attend the Subpanel meeting should contact Ms. Regina Bacon, Defense Advisory Panel on Government-Industry Relations, ATTN: DLA-L, Cameron Station, Alexandria, VA 22304, telephone (202) 274-7146, no later than April 10, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 28, 1989.

[FR Doc. 89-7764 Filed 3-31-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 26-27 April 1989.

Time: 0800-1730 hours, daily.

Place: The Pentagon, Washington, DC.

Agenda: The 1989 Army Science Board Summer Study on Maintaining State of the Art in the Army Command and Control System will meet to discuss the following topics: Research, Development and Acquisition process, the testing process, Army Command and Control Sytem future requirements development process, and technology base programs for command and control. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Richard E. Entlich,

Colonel, GS, Executive Secretary.

[FR Doc. 89-7862 Filed 3-31-89; 8:45 am]

BILLING CODE 3710-8-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 21, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an expedited review is requested, the information collection request is also included as an attachment to this notice.

Dated: March 29, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Expedited

Title: Application for Grants under Ronald E. McNair Post-Baccalaureate Achievement Program

Abstract: This form will be used by eligible applicants to apply for grants under the Ronald E. McNair Achievement Program. The Department needs this information to make grant awards to insure that proposed projects meet the requirement of regulations. This application contains the following Standard Forms: SF424, SF424A, and SF42B

Additional Information: The Ronald E. McNair Post-Baccalaureate Achievement program is requesting this expedited review in order for the Secretary to make FY 1989 grants.

Frequency: Annually

Affected Public: State or local governments; Nonprofit institutions

Reporting Burden:

Responses: 200

Burden Hours: 5,000

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

BILLING CODE 4000-01-M

BURDEN STATEMENT

Public reporting burden for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840-New, Washington, D.C. 20503.

INSTRUCTIONS FOR PART III - Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the Description of Program and the Selection Criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should —

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of the information required by the program legislation (See Description of Program (i) - (iii)) and each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

Please limit the Application Narrative to no more than 25 double-spaced typed pages (on one side only).

DASSURANCES-RONALD E. McNAIR POST-BACCALAUREATE ACHIEVEMENT PROGRAM

As the duly authorized representative of the applicant, I certify that the applicant will comply with the statutory requirements that:

1. Not less than two-thirds of the individuals participating in the project proposed to be carried out under this application be low-income individuals who are first-generation college students;

2. The remaining persons participating in the project proposed to be carried out be from a group that is underrepresented in graduate education;

3. Participants be enrolled in a degree program at an eligible institution in accordance with the provisions of Section 487 of the Higher Education Act of 1965, as amended; and

4. Participants in summer research internships, if any, have completed their sophomore year in post-secondary education.

Signature of Authorized Certifying Official	Title
Applicant Organization	Date Submitted

As these terms are used above,

1-A "low-income individual" means an individual whose family's taxable income did not exceed 150 percent of the poverty level (determined by using criteria of poverty established by the Bureau of the Census) in the calendar year preceding the year in which the individual participates in the project.

2-A "first generation college student" means an individual both of whose parents did not complete a baccalaureate degree; or in the case of any individual who regularly resided with and received support from only one parent, an individual whose only such parent did not complete a baccalaureate degree.

[FR Doc. 89-7867 Filed 3-31-89; 8:45 am]
BILLING CODE 4000-01-C

Office of Bilingual Education and Minority Languages Affairs; Grants and Cooperative Agreements Availability

AGENCY: Department of Education.

ACTION: Notice of request for data and information under the Bilingual Education; State Education Agency Program for fiscal year 1987.

PROGRAMMATIC INFORMATION: This program provides financial assistance to State educational agencies (SEAs) to collect and report data and information on limited English proficient (LEP) persons under section 7032 of the Bilingual Education Act (20 U.S.C. 3302), and 34 CFR Part 548, published in the **Federal Register** on August 16, 1985 at 50 FR 33204. SEAs are required to report data and information to the Secretary in accordance with section 7032(b) of the Act, and 34 CFR 548.10.

DATE FOR SUBMITTING DATA AND INFORMATION: SEA grantees are required to submit Fiscal Year 1987 data and information on LEP persons to the U.S. Department of Education by April 28, 1989.

ADDRESSES: Information should be sent to Luis A. Catarineau, U.S. Department of Education, Office of Bilingual Education and Minority Language Affairs, 400 Maryland Avenue SW. (Room 5086, Switzer Building), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Luis A. Catarineau. Telephone: (202) 732–5707.

Authority: 20 U.S.C. 3302.

Dated: March 28, 1989.

Alicia Coro,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 89–7869 Filed 3–31–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP87–30–023]

Colorado Interstate Gas Co.; Compliance Filing

March 29, 1989.

Take note that on March 23, 1989, Colorado Interstate Gas Company ("CIG") submitted in Docket No. RP87–30 the following tariff sheets:

Thirty-ninth Revised Sheet No. 7
Thirty-ninth Revised Sheet No. 8

CIG states these sheets are in response to the Orders issued February 13, 1987 and February 27, 1989 in this docket and the February 27, 1987 and March 8, 1989 extensions of time. In the February 13, 1987 and February 27, 1989 Orders, the Commission required that CIG modify its "as filed" rates in this case to reflect certain fixed costs associated with certificated production and gathering facilities and take-or-pay carrying costs in the sales commodity rates rather than the demand rates.

CIG states that since its February 13, 1989 compliance filing made pursuant to Opinion Nos. 290 and 290–A included the take-or-pay carrying costs in the sales commodity charge for prospective application, CIG is not making any tariff change to reflect that reclassification, but is reflecting the reclassification of certificated gathering facilities costs to the sales commodity rate.

CIG states that, pending action on a motion filed March 10, 1989, it has not included retroactive tariff adjustments in this filing, and requests any necessary waivers of the February 13, 1987 and February 27, 1989 orders that may be required with respect to the "prospective only" nature of the instant filing.

CIG states it is proposing a May 1, 1989 effective date for these tariff sheets in order to allow CIG's customers an opportunity to make necessary "pass through" filings and in order that the revised rates will become effective at the beginning of a billing cycle.

Copies of this filing are being served on all 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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 5, 1989. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–7810 Filed 3–31–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–57–001]

El Paso Natural Gas Co.; Compliance Tariff Filing

March 29, 1989.

Take notice that on March 23, 1989, El Paso Natural Gas Company ("El Paso") tendered for filing in compliance with the Federal Energy Regulatory Commission's ("Commission") order issued February 28, 1989, at Docket No. RP89–57–000, certain tariff sheets for inclusion in El Paso's FERC Gas Tariff, Original Volume No. 1–A and Third Revised Volume No. 2, which reflect the changes specified by the Commission in said order. Such tariff sheets delineated changes in El Paso's procedures for scheduling transportation services through its interstate pipeline system.

El Paso states that the filing reflects changes required by the Commission's order by: (i) Clarifying that when additional capacity exists on Day 2, Shippers will have the opportunity on a first come/first served basis to request additional supplies in accordance with the scheduling sequence otherwise set forth in Paragraph 4.3 of El Paso's Original Volume No. 1–A Tariff, and section 4.2(b) of El Paso's Third Revised Volume No. 2 Tariff; (ii) revising and clarifying the language which referred to "appropriate reductions"; (iii) eliminating the language which permitted El Paso to modify the scheduling procedures after no less than thirty (30) days notice; and (iv) eliminating the nomination penalty provisions from the Transportation General Terms and Conditions contained in El Paso's Original Volume No. 1–A Tariff.

El Paso requests the tendered tariff sheets become effective March 1, 1989.

Copies of the filing were served upon all shippers utilizing El Paso's system and all interested state regulatory 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 214 and 211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 5, 1989. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7811 Filed 3-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-6-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

March 29, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on March 23, 1989 tendered for filing Third Substitute Nineteenth Revised Sheet Nos. 57(i) and 57(ii), Sixth-A Revised Sheet No. 57(v) and Substitute Seventh Revised Sheet No. 57(v) to Great Lakes Gas Transmission Company's FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that Third Substitute Nineteenth Revised Sheet Nos. 57(i) and 57(ii) and Sixth-A Revised Sheet No. 57(v) reflect revised current PGA rates for the months of March and April, 1989. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes states Substitute Seventh Revised Sheet No. 57(v) was filed to reflect Rate Schedule T-23 for interruptible transportation service for Unicorp Energy Inc. Such service was authorized by the Commission order issued February 17, 1989 in Docket No. CP88-599-000. Great Lakes filed initial tariff sheets to implement such service on March 6, 1989.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective as requested in order to implement the gas pricing agreemer.ts between Great Lakes' resale customers and TransCanada on a timely basis.

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 petitions or protests should be filed on or before April 5, 1989. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7812 Filed 3-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-112-000]

Jupiter Energy Corp.; Proposed Changes in FERC Gas Tariff

March 29, 1989.

Take notice that on March 23, 1989 Jupiter Energy Corporation (Jupiter) tendered for filing as a part of its FERC Gas Tariff, Original Volume No. 1, six copies each of Original Sheet No. 7 and Original Sheet No. 8. Jupiter proposes April 1, 1989 as the effective date for the tariff sheets. These sheets, which are filed in compliance with Order Nos. 509 and 509-A, set forth new tariff provisions assuring future shippers non-discriminatory access to any firm capacity that is available on Jupiter's Outer Continental Shelf (OCS) pipeline facilities. In this filing, Jupiter has also notified the Commission that it elects to continue to use its currently effective rates for transportation services on the OCS performed pursuant to individually issued certificates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, 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). Such motions or protests should be filed on or before April 5, 1989. Such motions or 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 desiring 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.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7813 Filed 3-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1001-000]

Ringwood Gathering Co., Petition for Declaratory Order

March 29, 1989.

Take notice that on March 13, 1989, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Houston, Texas 77081, filed in Docket No. CP89-1001-000 a petition pursuant to § 385.207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order declaring that certain of its facilities behind the Mesa Operating Limited Partnership plant (Mesa plant) and operations described in this petition are gathering facilities and activities exempt from the Commission's jurisdiction under 1(b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is stated that Ringwood is a non-major interstate pipeline located in Major County, Oklahoma, owned by South Timbers Limited Partnership, a natural gas producer. It is stated that Ringwood currently makes sales subject to the Commission's Natural Gas Act (NGA) jurisdiciton to Williams Natural Gas Company (Williams) and Oklahoma Natural Gas Company (ONG) and provides open-access transportation service pursuant to Part 284 of the Commission's regulations. It is stated that all gas on the Ringwood system is processed at a plant wholly-owned and operated by the Mesa plant. Ringwood states that it has operated as an interstate pipeline since commencing service to Williams in 1962, then Cities Service Gas Company, citing *Oklahoma Natural Gas Gathering Corp.*, 27 FPC 652 (1962). At that time, Ringwood states, it was owned by ONG, which was otherwise an intrastate operation, and that ONG evidently sought certification of Ringwood's facilities, despite their primary gathering characteristics, in order to protect its intrastate system from federal regulation. Ringwood states that, historically, Williams (and its predecessors) have been Ringwood's primary customer, purchasing originally 40,000 Mcf per day and later 55,000 Mcf per day from Ringwood and that, despite its jurisdictional status, Ringwood's primary function always has been gathering, citing *Ringeood Gathering Company*, 35 FERC ¶ 61,033 at 61,080 (1986).

Ringwood states that, since commencing open-access transportation service, it has become primarily a transporter of gas, transportation now

being the predominant service on the pipeline. Ringwood states that, currently, Williams purchases only 5,000 Mcf per day on an interim basis until September 30, 1989, and that, upon the expiration of the current agreement between Williams and Ringwood, Williams could cease to purchase any gas from Ringwood.

Ringwood indicates that, physically, its system will undergo a further significant change in the near future, in that Ringwood currently intends to trransfer the 26-mile, 12-inch pipeline downstream of the Mesa plant to an unaffiliated third-party. Ringwood claims that this pipeline moves gas from the tailgate of the Mesa plant to interconnects with Williams, ONG, and Panhandle Eastern Pipe Line Company and, as a result, Ringwood's only facilities will be located behind the Mesa plant. Ringwood states that it does not seek, in this petition, any change in status of the 26-mile pipeline downstream of the Mesa plant. Only the network of small diameter low pressure lines behind the plant is the subject of this petition, it is stated.

Ringwood states that the facilities that will remain, after Ringwood sells the pipeline downstream of the Mesa plant, would consist of approximately 275 miles of 3- to 12-inch lines connecting 569 low-deliverability wells (randomly dispersed throughout the Ringwood Field) with the Mesa plant and that gas moves through the lines at wellhead pressure, without field compression. Ringwood explains that Exhibit A of the petition demonstrates that the lines form a network or grid behind the plant that is typical of field gathering. All remaining facilities will be located upstream of the Mesa plant, Ringwood further explains.

Ringwood states that section 1(b) of the NGA defines the scope of the Commission's jurisdiction to regulate the interstate movement of natural gas and that, to determine whether the Commission's NGA jurisdiction extends to a particular facility used to move gas, the Commission applies the "primary function" test, as first applied in *Ben Bolt Gathering Co.*, 26 FPC 825 (1961), *aff'd* 323 F. 2d 610 (5th Cir. 1963), and further refined in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983). Ringwood asserts that the primary function test evolved from the Commission's previous tests: the "behind the plant" test and the "central point in the field" test. Ringwood cites: *Brooks Gas Corp. v. FPC*, 383 F. 2d 503 (D.C. Cir. 1967) (the behind the plant test requires the determination of non-jurisdictional gathering status if the pipeline facility in question is located behind a processing plant); *Barnes Transportation Co.*, 18 FPC 369 (1957) (as applied, the central point in the field test exempts from NGA jurisdiction the separate and various lateral lines that bring gas to a central point in the field for delivery to a single downstream transmission line). Ringwood concludes that, under the primary function analysis, the ultimate test in determining whether a particular facility is jurisdictional is whether the primary function of the facility is transportation or gathering. *Id.*

Ringwood explains that in *Farmland*, the Commission delineated the several factors it weighs in determining the primary function of a facility: (i) The diameter and length of the facility; (ii) the location of the compressors and processing plants in relation to the facility; (iii) the extension of the facility beyond the central point in the field; (iv) the location of the wells along all or parts of the facility; and (v) the geographic configuration of the system. *Id.* These factors, however, Ringwood argues, are only guidelines and the Commission considers all of the facts and circumstances of each case when distinguishing transportation pipelines from gathering facilities. Ringwood cites: *Id; see, e.g., Locust Ridge Gas Co.*, 37 FERC ¶ 61,295 (1986); *Mississippi Fuel Co.*, 31 FERC ¶ 61,051 (1985); *Shell Gas Pipeline Co.*, 37 FERC ¶ 61,150 (1986); *Dorchester Gas Producing Co.*, 32 FERC ¶ 61,409 *further considered*, 32 FERC ¶ 61,916 (1985).

Ringwood claims that, for the reasons set forth below, the Commission should conclude that the facilities at issue here qualify as non-jurisdictional gathering facilities.

First, Ringwood states, the dimensions of the lines behind the Mesa plant are similar to those of other facilities that the Commission has found to be exempt from NGA jurisdiction. Ringwood cites: *Locust Ridge Gas Company*, 37 FERC ¶ 61, 295 at 61,882 n.3 (1936) (88.32 miles of 2– to 8–inch pipeline); *Beacon Gasoline Co.*, 30 FERC ¶ 61,041 at 61,065 (1985) (136 miles of 2– to 8–inch pipeline).

Second, Ringwood states, all of the facilities are located behind the Mesa plant, which is the central point in the field. It is stated that the lines are operated at low pressure and that gas is not compressed until it reaches the perimeter of the Mesa plant. Ringwood cites: *Locust Ridge* at n.3.

Ringwood asserts that the facilities at issue also are indicative of a gathering function under the third and fourth *Farmland* criteria, *i.e.*, the location of the central point in the field and the location of producing wells throughout the system. Ringwood claims in the field and that all lines eventually flow into the plant. Randomly dispersed well locations also are consistent with a gathering classification, it is stated, citing *Locust Ridge* at 61,883. Moreover, Ringwood argues, it serves only one discrete producing area, unlike many of the offshore projects recently found to be jurisdictional transmission systems. Ringwood cites: *Oklahoma Gas Pipeline Co.*, 42 FERC ¶ 61,086 at 61,266 (1988), citing *Southern Union Gathering Co.*, 47 FPC 1177 (1972).

Finally, the fifth factor, the geographical configuration of the facilities is indicative of a gathering function, Ringwood states. It is stated that the facilities at issue do not resemble a long line, large diameter jurisdiction transmission facility. Ringwood states that the facilities are located wholly within the Ringwood Field and coverage on the Mesa plant for processing and ultimate delivery at the plant tailgate. *Louisiana Gas System, Inc.*, 22 FERC ¶ 61,308 at 61,534 (1983). Ringwood states that the principal function of the facilities involved here is to deliver gas from numerous wellheads to the plant, Ringwood states, not to transport gas to serve consumers directly.

Ringwood claims that the activities and facilities described herein constitute exempt gathering operations under the Natural Gas Act under the primary function test and criteria set out in *Farmland, Locust Ridge* and elsewhere. Moreover, Ringwood states, the Commission's long-standing regulation of Ringwood as an interstate pipeline should not overshadow the obvious primary function of Ringwood's facilities. Ringwood further states that, by divesting the one facility which extends beyond the central point in the field from consideration, it will eliminate the only possible basis for continuing NGA jurisdiction and considering its facilities to be transmission. Ringwood submits that this significant change in the nature of its system, together with its conversion from merchant to shipper, constitute changed circumstances sufficient to support the determination sought herein.

Any person desiring to be heard or to make any protest with reference to said petition for declaratory order should on or before April 19, 1989, 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 385.214 or 385.211).

All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7814 Filed 3-31-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of January 17 Through February 3, 1989

During the Week of January 27 through February 3, 1989, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from an earlier list have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

March 24, 1989.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

Week of January 28 through February 3, 1989

Date	Name and location of applicant	Case No.	Type of submission
Aug. 21, 1987	Gear Petroleum, Company, Inc., Wichita, KS.	KRZ-0090	Interlocutory. If granted: The letter of Michael Lennen, former Chairman of the Kansas Corporation Commission, would be stricken from the record in the proceeding concerning the Proposed Remedial Order issued to Gear Petroleum, Inc. (Case No. HRO-0144).
Dec. 9, 1988	Economic Regulatory Administration, Washington, DC.	KRD-0034	Motion for Discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the Proposed Remedial Order issued to Gear Petroleum, Inc. (Case No. HRO-0144).
Dec. 27, 1988	Gear Petroleum, Inc., Wichita, KS	KRZ-0089	Interlocutory. If granted: The Affidavit of Kishore Parekj, an Economic Regulatory Administration Petroleum Engineer, would be stricken from the record of the proceeding concerning the Proposed Remedial Order issued to Gear Petroleum, Inc. (Case No. HRO-0144).
Jan. 31, 1989	Getty Oil Company, Washington, DC	KEF-0124	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the January 18, 1989 Order of Disbursement issued by the United States District Court for the District of Delaware.
Do	Kaiser International Corporation, Washington, DC.	KEF-0125	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the October 26, 1988 Consent Order entered into with Kaiser International Corporation.
Do	Century Resources Development, Inc., Washington, DC.	KEF-0126	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the July 5, 1985 Consent Order entered into with Century Resources Development, Inc.
Do	Entex Petroleum, Inc., Washington, DC	KEF-0127	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the April 7, 1987 settlement agreement.
Do	M.A. Malik, Hartford, Connecticut	KFA-0259	Appeal of an information Request Denial. If granted: The January 19, 1989 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded and M.A. Malik would receive access to certain Unclassified Controlled Nuclear Information documents.
Feb. 2, 1989	Government Accountability Project, Washington, DC.	KFA-0260	Appeal of an Information Request Denial. If Granted: The Government Accountability Project would receive access to records relating to an experimental Strategic Defense Initiative at the Brookhaven National Lab and those records relating to transportation of an armed nuclear warhead.
Do	Government Accountability Project, Washington, DC.	KFA-0261	Appeal of an Information Request Denial. If Granted: The Government Accountability Project would receive access to various DOE documents.
Do	Government Accountability Project, Washington, DC.	KFA-0262	Appeal of an information Request Denial. If Granted: The Government Accountability Project would receive access to records in connection with an experimental Strategic Defense Initiative.

REFUND APPLICATIONS RECEIVED

Date Received	Name of refund proceeding/Name of refund application	Case Number
January 27, 1989	J.E. Dewin, Inc	RF311-4
January 27, 1989 thru February 3, 1989	Gulf Oil Refund Applications Received	RF300-10676 thru RF300-10686
Do	Crude Oil Refund Applications Received	RF272-75247 thru RF272-75265

REFUND APPLICATIONS RECEIVED—Continued

Date Received	Name of refund proceeding/Name of refund application	Case Number
Do	Murphy Oil Refund Applications Received	RF309-832 thru RF309-853
Do	Atlantic Richfield Refund Applications Received	RF304-7760 thru RF304-7790
Do	Exxon Refund Applications Received	RF307-7992 thru RF307-8142
January 30, 1989	Billy A. Phllips	RF300-10675
Do	Margeo Petroleum Company	RF313-33
Do	Petroleum Purchasing, Inc	RF313-34
Do	D&E Associates, Inc	RF313-35
Do	Jack C. Mitchell Oil	RF313-36
Do	United Oil Corporation	RF313-37
February 1, 1989	Echols Oil Company, Inc	RF313-38
Do	Brumwell's Fuel Service	RF313-39
Do	Ronald & Phyllis McFall	RF313-838
Do	Vane's Crown	RF313-40
Do	Walding Enterprises, Inc	RF313-41
Do	Belair Road Crown	RF313-42
Do	Petromar, Inc	RF311-5
Do	Marlex Petroleum, Inc	RF311-6
Do	H.E. Graham	RF311-7
Do	Lancaster Independent Oil	RF313-43
Do	E.M. Haynes, Jr., Inc	RF313-44

[FR Doc. 89-7848 Filed 3-31-89; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decision and Orders; Week of December 12 Through December 16, 1988

During the week of December 12 through December 16, 1988, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Atlantic Richfield Company/Bill's Richfield Arco, et al., 12/12/88; *RF304-483, et al.*

The DOE issued a Decision and Order concerning ten Applications for Refund filed by five claimants from a consent order fund made available by the Atlantic Richfield Company. As resellers/retailers applying for small claims refunds, these firms were presumed to have been injured. The DOE concluded that these firms should receive refunds totalling $10,585, representing $8,369 in principal and $2,216 in accrued interest.

Atlantic Richfield Company/Graebel Eastern Movers, Incorporated, et al., 12/15/88; *RF304-1500, et al.*

The DOE issued a Decision and Order concerning fifty applications for refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this decision totalled $48,219, including $12,778 in accrued interest.

Atlantic Richfield Company/H & H Arco, et al., 12/14/88; *RF304-369, et al.*

The DOE issued a Decision and Order concerning eighty-nine Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO and was therefore presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totalling $129,199, representing $102,135 in principal and $27,064 in accrued interest.

Atlantic Richfield Company/Jack's Arco, et al., 12/13/88; *RF304-1347, et al.*

The DOE issued a Decision and Order concerning forty Applications for Refund filed by thirty-seven claimants from a consent order fund made available by the Atlantic Richfield Company. As end-users or resellers/retailers applying for small claims refunds, these firms were presumed to have been injured. The DOE concluded that these firms should receive refunds totalling $51,496, representing $40,710 in principal and $10,786 in accrued interest.

Atlantic Richfield Company/Jerry Slutts Arco, et al., 12/15/88; *RF304-1701, et al.*

The DOE issued a Decision and Order concerning 68 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As end-users or reseller/retailers claiming refunds of less than $5,000 in principal, each applicant is presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds of $92,782, representing $73,348 in principal and $19,434 in interest.

Atlantic Richfield Company/Ringwood Propane, et al., 12/12/88; *RF304-1223, et al.*

The DOE issued a Decision and Order concerning thirteen Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. As resellers/retailers applying for small claims refunds, these firms were presumed to have been injured. The DOE concluded that these firms should receive refunds totalling $7,614, representing $6,020 in principal and $1,594 in accrued interest.

Atlantic Richfield Company/The Auto Scrubber, 12/18/88; *RF304-1093; RF304-1094; RF304-1095; RF304-1096; RF304-1097.*

The DOE issued a Decision and Order concerning five Applications for Refund filed in the Atlantic Richfield Company

special refund proceeding. The applicant was a retailer that elected to limit its refund to $5,000 in principal. After considering documentation provided by the firm, the DOE concluded that the applicant should receive a refund totalling $6,324, representing $5,000 in principal and $1,324 in accrued interest.

Coca-Cola Bottling Company of Los Angeles, Mid-South Bottling Company, 12/14/88; RR272-14; RR272-15.

A group of thirty States and two Territories of the United States (collectively "the State") filed Motions for Reconsideration of a Decision and Order issued by the Office of Hearings and Appeals (OHA) of the Department of Energy on August 25, 1988. *Royal Crown of Angelo, Inc., et al.*, 17 DOE ¶ 85,734 (1988) (*Royal Crown*). In *Royal Crown*, OHA approved Applications for Refund filed by seventeen domestic bottling companies based upon their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. OHA directed that the Applicants receive refunds from the crude oil monies currently available for disbursement by OHA pursuant to 10 CFR Part 205, Subpart V. In reaching its determination, OHA denied a "States' Objection to Application for Refund" (States' Objection) filed by the States in two of the refund proceedings, involving Coca-Cola Bottling Company of Los Angeles (CCLA), Case No. RF272-288, and Mid-South Bottling Company (Mid-South), Case No. RF272-329. In their Motions for Reconsideration, the States requested that OHA reconsider its determination with respect to CCLA and Mid-South in light of certain new material submitted with the States' motions. In considering the Motions for Reconsideration, the DOE determined that the States had failed to show the existence of significantly changed circumstances or other compelling reasons sufficient to justify reconsideration of DOE's prior decision and, in any event, the DOE had already considered and rejected the States' new material in a similar proceeding involving a bottling company. Accordingly, the States' Motions for Reconsideration were denied.

East Richland Community Unit #1, et al., 12/13/88; RF272-6129, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to nine applicants based upon their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant provided various actual records and/or conservative estimates to document their gallonage claims. Each applicant was an end-user of the products it claimed and was therefore presumed to have been injured. The sum of the refunds granted in this Decision is $2,690. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Exxon Corporation/Abilene Reporter-News, et al., 12/15/88; RF307-3500, et al.

The DOE issued a Decision and Order concerning 76 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $49,252 ($42,817 principal plus $6,435 interest).

Exxon Corporation/Creech's Cash & Carry, et al., 12/15/88; RF307-422, et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. Each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $20,212 ($17,574 principal plus $2,638 interest).

Exxon Corporation/E. James Gillespie Jim's Exxon, et al., 12/14/88; RF307-6998; RF307-6999.

The DOE issued a Supplemental Decision and Order in the Exxon Corporation special refund proceeding to E. James Gillespie (Gillespie) and Jim's Exxon (Jim's), applicants in *Exxon Corp./Beheler Exxon*, Case Nos. RF307-211, *et al.* (December 2, 1988). In that Decision, Gillespie (Case No. RF307-1186) and Jim's (Case No. RF307-1129) were granted refunds of $1,915 and $110 respectively, based on their purchases of refined petroleum products. However, both Gillespie and Jim's had previously been granted refunds in the Exxon proceeding under the same case numbers and based upon the exact same purchase volumes. Accordingly, the DOE rescinded the duplicate refunds that were inadvertently granted to the claimants.

Exxon Corporation/James Dickson Fuel Oils, et al., 12/13/88; RF307-4201, et al.

The DOE issued a Decision and Order concerning 77 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $51,646 ($44,901 principal plus $6,745 interest).

Getty Oil Company, A.E. Staley Mfg. Co., Mallard Seed Co., Inc., 12/14/88; RF265-2756; RF265-2758; RF265-2759; RF265-2760.

A.E. Staley Mfg. Co. (Staley) and Mallard Seed Co., Inc. (Mallard) filed Applications for Refund seeking a portion of the fund obtained by the DOE through a consent order entered into with the Getty Oil Company. both applicants documented the volumes of Getty motor gasoline, middle distillates and propane purchased during the consent order period. Staley and Mallard were end-users. Under the procedures outlined in *Getty Oil Company*, 15 Doe ¶85,064 (1986) both applicants were eligible for a full volumetric refund. The total amount of the refund is $19,292, representing $9,363 in principal and $9,929 in accrued interest.

Getty Oil Company/Dale Gas and Oil Company, Inc., 12/14/88; RF265-822; RF265-823.

The DOE issued a Decision and Order concerning two Applications for Refund filed by the reseller of refined petroleum products covered by a Consent Order that the DOE entered into with Getty Oil Company. The applicant submitted information indicating the volume of its Getty purchases of motor gasoline and middle distillates and it elected to limit its claim to $5,000. The total refund amount approved in this Decision is $10,301, representing $5,000 in principal and $5,301 in accrued interest.

Gulf Oil Corporation/Associated Grocers Co-Op, Inc., et al., 12/15/88; RF300-501, et al.

The DOE issued a Decision and Order concerning 82 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $91,310.

Gulf Oil Corporation/Dallas Gulf Service, et al., 12/15/88; RF300–1967, et al.

The DOE issued a Decision and Order concerning 134 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $204,197.

Gulf Oil Corporation/Joseph Stertz and Louis DeNicola, 12/12/88; RF40–3709.

Joseph Stertz and Louis DeNicola sought a portion of the Gulf Oil Corporation consent order fund based upon the settlement of a private claim by Stertz and DeNicola arising out of allegerd cost violations by Gulf during the consent order period. The refund procedures allow for consideration of applications of this type, provided that the amount of the settlement is approved by the Office of the Chief Counsel for Enforcement Litigation of the Economic Regulatory Administration. After verifying that the Application meets the criteria established in the refund procedures, the DOE concluded that Stertz and DeNicola should receive a refund based on the amount of their settlement with Gulf.

Gulf Oil Corp./O.B. Parris, 12/12/88; RF300–10604

The DOE issued a Decision concerning 50 Applications for Refund in the Gulf Oil Corporation refund proceeding. *White Mountain Oil Company, et al.* 18 DOE ¶———— (Case Nos. RF300–7300, *et al.*) (November 9, 1988). In that Decision, Red's Freeway Gulf (Case No. RF 300–7407) (Red's) was granted a refund of $5,295. However, the firm should have received a refund, including accrued interest, of $5,687, based on purchases of 6,934,953 gallons of Gulf product. In order to provide Red's with its proper refund amount, the OHA approved a supplemental refund of $392.

Gulf Oil Corporation/Pearland Gulf Service, et al., 12/12/88; RF300–376, et al.

The DOE issued a Decision and Order concerning 22 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $77,957.

Gulf Oil Corporation/Scott Petroleum Corporation, et al., 12/12/88; RF300–1528, et al.

The DOE issued a Decision and Order concerning 15 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $96,090.

Gulf Oil Corporation/Stinson Aviation Corp., et al., 12/13/88; RF300–5900, et al.

The DOE issued a Decision and Order concerning 62 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury standard. The sum of the refunds granted in this Decision is $100,860.

Murphy Oil Corporation/Barcoat Blacktop Co., et al., 12/13/88; RF309–400, et al.

The DOE issued a Decision and Order granting 50 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the Applicants purchased directly from Murphy and was either an end-user or a reseller whose allocable share was less than $5,000. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Murphy escrow account. The sum of the refunds granted in the Decision was $59,925 ($53,081 principal plus $6,844 interest).

Murphy Oil Corporation/James Peterson Sons, Inc., et al.; 12/13/88; RF309–11, et al.

The DOE issued a Decision and Order granting 25 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the Applicants purchased directly from Murphy and was either an end-user or a reseller whose allocable share was less than $5,000 or an end-user of Murphy products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Murphy escrow account. The sum of the refunds granted in the Decision was $48,218 ($42,712 principal plus $5,506 interest).

Murphy Oil Corporation/Seedorff Oil Co., Inc., et al.; 12/14/88; RF309–475, et al.

The DOE issued a Decision and Order granting 14 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the Applicants purchased directly from Murphy was either an end-user or a reseller whose allocable share was less than $5,000. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Murphy escrow account. The sum of the refunds granted in the Decision was $14,969 ($13,258 principal plus $1,711 interest).

Plaquemines Oil Sales Corp./Shell Oil Corp.; 12/14/88; RF305–13.

The DOE issued a Decision and Order denying an Application for Refund filed by the Shell Oil Corp. (Shell) in the Plaquemines Oil Sales Corp. (POSC) special refund proceeding. Shell claimed that because it had used its purchases from POSC in its offshore drilling operations, it was an end-user for the purposes of this proceeding and should be granted a refund based on the end-user presumption of injury. Because Shell had failed to answer queries raised in *Plaquemines Oil Sales Corp.*, 17 DOE ¶ 85,059 at 88,124 n.4 (1988) regarding Shell's relationship with POSC as its supplier and primary purchaser. The DOE found that Shell exercised a large degree of discretionary judgment in making its purchases from POSC and thus had operated in a manner similar to a spot purchaser, for whom the DOE has established a presumption of ineligibility. Furthermore, the DOE concluded that Shell's purchasing from POSC was functionally equivalent to its own servicing of its offshore operations and therefore Shell was not injured in those transactions. The DOE also determined that the equities of the situation did not favor the approval of Shell's claim. Accordingly, the Application for Refund was denied.

Ralph Maider & Sons, Dedham, et al.; 12/15/88; RF272–62326, et al.

The DOE issued a Decision and Order denying 39 Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant was a reseller or retailer during the period August 19, 1973, through January 27, 1981. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, each applicant was ineligible for a crude oil refund.

Richard Kor, et al.; 12/14/88; RC272–5, et al.

The DOE determined that five claimants had received duplicate refunds in the Subpart V crude oil refund proceedings. Each applicant submitted two refund applications. Accordingly, the DOE issued a Supplemental Order rescinding the second refund granted to each applicant.

South Lewis Schools, et al.; 12/13/88; RF272–31523, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 22 public school districts, one public university and one private college based on their respective purchases of refined petroleum products during August 19, 1973, through January 27, 1981. Each applicant used the products for heating school facilities or transportation of students. Therefore, each applicant was an end-user of the products it claimed and was found injured based upon the end-user presumption of injury. With the exception of some applicants who used estimates to determine their volume claims, all of the applicants relied upon actual purchase records for the crude oil price control period. The sum of the refunds granted in this Decision is $12,277.

Total Petroleum, Inc./Admiral Petroleum Co., et al.; 12/13/88; RF310–76, et al.

The DOE issued a Decision and Order concerning ten Applications for Refund filed by purchasers of motor gasoline and/or No. 2 oils from Total Petroleum, Inc. The applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total. Under the standards established in *Total Petroleum, Inc.*, 17 DOE Par. 85,542 (1988), the DOE granted refunds in this proceeding which total $100,799 ($87,773 principal and $13,026 interest).

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Order:

Name	Case No.	Date	No. of applicants	Total refund
Lawrence General Hospital, *et al.* (See attached list)	RF272-30473	12/12/88	46	$14,023

Dismissals

The following submissions were dismissed:

Name	Case No.
Burling Sales Association	RF139-190
City of Glenburn	RF139-197
City of Granville	RF139-203
City of Portal	RF139-200
City of Tulsa	RF139-189
City of Tulsa	RF139-191
City of Tulsa	RF139-202
City of Wildrose	RF139-198
Collins Oil Company	RF300-9261
Enron Corporation	RF139-201
Fred's Gulf	RF300-8469
Grady Memorial Hospital	RF300-9538
Groom Road Exxon	RF307-999
Hammond's Service Station	RF304-3510
Holbrook Gulf	RF300-194
Mutch Oil Gulf	RF139-199
Newman & Company	RF300-10592
Roseburg Lumber Company	RF272-71972
United Association Local 412	KFA-0242

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

March 24, 1989.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 89–7849 Filed 3–31–89; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces proposed procedures for the disbursement of $1.198 billion (plus accrued interest) that Texaco Inc. is required to remit to the DOE pursuant to a consent order. The funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR Part 205, Subpart V.

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of the date of publication in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case Number KEF–0119.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Asociate Director, Victor J. Miller, Staff Analyst, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–2860 (Dugan), (202) 586–4921 (Miller).

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies that have been and will be remitted by Texaco Inc. to the DOE to settle possible pricing and allocation violations with respect to its sale of crude oil and refined petroleum products. The DOE is currently holding Texaco's first payment of $348 million in an interest-bearing escrow account pending distribution. Subsequent payments totalling $850 million plus interest will also be distributed pursuant to the procedures established in this proceeding.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of the publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585. If commenters express sufficient interest in presenting their views orally, the DOE will convene a public hearing. In the event we determine to hold a hearing, notice will be given in the **Federal Register**.

Dated: March 24, 1989.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Implementation of Special Refund Procedures

March 24, 1989.

Name of Case: Texaco Inc.

Date of Filing: September 28, 1988

Case Number: KEF–0119

On September 28, 1988, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed with the Office of Hearings and Appeals (OHA) a Petition for the Implementation of Special Refund Procedures to distribute funds received from Texaco Inc. (Texaco) under the terms of a consent order between the DOE and Texaco. In accordance with the provisions of the procedural regulations at 10 CFR Part 205, Subpart V (Subpart V), the ERA requests in its petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations which were settled by the Texaco consent order.

I. Background

Texaco is a major integrated refiner which produced and sold crude oil and a full range of refined petroleum products during the period of federal price controls. The firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth in 10 CFR Parts 210, 211 and 212, and predecessor regulations in 6 CFR Part 150. During the course of controls, the ERA conducted an extensive audit of Texaco's operations and alleged in several judicial and administrative proceedings that Texaco has violated certain applicable DOE price and allocation regulations in its sales of crude oil and refined petroleum products. Settlement discussions were held, and on March 10, 1988, the ERA and Texaco entered into a consent order (No. RTXE006A1Z) that resolved issues pertaining to Texaco's crude oil and refined petroleum product operations during the period January 1, 1973 through January 27, 1981 (the consent order period).[1] After the ERA reviewed written comments from the public, and oral testimony at a public hearing, the consent order was finalized on August 29, 1988. See 53 FR. 32929 (August 29, 1988) (the August 29 Notice). Pursuant to the consent order, Texaco is required to remit a total of $1.25 billion [2] pursuant to the following timetable as specified in the consent order:

(a) $52 million within five days of the consent order date

(b) $348 million within 30 days of the consent order date

(c) $190 million plus accrued interest within 18 months of the consent order date

(d) 4 annual payments of $165 million plus accrued interest

As of the date of the issuance of this Proposed Decision and Order, Texaco has remitted $348 million to the DOE.[3] These funds and future payments comprising the consent order fund are and will be held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution through Subpart V.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute oil overcharge funds. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981)(*Vickers*).

We have considered the ERA's petition that we implement a Subpart V proceeding with respect to the Texaco consent order fund and have determined that such a proceeding is appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute this fund. Comments are solicited.

III. Proposed Refund Procedures

Because the consent order resolves alleged violations involving both sales of crude oil and refined petroleum products, we propose to divide the consent order fund into two pools. See *Shell Oil Co.*, 18 DOE ¶ 85,492 (1989)(*Shell*). According to the ERA, $120,000,000 of the consent order fund is attributable to refined product issues and the remaining $1,078,000,000 is attributable to crude oil and related issues. See August 29 Notice at 32931. This allocation was based upon the ERA's assessment of the "litigation risks involved in the various crude and refined product cases that have led to this consent order, the linkage of certain refined product issues which could substantially alter dollar liability amounts and the relatively early stages of litigation for many of the refined product issues as compared with the crude oil pricing issues." Id. While the ERA has deferred adjudication of the final division of the consent order fund to the OHA, we find no reason to alter this division.[4] Accordingly, we propose that $120 million, plus interest accrued on that amount, be made available for distribution to purchasers of Texaco refined petroleum products who demonstrate that they were injured as a result of Texaco's alleged regulatory violations. Additionally, to speed action in this proceeding, we propose that the principal amount of $120 million be taken in its entirety from the initial payment of $348 million made by Texaco to the DOE. We further propose that the remaining portion of the consent order fund, or $228 million from Texaco's initial payment and all future payments and accumulated interest on both the $228 million and those future payments, be set aside as a pool of crude oil overcharge funds available for disbursement. The specific distribution procedures for those funds are proposed in detail in the following section.

A. Crude Oil Claims

We propose that the funds in the crude oil pool be distributed in accordance with the Modified Statement of Restitutionary Policy (MSRP), which was issued by the DOE on July 28, 1986.

[1] The consent order also resolves certain allegations against Getty Oil Company, which has been acquired by Texaco. Those allegations relate to crude oil exchange between Getty and Standard Oil of Ohio and were the subject of a Supplemental Remedial Order issued to Getty on July 17, 1986. See Notice of Proposed Consent Order, 53 FR. 15106, 15107–08 (April 27, 1988); *Getty Oil Co.*, 14 DOE ¶ 83,033 (1986).

[2] This amount represents Texaco's payment obligation exclusive of interest. Since the effective date of the consent order, interest has been accruing on the unpaid balance of the consent order amount—currently $850 million—at a rate of 8.85 per cent per annum. Texaco Consent Order ¶ 404.

[3] In accordance with the terms of the consent order, Texaco has also remitted the initial payment of $52 million to the United States District Court of the District of Kansas in settlement of its obligations in the DOE Stripper Well Exemption Litigation, M.D.L. 378.

[4] We have generally relied upon the ERA's divisions of consent order funds into refined product and crude oil pools when ERA has made a reasonable evaluation of the various strengths and weaknesses of the litigation issues composing the basis of the consent order. See *Shell Oil Co.*, 52 FR 47967, 47283 (Proposed Decision and Order), finalized, 18 DOE ¶ 85,492 (1989). In some cases were the ERA has not proposed a division of the consent order fund into refined and crude oil pools, we have used the maximum liability for refined products and crude oil in order to divide the consent order fund proportionately. See *e.g., Exxon Corp.*, 52 Fed. Reg. 35313, 35314 (Proposed Decision and Order), finalized, 17 DOE ¶ 85,590 (1988) (*Exxon*).

51 FR 27899 (August 4, 1986).[5] The MSRP, which was issued as a result of a court-approved Settlement Agreement in *The Department of Energy Stripper Well Litigation*, M.D.L. 378 (D. Kan. 1986), provides that crude oil overcharge payments will be distributed among the States, the United States Treasury, and eligible purchasers of crude oil and refined products.[6] Under the MSRP, up to 20 percent of these crude oil overcharge funds may be reserved to satisfy valid claims by eligible purchasers of crude oil and refined petroleum products. Remaining funds are to be disbursed to the state and federal government for indirect restitution as directed by the MSRP. In the present case, we have decided to reserve the full 20 percent, or $45.6 million of the $228 million crude oil pool, plus proportionate share of the accrued interest on that amount, for direct refunds to purchasers of crude oil and refined petroleum products who prove that they were injured as a result of alleged crude oil violations.[7]

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986).

As in non-crude oil cases, applicants will be required to document their purchase volumes and prove that they were injured as a result of alleged violations (i.e., that they did not pass on the alleged overcharges to their customers). We propose to utilize standards for the showing of injury which OHA has developed for analyzing non-crude oil claims. See, e.g., *Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). These standards include a presumption that end-users (i.e., ultimate consumers) whose businesses are unrelated to the petroleum industry absorbed the increased costs resulting from a consent order firm's alleged overcharges. See *A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,894–896 (1987). However, reseller and retailer claimants must submit detailed evidence of injury, and may not rely upon the presumptions of injury utilized in refund cases involving refined petroleum products. *Id.* They can, however, use econometric evidence of the type employed in the OHA Report in *In Re: The Department of Energy Stripper Well Exemption Litigation*, 6 Fed. Energy Guidelines ¶ 90,507.

Refunds to eligible claimants will be calculated on the basis of a volumetric refund amount derived by dividing the 20 percent of the crude oil pool currently available which is reserved for crude oil claimants ($45.6 million) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). Based upon the amount of the crude oil pool currently available, the crude oil volumetric refund amount in this proceeding is $0.000022563 per gallon. This volumetric refund amount will increase as interest accrues on the consent order fund and as subsequent payments are made by Texaco. After all valid claims are paid, unclaimed funds from the 20 percent claims reserve will be divided equally between federal and state governments. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

We propose that the remaining 80 percent of the currently available crude oil pool ($182.4 million) and 80 percent of accumulated interest and future payments made by Texaco be disbursed in equal shares to the federal and state governments for indirect restitution. See *Shell*. If this proposal is adopted, we will direct the DOE's Office of the Controller to segregate the crude oil share of Texaco's initial payment and distribute $91.2 million, plus appropriate interest, to the States and the same amount to the federal government. Refunds to the States will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share (ratio) of the funds in the account which each State will receive if these procedures are adopted is contained in Exhibit H of the Stripper Well Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the States under the Settlement Agreement.

B. Refined Product Claims

The remainder of the Texaco consent order fund ($120 million plus interest accrued on that amount) shall be made available to injured purchasers of Texaco refined products. We propose to implement a two-stage refund process by which purchasers of Texaco refined products during the consent order period may submit Applications for Refund in this initial stage.[8] From our experience with Subpart V proceedings, we expect that potential applicants generally will fall into the following categories: (i) End-users; (ii) regulated entities, such as public utilities, and cooperatives; and (iii) refiners, resellers and retailers (hereinafter collectively referred to as "resellers").

In order to receive a refund, each claimant will be required to submit a schedule of its purchases of Texaco refined petroleum products during the consent order period. *See* "Proposed Application Procedures," infra. If the product was not directly purchased from Texaco, the claimant must establish that the product originated with Texaco.[9]

In addition, a reseller claimant, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by Texaco's alleged overcharges. This showing will generally consist of two distinct elements. First, a reseller claimant will

[5] In the Order implementing the MSRP, the OHA solicited comments regarding the proper application of the MSRP to OHA refund proceedings involving alleged crude oil violations. On April 6, 1987, the OHA issued a notice which analyzes the comments that were submitted and explains the procedures which the Office will follow in processing applications filed under Subpart V regulations for refunds from the crude oil overcharge funds. 52 FR 11737 (Apr. 10, 1987). Since the procedures apply to all crude oil funds subject to Subpart V, we need not differentiate between the various crude oil transactions (including those involving Getty) settled by the Texaco consent order.

[6] Under the Settlement Agreement, firms which apply for a portion of certain escrow funds established under the Settlement generally must sign a waiver releasing their claims to any crude oil funds to be distributed by the OHA under Subpart V. Accordingly, those firms will not be eligible for a refund from the Texaco crude oil pool.

[7] The allocation of monies in the crude oil pool is based upon the amount of crude oil related funds currently available in the Texaco consent order fund. When additional payments are received from Texaco, they will be added to the crude oil pool and 20 percent of each payment will be reserved for direct claimants.

[8] OHA will not accept Applications for Refund on behalf of classes of applicants. We have previously determined that such claims are inappropriate in the "first stage" claims process in which we review claims of direct injury, because they amount to a proposal for "indirect" restitution, i.e., specifically identified by the DOE. See *Standard Oil Co. (Indiana)/Diesel Automotive Association*, 11 DOE ¶ 85,250 (1984); *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,214 (1982).

[9] Although Texaco now owns Getty Oil, purchases made from Getty are not eligible for refunds in this proceeding. Firms which purchased refined products from Getty were generally eligible for refunds in a separate Subpart V proceeding involving a Getty consent order. See *Getty Oil Co.*, 15 DOE ¶ 85,064 (1986). The consent order underlying the Getty Subpart V proceeding excluded issues relating to the propriety of costs reported by Getty for interaffiliate transfers of natural gas liquids (NGLs) and natural gas liquid products and the computation of shrinkage costs of NGLs associated with the production of refined petroleum products. These issues, however, were settled by a later Getty consent order which remitted the funds to the DOE for deposit directly into the U.S. Treasury. Thus, these funds were not made available for direct restitution under Subpart v. See Notice of Proposed Consent Order, Getty Oil Co., 47 FR 20347 (May 12, 1982).

be required to show that it had "banks" of unrecouped increased product costs in excess of the refund claimed.[10] Second, because a showing of banked costs alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. See *Vickers Energy Corp./Hutchens Oil Co.*, 11 DOE ¶ 85,070 at 88,105 (1983). Such a showing could consist of a demonstration that a firm suffered a competitive disadvantage as a result of its purchases from Texaco. See *National Helium Co./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co.* v. *DOE*, 618 F. Supp. 1199 (D. Del. 1985).

1. *Presumptions for Claims Based upon Refined Product Purchases.* Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See, *e.g.*, *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986) (*Marathon*). Presumptions in refund cases are specifically authorized by the applicable DOE procedural regulations at 10 CFR 205.282(e). Accordingly, we propose to adopt the presumptions set forth below.

First, we will adopt a presumption that the alleged overcharges were dispersed equally in all of Texaco's sales of refined petroleum products during the consent order period. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis.[11] In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of the refined product pool is equal to the number of gallons purchased from the consent order firm during the applicable consent order period times the per gallon refund amount. In the present case, the per gallon refund amount is $0.001136. We derived this figure by dividing the conset order funds in the refined product pool ($120 million) by 105,590,045,356 gallons, the approximate number of gallons of covered products other than crude oil which Texaco sold from March 6, 1973, the date that Texaco became subject to the Federal price controls under Special Rule No. 1 (38 Fed. Reg. 6283) (March 8, 1973), through the date of decontrol of the relevant product.[12] A firm that establishes its entitlement to a refund will receive all or a portion of its allocable share plus a pro-rata share of the accured interest.[13] In addition to the volumetric presumption, we also propose to adopt a number of presumptions regarding injury for claimants in each category listed below.

a. *End-users.* In accordance with prior Subpart V proceedings, we propose to adopt the presumption that an end-user or ultimate consumer of Texaco petroleum products whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the consent order. See e.g., *Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) (*TOGCO*). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* We therefore propose that the end-users of Texaco refined petroleum products need only document their purchase volumes from Texaco during the consent order period to make a sufficient showing that they were injured by the alleged overcharges.

b. *Refiners, Resellers, and Retailers Seeking Refunds of $10,000 or Less.* We propose to adopt a presumption that a firm which resold Texaco products and requests a small refund was injured by the alleged regulatory violations. Under the small claims presumption, a reseller seeking a small refund will not be required to submit evidence of injury beyond documentation of the volume of Texaco covered products it purchased during the consent order period. See TOGCO at 88,210. As we have noted in numerous prior proceedings, there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; in some cases, the expense might possibly exceed the expected refund. Consequently, failure to allow simplified application procedures for small claims could therefore deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claim presumption is desirable in that it allows the OHA to process the large number of routine refund claims expected in an efficient manner.

In many prior cases, we have established a small claims threshold of $5,000. In the present case, however, in order to minimize the burden upon individual applicants and this Office, we have tentatively decided to establish the small claims threshold at $10,000. This determination is based on a number of considerations. In this proceeding, the volumetric factor is significantly higher than the amount in most other proceedings; in fact, in is double the average volumetric refund amount available in the seven most recent Subpart V proceedings involving global consent orders with major integrated oil companies. As a result, the allocable share of many small retailers and resellers who would typically qualify for a refund at or below the small claims threshold will be well above $5,000 in this case. If we were to keep the small claims threshold at $5,000 in this case, it would significantly increase the number of firms, especially very small firms, that would be faced with the burden of making a detailed showing of injury in order to receive their allocable share. It would also very significantly increase the burden on this Office because of the need to analyze many more detailed injury showings and would thus slow

[10] Claimants who have previously relied upon their banked costs in order to obtain refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. See *Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶ 85,090 at 88,179 (1987). Additionally, a claimant may not receive a refund for any month in which it has a negative cumulative bank (for that product) or for any preceding month. See *Standard Oil (Indiana)/Suburban Propane Gas Corp.*, 13 DOE ¶ 85,030 at 88,082 (1985). If a claimant no longer has records showing its banked costs, the OHA may use its discretion to allow approximations of those banks prepared by the applicant. See *e.g.*, *Gulf Oil Corp./Sturdy Oil Co.*, 15 DOE ¶ 85,187 (1986).

[11] Because we realize that the impact on an individual claimant may have been greater than the volumetric refund amount, we will allow any purchaser to file a refund application based upon a claim that it suffered a disproportionate share of Texaco's alleged overcharges. See *e.g.*, *Standard Oil Co. (Indiana/Army) and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

[12] Although the Texaco consent order period begins January 1, 1973, refund applications may only be based upon purchases of refined products between March 6, 1973 and the relevant decontrol date for each product as summarized below:

Ethane and Liquid Asphalt—April 1, 1974
Residual Fuel—June 1, 1976
No. 1 and No. 2 Heating Oil; Diesel Fuel and Kerosene—July 1, 1976
Naphthas—September 1, 1976
Naphtha Based Jet Fuel—October 1, 1976
Aviation Gas and Kerosene; Based Jet Fuel—February 28, 1979
Butane and Natural Gasoline—January 1, 1980
Motor Gasoline and Propane—January 28, 1981

[13] As in previous cases, we propose to establish a minimum refund amount of $15.00. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15.00 are sought outweighs the benefits of restitution in those instances. See *Exxon* at 89,150.

down the evaluation of claims. Therefore, in order to minimize these burdens we are proposing a larger small claims threshold of $10,000.[14] Reseller claimants whose allocable share is $10,000 or less will be presumed injured and therefore need not provide a further demonstration of injury to receive their full allocable share.

c. *Medium-Range Refiner, Reseller and Retailer Claimants.* In lieu of making a detailed showing of injury, a reseller claimant whose allocable share exceeds $10,000 may elect to receive as its refund the larger of $10,000 or 40 percent of its allocable share up to $50,000.[15] The use of this presumption reflects our conviction that these larger claimants were likely to have experienced some injury as a result of the alleged overcharges. See *Marathon*, 14 DOE at 88,515. In some prior special refund proceedings, we have performed detailed economic analysis in order to determine product-specific levels of injury. See, e.g., *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). However, in *Gulf Oil Corp.*, 16 DOE ¶ 85,381 at 88,737 (1987), we determined that based upon the available data, it was more accurate and efficient to adopt a single presumptive level of injury of 40 percent for all medium-range claimants, regardless of the refined product that they purchased, based upon the results of our analyses in prior proceedings. We believe that approach generally to be sound, and we therefore propose to adopt a 40 percent presumptive level of injury for all medium-range claimants in this proceedings. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Texaco refined petroleum products during the consent order period in order to be eligible to receive a refund of 40 percent of its total volumetric share, or $10,000, whichever is greater.[16]

d. *Regulated Firms and Cooperatives.* We further propose that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by terms of a cooperative agreement, needs only to submit documentation of purchases used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or a cooperative whose allocable share is greater than $10,000 will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund. This requirement is based upon the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers. Similarly, any refunds received would be passed through to its customers. With respect to a cooperative, in general, the cooperative agreements which control prices would ensure that the alleged overcharges, and similarly refunds, would be passed through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.[17]

e. *Spot Purchasers.* We propose to adopt a rebuttable presumption that a reseller that made only spot purchases from Texaco did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers generally had considerable discretion as to the timing and market in which they made their purchases, and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. See Vickers 8 DOE at 85,396–97. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchasers presumption and to establish the extent to which it was injured as a result of its spot purchases from Texaco.[18]

f. *Consignee.* A consignee agent is a firm that distributed covered products pursuant to a contractual agreement with a refiner, under which the refiner retained title to the products, specified the price to be paid by the purchaser, and paid the consignee a commission based upon the volume of covered products it distributed. 10 CFR 212.31 (definition of "Consignee agent"). As in many previous cases, we propose to adopt the rebuttable presemption that consignees of Texaco refined petroleum products were not injured as a result of their arrangement with their refiner/supplier. See e.g., *Exxon* 17 DOE at 89,151. A consignee, however, may rebut this presumption of non-injury by establishing that "[its] sales volumes, and [its] corresponding commission revenues, declined due to the alleged uncompetitiveness of [the consent order firm's] practices. See *Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85.388 at 88,962 (1986).

2. *Allocation Claims.* We may also receive claims based upon Texaco's alleged failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations that became effective in Januay 1974. See 10 CFR Part 211. Any such applications will be evaluated with reference to the standards set forth in Subpart V implementation cases such as *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,220 (1982), and refund application cases such as *OKC Corp./Town & Country Markets, Inc.*, 12 DOE ¶ 85,094 (1984); *Marathon Petroleum Co./Research Fuels, Inc.*, Case No. FR250–2695 (April 29, 1988) (Proposed Decision). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR Part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was

[14] Resellers that purchased less than 8,803,000 gallons of Texaco refined products during the consent order period will be eligible to use this presumption. This gallonage is just slightly more than the average gallonage necessary to obtain a refund at the small claims threshold in the Mobil, Marathon, Getty, Gulf II, Atlantic Richfield, Exxon and Shell refund proceedings (8,335,278 gallons).

[15] That is, claimants who purchased between 8,803,000 gallons and 110,035,211 gallons of Texaco refined petroleum products during the consent order period (medium-range claimants) may elect to utilize this presumpuon. Claimants who purchased more than 110,035,211 gallons may elect to limit their claim to $50,000.

[16] A claimants who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the alleged overcharges or is eligible for a refund of less than the applicable presumption-level refund will not then be eligible for a presumption-based refund. Instead, such a claimant will receive a refund which reflects the level of injury established in its Application. No refund will be approved if its submission indicates that it was not injured as a result of its purchases from Texaco. *See Exxon*, 17 DOE at 89,150 n.10; *Quaker State Oil Refining Corp./Campbell Oil Co.*, 15 DOE ¶ 85,089 (1986).

[17] A cooperative's purchases of Texaco products which were resold to non-members will be treated in a manner consistent with purchases made by other resellers. See Marathon, 14 DOE at 88,515.

[18] In prior proceedings we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not subsequentially recouped through the draw down of banks. *See Quaker State Oil Refining Corp./Certified Gasoline Co.*, 14 DOE ¶ 85,465 (1986).

injured and document the extent of the injury.

3. *Proposed Application Procedures.* We propose to accept applications from claimants who purchased Texaco refined products between March 6, 1973 and January 27, 1981. *At this time, we will not accept Applications for Refund.* Also as in prior refund proceedings, we do not at this time propose to require a specific application form. However, all applications will be required to contain certain information specified in a suggested format that will be appended to the final Decision and Order implementing refund procedures in the Texaco proceeding. At the minimum, this information will consist of the following items:

(1) A conspicuous reference to "Texaco Refund Proceeding—Case No. KEF—0119" and the name and address of the applicant during the period for which the claim is filed, as well as the name to whom the refund check should be made out and the address to which the check should be sent. If the check is to be sent to a party other than the applicant, the applicant shall also provide its current address.

(2) The name, title, and telephone number of a person who may be contracted for additional information concerning the Application.

(3) The manner in which the applicant used the Texaco product, e.g., whether the applicant was a refiner, petroleum jobber, gas station, end-user or consumer, consignee agent, public utility, or cooperative.[19]

(4) If the applicant was supplied directly by Texaco, it must provide its Texaco customer number. If the applicant was an indirect purchaser, it must submit the name and address of its immediate supplier and indicate why it believes that the covered product was originally sold by Texaco.

(5) A statement that neither it nor a related firm has filed, or authorized any individual to file on its behalf, any other refund application in the Texaco proceeding. This statement must be signed by the applicant and may not be signed by its representative (outside counsel, filing service, etc.).[20]

(6) If the applicant is or was entirely or partly owned by Texaco, it must explain the nature of the affiliation.[21]

(7) If the applicant has been involved in an enforcement proceeding brought by the DOE or a private action under Section 210 of the Economic Stablilization Act of 1970, it should describe the action and its current status. If the applicant was a party to any such action which is no longer pending, it should indicate how the proceeding was resolved. The applicant must keep the OHA informed of any change in status of the proceeding during the pendency of its Application for Refund. For a more detailed explanation of the considerations involved in our evaluating responses to this item, see *Office of Enforcement*, 9 DOE ¶ 82,508 at 85,052–4 (1981).

(8) The applicant must state whether the ownership of its business has changed during or since the refund period. If ownership has changed, it should indicate when and provide this Office with the names and addresses of the other parties included in that transaction.[22]

(9) The Application should also contain the following statement signed by the individual applicant or a responsible official of a corporate or other organizational applicant: "I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room." [23]

Applications based on alleged overcharges will also have to include the following information:

(1) Monthly schedules of the applicant's purchases of each refined petroleum product that it purchased from Texaco from March 6, 1973 through the date of decontrol of that product. Yearly schedules will only be accepted if they are accompanied by a Texaco-generated printout or adequate supporting documentation from the firm's own records. Estimated volumes will only be accepted if they are reasonable and if the applicant (a) certifies that actual records are unavailable, (b) indicates the source of the information upon which the Application is based and (c) clearly explains how the estimates are derived.

(2) If the applicant is a refiner, reseller, or retailer whose allocable share exceeds $10,000, it must indicate whether it elects to receive as its refund the larger of $10,000 or 40 percent of its allocable share up to $50,000. If it does not elect to receive a presumption refund, it must submit a detailed showing that is was injured by the alleged overcharges. See Part IIIB, supra.

We solicit comments on these proposed Application procedures for the distribution of the refined products portion of the consent order fund.

IV. Filing Services

In addition to the general procedures outlined above, the OHA proposes other procedures due to the proliferation of firms seeking to represent potential claimants in Subpart V proceedings. In some Subpart V proceedings, filing services have provided a useful service by informing many potential applicants about the Subpart V process and preparing refund claims on their behalf. However, some filing services have increasingly become engaged in questionable solicitation practices and have committed many unnecessary errors. Those actions, usually caused by negligence or overzealous solicitation practices, have delayed the evaluation of refund claims and have necessitated the Office's use of increased resources to screen and process incomplete,

[19] Retailer applicants must file a separate form (with supporting schedule of purchases) for each retail station for which a refund is requested.

[20] If duplicate Applications containing this statement are filed, both Applications may be summarily denied or dismissed. See *Exxon Corp./William H. Abbott*, 18 DOE ¶ 85,406 (1988); *Getty Oil Co./Dale Gas & Oil Co.*, 18 DOE ¶ 85,376 (1988).

[21] We have previously held that affiliates or subsidiaries of a consent order firm are not eligible for refunds based upon the presumption that they were not injured. See, e.g., *Marathon Petroleum Co./EMRO Propane Co.*, 15 DOE § 85,288 at 85,528 (1987). This presumption applies to firms affiliated with Texaco during the consent order period but no longer affiliated with the firm. See *Cosby Oil Co./Yucca Valley Liquor Store*, 13 DOE ¶ 85,402 at 88,986 (1986). It also applies to firms that have become affiliated with Texaco after the consent order period, because their receipt of a refund would allow the consent order firm to benefit from this proceeding. See, e.g., *Marathon Petroleum Co./Webster Service Stations*, 17 DOE ¶ 85,038 (1988). For a partial list of Texaco affiliates, that we propose to find ineligible under this presumption, see the Appendix to this Proposed Decision and Order.

[22] The OHA has held that the party that actually purchased the products from a consent order firm was in all likelihood the party injured by any alleged overcharges. Therefore, this party is generally the proper recipient of the Subpart V refund, absent a demonstration that the right to a refund has been transferred to the present owner. See, e.g., *Gulf Oil Corp./Strubes Propane, Inc.*, 16 DOE ¶ 85,314 (1987).

[23] An applicant may request that confidential information be withhold from disclosure, but the OHA retains the right to make its own determination with regard to any claim of confidentiality. See 10 CFR 205.9(f)(2). In view of the length of time that has elapsed since the Texaco consent order period, it may be difficult for an applicant to establish that the information that it submits is exempt from public disclosure under the Freedom of Information Act. See *Vinson & Elkins*, 9 DOE ¶ 80,150 (1982).

unauthorized or duplicate Applications for Refund. In many cases, these errors occur because a filing service does not submit all of the information required by the OHA in each Application or has prepared the Application well in advance of any notice from OHA regarding the proper application procedures in the proceeding. Other problems have occurred because services have adopted inadequate procedures to obtain authorization from applicants and because they have not been knowledgeable regarding the procedural and substantive requirements for refund applications. These problems have led us to consider taking corrective actions in other proceedings.[24] Based upon the continued problems caused by these services in recent proceedings, we propose the following actions in an attempt to limit possible abuses by such firms:

(i) Submission by the filing service of a statement indicating the firm's qualifications to represent applicants and containing a detailed description of the solicitation practices and application procedures that it plans to use. This statement must be approved by OHA prior to the approval of any applications filed by the firm. This statement should include the following information:

(a) A description of the procedures used to solicit clients and copies of any solicitation materials mailed to prospective clients;

(b) A description of how the firm obtains authorization from its clients to file a refund application, including copies of any type of authorization form signed by clients;

(c) A copy of the standard fee agreement that the firm enters into with clients;

(d) A description of how the firm obtains and verifies the information contained in refund applications;

(e) A description of the procedures the firm uses to forward refunds to its clients;

(f) A description of the procedures the firm uses to avoid duplicate filings;

(g) A statement that the firm will not file any refund application for which it does not have written authorization from the applicant.

(ii) Strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and certification be signed by "the applicant."

(iii) The posting of a bond, in an amount to be specified, by all firms or individuals who plan to file Applications in the Texaco refund proceeding on behalf of another party where the total allocable share of their clients is greater than $50,000.[25]

(iv) A certification, dated after the issuance of the Texaco Final Decision and Order, signed by each applicant whose authorization of a filing service or Application for Refund has been signed and dated before the issuance of that final Decision, that it has not filed any other Application for Refund in the Texaco refund proceeding and that it still authorizes that filing service or attorney to represent it.

We solicit comments on the above proposals and request alternative suggestions.

V. Distribution of Product Funds Remaining after First Stage

We propose that any refined product funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injuried parties in Subpart V proceedings and make those finds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any refined product pool funds in the Texaco consent order escrow account that the OHA determines will not be needed to effect direct restitution to injured Texaco customers will be distributed in accordance with the provisions of PODRA.

VI. Solicitation of Comments

As indicated above, no refund applications should be filed at the present time. Before disposing of any of the funds received as a result of the Texaco consent order, we intend to publicize the distribution process in order to solicit comments on all aspects of the foregoing Proposed Decision and Order from interested parties. All comments must be filed within 30 days of the publication of this Proposed Decision in the **Federal Register.**

The OHA proposes to hold a hearing on this Proposed Decision if sufficient interest is expressed on any of these matters. The date, location and subject of such a hearing may be suggested by interested parties in their comments.

It Is Therefore Ordered, That:

The payments remitted to the Department of Energy by Texaco, Inc. pursuant to Consent Order No. RTXE006A1Z, finalized on August 29, 1988, will be distributed in accordance with the foregoing Decision.

Appendix

Texaco Affiliates and Subsidiaries Presumptively Ineligible

Aero Oil
Arbuckle Pipeline Co.
Badger Pipeline
Bay Drilling Corp.
Clay Oil Terminal
Colonial Pipeline
Donna Oil
Explorer Pipeline
Gasway, Inc.
Getty Oil Co.
The Harrison, Ltd.
Huelva Pyrites, Inc.
Iricon Agency, Ltd.
KAW Pipeline Co.
Kingston Oil
Kwik Farms, Inc.
Levemilts Petroleum, Inc.
Loop, Inc.
Minnehoma Cotton Inc.
Minnehoma Land and Farming Co.
Nuclear Fuel Services
Olympic Pipeline Co.
Osage Pipeline Co.
P.T. Petro Corp.
Petronomics Co.
The Pipelines of Puerto Rico
Power-Test Distributors
Sabine Pipeline Co.
Selville Metals Corp.
Skelly Leasing Co.
Thums, Long Beach, CA
Vancouver Plywood Co.
Vanply, Inc.

[FR Doc. 89–7850 Filed 3–31–89; 8:45 am]
BILLING CODE 6450–01–M

[24] In a recent case, because of our lack of confidence in the integrity of a filing service, Federal Refunds, Inc., we determined that it was appropriate to disburse refunds directly to the firms that it purported to represent. See *Ken's Professional Waterproofing,* 18 DOE ¶ , Case No. RF272–65929 (March 15, 1989). See also *Illinois Gasoline Dealers Association,* 13 DOE ¶ 85,114 (1985) (Dealers' association suspended for filing fraudulent refund applications); *Herbert L. Tanner,* 18 DOE ¶ 85,105 (1988) (Order to Show Cause issued to a filing service, P.A.D., Inc., and its President, due to repeated errors); *Lafayette & Greenville Bus Owner's Association,* 18 DOE ¶ 85,137 (1988) (president of a filing service, Petroleum Resources Associates, Inc., warned that false statements in future submissions may result in the suspension of his privilege to participate in refund proceedings); *Ozona Gas Processing I/Ozona Butane Co.,* 15 DOE ¶ 85,161 (1986) (president of a filing service, Energy Refunds, Inc., warned that failure to verify statements of clients may result in suspension of his privilege to participate in refund proceedings).

[25] Alternatively, we may require such filing services to place a sufficient amount of funds in an escrow account in order to protect their clients from any impropriety. In other proceedings before this Office, we have conditioned the granting of the requested relief upon the petitioner's establishing an irrevocable escrow with the bank. See e.g., *Basset Oil & Equipment Co.,* 5 FEA ¶ 85,032 (1977); *Boyd Oil Corp.,* 5 FEA ¶ 85,032 (1977); *General Crude Oil Co.,* 3 FEA ¶ 85,040 (1976).

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3548-5]

Agency Information Collection Activities; Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

DATE: Comments must be submitted on or before May 3, 1989.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Asbestos Information Act: Requirement to Submit Summary Data (EPA ICR # 1498). This is a new collection.

Abstract: The Asbestos Information Act (AIA) requires asbestos manufacturers and processors to submit certain identifying information about their asbestos or asbestos-containing products to EPA. To help the Agency organize this information, EPA has asked respondents to furnish a summary of the data required by the AIA.

Burden Statement: The public reporting burden for this collection of information is estimated to average 1.5 hours per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Asbestos manufacturers and processors.

Estimated No. of Respondents: 460.

Estimated Total Annual Burden on Respondents: 690 hours.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20530.

Date: March 24, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-7790 Filed 3-31-89; 8:45 am]

BILLING CODE 6560-50-M

[AMS-FRL-3548-3]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption Notice of Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice of determination regarding waiver of Federal preemption.

SUMMARY: EPA has determined that no waiver of Federal preemption under section 209(b) of the Clean Air Act, as amended, 42 U.S.C. 7543(b) (Act) is required before California can enforce various amendments to its Tune-up Label Specifications. They are enforceable without further action by the administrator.

DATES: The Agency's determination was made by the Acting Assistant Administrator for Air and Radiation on March 22, 1989. This decision became final on that date.

ADDRESSES: A copy of the determination as well as all documents submitted by the California Air Resources Board are available for public inspection during normal working hours (8:00 a.m. to 3:30 p.m.) at the U.S. Environmental Protection Agency, Air Docket (Docket EN-88-09), Room M-1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. Copies of the determination can be obtained from EPA's Manufacturers Operations Division by contacting John Hannon, as noted below.

FOR FURTHER INFORMATION CONTACT: John Hannon, Attorney/Advisor, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 475-8656.

SUPPLEMENTARY INFORMATION: I have determined that the California Air Resources Board does not need a waiver of Federal preemption under section 209(b) of the Act to enforce various amendments to California's Tune-up Label Specifications and that these amendments are enforceable without further action by the Administrator. The amendments apply to 1990 and subsequent model year passenger cars, light-duty trucks, motorcycles, medium-duty vehicles and heavy-duty gasoline and diesel engines and vehicles.

The amendments are conditions precedent within the meaning of section 209(a) of the Act since the sale, titling or registration of the affected new motor vehicles or engines is contingent upon compliance with these Specifications. They are neither standards nor enforcement procedures. EPA's prior issuance of waivers for the affected classes of vehicles and engines, based on California's standards and/or accompanying enforcement procedures, removes the prohibitions of section 209(a) regarding such conditions precedent for these classes. Hence no waiver under section 209(b) is required for California to enforce the amended Tune-Up Label Specifications.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vechicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability. Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia. Petitions for review must be filed within sixty days from the date this notice is published in the **Federal Register**. Pursuant to section 307(b)(2) of the Act, judicial review of this final action may not be obtained in civil or criminal proceedings for enforcement.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 12, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Nor is a Regulatory Impact Analysis being prepared under Executive Order 12291 for this determination, since it is not a rule.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: March 22, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89-7794 Filed 3-31-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51729; FRL-3547-6]

Office of Pesticides and Toxic Substances; Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of seventy-five such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 89-364, 89-365, 89-367, 89-370, 89-371, 89-374—May 7, 1989.

P 89-375, 89-376, 89-377, 89-378, 89-379, 89-380, 89-381, 89-382, 89-383, 89-384, 89-385, 89-386, 89-387—May 18, 1989.

P 89-388, 89-389, 89-390—May 14, 1989.

P 89-391, 89-392, 89-393, 89-394, 89-395—May 16, 1989.

P 89-396, 89-397, 89-398—May 17, 1989.

P 89-399, 89-400—May 21, 1989.

P 89-402, 89-403, 89-404, 89-405, 89-406, 89-407, 89-408, 89-409—May 22, 1989.

P 89-410, 89-411, 89-412, 89-413, 89-414, 89-415—May 23, 1989.

P 89-416, 89-417, 89-418—May 24, 1989.

P 89-419—May 23, 1989.

P 89-420, 89-421, 89-422, 89-423, 89-424—May 27, 1989.

P 89-425, 89-426, 89-427—May 28, 1989.

P 89-428, 89-429, 89-430, 89-431, 89-432, 89-433, 89-434, 89-435, 89-436, 89-437—May 29, 1989.

P 89-438, 89-439, 89-442, 89-443, 89-444, 89-445, 89-446—May 30, 1989.

Written comments by:

1989.

P 89-364, 89-365, 89-367, 89-370, 89-371, 89-374—April 7, 1989.

P 89-375, 89-376, 89-377, 89-378, 89-379, 89-380, 89-381, 89-382, 89-383, 89-384, 89-385, 89-386, 89-387—April 8, 1989.

P 89-388, 89-389, 89-390—April 14, 1989.

P 89-391, 89-392, 89-393, 89-394, 89-395—April 16, 1989.

P 89-396, 89-397, 89-398—April 17, 1989.

P 89-399, 89-400—April 21, 1989.

P 89-402, 89-403, 89-404, 89-405, 89-406, 89-407, 89-409—April 22, 1989.

P 89-410, 89-411, 89-412, 89-413, 89-414, 89-415—April 23, 1989.

P 89-416, 89-417, 89-418—April 24, 1989.

P 89-419—April 23, 1989.

P 89-420, 89-421, 89-422, 89-423, 89-424—April 27, 1989.

P 89-425, 89-426, 89-427—April 28, 1989.

P 89-428, 89-429, 89-430, 89-431, 89-432, 89-433, 89-434, 89-435, 89-436, 89-437—April 29, 1989.

P 89-438, 89-439, 89-442, 89-443, 89-444, 89-445, 89-446—April 30, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS-51729]" and the specific PMN number should be sent to: Document Control Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room 201 East Tower, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89-364

Manufacturer. Confidential.

Chemical. (G) Aromatic substituted aldehyde.

Use/Production. (G) Highly dispersive use. Prod. range: Confidential.

Toxicity Data. Eye irritation: none species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: negative. Skin Sensitization: negative species (Guinea pig). Phototoxicity: negative species (Guinea pig). Photoallergenicity: negative species (Guinea pig).

P 89-365

Importer. Huls America Inc.

Chemical. (G) 1-Amino-1-deoxy-d-glucitol.

Use/Import. (S) Pharmaceutical intermediate. Import range: 2,000-20,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 3,000 mg/kg species (Rat). Eye irritation: moderate. Skin irritation: negligible species (Rabbit).

P 89-367

Manufacturer. Confidential.

Chemical. (S) Acrylate capped polyurethane diol.

Use/Production. (S) Component of radiation-curable coating. Prod. range: Confidential.

P 89-370

Manufacturer. Confidential.

Chemical. (G) Fluorinated polyurethane.

Use/Production. (G) Open nondispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 5 g/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 89-371

Manufacturer. American Cyanamid Company.

Chemical. (G) Substituted dicarboxylic acid.

Use/Production. (G) Monomer. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: strong species (Rabbit). Skin irritation: moderate species (Rabbit). Mutagenicity: negative. Skin sensitization: positive species (Mouse).

P 89-374

Manufacturer. Confidential.

Chemical. (G) Aromatic substituted aldehyde.

Use/Production. (G) Highly dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea pig). Phototoxicity: negative species (Guinea pig). Photoallergenicity: negative species (Guinea pig).

P 89-375

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Alkyl-aryl (polyester-urethane).
Use/Production. (G) Open nondispersive. Prod. range: Confidential.

P 89-376

Importer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Polyester-urethane amine salt.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 89-377

Manufacturer. Confidential.
Chemical. (G) Disubstituted cyclopentanone.
Use/Production. (S) Intermediate for polymer synthesis. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 89-378

Manufacturer. Confidential.
Chemical. (G) Substituted pyrylium salt.
Use/Production. (G) Antistat for fibers, yarns, fabrics. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 89-379

Manufacturer. Confidential.
Chemical. (G) Substituted pyrylium based squarylium dye.
Use/Production. (G) Fluorescent whitten for textile. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 4,488 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Static acute toxicity: LC50 .70 ppm time 96h species (zebra fish). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea pig).

P 89-380

Manufacturer. Confidential.
Chemical. (G) Substituted pyrylium salt.
Use/Production. (G) Antistat for fibers, yarns, fabrics. Prod. range: Confidential.

P 89-381

Manufacturer. Confidential.
Chemical. (G) Substituted 4H-pyran.
Use/Production. (S) Industrial anionic wetting agent. Prod. range: Confidential.
Toxicity Data. Static acute toxicity: LC50 > 1,000 mg/kg time 46h species (Golden orfe).

P 89-382

Manufacturer. Confidential.
Chemical. (G) Aliphatic dione.
Use/Production. (G) Printing bath additives. Prod. range: Confidential.

P 89-383

Manufacturer. Confidential.
Chemical. (G) Substituted thiopyrylium salt.
Use/Production. (G) Antistat for fibers, yarns, or fabrics. Prod. range: 15,000-20,000 kg/yr.

P 89-384

Manufacturer. Confidential.
Chemical. (G) Substituted thiopyrylium based squarylium dye.
Use/Production. (G) Antistat for fiber, yarns, or fabrics. Prod. range: 15,000-20,000 kg/yr.

P 89-385

Importer. Confidential.
Chemical. (G) Copolyacrylester.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 89-386

Manufacturer. Dow Corning Corporation.
Chemical. (G) Amino-functional poly(organo)siloxane.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89-387

Manufacturer. Dow Corning Corporation.
Chemical. (G) Acrylamide-functional poly(organo)siloxane.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 89-388

Manufacturer. Amoco Petroleum Additive Company.
Chemical. (G) Alkyleneamine alkylphenol mannish.
Use/Production. (G) Gasoline additive. Prod. range: Confidential.
Toxicity Data. Acute dermal toxicity: LD50 > 2 g/kg species(Rabbit). Eye irratation: none species(Rabbit). Skin irritation: slight species(Rabbit).

P 89-389

Manufacturer. Confidential.
Chemical. (S) Phosphoric acid diester of C24-28 branched alcohols.
Use/Production. (G) Detergent additive. Prod. range: Confidential.

P 89-390

Manufacturer. R.T. Vanderbilt Company, Inc.
Chemical. (G) Alkylamine compounds with (3H-)-benzothiazoletherthione.
Use/Production. (S) Color stabilizer and external pressure agent for lubricants. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 1.47 ml/kg species(Rat). Acute dermal toxicity: LD50 2.15-10 ml/kg species(Rabbit). Eye irritation: moderate species(Rabbit).

P 89-391

Importer. Organic Dyestuff Corporation.
Chemical. (G) C.I. dispersive blue 79.
Use/Import. (S) Resale as is and physical mixtures other shading colors. Import range: 2,000-6,000 kg/yr.

P 89-392

Manufacturer. Confidential.
Chemical. (G) Modified acrylic polymer.
Use/Production. (S) Polymeric component of barrier coating and of caulk sand sealant. Prod. range: Confidential.

P 89-393

Manufacturer. Confidential.
Chemical. (G) Alkaline earth metal salt of mineral acid alkoxide.
Use/Production. (S) Alkoxylation catalyst. Prod. range: Confidential.

P 89-394

Manufacturer. Confidential.
Chemical. (G) Alkaline earth metal-mineral acid alkoxide salt.
Use/Production. (S) Alkoxylation catalyst. Prod. range: Confidential.

P 89-395

Manufacturer. Confidential.
Chemical. (G) Alkaline earth metal-mineral acid alkoxide salt.
Use/Production. (S) Alkoxylation catalyst. Prod. range: Confidential.

P 89-396

Manufacturer. Confidential.
Chemical. (G) Sulfur bridged substituted phenols.
Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 89-397

Manufacturer. Confidential.
Chemical. (S) 1-N,N-Dimethylamino-3-aminopropane formates, disubstituted.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 89–398

Manufacturer. Confidential.

Chemical. (S) 1-N,N-dimethylamino-3-aminopropane; disubstituted.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 89–399

Manufacturer. Confidential.

Chemical. (G) Amine functional epoxy salted with an organic acid.

Use/Production. (G) Resin. Prod. range: Confidential.

P 89–400

Importer. Ciba-Geigy Corporation.

Chemical. (G) Triazine-sulfanilate.

Use/Import. (G) Textile chemical. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species(Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species(Rabbit). Static acute toxicity: LC50 1,000 ppm time 96h species (Zebra fish). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative. Skin sensitization: negative species(Guinea pig).

P 89–402

Manufacturer. Confidential.

Chemical. (G) Substituted aminobenzoic acid.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 0.5–5 g/kg species(Rat). Acute dermal toxicity: LD50 2.0 g/kg species(Rabbit). Eye irritation: moderate species(Rabbit). Skin irritation: slight species(Rabbit). Mutagenicity: negative.

P 89–403

Manufacturer. Confidential.

Chemical. (G) Alkyl substituted aminobenzoic acid.

Use/Production. (G) Organic intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 0.5 g/kg species(Rat). Acute dermal toxicity: LD50 > 2.0 g/kg species(Rabbit). Eye irritation: none species(Rabbit). Skin irritation: slight species(Rabbit).

P 89–404

Manufacturer. Confidential.

Chemical. (G) Alkylamine modified polyether.

Use/Production. (G) Intermediate for manufacture of polyurethane foam and polyurethane elastomer. Prod. range: Confidential.

P 89–405

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyols, poly isocyanates and amines.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 89–406

Manufacturer. Confidential.

Chemical. (G) Di fatty acid condensate.

Use/Production. (G) Textile softener. Prod. range: Confidential.

P 89–407

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Styrene acrylate copolymer.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89–408

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Methacrylate copolymer.

Use/Production. (G) Destructive use. Prod. range: Confidential.

P 89–409

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyols isocyanates; and polyamines.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 89–410

Manufacturer. Eastman Kodak Company.

Chemical. (G) Substituted(phenylchloroheterocycle)-aromatic substituted alkanamide.

Use/Production. (G) Contained use in article. Prod. range: 4,000–14,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 kg/yr species(Rat). Acute dermal toxicity: LD50 > 2,000 kg/yr species(Rabbit). Eye irritation: slight species(Rabbit). Skin irritation: slight species(Rabbit). Skin sensitization: negative species(Guinea pig).

P 89–411

Manufacturer. Eastman Kodak Company.

Chemical. (G) Substituted(phenylchloroheterocycle)-aromatic substituted alkanamide.

Use/Production. (G) Chemical intermediate. Prod. range: 4,000–14,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 species(Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species(Rabbit). Eye irritation: slight species(Rabbit). Skin irritation: slight species(Rabbit). Skin sensitization: positive species(Guinea pig).

P 89–412

Manufacturer. Eastman Kodak Company.

Chemical. (G) Aromatic azo substituted phenol.

Use/Production. (G) Chemical intermediate. Prod. range: 60,000–150,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species(Rat). Acute dermal toxicity: LD50 > 2,000 mg/kd species(Rabbit). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit). Skin sensitization: negative species(Guinea pig).

P 89–413

Manufacturer. Eastman Kodak Company.

Chemical. (G) Alkyl hydroxy substituted benzenamine.

Use/Production. (G) Contains use in on article. Prod. range: 50,000–130,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 kg/yr species(Rat). Acute dermal toxicity: LD50 > 18,310 mg/kg species(Rabbit). Eye irritation: slight species(Rabbit). Skin irritation: slight species(Rabbit). Skin sensitization: negative species (Guinea pig).

P 89–414

Manufacturer. DSM Resins U.S., Inc.

Chemical. (G) Dibasic acid/gylcol ester.

Use/Production. (G) Resin. Prod. range: Confidential.

P 89–415

Manufacturer. Schnee-Morehead, Inc.

Chemical. (G) Bisphenol-alpha-based epoxy resin derivative.

Use/Production. (S) Primer. Prod. range: Confidential.

P 89–416

Manufacturer. Huls America Inc.

Chemical. (G) Alkyl grignard reagent.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 89–417

Importer. Huls America Inc.

Chemical. (G) Polyester resin of aryldicarboxylic acids, alkane diols, and dimeric fatty acids.

Use/Import. (G) Resin for paint. Import range: Confidential.

P 89–418

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Haloalkyl sulfonic acid salt.

Use/Production. (G) Polymer procession agent. Prod. range: Confidential.

P 89–419

Manufacturer. Confidential.
Chemical. (G) Poly (vinyl ester co-unsaturated dicarboxylic acid ester) co-olefin.
Use/Production. (G) Water ased industrial polymer. Prod. range: Confidential.

P 89–420

Manufacturer. Confidential.
Chemical. (S) Formaldehyde; urea; dicyandiamide; phosphoric acid; monoethanolamine.
Use/Production. (S) Polymer for flame retardant. Prod. range: 150,000–630,000 kg/yr.

P 89–421

Manufacturer. Minnesota Mining & Manufacture Co., (3M).
Chemical. (S) Sodium sulfonisophtalic acid; isophthalic acid; sebacic acid; 5-t-butyl isophthalic acid; neopentyl glycol; ethylene.
Use/Production. (G) Polymeric binder. Prod. range: Confidential.

P 89–422

Importer. Confidential.
Chemical. (G) 2-Propenoic acid, 2-alkyl-,alkyl ester.
Use/Import. (S) Raw material for manufacture of synthetic resins. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (Rat). Acute dermal toxicity: LD50 > 2.5 g/kg species (Rabbit). Skin irritation: moderate species (Rabbit). Mutagenicity: negative.

P 89–423

Manufacturer. Confidential.
Chemical. (G) Organo-functional silylamine.
Use/Production. (G) A formulation component for open, nondispersive use. Prod. range: Confidential.

P 89–424

Manufacturer. Confidential.
Chemical. (G) Substituted alkylsilylpropenoate ester of carbamic acid.
Use/Production. (G) A formulation component for open, nondispersive use. Prod. range: Confidential.

P 89–425

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Organosiloxane.
Use/Import. (S) Ingredient for silicone rubber compounds. Import range: 1,000–3,000 kg/yr.

P 89–426

Importer. Organic Dyestuff Corporation.
Chemical. (G) Reactive yellow 15.
Use/Import. (S) Resale as is and physical mixtures other shading colors. Import range: 4,000–8,000 kg/yr.

P 89–427

Importer. Organic Dyestuff Corporation.
Chemical. (G) Reactive blue 21.
Use/Import. (S) Resale as is and physical mixtures other shading colors. Import range: 4,000–8,000 kg/yr.

P 89–428

Manufacturer. The Dow Chemical Company.
Chemical. (G) Blocked aromatic isocyanate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89–429

Manufacturer. The Dow Chemical Company.
Chemical. (G) Blocked aromatic isocyanate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89–430

Manufacturer. The Dow Chemical Company.
Chemical. (G) Blocked aromatic isocyanate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89–431

Manufacturer. The Dow Chemical Company.
Chemical. (G) Blocked aromatic isocyanate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89–432

Manufacturer. The Dow Chemical Company.
Chemical. (G) Blocked aromatic isocyanate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89–433

Manufacturer. The Dow Chemical Company.
Chemical. (G) Blocked aromatic isocyanate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89–434

Manufacturer. The Dow Chemical Company.
Chemical. (G) Blocked aromatic isocyanate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89–435

Manufacturer. The Dow Chemical Company.
Chemical. (G) Blocked aromatic isocyanate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89–436

Manufacturer. The Dow Chemical Company.
Chemical. (G) Blocked aromatic isocyanate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89–437

Manufacturer. The Dow Chemical Company.
Chemical. (G) Blocked aromatic isocyanate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89–438

Manufacturer. Confidential.
Chemical. (G) Polymethylene polyphenyl isocyanate.
Use/Production. (G) Coatings and adhesives. Prod. range: Confidential.

P 89–439

Manufacturer. Confidential.
Chemical. (G) Alkylaryl (polyethoxyethyl) phosphate ester.
Use/Production. (G) Intermediate for the preparation of potassium salt solution. Prod. range: Confidential.

P 89–442

Manufacturer. Manchem, Inc.
Chemical. (G) Amino-functional zirconium/aluminum chloride hydroxide polymer.
Use/Production. (S) Adhesive promoter for adhesive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species(Rat).

P 89–443

Manufacturer. Manchem, Inc.
Chemical. (G) Amino-functional zirconium/aluminum chloride hydroxide polymer.
Use/Production. (S) Adhesive promoter for adhesive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species(Rat).

P 89–444

Manufacturer. Manchem, Inc.
Chemical. (G) Amino-functional zirconium/aluminum chloride hydroxide polymer.

Use/Production. (S) Adhesive promoter for adhesive. Prod. range: Confidential.

P 89-445

Manufacturer. Manchem, Inc.

Chemical. (G) Methacrylato/oleophilic functional zircoaluminate chloride hydroxide polymer.

Use/Production. (S) Adhesive promoter for adhesive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species(Rat).

P 89-446

Manufacturer. Manchem, Inc.

Chemical. (G) Mercapto-functional zirconium/aluminum chloride hydroxide polymer.

Use/Production. (S) Adhesive promoter for adhesive. Prod. range: Confidential.

Date: March 24, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-7799 Filed 3-31-89; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before May 18, 1989. If you anticipate commenting on a report form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and Agency Clearance Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report forms, the request for clearance (Standard Form 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

EEOC Agency Clearance Officer: Margaret P. Ulmer, Office of Management; 2401 E Street, NW.—Room 386, Washington, DC 20507; Telephone (202) 663-4279.

OMB Reviewer: Joseph Lackey, Human Resources and Housing Branch, Office of Information, and Regulatory Affairs, Office of Management and Budget; New Executive Office Building—Room 3208; Washington, DC 20503; Telephone (202) 395-7316.

Type of Request: Extension (No change).

Title: Elementary-Secondary Staff Information EEO-5.

Form Number: EEOC FORMS 168A and 168B.

Frequency of Report: Biennially.

Type of Respondent: Public elementary and secondary school districts and systems with 100 or more employees and a sample of those districts and systems with 15-99 employees.

Standard Industrial Classification (SIC) Code: 821.

Description of Affected Public: State or local governments.

Responses: 58,509.

Reporting Hours: 292,545.

Federal Cost: $60,000.00.

Applicable under section 3504(h) of Public Law 96-511: Not applicable.

Number of Forms: 2.

Abstract-Needs/Users: EEO-5 data are used by EEOC to investigate charges of discrimination against employers in public elementary and secondary school districts and systems. Data are shared with the Department of Education (Office for Civil Rights and the National Center for Education Statistics) and the Department of Justice. EEO-5 data are also shared with approximately 23 State and 56 local FEPC agencies.

For the Commission.

John Seal,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 89-7843 Filed 3-31-89; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

March 16, 1989.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0027

Title: Application for Construction Permit for Commercial Broadcast Station

Form No.: FCC 301

Action: Revision

Respondents: Business (including small business)

Frequency of Response: On occasion

Estimated Annual Burden: 1,997 Responses, 110 hours each (average)

Needs and Uses: Filing is required to apply for authority to construct a new commercial AM, FM or TV broadcast station, or to make changes in the existing facilities. The data is used by FCC staff to determine whether the applicant meets basic statutory requirements to become a licensee.

OMB No.: 3060-0057

Title: Application for Equipment Authorization

Form No.: FCC 731

Action: Revision

Respondents: Business

Frequency of Response: On occasion

Estimated Annual Burden: 6,600 Responses, 24 hours each

Needs and Uses: Filing is required to apply for equipment authorization. A completed application, combined with descriptive information, test data, and occasionally a test sample, provides information necessary to determine if the equipment is in compliance with Commission rules, thereby controlling interference to radio communications. The data may also be used to aid in enforcement of the rules.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-7805 Filed 3-31-89; 8:45 am]

BILLING CODE 6712-01-M

March 28, 1989.

Information Collection Requirement Approval by Office of Management and Budget

The following information collection requirement has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0095

Title: Cable Television Annual Employment Report

Form No.: FCC 395–A

A revised form FCC 395–A has been approved for use through 1/31/92. This revised edition is being implemented with the reports which are due on May 1, 1989.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–7806 Filed 3–31–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

Federal Savings and Loan Advisory Council; Announcement of Members

AGENCY: Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

ACTION: Notice of 1989 members.

SUMMARY: See supplemental information.

FOR FURTHER INFORMATION CONTACT: Debra J. Ahearn (202) 906–6924.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board hereby announces the members of the 1989 Federal Savings and Loan Advisory Council. They are as follows:

Elected Members

John F. Murphy, President and Chief Executive Officer, Bay State Federal Savings Bank, Brookline, Massachusetts 02146, District Representative: Federal Home Loan Bank of Boston

Gilbert G. Roessner, Chairman, CityFed Financial Corporation, Long Beach, Florida 33480, District Representative: Federal Home Loan Bank Board of New York

Matthew T. Welde, Chairman of the Board and Chief Executive Officer, Commonwealth Federal Savings and Loan Association, Valley Forge, Pennsylvania 19482–2100, District Representative: Federal Home Loan Bank of Pittsburgh

William G. White, Jr., President, First Federal Savings Bank, Winston-Salem, NC 27101–3910, District Representative: Federal Home Loan Bank of Atlanta

Howard T. Glover, President, The Conneaut Saving and Loan Company, Conneaut, Ohio 44030, District Representative: Federal Home Loan Bank of Cincinnati

Robert H. Becker, President, Capitol Federal Savings Bank, Lansing, Michigan 48933, District Representative: Federal Home Loan Bank of Indianapolis

John C. Schlosser, Chairman of the Board and President, St. Francis Savings and Loan Association, St. Francis, Wisconsin 53207, District Representative: Federal Home Loan Bank of Chicago

William Turner, President, Great Southern Savings and Loan Association, Springfield, Missouri 65804, District Representative: Federal Home Loan Bank of Des Moines

Milton H. Thomas, President and Chief Executive Officer, First American Savings Bank, Hurst, Texas 76053, District Representative: Federal Home Loan Bank of Dallas

Duane H. Hall, President, Franklin Savings Association, Ottawa, Kansas 66067, District Representative: Federal Home Loan Bank of Topeka

James C. Schmidt, Vice Chairman and Managing Officer, Great American First Savings Bank, San Diego, California 92183, District Representative: Federal Home Loan Bank of San Francisco

Wayne E. Jack, Chairman of the Board, President and Chief Executive Officer, First Federal Savings and Loan Association of America, Honolulu, Hawaii 96813, District Representative: Federal Home Loan Bank of Seattle

Appointed Members

Robert R. Bench, Price Waterhuse, Washington, DC 20006

John T. Collins, Steptoe and Johnson, Washington, DC 20036

Howard D. Curlett, JP Morgan Securities, New York, New York 10015

Stuart I. Greenbaum, Kellogg Graduate School of Management, Northwestern University, Evanston, Illinois 60201

Bill R. Harman, Morgan Stanley, New York, New York 10020

Don Hovde, Hovde Financial, Inc., Washington, DC 20037

C.F. Muckenfuss, III, Gibson, Dunn & Crutcher, Washington, DC 20036

Larry S. Okinaga, Carlsmith, Wichman, Case, Mukai and Ichaki, Honolulu, Hawaii 96813

John J. Oros, Goldman Sachs, New York, New York 10004

Ken Rosen, Chairman and Professor, Center for Real Estate and Urban Economics, Berkeley, California 94720

George H. Sorter, New York University, New York, New York 10003

Tim S. Wahl, CitiBank New York, New York 10043

Robert H. Wilson, Chairman and President, R.H. Wilson Group, Ltd., Lake Forrest, Illinois 60045

Ex Officio Members

Kenneth Abt, President, First Federal Savings and Loan Association of Middletown, Middletown, New York 10940

Pete Allison, President, Mutual Savings and Loan Association, Durham, North Carolina 27702

Brent Beesley, Farm Credit Corporation of America, Denver, Colorado 80215

James Butera, Washington, DC. 20016

Dean Cannon, President, California League of Savings Institutions, Los Angeles, California 90045

Larry Fink, The Blackstone Group, New York, New York 10154

Patrick Forte, President, Association of Thrift Holding Companies, Washington, D.C. 20006

David Glenn, Executive Vice President and Chief Financial Officer, Federal Home Loan Mortgage Corporation, Reston, Virginia 22090

Mary Grigsby, Houston, Texas 77024

Rick Hohlt, U.S. League of Savings Institutions, Washingotn, D.C. 20006

Takuro Isoda, DIAWA Securities America, Inc., New York, New York 10281

Anne Jones, Partner, Sutherland, Asbill & Brennan, Washington, D.C. 20004

Tom Long, Jones, Day, Reavis, Pogue, Washington, D.C. 20005

Maurice Mann, Chairman and Chief Executive Officer, Pacific Stock Exchange, San Francisco, California 94104

Anita Miller, Chairman, Chief Executive Officer and President, AmeriFederal Savings Bank, Lawrenceville, New Jersey 08648

John T. Morgan, Chairman and Chief Executive Officer, American Savings Bank, FSB, White Plains, New York 10601

Lee Peckarsky, National Council of Savings Institutions, Washington, D.C. 20005

Theo Pitt, North Carolina League of Savings, Rocky Mount, North Carolina 27804

Dick Pratt, Merrill Lynch World Headquarters, New York, New York 10281–1206

Norman Raiden, Esquire, McKenna, Conner & Cuneo, Los Angeles, California 90017

Steve Roberts, KPMG Peat Marwick, Washington, D.C. 20036
Michael Roster, Morrison and Foerster, Los Angeles, California 90071-3168
Tom B. Scott, Jr., UniFirst Bank for Savings, Jackson, Mississippi 39201
Dale Stuard, Stuard Industries, Newport Beach, California 92660
Jim Turner, President, Kansas League of Savings Institutions, Topeka, Kansas 66603
Tom Vartanian, Fried, Frank, Harris, Schriver and Jacobsen, Washington, D.C. 20004
L. Scott Walshaw, Commissioner, Financial Investment Division, Carson City, Nevada 89710
Nestor Wiegand, J.P. Wiegand and Sons, Inc., Wichita, Kansas 67202

John M. Buckley, Jr.,
Executive Secretary.
March 29, 1989.

[FR Doc. 89-7825 Filed 3-31-89; 8:45 am]
BILLING CODE 6720-01-M

Federal Savings and Loan Advisory Council Meeting

AGENCY: Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20522.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Federal Savings and Loan Advisory Council. Notice of the meeting is required under the Federal Advisory Committee Act.

DATE(S): Tuesday, April 11, 1989; 9:00 a.m.—4:30 p.m., Wednesday, April 12, 1989; 9:00 a.m.—12 noon.

SUPPLEMENTAL INFORMATION:

Meeting address: Federal Home Loan Bank Board, Building #2, Amphitheater, 801 17th Street, NW., Washington, DC 20522.
Topic: Current issues relating to the Thrift Industry.

FOR FURTHER INFORMATION CONTACT:

John M. Buckley, Jr. (202) 906-6577
Debra J. Ahearn (202) 906-6924

John M. Buckley, Jr.,
Secretary to the Board.
March 29, 1989.

[FR Doc. 89-7824 Filed 3-31-89; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Jefferson Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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 225.24) 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)).

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 to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than April 21, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Jefferson Bancshares, Inc.*, Louisville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Jefferson County, Louisville, Georgia.

Board of Governors of the Federal Reserve System, March 27, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-7751 Filed 3-31-89; 8:45 am]
BILLING CODE 6210-01-M

Marine Midland Banks, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 17, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Marine Midland Banks, Inc.*, Buffalo, New York; The Hong Kong and Shanghai Banking Corporation, Hong Kong; HSBC Holdings B.V., Amsterdam, The Netherlands; and Kellett N.V., Curacao, Netherlands Antilles; to engage *de novo* through their subsidiary, Carroll McEntee and McGinley Incorporated, New York, New York, in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 27, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-7752 Filed 3-31-89; 8:45 am]
BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or 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 April 14, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *George and Ruth Pingrey,* Sac City, Iowa; to acquire 62 percent of the voting shares of Aurelia FT & S Bankshares, Inc., Aurelia, Iowa, and thereby indirectly acquire First Trust & Savings Bank, Aurelia, Iowa.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice Presisent) 400 South Akard Street, Dallas, Texas 75222:

1. *Joe M. Bennatte,* Hempstead, Texas, to acquire 50 percent; Dave C. Swalm, Houston, Texas, to acquire 20 percent; John T. Shelton, Houston, Texas, to acquire 10 percent; David Clarkston Swalm, Jr., Houston, Texas, to acquire 10 percent; and Ronald W. Wolvier, Houston, Texas, to acquire 10 percent of the voting shares of Community Bank, Katy, Texas.

Board of Governors of the Federal Reserve System, March 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-7753 Filed 3-31-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Program Announcement 916]

Public Health Conference Support Grant Program; Availability of Funds for Fiscal Year 1989

Introduction

The Centers for Disease Control (CDC) announces that grant applications are to be accepted for the Public Health Conference Support Grant Program.

Authority

This program is authorized under section 301 of the Public Health Service Act (42 U.S.C. 241). Applicable regulations are set forth in 42 CFR 52, Grants for Research Projects.

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, public and private orgranizations, State and local health departments, and small, minority and/or woman-owned businesses are eligible for these grants.

Availability of Funds

Approximately $150,000 will be available in Fiscal Year 1989 to fund approximately 15 awards. The awards will range from $5,000 to $50,000 with the average award being approximately $10,000. The award will be funded with a 12-month annual budget and project period. The funding estimate outlined above may vary and is subject to change. Continuation awards within the project period are made on the basis of satisfactory progress and availability of funds.

The following are examples of the most frequently encountered costs which may or may not be charged to the grant:

1. Grant funds may be used for direct cost expenditures: salaries, speaker fees, rental of necessary equipment, registration fees, transportation costs (not to exceed economical class fare) and travel of non-Federal employees.

2. Funds may not be used for the purchase of equipment, payments of honoraria, indirect costs, organizational dues, entertainment/personal expenses, cost of travel and payment of a full-time Federal employee or for per diem or expenses other than local mileage for local participants.

Purpose

The purpose of the conference support grants are to provide partial support for non-Federal conferences on disease prevention, health promotion and information/education projects.

Program Requirements

The programmatic areas of interest in which applications are being solicited by CDC for conferences are: (1) disease prevention; (2) chronic disease; (3) infectious disease; (4) environmental health; (5) occupational safety and health; (6) health education and promotion; (7) laboratory practices; and, (8) injury control.

Evaluation Criteria

1. Public health importance and significance of the conference. (20%)

2. Likelihood of accomplishing conference objectives as they relate to disease prevention and health promotion goals. (20%)

3. Capability of the proposed staff in relationship to the type conference. (15%)

4. Feasibility of the project in terms of operational plan. (15%)

5. Method of evaluating the results of the conference. (15%)

6. Adequacy of applicant's resources available for the project. (15%)

7. The appropriateness of the budget request. (Not Scored)

E.O. 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR 100).

CFDA Number

The Catalog of Federal Domestic Assistance number is 13.283.

Application Submission and Deadline

The original and two copies of the application shall be submitted on Form PHS 5161-1 in accordance with the following schedule. The schedule also sets forth the *anticipated* award date:

Deadline Date

Application: June 1
Award Date: September 1

Applications must be submitted on or before the deadline date to: Mr. Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Mailstop E-14, Atlanta, Georgia 30305.

Deadlines: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the *Deadline* criteria, outlined in the paragraph immediately above, are considered late applications, will not be considered in the current competition, and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures and application package may be obtained from Ms. Donna M. Rushin, Grants Management Specialist, Grants

Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Mailstop E–14, Atlanta, Georgia 30305, (404) 842–6575 or FTS 236–6575.

Please refer to Announcement Number 916 when requesting information and submitting any application on the Request for Assistance.

Dated: March 27, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89–7747 Filed 3–31–89; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–89–1917; FR 2606]

Notice of Unutilized and Underutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

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

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: April 3, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755–9075; TDD number for the hearing- and speech-impaired (202) 426–0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988, court order in *National Coalition for the Homeless v. Veterans Administration*, D.C.D.C. No. 88–2503–OG, HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: March 27, 1989.

James E. Schoenberger,

General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89–7567 Filed 3–31–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–736104

Applicant: Robert Wright Willingham, Dallas, TX

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*damaliscus dorcas dorcas*), culled from a captive-herd maintained in the Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–736236

Applicant: Natural Gardens, Oak Ridge, TN

The applicant requests a permit to sell artificially propagated Tennessee coneflowers (*Echinacae tennesseensis*) in interstate commerce.

PRT–736128

Applicant: A. B. Cauthen, Jr., Austin, TX

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. Kelly Davis, Howick, Natal, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–736102

Applicant: William T. Wyatt, Bend, OR

The applicant requests a permit to import three male and three female captive-hatched white eared pheasants (*Crossoptilon crossoptilon*) and one male and one female captive-hatched Mikado pheasant (*Syrmaticus mikado*), from South View Aviaries, Burnaby, BC, Canada, for the purpose of enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: March 29, 1989.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89–7869 Filed 3–31–89; 8:45 am]

BILLING CODE 4310–AN–M

Issuance of Permit for Marine Mammals

On *Jan. 4, 1989,* a notice was published in the **Federal Register** (Vol. 54, No. 2, page 192) that an application had been filed with the Fish and Wildlife Service by our Alaskan Office of Fish & Wildlife Research (PRT–690038) for a permit to import, export and reexport polar bear (*Ursus maritimus*) specimen materials.

Notice is hereby given that on March 22, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 USC 1361–1407), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours at the Office of Management Authority, 1375 K Street, NW., Washington, DC, Room 400.

Dated: March 24, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89–7870 Filed 3–31–89; 8:45 am]

BILLING CODE 4310–AN–M

National Park Service

Meeting of National Park System Advisory Board

Notice is hereby given in accordance with the Federal Advisory Committee Act (86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247), that a meeting of the National Park System Advisory Board will be held at the Old Post Office Building, 12th Street and Pennsylvania Avenue, NW., Washington, DC on April 24 and 25, 1989.

The general business session will start at 8:30 a.m., Monday morning, April 24; and conclude about noon on Tuesday,

April 25. All sessions will be held in meeting room M09, which is near the 12th Street entrance.

The Board will consider potential National Historic Landmark nominations, plus a variety of matters relating to the National Park System. The meeting will follow an orientation tour and briefings on issues in the Service's National Capital Region.

The business meetings will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis.

Anyone may file with the Board a written statement concerning matters to be discussed. Persons wishing further information concerning this meeting or who wish to submit written statements may contact Mr. David L. Jervis, National Park Service, P.O. Box 37127, Washington, DC 20013-7127 (telephone 202-343-4030).

Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting in room 1220, Main Interior Building, 18th and C Streets, NW., Washington, DC.

Denis P. Galvin,

Deputy Director, National Park Service.

[FR Doc. 89-7851 Filed 3-31-89; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0057), Washington, DC 20503, telephone (202) 395-7340.

Title: 30 CFR Part 882—Reclamation on Private Land.

OMB Approval Number: 1029-0057.

Abstract: Section 408 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, provides that under certain circumstances a lien may be levied on private property that has been reclaimed. Part 882 establishes procedures for recovery of the cost of reclamation activities conducted on privately owned land and is intended to ensure that landowners who acquired the land after a specified date or who benefited from the mining operation will not realize a windfall from the reclamation.

Bureau Form Number: None.

Frequency: As required.

Description of Respondents: States and Indian tribes.

Estimated Completion Time: One hour.

Annual Responses: One.

Annual Burden Hours: One.

Bureau Clearance Officer: Nancy Ann Baka (202) 343-5864.

Date: March 10, 1989.

Judith Saunders,

Acting Chief, Division of Regulatory Development.

[FR Doc. 89-7758 Filed 3-31-89; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31426]

Norfolk and Western Railway Co.; Trackage Rights Exemption; Southern Railway Co.

Southern Railway Company (Southern) has agreed to grant overhead trackage rights to Norfolk and Western Railway Company (NW) over the following lines: (1) Between milepost 174.6 at Lynchburg, VA, and milepost 32.6 at Manassas, VA, at the junction of Southern's Manassas Branch, a distance of approximately 142 miles; and (2) between milepost B-0.0 at Manassas, VA, and milepost B-50.0 at Riverton Junction, VA, a distance of approximately 50 miles. The trackage rights became effective when NW commenced operations on or after March 21, 1989.

Southern and NW are rail carriers commonly controlled by Norfolk Southern Corporation.

This notice is filed under 49 CFR 1180.2(d) (3) and (7). It is a transaction within a corporate family that will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). This acquisition of trackage rights is also an exempt transaction under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: N.S. Fleischman, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast RY., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: March 27, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-7772 Filed 3-31-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-301 (Sub-No. 3X)]

Southrail Corp.; Abandonment Exemption; Jones and Jasper Counties, MS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by SouthRail Corporation of 17.77 miles of rail line in Jones and Jasper Counties, MS, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 13, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 10, 1989; and petitions for reconsideration must be filed by April 28, 1989. Requests for a public use condition must be filed by April 10, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-301 (Sub-No. 3X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Kevin M. Sheys, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Ave., NW., Washington, DC 20005-4797.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: March 22, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Lamboley concurred with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89–7771 Filed 3–31–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31403]

Wisconsin and Calumet Railroad Co., Inc.; Modified Rail Certificate

On January 24, 1989, as supplemented on February 27, 1989, a notice was filed by the Wisconsin and Calumet Railroad Company, Inc. (W&C), for a modified certificate of public convenience and necessity under 49 CFR 1150.23. By agreement with the Wisconsin River Rail Transit Commission (WRRTC) and the Wisconsin Department of Transportation (WDOT), W&C is authorized to operate over rail lines between Fox Lake, IL (milepost 49.76), and Janesville, WI (milepost 94.40), a distance of 44.73 miles; and between Elkhorn, WI (milepost 39.64), and Bardwell Junction, WI (milepost 53.0), a distance of 13.36 miles.

Prior to abandonment, the lines were owned and operated by the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (MILW). The Fox Lake—Janesville line was abandoned in three segments. The 25.5-mile segment between Fox Lake, IL, and Walworth, WI, was recommended for abandonment in Docket No. AB–7 (Sub. No. 103), *Chicago, M. St. P. & Pac. R. Co.-Aband.-Fox Lake, IL to Walworth, WI* (not printed), served November 4, 1982; MILW's Reorganization Court authorized abandonment in Order No. 610C dated November 17, 1982. The 13.5-mile segment between Walworth and Avalon, WI, was recommended for abandonment in Docket No. AB–7 (Sub-No. 65), *Chicago, M. St. P. & Pac. R. Co.-Aband.-Walworth to Avalon, WI* (not printed), served December 28, 1979; MILW's Reorganization Court authorized abandonment in Order Nos. 281A dated February 19, 1980, and 281B dated March 10, 1980. The 5.8-mile segment between Avalon and Janesville, WI, was also authorized for abandoment by MILW's Reorganization Court in Orders Nos. 281A, and 281B. The 13.36-mile line between Elkhorn and Bardwell Junction, WI, is a part of the line recommended for abandonment in Docket No. AB–7 (Sub-No. 101), *Chicago, M. St. P. & Pac. R. Co.-Aband.-Janesville to Madison, WI and Burlington to Beloit, WI* (not printed), served September 17, 1982; MILW's Reorganization Court authorized abandonment in Order No. 606B dated December 17, 1982.

The lines were acquired from MILW by WDOT. Operation of the lines is the responsibility of the WRRTC, a public agency within the State of Wisconsin. WRRTC contracted with W&C to operate the lines.[1]

This notice involves the lease of property, which is defined by the regulations of the Advisory Council on Historic Preservation as potentially having an adverse effect on historic properties. To ensure compliance with the National Historic Preservation Act, 16 U.S.C. 470 (NHPA), W&C is directed to preserve intact all sites and structures more than 50 years old until compliance with the requirements of NHPA is achieved.

This notice must be served on the Assoication of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: March 28, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–7773 Filed 3–31–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on February 8, 1989, a proposed consent decree in *United States v. Antilles Electroplating, Inc.*, Civil Action No. 88–00260(cc), was lodged with the United States District Court for the District of Puerto Rico. This consent decree settles the United States' claims in a lawsuit filed February 11, 1988, pursuant to section 309 of the Clean Water Act (the "Act"), 33 U.S.C. 1319, for injunctive relief and for the assessment of civil penalties against Antilles Electroplating, Inc., ("Antilles"). The complaint is based on, among other things, Antilles' discharge of wastewater containing pollutants from its electroplating plant located at D Street, No. 75, Minillas Industrial Park, Bayamon, Puerto Rico, into a publicly owned treatment works ("POTW") violation of the Act and applicable pretreatment standards. 42 U.S.C. 1317; 40 CFR Part 413.

The proposed consent decree required Antilles to pay a civil penalty of $50,000 for past violations, and to continue to maintain compliance with the general and categorical pretreatment standards, 40 CFR Parts 403 and 413, and the Puerto Rico Sewer Authority's ("PRASA") Rules and Regulations Relating to the Use of the Public Sewers. Antilles is required to take composite samples of the Wastewater it discharges to the POTW in accordance with the monitoring and sampling provisions of the decree. The proposed consent decree also requires Antilles to submit monthly reports to the Environmental Protection Agency ("EPA") and PRASA that contain the results of sampling and monitoring required under the decree, discharge and flow information, plant modifications, and pretreatment compliance certification.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. All comments should refer to *United States v. Antilles Electroplating, Inc.*, D.J. Ref. 90–5–1–1–2937.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency:

EPA Region II, Contact: David Brook, Office of the Regional Counsel, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, (212) 264–0444.

United States Attorney's Office, Contact: Eduardo E. Toro Font,

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[1] The Railway Labor Executives' Association and the United Transportation Union seek the imposition of employee protective conditions. In *Common Carrier Status of States, State Agencies*, 363 ICC 132, 135 (1980), *aff'd Simmons v. ICC*, 697 F.2d 326, 334–342 (D.C. Cir. 1982) we stated that modified certificate operators will not be subjected to employee protective conditions. MILW employees were granted employee protection by the Reorganization Court when it approved abandonment.

Assistant United States Attorney, District of Puerto Rico, Frederico Degetau Federal Building, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00918, (809) 753–4656.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1250, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20044–7611. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice. When requesting a copy of the proposed consent decree, please enclose a check for copying costs in the amount of $1.90 (10 cents per page) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–7863 Filed 3–31–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; A.B.F. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than ——.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than ——.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 20th day of March 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition number	Articles produced
A.B.F. (workers)	Long Island City, NY	3/20/89	2/21/89	22,614	Warehouse and distribution facility.
AT&T Technologies Inc. (workers)	Westingter, CO	3/20/89	3/3/89	22,615	PBX systems.
Almond Jewelry (workers)	Westbury, NY	3/20/89	2/27/89	22,616	Jewelry.
Boise Cascade Corp. (LPIWU)	Goldendale, WA	3/20/89	3/2/89	22,617	Lumber.
Bushue Well Serv. (workers)	Effingham, IL	3/20/89	3/3/89	22,618	Oil and gas.
Chalmers Exploration Co. (workers)	Abilene, TX	3/20/89	2/24/89	22,619	Oil and gas.
Decor Furs, Inc. (UFCW)	New York, NY	3/20/89	3/3/89	22,620	Jackets and coats.
E.G. & G, Princeton Applied Research (workers).	Princeton, NJ	3/20/89	3/3/89	22,621	Scientific instrumentation.
Elmer Little & Sons (ACTWU)	Jonestown, NY	3/20/89	3/1/89	22,622	Warehousing and distribution.
Forest Oil Corp. (workers)	Denver, CO	3/20/89	2/23/89	22,623	Oil and gas.
Forest Oil Corp. (workers)	Corpus Christi TX	3/20/89	2/23/89	22,624	Oil and Gas.
Forest Oil Corp. (workers)	Midland, TX	3/20/89	2/23/89	22,625	Oil and gas.
Fort Hill Lumber Co. (workers)	Grande Rhonde, OR	3/20/89	3/2/89	22,626	Softwood lumber.
Freeman Shoe Co. (workers)	Hanover, PA	3/20/89	2/28/89	22,627	Men's Shoes.
Gearhart Industries (workers)	Abilene, TX	3/20/89	2/28/89	22,628	Oil and gas.
H&W Drilling Fluids (company)	Littleton, CO	3/20/89	2/17/89	22,629	Drilling fluids.
Imprimis Technology, Inc. (workers)	Bloomington, MN	3/20/89	2/26/89	22,630	Disc Drives.
John Kiss & Sons (workers)	North Bergen, NJ	3/20/89	2/25/89	22,631	Sweaters.
Jones Drilling & Producing Co. (workers)	Fairfield, IL	3/20/89	2/27/89	22,632	Oil and gas.
Kinney Shoe Corp. (workers)	Ronney, WV	3/20/89	3/3/89	22,633	Footwear.
Leviton Mfg Co., Inc. (workers)	Little Neck MY	3/20/89	3/6/89	22,634	Electrical devices.
McAdams Roux & Associates, Inc.	Denver, CO	3/20/89	3/1/89	22,635	Oil and gas.
Miami Carey Corp. (USWA)	Monroe, OH	3/20/89	2/28/89	22,636	Accessories.
Miller Well Service (workers)	Fairfield,IL	3/20/89	3/3/89	22,637	Oil and gas.
Modine Mfg. Co. (UAW)	Trenton, MO	3/20/89	2/28/89	22,638	Radiators.
Nat Kaplan (workers)	New York, NY	3/20/89	3/2/89	22,639	Dress samples.
North American Underwear, Inc. (workers)	New York, NY	3/20/89	3/2/89	22,640	Panties and sleepwear.
Northwestern Supply Co., Inc. (workers)	Plainville, KS	3/20/89	2/28/89	22,641	Oil and gas.
O'Donnell Coal Co. (UMWA)	Indiana, PA	3/20/89	2/17/89	22,642	Bituminous coal.
Pacific Dunlop/GNB, Inc. (IBEW)	Salem, OR	3/20/89	2/23/89	22,643	Car batteries.
Pan Canadian Petroleum Co. (workers)	Denver, Co	3/20/89	2/28/89	22,644	Oil and gas.
Pico Products, Inc. (workers)	Liverpool, NY	3/20/89	2/10/89	22,645	Administrative and support services.
Quality plant Services (workers)	Yonkers, NY	3/20/89	3/6/89	22,646	Auto service.
R&C Drilling Co., Inc (workers)	Hays, KS	3/20/89	3/2/89	22,647	Oil and gas.
Reliable Acid, Inc. (workers)	Fairfield, IL	3/20/89	3/3/89	22,648	Oil and gas.
Seatide International Inc. (company)	Gretna, LA	3/20/89	2/23/89	22,649	Oil and gas.
Seville Construction, Inc. (workers)	Brooklyn, NY	3/20/89	2/14/89	22,650	Construction contractor.
Shenango Co. (USWA)	Dover, OH	3/20/89	3/17/89	22,651	Metal castings.
Simco Awards, Inc. (UAW)	New York, NY	3/20/89	2/28/89	22,652	Metal emblems.
Sonat Offshore Drilling, Inc.	New Orleans, LA	3/20/89	2/28/89	22,653	Oil and gas.
Thomas Drilling Co. (workers)	Duncan, OK	3/20/89	2/24/89	22,654	Oil and gas.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition number	Articles produced
United Mine Workers of America, District Number Two (UMWA).	Ebensburg, PA	3/20/89	3/2/89	22,655	Coal mining.
Wellington Leather Goods, Inc.	New York, NY	3/20/89	2/27/89	22,656	Leather briefcases.
Willow & Reed (IUE)	Elmhurst, NY	3/20/89	2/28/89	22,657	Furniture.

[FR Doc. 89-7836 Filed 3-31-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: Than an alternate method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register.** Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Date: March 14, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M-85-197-C.
FR Notice: 51 FR 6604.
Petitioner: Peabody Coal Company.
Reg. Affected: 30 CFR 75.305.
Summary of Findings: Due to deteriorating roof conditions in the return aircourses and seals, certain areas of the mine cannot be safely traveled. Petitioner's proposal to monitor the seals and aircourses on a daily basis from a safe location between the seals and the exhaust fan considered acceptable alternate method. Granted with conditions.

Docket No.: M-87-5-C.
FR Notice: 52 FR 6241.
Petitioner: AMAX Coal Company.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of metal locking devices, each consisting of a hinged fabricated metal bracket in lieu of padlocks for the purpose of securing battery nips to machine-mounted battery receptacles on permissible, mobile, battery-powered machines, considered acceptable alternate method. Granted with conditions.

Docket No.: M-87-9-C.
FR Notice: 52 FR 6242.
Petitioner: Clinchfield Coal Company.
Reg. Affected: 30 CFR 75.305.
Summary of Findings: Due to the structural characteristics of the mine roof in certain areas of the intake and the abutment pressures created from the adjacent mined-out longwall panel, certain areas cannot be safely examined. Petitioner's proposal to establish an evaluation checkpoint where a certified person will make weekly examinations of the air quantity, and test for methane and oxygen deficiency considered acceptable alternate method. Granted with conditions.

Docket No.: M-87-23-C.
FR Notice: 52 FR 9973.
Petitioner: Mid-Continent Resources, Inc.
Reg. Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use the belt haulage entry to ventilate active working places, and to install a low-level carbon monoxide (CO) detection system in all belt entries used as intake entries with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M-87-41-C.
FR Notice: 52 FR 9976.
Petitioner: Western Mingo Coal Company.
Reg. Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal to use contractors in lieu of circuit breakers to obtain undervoltage protection with specific conditions as outlined in petition, considered acceptable alternate method. Granted with conditions.

Docket No.: M-87-42-C.
FR Notice: 52 FR 9972.
Petitioner: Eastern Mingo Coal Company.
Reg. Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal to use contractors in lieu of circuit breakers to obtain undervoltage protection with specific conditions as outlined in petition, considered acceptable alternate method. Granted with conditions.

Docket No.: M-87-43-C.
FR Notice: 52 FR 9975.
Petitioner: Southern Mingo Coal Company.
Reg. Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal to use contractors in lieu of circuit breakers to obtain undervoltage protection with specific conditions as outlined in petition, considered acceptable alternate method. Granted with conditions.

Docket No.: M-87-44-C.
FR Notice: 52 FR 11770.
Petitioner: Rushton Mining Company.
Reg. Affected: 30 CFR 77.900.
Summary of Findings: Petitioner's proposal to utilize a combination motor controller, of adequate interrupting capacity, to function as a suitable circuit breaker and to utilize a ground monitoring device which drops out at 40 to 60 percent voltage to act as the undervoltage protection for the circuit

considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–48–C.
FR Notice: 52 FR 22551.
Petitioner: Mingo Coal Company, Inc.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–49–C.
FR Notice: 52 FR 11143.
Petitioner: Three X Coal Company.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of continuous methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–56–C.
FR Notice: 52 FR 11141.
Petitioner: H L & W Coal Company.
Reg. Affected: 30 CFR 75.301.
Summary of Findings: Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–71–C.
FR Notice: 52 FR 12097
Petitioner: Dominion Coal Corporation.
Reg. Affected: 30 CFR 75.1701.
Summary of Findings: Petitioner's proposed method of drilling boreholes in the face and rib considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–73–C.
FR Notice: 52 FR 11769.
Petitioner: Raco Mining Company.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of continuous methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–74–C.
FR Notice: 52 FR 27881.
Petitioner: Summar Coal Inc.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–75–C.
FR Notice: 52 FR 27879.
Petitioner: Red Rose Coal Company, Inc.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of continuous methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–82–C.
FR Notice: 52 FR 12098.
Petitioner: M & F Coal Company.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of continuous methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–85–C.
FR Notice: 52 FR 16466.
Petitioner: Jay Bird Energy Company.
Reg. Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part.

Docket No.: M–87–98–C.
FR Notice: 52 FR 16753.
Petitioner: G. and G. Coal and Equipment Company, Inc.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of continuous methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–99–C.
FR Notice: 52 FR 18754.
Petitioner: Laurel Fork Mining Company.
Reg. Affected: 30 CFR 77.1605(k).
Summary of Findings: Petitioner's proposal to develop a traffic system with specific conditions as outlined in the petition and to make daily inspections of all coal-hauling vehicles in lieu of providing berms or guards on the outer banks of elevated roadways considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–100–C.
FR Notice: 52 FR 16465.
Petitioner: Bill Branch Coal Company, Inc.
Reg. Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part.

Docket No.: M–87–101–C.
FR Notice: 52 FR 19431.
Petitioner: C & B Coal Company, Inc.
Reg. Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in diminution of safety. Granted in part.

Docket No.: M–87–102–C.
FR Notice: 52 FR 16466.
Petitioner: Sea "B" Mining Company.
Reg. Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.

Docket No.: M–87–104–C.
FR Notice: 52 FR 25322.
Petitioner: Action Energies, Inc.
Reg. Affected: 30 CFR 75.305.
Summary of Findings: Due to the age of the mine, deterioration of the roof and return aircourses and roof falls, certain areas of the mine cannot be safely traveled. Petitioner's proposal to establish measurement stations where air and methane readings will be taken considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–106–C.
FR Notice: 52 FR 21388.
Petitioner: Golden Oak Mining Company, Inc.
Reg. Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part.

Docket No.: M–87–112–C.
FR Notice: 52 FR 21390.
Petitioner: Stoney Fork Coal Company (Formerly Shevon Coal, Inc.).
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and menthane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–114–C.
FR Notice: 52 FR 27880.
Petitioner: Shell Energy Company, Inc.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded metal locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines, considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–116–C.
FR Notice: 52 FR 19432.
Petitioner: Greenwich Collieries.
Reg. Affected: 30 CFR 75.1100–2(b).
Summary of Findings: Petitioner's proposal to install a dry waterline system with automatic and manual water-charging capabilities considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–119–C.
FR Notice: 52 FR 22550.
Petitioner: Gordon Coal Company.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–124–C.
FR Notice: 52 FR 19785.
Petitioner: Lesco Mining Company.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–131–C.
FR Notice: 52 FR 27482.
Petitioner: K & M Coal Company, Inc.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–134–C.
FR Notice: 52 FR 23905.
Petitioner: Tug Huff Coal Corporation.
Reg. Affected: 30 CFR 75.305.
Summary of Findings: Due to deteriorating roof and roof falls, certain areas of the mine cannot be safely traveled.

Petitioner's proposal to inspect the return up to the fall area and then to proceed through a mandoor to the beltline which is only two breaks inside the mine, and to check the ventilation and water gauge at the fan daily to ensure proper ventilation in the mine considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–135–C.
FR Notice: 52 FR 27875.
Petitioner: C. R. & C. Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–136–C.
FR Notice: 52 FR 27482.
Petitioner: Minton Hickory Coal Company, Inc.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–142–C.
FR Notice: 52 FR 27874.,
Petitioner: Astor Coal Company.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–144–C.
*FR Notice:*52 FR 27876.
Petitioner: Elijah Coal Company.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–146–C.
FR Notice: 52 FR 28615.
Petitioner: Bowling Mountain Coal Company.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–147–C.
FR Notice: 52 FR 28617.
Petitioner: Wolf-Creek Collieries Company.
Reg. Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage (not to exceed 2,400 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–148–C.
FR Notice: 52 FR 27879.
Petitioner: Quarto Mining Company.
Reg. Affected: 30 CFR 75.1101–8.
Summary of Findings: Petitioner's proposal to use a single line of automatic water sprinklers for its fire protection system at its main and secondary belt conveyor drives with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–149–C.
FR Notice: 52 FR 28207.
Petitioner: Northwestern Resources Company.
Reg. Affected: 30 CFR 77.216–3(a).
Summary of Findings: Petitioner's proposal to examine the impounding structure at intervals not exceeding 31 days, or when the structure exceeds 50% of its design runoff volume, in which case the impounding structure would be examined at intervals not exceeding 7 days considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–1509–C.
FR Notice: 52 FR 29084.
Petitioner: Crescent Development Company, Inc.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded metal locking device in lieu of padlocks for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–151–C.
FR Notice: 52 FR 29086.
Petitioner: Kerr-McGee Coal Corporation.
Reg. Affected: 30 CFR 75.902.
Summary of Findings: Petitioner's proposal to use 480 volt, three phase power distribution, without the need of the ground check circuit in the No. 6 Shop considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–153–C.
FR Notice: 52 FR 27882.
Petitioner: U.S. Steel Mining Company, Inc.
Reg. Affected: 30 CFR 1002.
Summary of Findings: Petitioner's proposal to use high-voltage (not to exceed 4,160 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–154–C.
FR Notice: 52 FR 34435.
Petitioner: Kelly Mining Company.
Reg. Affected: 30 CFR 75.301.
Summary of Findings: Proposed airflow reduction which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–156–C.
FR Notice: 52 FR 28206.
Petitioner: Belva Contracting Company.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–157–C.
FR Notice: 52 FR 28617.
Petitioner: Wilton Contracting.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–158–C.
FR Notice: 52 FR 29084.
Petitioner: CY Smith, Inc.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted in parts.

Docket No.: M–87–159–C.
FR Notice: 52 FR 27873.
Petitioner: Aspen Mining Company, Inc.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded metal locking device in lieu of padlocks for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–161–C.
FR Notice: 52 FR 28616.
Petitioner: Colket Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–164–C.
FR Notice: 52 FR 32074.
Petitioner: Barbara Kay Coal Corporation.
Reg. Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part.

Docket No.: M–87–165–C.
FR Notice: 52 FR 27880.
Petitioner: Smooth Sailing Coal Company, Inc.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–166–C.
FR Notice: 52 FR 29086.
Petitioner: Hubbs Creek Coal.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–167–C.
FR Notice: 52 FR 29085.
Petitioner: Girdner Mining Company.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–172–C.
FR Notice: 52 FR 29087.
Petitioner: Old Ben Coal Company.
Reg. Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage (not to exceed 2,400 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–173–C.
FR Notice: 52 FR 28616.
Petitioner: Consolidation Coal Company.
Reg. Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal to enclose a pump in a fireproof housing and to install an automatic fire suppression device activated by heat sensors considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–176–C.
FR Notice: 52 FR 29087.
Petitioner: S&S Anthracite, Inc.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–177–C.
FR Notice: 52 FR 34435.
Petitioner: K. and H. Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–178–C.
FR Notice: 52 FR 29085.
Petitioner: Granny Rose Coal Company, Inc.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–180–C.
FR Notice: 52 FR 31099.
Petitioner: International Anthracite Corporation.
Reg. Affected: 30 CFR 77.1914(a).
Summary of Findings: Petitioner's proposal to use non-permissible locomotives in the Ventilation Haulage Drift with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–186–C.
FR Notice: 52 FR 32615.
Petitioner: AMAX Coal Company.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to use 700 feet of portable trailing cables in lieu of 500 feet of portable trailing cables on shuttle cars considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–195–C.
FR Notice: 52 FR 34436.
Petitioner: Oakwood Mining Company.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of metal locking devices, each consisting of a fabricated metal bracket and a metal locking screw in lieu of padlocks for the purpose of locking battery plugs to machine-mounted battery-powered machines, considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–200–C.
FR Notice: 52 FR 39721.
Petitioner: Keno Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–204–C.
FR Notice: 52 FR 37852.
Petitioner: J.J.G. Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around

the gunboat, and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–205–C.
FR Notice: 52 FR 37853.
Petitioner: Raven Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–216–C.
FR Notice: 52 FR 45401.
Petitioner: North Mountain Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–224–C.
FR Notice: 52 FR 42356.
Petitioner: Webster County Coal Corporation.
Reg. Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal to clean out and plug oil and gas wells using specific techniques and procedures prior to mining through considered acceptable alternate method. Granted.

Docket No.: M–87–225–C.
FR Notice: 52 FR 46133.
Petitioner: Chestnut Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–226–C.
FR Notice: 52 FR 42355.
Petitioner: Old Ben Coal Company.
Reg. Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use 2400-volt a.c. high-voltage cables to supply power to longwall mining equipment inby the last open crosscut and within 150 feet of gob areas with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–232–C.
FR Notice: 52 FR 46864.
Petitioner: Charity Coal Company, Inc.
Reg. Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.

Docket No.: M–87–246–C.
FR Notice: 52 FR 46009.
Petitioner: Jim Walter Resources, Inc.
Reg. Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage (2,300 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–277–C.
FR Notice: 53 FR 583.
Petitioner: Consolidation Coal Company.
Reg. Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal to seal the Pocahontas No. 3 Coal Seam from the surrounding strata at the affected wells using specific techniques and procedures considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–293–C.
FR Notice: 53 FR 1868.
Petitioner: Eastern Associated Coal Corporation.
Reg. Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage (2,400 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–79–17–M.
FR Notice: 44 FR 44980.
Petitioner: Rio Algom Corporation.
Reg. Affected: 30 CFR 57.22305.
Summary of Findings: Petitioner's proposal to use suitable schedule 24 qualified mobile diesel-powered equipment beyond the last open crosscut in lieu of schedule 31 equipment with specific conditions considered acceptable alternate method. Granted with conditions.

[FR Doc. 89–7838 Filed 3–31–89; 8:45 am]
BILLING CODE 4510–43–M

[Docket No. M–89–29–C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Loveridge No. 22 Mine (I.D. No. 46–01433) located in Marion County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitoner's statements follows:

1. The petition concerns the requirement that return aircourses and bleeder entries be examined in their entirety on a weekly basis.

2. The affected return aircourses and bleeder entries are experiencing deterioration of roof rib conditions and an accumulation of water. Restoration of these areas would expose workers to hazardous conditions.

3. As an alternate method, petitioner proposes to establish checkpoints at specific locations where air and methane readings would be taken by a certified person weekly. In support of this request, petitioner states that—

(a) Signs stating "Stay Out-Abandoned Area" would be posted at the designated areas to prevent persons from entering;

(b) All monitoring stations and the approaches to the stations would be maintained in a safe condition; and

(c) The person making the examinations and tests would place his/her initials and the date and time at each station. A record of these examinations, tests and actions taken would be recorded in a book kept on the surface.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 3, 1989. Copies of the petition are available for inspection at that address.

Date: March 21, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–7837 Filed 3–31–89; 8:45am]
BILLING CODE 4510–43–M

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY

Meeting

AGENCY: National Commission to Prevent Infant Mortality.

ACTION: Notice of open hearing.

SUMMARY: In accordance with Pub. L. 99–660, notice is given of a meeting of the National Commission to Prevent Infant Mortality. The Purpose of the meeting is to discuss the strategic workplan of the Commission.

DATE: April 5, 1989.

TIME: 10:30 a.m.–12:30 p.m.

ADDRESS: The Dirksen Senate Office Building (Rm. 215), 1st Street & Constitution Ave., NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Betty Palmer, 202–472–1364.

Rae K. Grad,

Executive Director.

[FR Doc. 89–7907 Filed 3–31–89; 8:45 am]

BILLING CODE 6820-SK-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306]

Northern State Power Co.; Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–42 and DPR–60, issues to Northern States Power Company (the licensee), for operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue County, Minnesota.

Environmental Assessment

Identification of Proposed action

The proposed amendments would revise the technical Specifications (TSs) by deleting the steam/feedwater mismatch flow in coincident with the low feedwater flow reactor trip.

The proposed action is in accordance with the licensee's application for amendment dated July 18, 1988 as supplemented by letters dated September 15, 1988 and March 10, 1989.

The Need for the Proposed Action

The proposed changes to the TSs is required in order to permit the installation of a new feedwater flow control system that will result in a significant improvement in plant reliability.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the Technical Specifications. The proposed revision would eliminate the reactor trip dealing with low steam generator water level coincident with steam/feedwater mismatch flow. This proposed change does not impact on the reactor licensed thermal power level. Since the evaluation demonstrates that the plant does not exceed the acceptable thermal limits, the proposed change does not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environment impact.

With regard to potential nonradiological impacts, the proposed change to the TSs involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradioloical plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 8, 1989, (54 FR 6201). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the final Environmental Statements related to the Prairie Island Nuclear Generating Plant Unit Nos. 1 and 2 dated May 1973.

Agencies and Person Consulted

The Commission's staff review the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 18, 1988, and supplemented by letters dated September 15, 1988 and March 10, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Technology and Science Department, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 28th day of March 1989.

For the Nuclear Regulatory Commission.

Dominic C. DiIanni,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–7815 Filed 3–31–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–374]

Commonwealth Edison Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–18, issued to the Commonwealth Edison Company (the licensee), for operation of the LaSalle County Station, Unit 2, located in LaSalle County, Illinois.

Identification of Proposed Action

The amendment would consist of changes to the Technical Specifications (TS) and would authorize an increase of the storage capacity of the spent fuel pool from 1120 fuel assemblies to 4078 fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated September 19, 1986 as supplemented August 18, 1987. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the

Office of Nuclear Reactor Regulation Relating to the Expansion of the Spent Fuel Pool," Facility Operating License No. NPF–18, Commonwealth Edison Company, LaSalle County Station, Unit 2, Docket No. 50–374, dated March 28, 1989.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG–0575), Volumes 1–3, concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For the LaSalle County Station, Unit 2, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or non-radiological environmental impacts.

The estimated additional whole body dose that might be received by an individual at the site boundary is less than 0.1 mrem/year; the estimated dose to the population within an 80 kilometer radius is expected to be less than 0.1 person-rem/year. These doses are small compared to the fluctuations in the annual dose this population receives from exposure to background radiation. The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than two percent of the total annual occupational radiation exposure for this facility.

The only non-radiological impact affected by the SFP expansion is the waste heat rejected. The increase in total plant waste heat is estimated to be less than 0.01 percent. There is no significant environmental impact attributed to the waste heat from the plant due to this very small increase.

Finding of No Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR Part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment to the Technical Specifications dated September 19, 1986 as supplemented on August 18, 1987; and additional information provided by the licensee in letters dated November 5, 24, 1987 and May 17, 1988, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), (3) the Final Environmental Statement for LaSalle County Station, Units 1 and 2, dated November, 1978, and (4) the Environmental Assessment dated ——.

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Rockville, Maryland, this 28th day of March 1989.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–7816 Filed 3–31–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Instrumentation and Control Systems; Meeting

The ACRS Subcommittee on Instrumentation and Control Systems will hold a meeting on April 21, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, April 21, 1989—8:30 a.m. until the conclusion of business.

The Subcommittee will review the implementation status of the ATWS rule.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 28, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89–7826 Filed 3–31–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–373 and 50–374]

Commonwealth Edison Co.; Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the withdrawal of an amendment application dated October 5, 1988, filed by Commonwealth Edison Company (the licensee). The application requested amendments to Facility Operating License Nos. NPF–11 and NPF–18 for operation of LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois.

The proposed amendment would have changed the Technical Specifications by deleting Figure 6.1–1, "Corporate Organization," and Figure 6.1–2, "Station Organization," and revising section 6 to require inclusion of these organization charts in the QA Topical Report. The Commission issued a Notice of Consideration of Issuance of Amendment which was published in the **Federal Register** on February 1, 1989 (54 FR 5162).

By letter dated February 21, 1989, the licensee witdrew the application of the proposed amendment due to the

reorganization. The Commission has considered the licensee's February 21, 1989 letter and has determined that permission to withdraw the October 5, 1988 application for amendment should be granted.

For further details with respect to this action, see (1) The application for amendment dated October 5, 1988, and (2) the licensee's letter dated February 21, 1989 withdrawing the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Dated at Rockville, Maryland this 28th day of March 1989.

For the Nuclear Regulatory Commission.

Paul C. Shemanski,

Project Manager, Project Directorate III–2, Division of Reactor Projects III, IV, V, and Special Projects.

[FR Doc. 89–7817 Filed 3–31–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–237, 50–249, 50–254 and 50–265]

Commonwealth Edison Co.; Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the withdrawal of amendment applications dated October 5, 1988 as supplemented by a November 7, 1988 submittal, filed by Commonwealth Edison Company (the licensee). The application requested amendments to Provisional Operating License No. DPR–19 and Facility Operating License No. DPR–25 for operation of Dresden Nuclear Power Station Units 2 and 3, located in Grundy County, Illinois and Facility Operating License Nos. DPR–29 and DPR–30 for operation of Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois.

The proposed amendment would have deleted the "Offsite Organization" and "Station Organization" charts from the Technical Specifications and would revise Section 6 to require inclusion of these organizational charts in the QA Topical Report. The Commission issued a Notice of Consideration of Issuance of Amendment which was published in the **Federal Register** on December 30, 1988 (53 FR 53088) for Dresden Units 2 and 3 and on November 16, 1988 (53 FR 46141) for Quad Cities Units 1 and 2.

By letter dated February 21, 1989, the licensee withdrew the application of the proposed amendments for both Dresden and Quad Cities because a major corporate reorganization has been finalized since its submittal which has outdated the amendments. The Commission has considered the licensee's February 21, 1989 letter and has determined that permission to withdraw the October 5, 1988 application for amendments should be granted.

For futher details with respect to this action, see: (1) The application for amendments dated October 5, 1988 and supplemental information dated November 7, 1988, and (2) the licensee's letter dated February 21, 1989 withdrawing the application for the license amendments. The above documents are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450 for Dresden Units 2 and 3, and at the Dixon Public Library, 221 Hennepin Avenue, Dixon Illinois 61021 for Quad Cities Units 1 and 2.

Dated at Rockville, Maryland this 28 day of March 1989.

For the Nuclear Regulatory Commission.

Byron L. Siegel,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III, IV, V, and Special Projects.

[FR Doc. 89–7818 Filed 3–31–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–321]

Georgia Power Co. et al; Denial of Amendment to Facility Operating License and Opportunity for Hearing

In the matter of Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia.

The United States Nuclear Regulatory Commission (the Commission) has denied a request by the licensee for an amendment to Facility Operating License No. DPR–57, issued to the Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia and City of Dalton, Georgia (the licensee) for operation of the Edwin I. Hatch Nuclear Plant, Unit 1 (the facility) located in Appling County, Georgia.

The denied amendment, as proposed by the licensee, would modify the Unit 1 Technical Specifications (TS) to delete Table 3.7–1, "Primary Containment Isolation Valves." The table would be replaced with a reference to valve listings contained in plant procedures. The amendment was requested March 3, 1986.

The licensee's application for the amendments was published in the **Federal Register** on May 8, 1986 (51 FR 17116).

Amendment No. 129 dated September 25, 1986, to the operating license updated and corrected valve listings in Tables 3.7–1 and 3.7–4 in response to a request by the licensee.

Since Amendment No. 129 corrected the errors in the valve listings which served as the initial impetus for the March 3, 1986, request, the March 3, 1986, request was denied. The licensee was notified of the Commission's denial of this request by letter dated January 26, 1989.

By May 3, 1989, the licensee may demand a hearing with respect to the denial described above and any person whose interst may be affected by the proceeding may file a written petition for leave to intervene.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated March 3, 1986, and (2) the Commission's letter to Georgia Power Company dated January 26, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 28th day of March 1989.

For the Nuclear Regulatory Commission.

Lawrence P. Crocker,

Project Manager, Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–7819 Filed 3–31–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461]

Illinois Power Co., et al.; Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has issued Amendment No. 20 to Facility Operating License No. NPF–62 issued to the Illinois Power Company* (IP), and Soyland Power Cooperative, Inc. (the licensees), for operation of the Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

The amendment consists of proposed changes to the Operating License to reflect an adjustment of the ownership interest in Clinton Power Station (CPS) which would occur if Soyland Power Cooperative (Soyland) merges with Western Illinois Power Cooperative (WIPCO) and WIPCO ceases to exist as a separate entity. Soyland and WIPCO are minority owners of CPS with a combined ownership share of less than 15%. WIPCO and Soyland, in addition to IP are currently licensees for CPS. Therefore, the merger of Soyland and WIPCO will not result in the transfer of the license to any entity not currently a licensee for CPS. Soyland will assume full responsibility for all CPS obligations currently being discharged by WIPCO. The proposed license amendment will not change the share of ownership that IP has in CPS, will not change IP's commitments related to capital and operating and maintenance costs, and will not affect IP's role as project manager.

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 licensees' amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on November 22, 1988 (53 FR 47287). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to this action and has determined not to prepare an environmental impact statement. Based upon the Environmental Assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see: (1) The application for amendment dated November 2, 1988 (2) Amendment No. 20 to License No. NPF–62, and (3) the Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC; and at Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. 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 Reactor Projects.

Dated at Rockville, Maryland this 27th day of March 1989.

For the Nuclear Regulatory Commission.

John B. Hickman,

Project Manager Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–7820 Filed 3–31–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–483]

Union Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 42 to Facility Operating License No. NPF–30, issued to Union Electric Company, which revised the Technical Specifications for operation of the Callaway Plant, Unit 1, located in Callaway County, Missouri. The amendment was effective as of the date of issuance.

The amendment modified the Technical Specifications to reduce the required Residual Heat Removal (RHR) system flowrate during Mode 6 operation, delete the RHR autoclosure interlock (ACI) function, and allow the safety injection (SI) pumps to be energized with the head on and with water level not above the top of the reactor vessel flange, in Modes 5 and 6.

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.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on February 8, 1989 (54 FR 6222). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human enviroment.

For further details with respect to the action see: (1) The application for amendment dated January 6, 1989, and supplemented by letter dated February 10, 1989, (2) Amendment No. 42 to License No. NPF–30, (3) the Commission's related Safety Evaluation dated March 27, 1989 and (4) the Environmental Assessment dated March 13, 1989. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW, and at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251, and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 27th day of March 1989.

For the Nuclear Regulatory Commission.

James R. Hall,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–7821 Filed 3–31–89, 8:45 am]

BILLING CODE 7590–01–M

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*Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments in Connnection With Presidential Review of Limited Exclusion Order and Cease and Desist Orders Issued Under Section 337 of the Tariff Act of 1930

AGENCY: Office of the United States Trade Representative.

ACTION: Request for public comments on the limited exclusion order and cease and desist orders issued by the U.S. International Trade Commission (USITC or Commission) in Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes For Making Such Memories, Inv. No. 377–TA–276.

SUMMARY: On March 23, 1989, the USITC referred to the President for review its determination that there is a violation of Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), in the unauthorized importation into the United States, sale for importation into the United States, and sale in the United States, of certain erasable programmable read only memories (EPROMs) which infringe certain claims of U.S. Letters Patent 4,223,394, 4,519,050, 4,103,189 and/or 4,685,084. These patents are owned by Intel Corporation (Intel) of Santa Clara, California.

The USITC issued an order directing the U.S. Customs Service to exclude from the United States EPROMs of 256 or 512 kilobits (whether assembled or unassembled or which are incorporated into a carrier of any form or assembled onto circuit boards of any configuration) manufactured abroad by Hyundai Electronics Industries Co., Ltd. (Hyundai) or any of its affiliated companies, parents, subsidiaries, licensees, contractors or other related entities pursuant to designs and process technology provided to it by General Instrument Corporation and/or Microchip Technology, Inc. (GI/Microchip) that infringe the above cited patents for the remaining terms of the patents, except under license from the patent owner or as provided by law.

The order also excludes computers, computer peripherals, telecommunications equipment and automotive electronic equipment manufactured by Hyundai containing 256 or 512 kilobit EPROMS that infringe the subject patents for the remaining terms of the patents except under license from the patent owner or as provided by law.

In addition, EPROMs of 64, 256, 512, or 1024 kilobits (whether assembled or unassembled, or which are incorporated into a carrier of any form or assembled into circuit boards of any configuration) manufactured abroad by or for Atmel Corporation (Atmel) or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities that infringe the subject patents are excluded from entry into the United States for the remaining term of the patents, except under license of the patent owner, or as provided by law.

Similarly, the order excludes EPROMs of 256 or 512 kilobits (whether assembled or unassembled or incorporated into a carrier of any form or assembled onto a circuit board of any configuration) manufactured abroad by or for GI/Microchip that infringe the subject patents for the remaining terms of the patents, except under license of the patent owner, or as provided by law.

The limited exclusion order provides that pursuant to procedures to be specified by the U.S. Customs Service, persons seeking to import computers, computer peripherals, telecommunications equipment, or automotive electronic equipment manufactured by Hyundai, carriers of any form, and/or circuit boards of any configuration, containing EPROMs, shall prior to the entry or at entry summary of such products into the United States, certify that they have made appropriate inquiry and thereupon state that to the best of their knowledge and belief any EPROMs incorporated into, assembled onto, or contained in such products are not covered by this order.

The limited exclusion order specifies that certain EPROMs covered by a consent order issued in this investigation or assembled EPROMs imported by or on behalf of Microchip containing chips which were wafer fabricated in the United States are not covered by the order. Furthermore, EPROMs imported by or for the U.S. government are not subject to the exclusion order.

The USITC set the bond that applies during the Presidential review period at 100 percent of the value of the EPROMs concerned. However, computers computer peripherals, telecommunications equipment, and automotive electronic equipment manufactured by Hyundai is permitted to enter free of bond during the Presidential review period.

The USITC also issued cease and desist orders against Atmel, Microchip, All-American Semiconductor, Inc., Cypress Electronics, Inc. and Pacesetter Electronics. The cease and desist orders require these firms to stop importing, selling for importation, assembling, testing, marketing, distributing, offering for sale, and selling in the United States certain EPROMS in violation of section 337.

Under section 337(j), the President, for policy reasons may disapprove the Commission's determination within 60 days following receipt of the determination and record. If disapproved by the President, the determination, and any order issued under its authority, would be without force or effect. The President also may approve the Commission's determination rendering the determination and order final on the date that the Commission receives notice of the approval. If the President takes no action to approve or disapprove the determination and order, they become final automatically following the 60-day review period.

Interested parties may submit comments concerning foreign or domestic policy issues that should be considered by the President in making his decision regarding this investigation. Parties commenting on domestic policy issues should specifically refer to the portion of the Commission's record related to that issue. If the domestic policy issue was not raised before the Commission, parties should provide a rationale for that omission.

Comments may not exceed 15 letter-sized pages, including attachments. Parties must provide twenty copies of the submission to the Secretary, Trade Policy Staff Committee, Room 523, 600 17th Street, NW., Washington, DC 20506. Requests for confidential treatment of information must conform to USTR regulations set forth at 15 CFR 2003.6. All submissions must be received by close of business, Monday, April 10, 1989.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field or Warren Maruyama, Office of the U.S. Trade Representative (202) 395–3432.

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

[FR Doc. 89–7955 Filed 3–31–89; 8:45 am]

BILLING CODE 3190–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public hearing.

SUMMARY: The Physician Payment Review Commission will hold a public meeting on Thursday, April 6, 1989, from 9:00 a.m. to noon. The meeting will be held in The Grand Hotel, 2350 M Street, NW., in Room V. The meeting will be devoted to reviewing the draft of the Commission's upcoming report to Congress. The Commissioners will review the chapter summarizing the Commission's recommendations and resolve any outstanding issues during the public session. It will then conduct its editorial review of other chapters in executive session.

ADDRESS: The Commission office is located in Suite 510, 2120 L Street, NW., Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653-7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 89-7748 Filed 3-31-89; 8:45 am]

BILLING CODE 6820-SE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89-023]

Lower Mississippi River Waterway Safety Advisory Committee; Solicitation for Membership

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Lower Mississippi River Waterway Safety Advisory Committee. Present appointments will expire with the present committee charter on August 1, 1989. Approximately twenty four memberships will be filled.

Applicants may be of State and local government, the marine industry, environmental groups, academia, and other interested parties. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The purpose of the committee is to provide consultation and local expertise on such matters as communication, traffic control, anchorages and other related topics in areas of maritime safety affecting this waterway. The committee normally meets once each quarter at various locations within the New Orleans area. Members serve voluntarily, without compensation from the Federal Government for salary, travel, or per diem. Term of membership will not exceed the expiration of the committee charter, August 1, 1991.

DATES: Requests for applications should be received no later than April 15, 1989. Completed applications should be returned no later than May 15, 1989.

ADDRESS: Persons interested in applying should write to Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396.

FOR FURTHER INFORMATION CONTACT: Commander Gary A. Bird, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, C/O Commander Eighth Coast Guard District (oan) Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone (504) 589-6234.

Dated: March 17, 1989.

W.F. Merlin,

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

[FR Doc. 89-7847 Filed 3-31-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Railroad Administration

Petitions for Exemption or Waiver

In accordance with 49 CFR §§ 211.9 and 211.41, notice is hereby given that three railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of 12 hours. However, the Hours of Service Act contains a provision that permits a railroad which employs not more than 15 employees who are subject to the statute to seek an exemption from the 12-hour limitation.

Algers, Winslow & Western Railway Company (AWW)

[ERA Waiver Petition Docket No. HS-89-1]

The AWW seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The AWW states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The AWW provides service on over 16 miles of track from a connection with the Consolidated Rail Corp. (Conrail) and the Norfolk Southern Railway at Oakland City Junction, Indiana to Enosville and Algers, Indiana.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Housatonic Railroad (HRR)

[ERA Waiver Petition Docket No. HS-89-2]

The HRR seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The HRR plans to provide service on over 34 miles of track between Canaan and New Milford, Connecticut.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Huron and Eastern Railway Company (HESR)

[ERA Waiver Petition Docket No. HS-89-3]

The HESR seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The HESR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The HESR provides service on over 82 miles of track from a connection with the CSX at Bad Axe, to Groswell, with branches from Bad Axe to Port Austin and from Palms to Harbor Beach. All operations occur within the state of Michigan.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceeding should identify the appropriate docket number (e.g., Waiver

Petition Docket No. HS–87–20 and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before May 18, 1989, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on March 23, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89–7853 Filed 3–31–89; 8:45 am]

BILLING CODE 4910–06–M

[FRA Waiver Petition Docket Number PB–88–7]

Public Hearing on Burlington Northern Railroad Company's Train Air Brake Test Program

In accordance with 49 CFR 211.41, notice is given that the Federal Railroad Administration (FRA) will hold a public hearing on the Burlington Northern Railroad Company's (BN) petition for a permanent waiver of certain provisions of FRA's Railroad Power Brakes Regulation in order to use trains with air repeater units. This proceeding is identified as FRA waiver petition docket number PB–88–7.

BN's specific request is for relief from the obligation to conduct a leakage test on the portion of the train to the rear of the repeater unit. Trains containing repeater units would operate on various subdivisions of the BN's Chicago, Twin Cities, Billings, Seattle and Denver regions. (For further details see FRA notice published at 53 FR 50617–50618 and 50619, December 16, 1988.)

The Railway Labor Executive Association and the United Transportation Union have protested BN's application and requested a hearing. After examining BN's petition, the protests and hearing requests and the available facts, FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on June 6, 1989, in Room 2230 at 400 7th Street, SW., Washington, DC 20590.

The hearing will be an informal, nonadversary proceeding and will be conducted by a representative designated by FRA. Strict rules of evidence will not apply, and cross-examination will be somewhat limited. The FRA representative will make an opening statement outlining the scope of the hearing. Then each person in attendance will be permitted to make an initial statement. After each initial statement is completed, the hearing officer, the technical panel, and the audience will be allowed to question the witness. After all the initial statements are completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so, in the same order in which they made their initial statements. In addition, written statements or other documents may be submitted at the hearing for inclusion in the record of this proceeding. If practical, eight copies of each written statement or other document should be submitted. Additional procedures, if necessary for the conduct of the hearing will be announced at the hearing.

Issued in Washington, DC on March 20, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89–7854 Filed 3–31–89; 8:45 am]

BILLING CODE 4910–06–M

Meeting; Northeast Corridor Safety Committee

Pursuant to section 11 of the Rail Safety Improvement Act of 1988 (Pub. L. 100–342), notice is hereby given that a meeting of the Northeast Corridor Safety Committee will be held on April 20, 1989, at 10:00 a.m. in the Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

This meeting is called for the purpose of providing counsel and advice to the Department of Transportation on safety improvements on the main line of the Northeast Corridor (NEC). The agenda will include discussions on opportunities for improving safety on the NEC. Because the discussions will include economic and financial information which need to remain confidential, this meeting will be closed to the public.

Dated: March 29, 1989.

John H. Riley,

Federal Railroad Administrator.

[FR Doc. 89–7784 Filed 3–31–89; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 89–43]

Extension of Analyses for Which Commercial Laboratories Have Been Accredited to Perform

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Publication of additional analyses for which certain Customs-accredited commercial laboratories have been approved to perform.

SUMMARY: On July 1, 1988, (T.D. 88–37) Customs published a comprehensive list of approved gaugers and accredited laboratories along with the commodities they were approved to analyze or gauge. Subsequent to this publication certain accredited laboratories were granted additional accreditations to perform analyses which had not been originally listed. Customs is publishing a list of supplemental accreditations.

SUPPLEMENTARY INFORMATION: Part 151 of the Customs Regulations provides for the acceptance of gauging reports and analysis reports from Customs-approved commercial gaugers and Customs-accredited commercial laboratories, respectively, for certain products. Section 151.13(f) requires that notices of approval of these organizations and individuals be published in the **Federal Register** and the *Customs Bulletin.* A comprehensive list of approved commercial gaugers and accredited commercial laboratories was published in both the **Federal Register** and the *Customs Bulletin* on July 1, 1988. Since this comprehensive list was published, individual approvals, accreditations and revocations of commercial gaugers and commercial laboratories have been published as required by § 151.13(f) CFR. However, extensions for laboratories to analyze additional commodities have not been published. The purpose of this notice is to publish the additional analyses for which commercial laboratories have been accredited.

The accreditations of the organizations and individuals listed in the table are effective in all Customs districts.

EFFECTIVE DATE: March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Donald A. Cousins, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–2446).

Dated: March 29, 1989.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

EXTENSIONS GRANTED TO CUSTOMS-ACCREDITED COMMERCIAL LABORATORIES LISTING THE LABORATORY ANALYSES FOR WHICH EXTENSIONS HAVE BEEN ISSUED TO THEIR ORIGINAL APPROVALS UNDER § 151.13(a) OF THE CUSTOMS REGULATIONS (19 CFR 151.13(a)) AS AMENDED BY T.D. 89-1

Name of Laboratory	Laboratory Analyses of Products That May Be Performed Under § 151.13(a)(2)														
	Petroleum and Petroleum Products				Sugar, Sirups and Molasses				Organic Chemicals		Standard Newsprint				
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Caleb Brett U.S.A., Inc			X						X	X					
Camin Cargo Control, Inc			X	X											
Chem Coast, Inc									X	X					
Commodity Control Services Corp			X						X	X					
Dixie Services Inc			X	X					X	X					
Johnniew Wilson Inspections				X											
P. J. Heinrici, Inc				X					X	X					

1 API gravity, § 151.13(a)(2)(i)(A).
2 Amount of sediment and water (S&W), § 151.13(a)(2)(i)(B).
3 Antiknock index, § 151.13(a)(2)(i)(C).
4 Distillation characteristics, § 151.13(a)(2)(i)(D).
5 Sugar degrees determined by polariscope, § 151.13(a)(2)(ii)(A).
6 Percent soluble nonsugar solids, § 151.13(a)(2)(ii)(B).
7 Percent total sugars, § 151.13(a)(2)(ii)(C).
8 Weight per gallon in air at 60.F, § 151.13(a)(2)(ii)(D).
9 Indentity using common or IUPAC nomenclature, § 151.13(a)(2)(iii)(A).
10 Composition, giving percent by weight of each component, § 151.13(a)(2)(iii)(B).
11 Weight per (Customs) ream, § 151.13(a)(2)(iv)(A).
12 Thickness, § 151.13(a)(2)(iv)(B).
13 Time of transudation of water (ground glass method), § 151.13(a)(2)(iv)(C).
14 Percent by weight ash, § 151.13(a)(2)(iv)(D).
15 Ingersoll gloss, § 151.13(a)(2)(iv)(E).

[FR Doc. 89-7832 Filed 3-31-89; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 62
Monday, April 3, 1989

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).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (Eastern Time) Monday, April 10, 1989.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington DC 20507.

STATUS: Part of the meeting will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations—(Given by the Office of Management—Information Systems Services).

Closed Session

1. Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals.
2. Litigation Authorization: General Counsel Recommendations.
3. Discussion of Commissioners' Charges.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at any time for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 634–6748.

Dated: March 29, 1989

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 89–7883 Filed 3–30–89; 10:38 am]

BILLING CODE 6750–06–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:08 a.m. on Tuesday, March 28, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the possible closing of certain insured banks, and (2) a recommendation regarding an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: March 29, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89–7954 Filed 3–30–89; 2:34 pm]

BILLING CODE 6714–01–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE (NCLIS)

DATE AND TIME: April 13–14, 1989.

PLACE:

April 13, 1989, Embassy Suites Hotel, Delegate Room, 1250 22nd Street, NW., Washington, DC 20037

April 14, 1989, Martin Luther King Memorial Library, Room 443, 901 G Street NW., Washington, DC 20001

STATUS:

April 13, 1989, 1:00 p.m.–4:00 p.m., Open

April 13, 1989, 4:00 p.m.–5:45 p.m., Closed, Sec. 1703.202(2) and (6) of the Code of Federal Regulations, 45 CFR, Part 1703

April 14, 1989, 9:15 a.m.–12:00 noon, Open

MATTERS TO BE DISCUSSED:

Chairman's Report
Executive Director's Report
- FY '89 Second Quarter Program Reports
- Administrative Report

Approval of January 26–27, 1989 Minutes
Report on Georgia State Library Programs and Activities—Joe Forsee, State Librarian
Discussion on A130—Frank Reeder, Information Policy Director, OMB
Discussion on Indian Library Services—Dr. Anne J. Mathews, Director of Library Programs, Department of Education; Mr. William Ragsdale, Acting Assistant Secretary of Indian Affairs, Department of Interior
Report on District of Columbia Public Library Programs and Activities—Dr. Hardy R. Franklin, Director, DC Public Library System
NCLIS Committee Reports
- Budget and Finance
- Governance
- Indian Library Services
- Information Age
- International
- Legislative
- Program Review
- White House Conference on Library and Information Services II

Special provisions will be made for handicapped individuals by calling Jane McDuffie (202) 254–3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Susan K. Martin, NCLIS Executive Director, 1111 18th Street, N.W., Suite 310, Washington, DC 20036, (202) 254–3100.

Dated: March 28, 1989.

Jane D. McDuffie,

Staff Assistant.

[DR Doc. 89–7913 Filed 3–3–89; 12:51pm]

BILLING CODE 7527–01–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE (NCLIS)

DATE AND TIME: April 12, 1989.

PLACE: The Library of Congress, Madison Building, Sixth Floor, Mumford Room, 101 Independence Avenue, SE., Washington, DC 20540.

STATUS: April 12, 1989, 10:00 a.m.–4:30 p.m., Open.

MATTERS TO BE DISCUSSED:

White House Conference on Library and Information Services Conference II
- Review Public Law 100–382
- Review White House Conference Advisory Committee (WHCAC) Charge and Responsibilities
- Election of White House Conference on Library and Information Service

Chairman
Review White House Conference Preliminary Design Group Report
Tentative Establishment of WHCAC Committee Structure
Review Video of the 1979 White House Conference on Library and Information Conference
WHCAC Committee Meetings
WHCAC Committee Reports and Discussion
Review Status of Funding of Pub. L. 100–382
Fund Raising
Future Activities

Special provisions will be made for handicapped individuals by calling Jane Mc Duffie (202) 254–3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Mary Alice Hedge Reszetar, NCLIS Associate Director, 1111 18th Street, NW., Suite 310, Washington, DC 20036, (202) 254–3100.

Dated: March 28, 1989.

Jane D. Mc Duffie,

Staff Assistant.

[FR Doc. 89–7912 Filed 3–3–89; 12:51 pm]

BILLING CODE 7527–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

AGENCY: Institute of Museum Services.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME & DATE: 08:00 a.m., Thursday, April 27, 1989.

STATUS: Open.

ADDRESS: The Inn on the Alameda, 303 East Alameda, Santa Fe, New Mexico 87501, (505) 984–2121.

FOR FURTHER INFORMATION CONTACT: William Laney, Executive Assistant to the National Museum Services Board, Room 510, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786–0536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of April 27, 1989 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum Services, Room 510, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786–0536, TDD (202) 682–5496 at least seven (7) days prior to the meeting.

A True Copy, National Museum Services Board, April 27, 1989, Meeting Agenda

I. NMSB Chairman's Report & Approval of Minutes of November 18, 1988 NMSB Meeting
II. IMS Director's Report
III. IMS Regulatory Report
IV. IMS Reauthorization—General Board Discussion
V. IMS Program Report

Dated: March 27, 1989.

Lois Burke Shepard,

IMS Director.

[FR Doc. 89–7964 Filed 3–30–89; 3:46 pm]

BILLING CODE 7036–01–M

Corrections

Federal Register
Vol. 54, No. 62
Monday, April 3, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, 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.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Update to Official Staff Commentary

Correction

In rule document 89-5161 beginning on page 9417 in the issue of Tuesday, March 7, 1989, make the following corrections:

Supplement 1-[Amended]

1. On page 9421, in the third column, in the paragraph numbered 17(c), "*paragraph 17(c)(1)*" should be moved to the next line.

2. On the same page, in the same column, in the last paragraph, in the 13th line "premium" was misspelled.

3. On page 9422, in the first column, in the paragraph numbered 14, in the third line "typically" was misspelled.

4. On page 9423, in the second column, in the paragraph numbered 6, in the sixth line "disclosure" should read "disclosed".

5.On the same page, in the same column, in the paragraph numbered 7, in the last line of the paragraph, "now" should read "not".

6. On the same page, in the same column, in the paragraph numbered 1, in the last line, "§ 226.19(b)(x)" should read "§ 226.19(b)(2)(x)".

7. On the same page, in the same column, in the paragraph numbered 2, in the second line, insert a comma after "payments".

8. On the same page, in the third paragraph, in the paragraph numbered 4, in the eighth line, "payment" should read "payments".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWA-3]

Establishment of an Airport Radar Service Area; San Jose, CA

Correction

In the issue of Monday, March 27, 1989, on page 12532, beginning in the second column, in the correction to rule document 89-5137, the date of the original publication should read "March 6, 1989".

BILLING CODE 1505-01-D

federal register

Monday
April 3, 1989

Part II

Department of Health and Human Services

Public Health Service

42 CFR Part 62

National Health Service Corps Loan Repayment Program; Grants for State Loan Repayment Programs and Special Repayment Program; Interim Rule With Request for Comments

DEPARTMENT OF HEALTH AND HUMAN SERVICES

PUBLIC HEALTH SERVICE

42 CFR Part 62

National Health Service Corps Loan Repayment Program; Grants for State Loan Repayment Programs; and Special Repayment Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Interim rule with request for comments.

SUMMARY: This rule responds to certain requirements of the "Public Health Service Amendments of 1987," which was enacted on December 1, 1987.

The rule establishes requirements for: (1) A new Federal program to be known as the National Health Service Corps (NHSC) Loan Repayment Program; (2) a new program of grants for States to establish loan repayment programs similar to the NHSC Loan Repayment Program; and (3) a new Special Repayment Program for persons in default of NHSC scholarship obligations. The statute requires that regulations be published for the NHSC Loan Repayment Program and Grants for State Loan Repayment Programs within 180 days of the passage of the act. The statute also requires that the Secretary establish guidelines regarding monetary payments under the Special Repayment Program and issue regulations providing for the allowance of partial credit for service performed under this program.

It is the current plan of the Department that funding for the National Health Service Corps Loan Repayment Program be phased down over the first 2 years of the program's operation and that funding for the grants for State Loan Repayment Programs be increased so that communities totally rely on State Loan Repayment Programs during the third year of operation of these programs. States should begin to develop State Loan Repayment programs to compete for future Federal funding for such programs.

DATES: Interim rule effective April 3, 1989. Comments must be received on or before June 2, 1989.

ADDRESS: Comments must be in writing and addressed to Director, Office of Program and Policy Development, Bureau of Health Care Delivery and Assistance, Room 7A08, 5600 Fishers Lane, Rockville, Maryland 20857. Comments will be available for examination by the public between 8:30 a.m. and 5:00 p.m., in Room 7A08, Monday through Friday, except Federal holidays at this address.

FOR FURTHER INFORMATION CONTACT: Ms. Rhoda Abrams, Director, Office of Program and Policy Development, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7A08, Rockville, Maryland 20857, (301) 443–1034.

SUPPLEMENTARY INFORMATION: NHSC Loan Repayment Program: The Public Health Service Amendments of 1987, Pub. L. 100–177, amended section 338B of the Public Health Service (PHS) Act (42 U.S.C. 2541–1) by substituting a new section authorizing the Secretary to establish the National Health Service Corps Loan Repayment Program (LRP). The purpose of the LRP is to assure an adequate supply of trained health professionals to be used by the Secretary to improve the delivery of health services in sites or areas which are determined to have the greatest need for health services personnel and for which alternative sources of health care services are not readily available. The NHSC will regularly select health manpower shortage areas which are in the greatest need of health providers and will establish a list of "NHSC Loan Repayment Service Sites" at which LRP participants may fulfill their service obligations.

Section 62.23 of the regulation sets out criteria for acceptance of applications from eligible applicants and assigns priority for funding approval as specified in the statute (i.e., for applications from individuals trained in professions or specialties most needed by the NHSC and to persons who are most committed to serve in health manpower shortage areas). The acceptance criteria include consideration of the needs of the NHSC for individuals with the applicant's health professions and specialty training, the applicant's commitment to serve in a health manpower shortage area, the applicant's readiness to serve, the length of the applicant's proposed service (3 or 4 years as opposed to 2 years), and the applicant's professional qualifications. The criterion relating to the degree of readiness to serve is designed to reduce the time between the point at which a provider commits himself to participate in the program and the time that such service actually begins. In the NHSC Scholarship Program, the commitment to serve was made many years before such service was actually to begin. The NHSC program has learned that, over time, the priorities and needs of the individuals in the program and the priorities and needs of the NHSC can change. Reaching agreement with program participants more closely to the point of service helps to assure a meeting of the minds and, thereby, reduces the possibility of default under the Program. The criterion related to the health professions and specialty needs of the NHSC will also permit the NHSC to more accurately target the kinds of providers needed. A final criterion is added to allow the Secretary to consider the professional qualifications, experience, and competence of the applicants.

Section 62.24 of the regulation describes the statutory conditions of eligibility for participation in the LRP. The eligibility requirements specify that applicants must, as part of the application process for this program, submit a signed contract agreeing to accept loan repayments and to serve in a health manpower shortage area to which they are assigned by the Secretary.

The LRP will follow the same procedure as the NHSC Scholarship Program in paying for one site visit for the potential assignee (and spouse, if married) to the site where an assignment is being considered.

Applications will be accepted from persons who have an obligation to provide health professions service to any other Federal or State Government agency or any other public or private organization only if such obligation will be completely satisfied prior to the beginning of the applicants' service under this Program. See § 62.24(b). The purpose of the LRP is to increase the supply of physicians, dentists and other health professions personnel in areas where such services are in great need. The Secretary does not want to undermine the effectiveness of State or other programs by substituting one service obligation for another or by delaying one service obligation for another.

Section 62.24(c) of this regulation denies eligibility for participation in this Program to any person who has breached a health professions service obligation to the Federal Government or a State or local government entity. Persons who have breached a service obligation are not considered to be good risks for the receipt of benefits under the LRP.

The Secretary is authorized to repay educational loans health professionals used to pay for their health education in amounts up to $20,000 for each year of a participant's service performed under the LRP and up to $25,000 may be repaid for each year if the service is performed in specified sites serving Indian populations. Only loans incurred for and

during health professions academic training are eligible for repayment under the LRP. Applicants must document that their loans were incurred for health professions education expenses, including reasonable living expenses, during the time that such training was being received. See section 62.22. Loans for living expenses during periods of internship and/or residency cannot be repaid under the program. These provisions of the regulation are intended to ensure that the loans repaid by the Secretary are valid health profession educational loans.

The Secretary, based on the availability of appropriated funds, the needs and best interests of the areas to be served and/or the request of the applicant, may reimburse loan repayment participants at levels which are less than the amounts set forth in the preceding paragraph. Accordingly, the regulation provides at § 62.25(a) that the Secretary may establish different levels of annual loan repayment for participants to encourage service in a manner that is determined to be in the best interests of the NHSC. For example, the Secretary may use this provision to pay the maximum annual loan repayment amount for a LRP participant who agrees to provide service for 3 or 4 years, and a lower annual amount for a LRP participant who agrees to serve the minimum 2-year obligation. This allows the Secretary to encourage LRP participants to increase the amount of service provided. Willingness to serve for longer periods of time is also a selection criterion under § 62.23.

It is anticipated that payments on loans will be made on a regular basis to lenders (i.e. monthly or quarterly). Once a contract is finalized with a Program participant and the participant begins service, the Secretary will begin payments of the amount the program has agreed to pay toward the participant's qualifying health professions educational loans. Subsequent payments will be made as long as the participant continues to provide health professions service under the Program contract. Participants should understand that the loan repayments may not cover the full indebtedness of the participant.

For each year of service under the LRP, a participant may be given the opportunity to request a tax liability supplement as provided in the statute. The conditions under which these supplements will be paid and the method to apply for these supplements are described in § 62.25(c).

A participant in the LRP must provide obligated service through full-time clinical practice: (1) As a Commissioned Officer of the Public Health Service; (2) as a civil service employee of the Federal Government; (3) as a civilian member of the NHSC who is not an employee of the Federal Government but who may be employed by State agencies or other public or nonprofit private agencies, such as Community Health Centers, under a Private Practice Assignment (PPA) arrangement; or (4) as a private practitioner or as an employee of a private group practice, Health Maintenance Organization or other similar agency under a Private Practice Option (PPO) arrangement.

The statute provides that the Secretary may repay health professions loans which have been incurred for actual tuition and for reasonable educational and living expenses. These regulations, in the definitions at § 62.22, define reasonableness of educational and living expenses as follows. Educational and living expenses equal to or less than the level of such expenses that is/was estimated by the Program participant's school in the standard student budgets for the degree program in which the Program participant is/was enrolled during the years in which the Program participant is/was enrolled are deemed by the Secretary to be reasonable. As long as the Program participant's educational and living expenses are equal to or less than the applicable standard student budget, no documentation of these expenses will be required by the Secretary and the entire amount of the loan for these expenses will qualify for loan repayment. In those instances where the Program participant's school did not maintain a standard student budget or the Program participant seeks loan repayment for educational and/or living expenses in excess of the standard student budgets, the Program participant must submit documentation, as required by the Secretary, to substantiate the reasonableness of all the educational and living expenses incurred by the Program participant. To the extent the Secretary determines, upon review of the Program participant's documentation, that all or a portion of the educational and living expenses incurred by the Program participant were reasonable, these expenses will qualify for loan repayment.

Grants for State Loan Repayment Programs: Pub. L. 100-177 also amended the PHS Act by adding a new section 338H authorizing the Secretary to establish a program of grants to support State loan repayment programs that are "similar to" the NHSC LRP. The statute provides little specificity as to how these State programs are to be administered at the State or Federal level. This regulation identifies those program components which are considered necessary for the State program to be similar to the Federal program and for the orderly conduct and administration of this program.

The Secretary has chosen to use a standard grant application form for this program. Section 62.54 sets forth those items which must be included in the program narrative of the grant applications. Two specific items are required by the statute to be contained in the application: A description of the State's standard for designation of medically underserved areas and for the determination of obligated service requirements under the State Loan Repayment Program. The Secretary has determined that, in order to promote consistency in targeting health manpower resources to areas of greatest need, States may utilize health manpower shortage areas as designated by the Secretary pursuant to section 332 of the PHS Act in lieu of individually developing State standards for the designation of medically underserved areas. See § 62.22. If a State chooses to use the health manpower shortage areas as determined by the Department as its shortage area criteria, such State will not need to individually develop (or describe in its application) standards for designation of medically underserved areas. See § 62.54(b)(1). State standards for the determination of medically underserved areas will be subject to review and approval by the Secretary as provided in the statute.

The application narrative should also contain information and appropriate data on the need of the State for health professions manpower, with special emphasis on health professionals trained in a profession or specialty identified by the Secretary as needed (see § 62.23(c)), and the State's efforts to obtain such manpower; the availability, amount and use of the State's matching funds; and the program and management plans, experience, and qualifications of the State agency administering the program. These factors, and others included in § 62.54, will be evaluated as described in § 62.57 and will be used in selecting applicants for approval under this program. The State's program description in its application is, by statute, the standard for the conduct of the State program.

The statute authorizes the Secretary to make grants to States to support the establishment by States of State programs similar to the NHSC LRP. The Secretary has determined that the following NHSC LRP elements are necessary to ensure that a State's

program is similar to the NHSC LRP: (1) The priority for the selection of applicants; (2) the training level of applicants; (3) the obligated service requirements of State program participants and (4) the practice requirements for State program participants. These elements, as well as a few additional elements set forth at § 62.55, are considered necessary elements of a State program to meet the requirements of the statute that State programs are to be similar to the NHSC LRP. These requirements also include specifications that State program participants must provide service in medically underserved areas determined by the State to have the greatest need and demand for health manpower. See § 62.55.

States are required to provide at least 25 percent of the cost of the approved State program and are expected to increase the amount of money available for loan repayment by proposing State funds for use for repayment of loans in addition to State funds proposed for administrative costs. The Federal share of the program must be spent entirely for loan repayments. None of the Federal share is to be used for program administration costs. See § 62.56. Under § 62.57(g) the Secretary will, in determining which State applications will be approved, consider the level and use of the State match and the percentage of the State's match which is proposed for use for repayment of loans.

Special Repayment Provisions: Section 204 of Pub. L. 100–177, established a new program which is not a part of the PHS Act and which provides a time-limited opportunity for persons who are in default or otherwise in breach of any written obligation under the present NHSC Scholarship Program or the former Public Health and National Health Service Corps Scholarship (PH/NHSC) Training Program, to repay these obligations through service or through a combination of service and monetary payment. Participants in this Special Repayment Program may thus avoid the financial consequences under the default provisions of the scholarship statutes. Service may be performed at a site on the 1988 or 1989 Health Manpower Shortage Area Placement Opportunity List (HPOL) or at a site on the Supplemental HPOL (SHPOL) in 1989. A SHPOL will be established by the Secretary, in accordance with Pub. L. 100–177, exclusively for this program and will include various sites which do not otherwise appear on a HPOL because they are not considered as critically needy as HPOL sites. Service at SHPOL sites requires an additional commitment on the part of the participant (i.e., to serve 150 percent of the remaining service obligation or to serve 100 percent of the remaining service obligation and repay the original scholarship amounts paid to, or on behalf of, the participant under the scholarship programs).

All persons in default or breach of a scholarship obligation as of November 1, 1987, may be eligible for this program and, except as noted below, have been sent a notice on or before February 29, 1988, as required by statute. The notice described the provisions of the Special Repayment Program and required a response by May 29, 1988, from persons interested in participating in the program.

The eligibility notice under this program was sent to the last address on record with the Division of Health Services Scholarships. Mailing of the notice to the last known address of the individual constituted a legal notice for the purpose of the statute and no further effort is required to locate new addresses for persons whose notices were returned undelivered.

Notices were not sent to individuals who were serving their scholarship obligations on December 1, 1987, under a judgment, forbearance agreement or other written agreement to serve. While these individuals may have been in breach of a scholarship obligation on November 1, 1987, the Secretary considers that their acceptance and commencement of a service assignment before the statute was enacted, places them outside the intended scope of the statute. Persons who were in breach on November 1, 1987, and who began serving under such agreements after December 1, 1987, and who wish to participate in the Special Repayment Program, may participate but must assume full responsibility for extricating themselves from existing employment contracts.

Participants in this program are responsible for matching to a site. The prospective participant is also responsible for the cost of contacting and matching to a site, including site visits, if any.

The statute directs the Secretary to issue regulations allowing for a reduction in an individual's financial liability by providing credit for partial service under this program. The regulations contain this provision at § 62.75. The Secretary will allow NHSC Scholarship Program recipients a credit of 50 percent of any time served under an agreement under this program toward their remaining service obligation (including any additional months of service incurred by agreeing to serve 150 percent of the remaining service obligation at a SHPOL site). Thus, an individual with a two-year service obligation who elects to serve 100 percent of that obligation at a HPOL or SHPOL site and then serves only one year of that obligation would receive a ¼ reduction of his or her debt under the NHSC Scholarship Program. An individual with a two-year service obligation who elects to serve 150 percent of that obligation at a SHPOL site and then serves only one year of that obligation would receive a ⅙ reduction of his or her debt under the NHSC Scholarship Program. The Secretary will allow no partial credit for service under the Public Health Service and National Health Service Corp Scholarship Training Program because of the relative ease of the monetary repayment under the PH/NHSC Scholarship Training Program provisions.

Credit for approved service performed or monetary payments made prior to beginning service in the Special Repayment Program is allowed under the circumstances outlined in § 62.74 of the regulations. An individual will receive one day of service credit for each day of approved prior service performed by the individual. If a participant has made monetary payments and elects to serve 150 percent of the remaining service obligation at a SHPOL site or 100 percent of the remaining service obligation at a HPOL site, the monetary payments would be converted into days of service credit in accordance with § 62.74(b) of the proposed regulations. However, if a participant has made monetary payments and elects to serve 100 percent of the remaining service obligation at a SHPOL site and pay an amount equal to the orginal scholarship amount, prior monetary payments will first be credited against the participant's liability for the original scholarship amount. Thus, payments previously posted against the participant's total scholarship debt, as defined by § 62.72, will be credited instead by the Secretary to the participant's liability under the Special Repayment Program to pay the original scholarship amount, and the Secretary will increase the participant's outstanding scholarship debt in the amount equal to the amount credited to the participant's liability under the Special Repayment Program for the original scholarship amount. Payments in excess of the scholarship amount will be converted into days of service in accordance with § 62.74(c).

If a participant fails to complete service under the program, the monies previously paid will be applied to the outstanding scholarship debt. Except that, any amount paid to extinguish an additional liability for the payment of the scholarship amount under the option to serve 100 percent of the remaining service obligation at a SHPOL site will not be refunded and will not be applied to the outstanding scholarship debt. The Secretary will treat this up-front payment as a cost of exercising this particular SHPOL option in order to place individuals selecting the other SHPOL option (i.e. to serve 150 percent of their remaining service obligation) on more equal footing with respect to the financial consequences of only completing a portion of the service obligation.

Paperwork Reduction Act of 1980

This interim-final rule contains information collections which have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: National Health Service Corps Loan Repayment Program.

Description: This information is used to review qualifications and experience of the applicant for eligibility for the Loan Repayment Program (LRP) and State Loan Repayment Program. This information is also required for individuals who wish to receive benefits from the tax reimbursement provision under the LRP and to monitor the continuing eligibility of LRP recipients who are still in training.

Description of Respondents: Individuals and State and local government.

Estimated Annual Reporting and Recordkeeping Burden:

Section No.	Annual No. of Respondents	Annual Frequency	Average Burden Per Response	Annual Burden Hours
62.25(a)(1)(i)	2000	1	2	4000
62.25(c)	40	1	1.25	50
62.26(b)(2)	1	1	10	10
62.54	35	1	40	1400
Total				5460

Regulatory Flexibility Act and Executive Order 12291

The rule affects only private individuals and a few States. Within States, the impact of the State Loan Repayment Program is generally limited to the agency administering the State manpower programs. Therefore, the Department of Health and Human Services has determined that this rulemaking will not significantly impact on a substantial number of small entities and does not require preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act, Pub. L. 96–354.

The Department also has determined that this rule is not a "major rule" under Executive Order 12291. Thus, a regulatory impact analysis is not required because it will not: (1) Have an annual effect on the economy of $100 million or more; (2) Impose a major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions; or (3) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 42 CFR Part 62

Health professions, Loan programs—health, Grant programs—health, Scholarships and fellowships.

Justification for Publication of Interim Final Regulations

Pub. L. 100–177 was enacted on December 1, 1987. The statute authorized three new programs that must be implemented by the end of the current fiscal year. With respect to the Special Repayment Program, the statute also established a rigid time frame for implementation of the program, requiring notification of defaulters 90 days after enactment and a response from defaulters 90 days after the notice. It was therefore necessary to develop the policies and procedures, forms, guidelines, and other program materials simultaneously with the regulations so that they could be provided to potential participants in the program in timely fashion along with the required notice. It is also necessary that participants who wish to participate in the 1988 cycle have final regulations at the earliest possible date to guide them in the process of matching to sites and signing employment agreements with sites and/or agreements with the Department, all of which must be accomplished by October 1, 1988.

With respect to the NHSC LRP and the Grants for State Loan Repayment Programs, it is essential that final regulations be in place as soon as possible in order to reach health professionals eligible to participate in Fiscal Year 1988, many of whom must make employment decisions by the middle of the calendar year. Moreover, grant applications from States must be completed and sent to the Department by July 29, 1988, in order to be processed so that grant awards can be made this fiscal year.

Accordingly, the Secretary has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that notice and opportunity for public comment on the regulations set out below are impracticable and contrary to the public interest. Interested persons are, however, invited to submit comments on these final regulations by June 2, 1989. Comments so received will be considered by the Department and, if warranted, changes may be made in the regulations in the future based on those comments.

For the reasons set out in the preamble, Subparts B, C, and D of Part 62 of Title 42, Code of Federal Regulations, are revised as set forth below.

The OMB Catalog of Federal Domestic Assistance number for the NHSC/LRP is 13.162 and the catalog number for Grants for State Loan Repayment Programs is 13.165.

Dated: August 1, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: October 11, 1988.

Otis R. Bowen,

Secretary.

PART 62—NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP AND LOAN REPAYMENT PROGRAMS

Subpart A—National Health Service Corps Scholarship Program

* * * * *

Subpart B—National Health Service Corps Loan Repayment Program

Sec.

62.21 What is the scope and purpose of the National Health Service Corps Loan Repayment Program?

62.22 Definitions.

62.23 How will individuals be selected to participate in the Loan Repayment Program?

62.24 Who is eligible to apply for the Loan Repayment Program?

62.25 What does the Loan Repayment Program provide?

62.26 What does an individual have to do in return for loan payments received under the Loan Repayment Program?

62.27 What will happen if an individual does not comply with the terms and conditions of participation in the Loan Repayment Program?

62.28 Under what circumstances can the service or payment obligation be canceled, waived or suspended?

62.29 Under what circumstances can the Loan Repayment Program obligation be discharged in bankruptcy?

62.30 What other regulations and statutes apply?

Subpart C—Grants for State Loan Repayment Programs

62.51 What is the scope and purpose of the State Loan Repayment Program?

62.52 Definitions.

62.53 Who is eligible for this program?

62.54 What must applications for the State Loan Repayment Program contain?

62.55 What State program elements are required to ensure similarity with the NHSC Loan Repayment Program?

62.56 How are the Federal grant funds and State matching funds to be used under this program?

62.57 How will States be selected to participate in this program?

62.58 What other regulations apply?

Subpart D—Special Repayment Program

62.71 What is the scope and purpose of the Special Repayment Program?

62.72 Definitions.

62.73 What are the procedures for participation in the Special Repayment Program?

62.74 How much credit will a Program participant receive for monetary repayments made, or for approved service performed, before beginning service under the Special Repayment Program?

62.75 Will individuals serving under the Special Repayment Program receive credit for partial service?

62.76 How will amounts of money due under the option under section 204(c)(1) of Pub. L. 100–177 be required to be repaid?

Subpart B—National Health Service Corp Loan Repayment Program

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); Sec. 338B of the Public Health Service Act, 101 Stat. 992 (42 U.S.C. 2541–1).

§ 62.21 What is the scope and purpose of the National Health Service Corps Loan Repayment Program?

The regulations of this subpart apply to the award of health professions educational loan payments under the National Health Service Corps Loan Repayment Program authorized by section 338B of the Public Health Service Act (42 U.S.C. 2541–1). The purpose of the Program is to assure an adequate supply of trained health professionals for the National Health Service Corps. These professionals will be assigned by the Secretary to provide necessary health services to persons living in designated health manpower shortage areas.

§ 62.22 Definitions.

The definitions in § 62.2 of this part will apply for the purpose of this subpart, except for the definition of "approved graduate training." The following definitions will also apply for purposes of this subpart:

"Approved graduate training" means a program of graduate training in allopathic or osteopathic medicine, dentistry or other health profession which (a) leads to eligibility for board certification or which provides other evidence of completion, (b) has been approved by the appropriate health professions body as determined by the Secretary and (c) is in the specialty or type of training specified by the Program participant in the Loan Repayment Program Contract or, at the Program participant's request and at the Secretary's option, is in a specialty or area of training determined by the Secretary to be consistent with the needs of the National Health Service Corps.

"Commercial loans" means loans made by banks, credit unions, savings and loan associations, insurance companies, schools, and other financial or credit institutions which are subject to examination and supervision in their capacity as lenders by an agency of the United States or of the State in which the lender has its principal place of business.

"Educational expenses" means the costs of the health professions education, exclusive of the tuition, such as fees, books, supplies, and educational equipment and materials.

"Government loans" means loans which are made by Federal, State, county or city agencies which are authorized by law to make such loans.

"Living expenses" means the costs of room and board, transportation and commuting costs and other costs incurred during an individual's attendance at a health professions school.

"Loan Repayment Program" means the National Health Service Corps Loan Repayment Program authorized by section 338B of the Act (42 U.S.C. 2541–1).

"Loan Repayment Program Contract" means the agreement, which is signed by an applicant and the Secretary, for the Loan Repayment Program wherein the applicant agrees to accept repayment of health professions educational loans and to serve in accordance with the provisions of section 338B of the Act and this subpart for a prescribed period of obligated service.

"Medically underserved area" means "health manpower shortage area" as defined in section 62.2.

"Program participant" means an individual whose application to the Loan Repayment Program has been approved and whose contract has been accepted and signed by the Secretary.

"Qualifying loans" means government and commercial loans for actual costs paid for tuition, reasonable educational expenses, and reasonable living expenses relating to the obtainment of a degree in allopathic or osteopathic medicine, dentistry, or other health profession. Such loans must have documentation which is contemporaneous with the training received in a health professions school. If health professions educational loans are refinanced, the original documentation of the loan(s) will be required to be submitted to the Secretary to establish the contemporaneous nature of such loans.

"Reasonable educational and living expenses" means those educational and living expenses which are equal to or less than the sum of the school's estimated standard student budgets for

educational and living expenses for the degree program and for the year(s) during which the Program participant is/was enrolled in the school. However, if the school attended by the Program participant does/did not have a standard student budget or if a Program participant requests repayment for educational and living expenses which are in excess of the standard student budgets described in the preceding sentence, the Program participant must submit documentation, as required by the Secretary, to substantiate the reasonableness of all educational and living expenses incurred by the Program participant. To the extent that the Secretary determines, upon review of the Program participant's documentation, that all or a portion of the educational and living expenses are reasonable, these expenses will qualify for repayment.

§ 62.23 How will individuals be selected to participate in the Loan Repayment Program?

(a) In determining which applications from eligible individuals for participation in the Loan Repayment Program will be accepted for consideration, the Secretary will apply the following criteria:

(1) The extent to which an individual's training is in a health profession or specialty determined by the Secretary to be needed by the National Health Service Corps;

(2) The individual's commitment to serve in medically underserved areas;

(3) The availability of the individual for service, with highest consideration being given to individuals who will be available for service at the earliest dates;

(4) The length of the individual's proposed service obligation, with greatest consideration being given to persons who agree to serve for longer periods of time; and

(5) The individual's academic standing, prior professional experience in a health manpower shortage area, board certification, residency achievements, peer recommendations, depth of past residency practice experience and other criteria related to professional competence or conduct.

(b) Among qualified applicants, the Secretary will give priority to applications from individuals whose health professions or specialties are most needed by the NHSC and who are, in the Secretary's judgement, most committed to practice in medically underserved areas.

(c) By notice published in the **Federal Register** from time to time, the Secretary will specify the professions and specialties most needed by the National Health Service Corps.

§ 62.24 Who is eligible to apply for the Loan Repayment Program?

(a) To be eligible to participate in the Loan Repayment Program an individual must:

(1)(i) Be enrolled as a full-time student in the final year of a course of study or program approved by the Secretary which leads to a degree in allopathic or osteopathic medicine, dentistry or other health profession and which is offered by an accredited school in a State or (ii) be enrolled in an approved graduate training program in allopathic or osteopathic medicine or dentistry or other health profession in a State, or (iii) have a degree in allopathic or osteopathic medicine or dentistry or other health profession and have completed an approved graduate training program in a State (or received a waiver of the completion requirement under § 62.26(d) of this subpart) and have a current and valid license to practice such health profession in a State;

(2) Be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or be eligible for selection for civilian service in the National Health Service Corps;

(3) Submit an application to participate in the Loan Repayment Program; and

(4) Sign and submit to the Secretary, at the time of the submission of such application, a written contract agreeing to accept repayment of health professions educational loans and to serve (in accordance with this subpart) for the applicable period of obligated service in a health manpower shortage area as determined by the Secretary.

(b) Any individual who owes an obligation for health professional service to the Federal Government or a State or other entity under an agreement with such Federal, State or other entity is ineligible for the Loan Repayment Program unless such obligation will be completely satisfied prior to the beginning of service under this Program.

(c) Individuals in breach of a written contract entered into under section 338A of the Act and liable to the United States under section 338E(b) of the Act, in breach of a written contract entered into under section 225 of the Act (as in effect on September 30, 1977) and liable to the United States under section 225(f)(1) of the Act (as in effect on September 30, 1977) or in breach of any other obligation for health professional service to a Federal, State or local government entity are not eligible for participation in the Loan Repayment Program.

(Approved by Office of Management and Budget under control number 0915–0127)

§ 62.25 What does the Loan Repayment Program provide?

(a) *Loan repayment.* For each year of service the individual agrees to serve, with a minimum of 2 years of obligated service, the Secretary may pay: (1) Except as provided in paragraph (2), up to $20,000 per year of a Program participant's qualifying loans or (2) up to $25,000 per year for a Program participant's qualifying loans if the Program participant agrees to provide obligated service in the Indian Health Service or a health facility or program operated by a tribe or tribal organization under the Indian Self-Determination Act. Loan repayments by the Secretary in advance of service will be limited to one month or less. The Secretary may establish different levels of annual loan repayment to encourage Program participants to serve in a manner which is in the best interest of the Loan Repayment Program. No loan repayments will be made for any professional practice performed prior to the effective date of the Loan Repayment Program Contract. Once a loan repayment contract has been signed by both parties, the Secretary will obligate such funds as will be necessary to ensure that sufficient funds will be available to make loan repayments for the duration of the period of obligated service.

(b) *Site visit.* The Secretary may reimburse an individual for the actual and reasonable travel expenses associated with one trip from the individual's residence to a site for the purpose of evaluating such site for service under the the Loan Repayment Program.

(c) *Tax liability payments.* The Secretary may, upon a Program participant's written request, make payments in a reasonable amount, as determined by the Secretary, to reimburse the Program participant for all or part of the increased Federal, State and local tax liability resulting from loan repayments received under the Loan Repayment Program. To maximize the Federal resources available for placing participants in HMSAs, supplementary payments for increased tax liability will only be made under unusual circumstances, and in no cases will these tax liability payments exceed 20% of the annual amounts of the loans being repaid. Program participants wishing to receive tax liability payments must submit their requests for such

payments in a manner prescribed by the Secretary and must provide the Secretary with any documentation the Secretary determines is necessary to establish a Program participant's increased tax liability. The Secretary will determine, based on the availability of funds and such other factors as the Secretary determines, the amounts of any such payments that may be made.

(Information collection requirements contained in paragraph (c) were approved by Office of Management and Budget under control number 0915–0131)

§ 62.26 What does an individual have to do in return for loan repayments received under the Loan Repayment Program?

(a) A Program participant whose eligibility for the Loan Repayment Program is based on § 62.24(a)(1)(i) of this subpart must maintain full-time enrollment, at an acceptable level of academic standing, in that course of study until its completion. Upon completion of that course of study, a Program participant who received a degree in allopathic or osteopathic medicine must enter approved graduate training and a Program participant who received a degree in a health profession other than allopathic or osteopathic medicine may enter approved graduate training. Once a Program participant enters approved graduate training, he or she must also meet the requirements set forth in paragraphs (b) (1), (2), (3), and (4) of this section. If a Program participant who received a degree in a health profession other than allopathic or osteopathic medicine does not enter approved graduate training; service, in accordance with paragraph (e) of this section, must commence as soon as possible upon the Program participant's completion of the course of study leading to his or her health professions degree.

(b) A Program participant whose eligibility for the Loan Repayment Program is based on § 62.24(a)(1)(ii) of this subpart must: (1) Continue in his or her approved graduate training program at an acceptable level of academic standing; (2) provide the Secretary with annual documentation of continued participation in that approved graduate training program at an acceptable level of academic standing; (3) successfully complete that approved graduate training program; and (4) commence service, in accordance with paragraph (e) of this section, as soon as possible upon completion of approved graduate training.

(c) A Program participant whose eligibility for the Loan Repayment Program is based on § 62.24(a)(1)(iii) of this subpart must commence service, in accordance with paragraph (e) of this section, as soon as possible after the effective date of the Loan Repayment Program Contract.

(d) If a Program participant fails to complete approved graduate training, the Secretary may, on his or her own initiative or at the Program participant's request, waive, for good cause, the completion requirement. Good cause will be deemed to exist if the Secretary determines that the Program participant has sufficient health professions training to be utilized by and make a substantial contribution to the National Health Service Corps. If waiver of the completion requirement in paragraph (b) of this section is granted; service, in accordance with paragraph (e) of this section, must commence as soon as possible after the granting of the waiver.

(Information collection requirements contained in paragraph (b)(2) were approved by Office of Management and Budget under control number 0915–0131).

(e) Except for Program participants who fail to complete their course of study leading to a health professions degree or who fail to complete approved graduate training and do not receive a waiver pursuant to paragraph (d) of this section, each program participant must: (1) Serve in a health manpower shortage area to which he or she is assigned by the Secretary as a member of the National Health Service Corps or serve pursuant to section 338D of the Act in a health manpower shortage area selected by the Secretary and (2) accept employment in a full-time clinical practice of the Program participant's profession, as (i) a commissioned officer in the Regular or Reserve Corps of the Public Health Service, (ii) a civilian member of the National Health Service Corps who is an employee of the United States, (iii) a member of the National Health Service Corps who is not an employee of the United States, or (iv) a private practitioner who is providing obligated service under the provisions of section 338D of the Act.

(f) The minimum length of obligated service is two years, or such longer period as the Program participant may agree to. The maximum length of obligated service is four years. If a Program participant agrees to an original contract of two or three years, such contract may be extended, subject to the availability of appropriated funding, for one year or two years (up to the four-year maximum). A one-year extension will not reactivate the statutory minimum requirement of two years of service.

§ 62.27 What will happen if an individual does not comply with the terms and conditions of participation in the Loan Repayment Program?

Program participants who default on their Loan Repayment Program Contracts will be subject to the applicable monetary payment provisions set forth at section 338E of the Act. Payment of any amount owed under section 338E of the Act shall be made within one year of the date the participant breached his or her Loan Repayment Contract, as determined by the Secretary.

§ 62.28 Under what circumstances can the service or payment obligation be canceled, waived or suspended?

A service or payment obligation under the Loan Repayment Program will be canceled or may be waived or suspended as provided in § 62.12 of this part of the regulations.

§ 62.29 Under what circumstances can the Loan Repayment Program obligation be discharged in bankruptcy?

Any payment obligation incurred under § 62.27 of this subpart may be released by a discharge in bankruptcy under Title 11 of the United States Code only if such discharge is granted after the expiration of the five-year period beginning on the first date that payment was required, and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable.

§ 62.30 What other regulations and statutes apply?

Other regulations and statutes which apply to this subpart include but are not limited to:

Debt Collection Act of 1982, Pub. L. 97–365 (5 U.S.C. 5514) including Section 4, Requirement that Applicant Furnish Taxpayer Identifying Number;

Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);

Privacy Act of 1974 (5 U.S.C. 552a);

Section 215(a) of the Public Health Service Act, as amended (42 U.S.C. 216(a)), for PHS commissioned officers, and 5 U.S.C. 3301 for civil service employees both of which authorize verification of an individual's suitability for employment;

Privacy Act of 1974; Alteration of System of Records, 52 FR 21622–21627, June 8, 1987, regarding the collection, maintenance and allowable use of personal information requested from program applicants.

Subpart C—Grants for State Loan Repayment Programs

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690 as amended, 63 Stat.

35 (42 U.S.C. 216); Sec. 338H of the Public Health Service Act, 101 Stat. 999 (42 U.S.C. 254q–1).

§ 62.51 What is the scope and purposes of the State Loan Repayment Program?

The regulations of this subpart apply to the award of grants authorized by section 338H of the Public Health Service Act (42 U.S.C. 254q–1) to support the establishment of State programs similar to the National Health Service Corps Loan Repayment Program authorized by section 338B of the Public Health Service Act (42 U.S.C. 2541–1). The purpose of this program is to improve the delivery of health services in medically underserved areas.

§ 62.52 Definitions.

In addition to the definitions in § 62.2 of this part, the following definitions will apply for purposes of this subpart:

The definitions of "Qualifying loans," "Commercial loans," "Government loans," "Educational expenses," and "Living expenses" as contained in § 62.22 of this part will apply for purposes of this subpart.

"Medically underserved area" means "health manpower shortage area" or an area which has been designated by a State pursuant to standards described in § 62.54(b)(1) of this subpart which the Secretary has deemed acceptable.

"State Loan Repayment Program" or "program" means a State loan repayment program authorized under section 338H (42 U.S.C. 254q–1) of the Act.

§ 62.53 Who is eligible for this program?

Any State is eligible to apply for a grant under this subpart.

§ 62.54 What must applications for the State Loan Repayment Program contain?

(a) An application for a grant under this subpart shall be submitted to the Secretary at such time and in such form and manner as the Secretary requires.

(b) The application shall contain a budget and narrative statement describing the manner in which the applicant intends to conduct the project and carry out the requirements of this subpart. In addition, applications must include:

(1) A description of the State's standards for the designation of medically underserved areas, except that no description of designation standards will be required if the State elects to use health manpower shortage areas designated by the Secretary;

(2) An assessment of the need and demand in medically underserved areas within the State for health professions manpower with special emphasis on individuals whose training is in a health profession or specialty identified by the Secretary pursuant to § 62.23(b) of this Part. This assessment should include such demographic indicators of the need as the economic accessibility of health care services in the State as measured by poverty levels, the percentage of the service area population without health insurance, and the health status of the population as measured by the rates of infant mortality, low birth weight, geographic barriers and other indicators;

(3) A proposal for the placement of the health profession providers in medically underserved areas with the greatest need and demand in accordance with the need/demand assessment completed in compliance with paragraph (b)(2) of this section;

(4) Adequate assurances that sufficient current year State funds are available to cover the non-Federal share of State Loan Repayment Program costs;

(5) A description of how the program would meet the requirements of § 62.55 to demonstrate its similarity to the NHSC Loan Repayment program;

(6) A description of the source of, and plans for the use of, State matching funds;

(7) A description of how the program would be coordinated with Federal, State and other organized activities within the State which relate to health manpower services and resources;

(8) Identification of the State entity and key personnel who would administer the grant and a description of the qualifications and experience of that entity and its personnel concerning the State's health service delivery system and health manpower needs;

(9) A description of the State's plans for administration of the State's Loan Repayment Program which may include such provisions as annual levels of loan repayment to be made under the program, the number of health professionals to be funded, the frequency and timing of the loan repayments, program incentives for longer periods of service, procedures for monitoring the service of program participants and placing professionals in default for failure to complete their service obligation, penalties for default, provisions for waivers and suspensions, and a description of the contract/obligation process to be used by the State to obligate individuals receiving State loan repayments;

(10) A description of the State's need for Federal assistance in obtaining health professions resources and demonstrated inability to obtain such resources without Federal assistance;

(11) A description of how the State will accord special consideration to medically underserved areas with large minority populations; and

(12) The signature of an individual authorized to act for the State and to assume on behalf of the State the obligations imposed by the statute, the applicable regulations of this subpart and any additional conditions of the grant.

(Approved by Office of Management and Budget under control number 0915–0131)

§ 62.55 What State Program Elements are required to ensure similarity with the NHSC Loan Repayment Program?

A State Loan Repayment Program supported under this subpart must:

(a) Establish priorities for loan repayment applicants consistent with the provisions of § 62.23 of this Part;

(b) Contract only with a person who is (1) enrolled as a full-time student in the final year of a course of study or program in an accredited school in a State leading to a degree in allopathic or osteopathic medicine, dentistry or other health profession, or (2) enrolled in an accredited graduate training program in a State in allopathic or osteopathic medicine or dentistry or other health profession, or (3) a practitioner licensed by a State who has completed training in an accredited graduate training program in allopathic or osteopathic medicine, dentistry or other health profession;

(c) Provide that health professionals participating in a State Loan Repayment Program shall (1) serve for at least 2 years in a medically underserved area identified pursuant to § 62.54(b)(3) of this subpart in the full-time clinical practice of their profession, (2) charge for his or her professional services at the usual and customary rate prevailing in the area in which such services are provided, except that if a person is unable to pay such charge, such person shall be charged at a reduced rate or not charged any fee, (3) in providing health services, not discriminate against any person on the basis of such person's ability to pay for such services or because payment for the health services provided to such person will be made under the insurance program established under part A or B of Title XVIII of the Social Security Act or under a State plan for medical assistance approved under Title XIX of such Act, and (4) agree to accept an assignment under section 1842(b)(3)(B)(ii) of such Act for all services for which payment may be made under part B of Title XVIII of such Act and enter into an appropriate agreement with the State agency which administers the State plan for medical assistance under Title XIX of such Act

to provide service to individuals entitled to medical assistance under the plan;

(d) Repay qualifying loans for participating health professionals;

(e) Provide that the loans of health professionals will be repaid on a periodic basis after the receipt of obligated services by such participant for such period; and

§ 62.56 How are the Federal grant funds and State matching funds to be used under this program?

The Federal share of any program shall not exceed 75 percent of the cost of the approved State program. The Federal share must be used to repay the qualifying loans of health professionals. No portion of the Federal share shall be used to pay for administrative costs of any State Loan Repayment Program. The State's share of the program may be used to repay qualifying loans of health professionals or administrative costs of the State's Loan Repayment Program, or a combination of both. All program administrative costs are to be borne by the State. No portion of the State's share of the program shall consist of Federal funds.

§ 62.57 How will States be selected to participate in this program?

Within the limits of funds available under Section 338H of the Act, the Secretary may award grants to State applicants whose proposed Loan Repayment Programs will, in his or her judgment, best promote the purposes of section 338H of the Act, taking into account, among other pertinent factors:

(a) The need of the State for health professions manpower;

(b) The number and type of providers the State proposes to support through this program;

(c) The acceptableness of the State's standards for the designation of medically underserved areas and the appropriateness of the proposed placements of obligated providers;

(d) The degree of similarity between the proposed State Loan Repayment Program and the National Health Service Corps Loan Repayment Program;

(e) The adequacy of the qualifications, the administrative and managerial ability and the experience of the State staff to administer and carry out the proposed project;

(f) The suitability of the applicant's approach and the degree to which the applicant's project is coordinated with Federal, State and other organized activities for meeting the State's health professions manpower needs and resources, including mechanisms for an ongoing evaluation of the program's activities;

(g) The source and plans for use of the State match (including the percentage of the State's match that is proposed to be used for loan repayments), the degree to which the State match exceeds 25% or has increased over time, and the amount of the match relative to the needs and resources of the States; and

(h) The extent to which special consideration will be extended to medically underserved areas with large minority populations.

§ 62.58 What other regulations apply?

Other regulations which apply to this subpart include but are not limited to:

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services-Effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under part 80 of this title

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

45 CFR Part 50—Policies of general applicability: Subpart D—Public Health Service grant appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 92—Administrative Requirements for grants and cooperative agreements to State and local governments (effective October 1, 1988)

Subpart D—Special Repayment Program

Authority: Sec. 215 of the Public Health Service Act 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 204, Pub. L. 100–177, 101 Stat. 1000.

§ 62.71 What is the scope and purpose of the Special Repayment Program?

These regulations apply to the Special Repayment Program authorized under section 204 of Pub. L. 100–177, which provides a time-limited opportunity for persons who were, on November 1, 1987, in breach of a written contract under the Public Health and National Health Service Corps Scholarship Training Program or the National Health Service Corps Scholarship Program to satisfy their scholarship obligations through full-time clinical service. These regulations do not apply to any Public Health and National Health Service Corps Scholarship Training Program or National Health Service Corps Scholarship Program obligation which the Secretary has determined was completely satisfied through service or monetary payment prior to November 1, 1987. The purpose of this program is to supply trained health professionals for the National Health Service Corps, which is used by the Secretary to improve the delivery of health services in health manpower shortage areas.

§ 62.72 Definitions.

In addition to the definitions in § 62.2 of this Part, the following definitions will apply for purposes of this subpart:

"Prior approved service" means service performed prior to a Program participant's service start date under the Special Repayment Program (1) as a member of the National Health Service Corps pursuant to an assignment by the Secretary under section 333 of the Act, (2) under a written private practice option agreement signed by the Secretary pursuant to section 338D of the Act, or (3) in compliance with section 338C(e) of the Act.

"Eligible defaulters" means those individuals who, as of November 1, 1987, were: (1) in breach of a written contract entered into under section 338A of the Act and liable to the United States under section 338E(b) of the Act and/or in breach of a written contract entered into under section 225 of the Act (as in effect on September 30, 1977) and liable to the United States under section 225(f)(1) of the Act (as in effect on September 30, 1977), and (2) not already serving their obligations on December 1, 1987, under a judgment, forbearance agreement, or other written agreement to serve.

"HPOL" means the Health Manpower Shortage Area Placement Opportunity List described in section 204(b) of Pub. L. 100–177.

"Match" means that the Secretary has received documentation of (1) an offer of employment from a site which specifies at least the agreed upon salary and start date, and (2) the Program participant's acceptance of that offer. Provided, however, that if the Program participant would be self-employed, a "match" means that the Secretary has approved a program participant's private practice

option application under section 338D(a) of the Act.

"Program participant" means an eligible defaulter whose contract under section 204 of Pub. L. 100–177 has been accepted and signed by the Secretary.

"SHPOL" means the Supplemental Health Manpower Shortage Area Placement Opportunity List described in section 204(d) of Pub. L. 100–177.

"Scholarship amount" means the sum of any amounts paid to, or on the behalf of, a scholarship recipient under the PH/NHSC Scholarship Training Program and/or the Scholarship Program.

"Special Repayment Program" or "Program" means the program authorized by section 204 of Pub. L. 100–177.

"Total debt" means the debt that would be owed by a Program participant under section 225(f)(1) of the Act, as in effect on September 30, 1977, and/or section 338E(b) of the Act, as if no payments had been made on the debt.

§ 62.73 What are the procedures for participation in the Special Repayment Program?

(a) *Notice of eligibility for participation in the program.* On or before February 29, 1988, the Secretary will, subject to paragraph (h) of this section, send written notice to each eligible defaulter of the opportunity provided under this Program. The notice will be sent to the last known address of each eligible defaulter and will describe the special repayment options available under the Program.

(b) *Selection of repayment method.* On or before May 29, 1988, eligible defaulters who wish to participate in this Program must notify the Secretary of their intent to enter into a written contract to provide service in accordance with either section 204(b) or section 204(c) of Pub. L. 100–177. The election between section 204(b) and section 204(c) of Pub. L. 100–177 is binding on the eligible defaulters.

(c) *Service sites.* Eligible defaulters who enter into a written contract to serve under section 204 of Pub. L. 100–177 will receive a listing of approved sites appropriate to the service option they have selected. Program participants electing service under section 204(b) of Pub. L. 100–177 will receive a HPOL. Program participants electing service under section 204(c) of Pub. L. 100–177 will receive a SHPOL. The HPOL or SHPOL sent to the Program participant will be specific to the Program participant's profession and his or her specialty training, which is most needed by the National Health Service Corps. The Secretary is not required to identify placements for Program participants in a medical specialty for which the National Health Service Corps has no need.

(d) *Time frames for matching and commencing service.* If a Program participant electing to serve under section 204(b) of Pub. L. 100–177 chooses to serve at a remaining site on the 1988 HPOL, such participant must match to a site and must begin serving at the site by October 1, 1988. If a Program participant electing to serve under section 204(b) of Pub. L. 100–177 chooses to serve at a site on the 1989 HPOL, such participant must match to a HPOL site by February 15, 1989, and must begin service at the site by October 1, 1989. If a Program participant has elected to serve under section 204(c) of Pub. L. 100–177, such participant will have until May 15, 1989 to match to a SHPOL site and must begin service at that site by October 1, 1989.

(e) *Site visits.* The Program participant is responsible for the costs of any site visit(s) and any other contact with the site to obtain employment at the site.

(f) *Effect of failure to meet established time frames.* If a Program participant does not match to a site or begin service at that site within the time frames described in paragraph (d) of this section, his or her participation in the Special Repayment Program will be automatically ended and he or she will remain liable for the full scholarship debt(s), including accrued interest and/or damages.

(g) *Service.* Service must be performed in accordance with subpart II of Part D of Title III of the PHS Act. Service credit will begin after a Program participant has matched to a HPOL or SHPOL site and has commenced service at that site in accordance with subpart II of Part D of Title III of the PHS Act.

(h) *Secretary's exclusion authority.* The Secretary is authorized, at any time, to deny or terminate an individual's participation in the Program for reasons related to the individual's professional competence or conduct.

§ 62.74 How much credit will a Program participant receive for monetary repayments made, or for approved service performed, before beginning service under the Special Repayment Program?

(a) Prior approved service performed by a Program participant will be credited to the Program participant for the purpose of calculating the Program participant's remaining service obligation under this Program. Thus, the Program participant's remaining service obligation will be calculated by subtracting the number of days of the Program participant's prior approved service from the number of days of the Program participant's original service obligation under the PH/NHSC Scholarship Training Program and/or the Scholarship Program. If a Program participant has made monetary payments, his or her remaining service obligation will be reduced by converting the monetary payments into days of service credit as set forth in paragraph (b) or (c) of this section, whichever is applicable.

(b) Program participants who elect to serve pursuant to sections 204(b) and 204(c)(2) of Pub. L. 100–177, will not receive a refund of any amounts previously paid but will receive service credit for those payments as follows:

(1) The number of days of service credit will be calculated by dividing the total amount paid by the Program participant prior to the Program participant's service start date by the total debt as of the service start date and multiplying the result of that division by the number of days of the participant's remaining service obligation (as determined by the formula set forth in the second sentence of paragraph (a) of this section).

(2) If the Program participant defaults on a contract under this Program, prior monetary payments will not be credited to service but will be applied to the monetary debt owed by the Program participant.

(c) Program participants who elect to serve under section 204(c)(1) of Pub. L. 100–177 must pay an amount equal to the scholarship amount. Any amounts paid by the Program participant prior to or after entry into the Program, in accordance with § 62.76 of this subpart, will be used to reduce the Program participant's financial obligation incurred under section 204(c)(1) of Pub. L. 100–177. In some cases, the amounts paid before or after entry into the Program will exceed the scholarship amount. These payments in excess of the scholarship amount will be converted into days of service credit under the formula set forth in paragraph (b)(1) of this section. If a Program participant defaults on a contract under this option, the monies paid in excess of the scholarship amount will not be credited to service but will be credited toward the monetary debt owed by the Program participant under section 338E(b) of the Act or section 225(f)(1) of the Act, as in effect on September 30, 1977. The scholarship amount paid upon entering this option will be forfeited.

§ 62.74 Will individuals serving under the Special Repayment Program receive credit for partial service?

(a) With respect to obligations under the Scholarship Program, a credit will be

allowed for partial service under the Special Repayment Program and will result in a reduction of the Program participant's financial obligation in accordance with the following formula:

$$A = 3\ 0\ \frac{[t-(s+1/2r)]}{t}$$

In which:

'A' is the amount the United States is entitled to recover,

'0' is the sum of the amounts paid to or on behalf of the Program participant under the Scholarship Program and the interest on such amounts which would be payable if, at the time the amounts were paid, they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

't' is the total number of months in the Program participant's period of obligated service under the Program including any additional months of service incurred pursuant to section 204(c)(1) of Pub. L. 100–177

's' is the number of months of prior approved service performed by the Program participant before commencing service under this Program, and

'r' is the number of months of service performed by the Program participant in compliance with this Program.

However, where a judgment has been entered against a Program participant, the formula will be revised such that "30" equals the amount of the judgment representing the Program participant's liability under the Scholarship Program, including any accrued postjudgment interest and excluding any monetary payments on the judgment which may have been made by the Program participant and "s" equals the number of months of prior approved service performed by the Program participant after the entry of the judgment but before commencing service under this Program.

(b) With respect to obligations under the PH/NHSC Scholarship Training Program, if a Program participant fails to complete the period of obligated service under the Program (including any additional months of service incurred pursuant to section 204(c)(1) of Pub. L. 100–177), no credit for partial service under this Program will be allowed.

(c) Where participants have obligations under both the Scholarship Program and the PH/NHSC Scholarship Training Program, credit for service will be applied against the scholarship obligations in the order in which they were incurred.

§ 62.76 How will amounts of money due under the option under section 204(c)(1) of Pub. L. 100–177 be required to be repaid?

Program participants who elect to serve under section 204(c)(1) of Pub. L. 100–177 will be required to pay the full scholarship amount at least 60 days prior to the service start date specified in the documentation submitted to the Secretary.

[FR Doc. 89–7612 Filed 3–31–89; 8:45 am]

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federal register

Monday
April 3, 1989

Part III

Environmental Protection Agency

40 CFR Part 799

Triethylene Glycol Monomethyl, Monoethyl, and Monbutyl Ethers (Testing Consent Order) and Triethylene Glycol Monomethyl Ether (Final Test Rule); Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42080D; FRL-3548-8]

Testing Consent Order; Triethylene Glycol Monomethyl, Monoethyl, and Monobutyl Ethers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule announces that EPA has signed an enforceable Testing Consent Order with five manufacturers of triethylene glycol monomethyl ether (TGME; CAS No. 112-35-6), triethylene glycol monoethyl ether (TGEE; CAS No. 112-50-5), or triethylene glycol monobutyl ether (TGBE; CAS No. 143-22-6), who have agreed to perform certain toxicologic tests with TGME. This action is in response to the TSCA Interagency Testing Committee's (ITC) designation of these three chemicals for priority testing. Also, appearing elsewhere in this issue of the Federal Register, is a final rule requiring developmental neurotoxicity testing of TGME.

EFFECTIVE DATE: April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room EB-44, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under procedures described in 40 CFR Part 790, five manufacturers of TGME, TGEE, or TGBE have entered into a Testing Consent Order with EPA in which they have agreed to perform certain toxicologic tests on TGME. This rule amends Subpart C of 40 CFR Part 799 to add TGME, TGEE and TGBE to the list of chemical substances and mixtures subject to Testing Consent Orders for which the export notification requirements of 40 CFR Part 707 apply.

Public reporting burden for this collection of information is estimated to average 506 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.

I. ITC Recommendations

The Interagency Testing Committee (ITC) designated TGME, TGEE, and TGBE for priority testing consideration in its Sixteenth Report published in the Federal Register of May 21, 1985 (50 FR 20930), and recommended pharmacokinetic and metabolic studies. The results of those studies would determine whether subchronic studies with emphasis on hematologic effects, as well as reproductive and developmental toxicity tests, should be performed.

II. Proposed Test Rule

EPA issued a proposed test rule, published in the Federal Register of May 15, 1986 (51 FR 17883), requiring that manufacturers and processors of the three triethylene glycol ethers conduct toxicologic testing on the glycol ethers they manufacture or process. This testing was based on EPA findings of the potential for unreasonable risk under TSCA section 4(a)(1)(A) and a finding of substantial production and exposure under TSCA section 4(a)(1)(B). These findings are more fully described in the proposed rule. A two-stage test rule was proposed. Subchronic toxicity, developmental toxicity, neurotoxicity, developmental neurotoxicity, and lower-tier mutagenicity comprised the first stage. Following review of data from these tests EPA would decide if the second-stage tests, oncogenicity, upper-tier mutagenicity, and reproductive toxicity, were needed.

III. Testing Consent Order Negotiation

Following the test rule proposal, the Chemical Manufacturers Association (CMA) informed EPA that members of CMA's Glycol Ether Panel were sponsoring a series of tests on TGME. They planned to conduct a 90-day dermal toxicity test and a dermal developmental toxicity study in the rabbit, an *in vivo* mouse micronucleus test, and an Ames assay. They had already initiated an oral Chernoff-Kavlock developmental toxicity screen in the rat and a 21-day dermal range-finding study in the rabbit, with the high dose at 1 gram/kilogram (g/kg) as a limit test, and an *in vitro* dermal absorption study using human skin. These tests were done on all three glycol ethers, with no obvious toxicity differences between the chemical substances.

By February 1987, EPA informed CMA that EPA was considering the option of a Testing Consent Order. On May 19, 1987, EPA issued a notice (52 FR 18738) to this effect, requesting public participation and announcing a meeting on May 28, 1987, to initiate testing negotiations.

After several scientific meetings, CMA's Glycol Ethers Panel submitted to EPA a draft Consent Order on September 30, 1987, which included all but one of the first-stage tests proposed by EPA for TGME, TGEE and TGBE, with TGME as the test substance representing all three. The only testing not agreed upon was for developmental neurotoxicity. After a period of intensive discussion on developmental neurotoxicity testing, a final Consent Order, excluding developmental neurotoxicity, was signed by March 8, 1989 by Cain Chemical Inc., The Dow Chemical Company, Eastman Kodak Company, Shell Chemical Company, and Union Carbide Corporation. In this Consent Order, the manufacturers agreed to perform certain toxicologic tests on TGME by specific dates according to the test standards in the Appendix of the Order. The final test rule for developmental neurotoxicity testing of TGME is published elsewhere in this Federal Register. EPA is deferring final decisions on further testing of TGEE and TGBE (51 FR 17883) until the results of the Consent Order testing are available (see Unit V).

IV. Use and Exposure

These glycol ethers are primarily co-produced during the manufacture of lower molecular weight glycol ethers. About 5 percent of production is purified further for use as chemical intermediates, but the majority is sold in a technical grade for use as a diluent in brake fluid.

Preliminary data from the National Occupational Exposure Survey (NOES), conducted by the National Institute for Occupational Safety and Health (NIOSH) from 1980 to 1983, indicate that approximately 250,000 workers, including 8,000 females, were potentially exposed to brake fluids in the workplace in 1980 (Ref. 1). Although there are no data on actual levels of dermal exposure in the workplace, the nature of brake system maintenance and repair suggests that complete exposure of both hands occurs regularly, even daily, for many professional mechanics. EPA has recently prepared an updated exposure profile of mechanics (at least 175,000 estimated) exposed to brake fluids with at least one contact per day, resulting in estimated exposures ranging from 520 to 2,300 milligrams (mg)/day for 250 days per year (Ref. 2). Furthermore, there is a potential for consumer exposure, since some individuals can be expected to

perform brake maintenance, including addition of brake fluid, on their automobiles.

V. Testing Program

The proposed test rule would have required that most of the tests be performed dermally, since that is the route of human exposure, and the manufacturers agree that this would be most useful for risk assessment. This Consent Order however, requires that the route of administration for the developmental toxicity and subchronic neurotoxicity tests be oral to assure that a sufficient dose will be administered for hazard identification.

As TGME has relatively low acute toxicity by the oral or dermal route, the previously completed study by CMA prior to the issuance of the Order used the 1 g/kg limit test for the initial range-finding. This study found essentially no effect in the 21-day test in the rabbit. Because EPA found a possible maximum human dermal exposure of 3,900 mg/day (Ref. 3), or 56 mg/kg/day for a 70 kg person, the high dose of the test should be greater than the 1 g/kg limit test dose. Dow scientists were able to apply 4 g/kg percutaneously to the Sprague-Dawley rat (Ref. 3) in a second range-finding study. However, in order to approach a 100-fold margin of exposure for TGME, the high dose should be at least 5 g/kg for neurotoxicity tests, which would require oral dosing. Despite the requirement to conduct some of these tests via the oral route, the manufacturers subject to the Order have informed EPA that they plan to do both oral subchronic neurotoxicity and dermal subchronic regular toxicity studies in the Sprague-Dawley rat, since they believe the dermal route to be more informative.

In the Consent Order, the five manufacturers agree to conduct the following studies in accordance with the cited test guidelines. A dermal subchronic study will be conducted in the Sprague-Dawley rat according to 40 CFR 798.2250, using at least 4 g/kg as the high dose. Three combined oral subchronic neurotoxicity tests will be conducted in the Sprague-Dawley rat, using at least 5 g/kg as a high dose, according to 40 CFR 798.6050, 798.6200, and 798.6400. Developmental toxicity studies in the Sprague-Dawley rat and the rabbit will be conducted by the oral gavage route of exposure using at least 5 g/kg as a high dose, according to 40 CFR 798.4900. The high doses listed above will be required unless range-finding studies indicate that lower doses will produce adequate toxicity for an evaluation.

The remaining studies to be performed are three mutagenicity tests: the *Salmonella typhimurium* reverse mutation assay, 40 CFR 798.5265; detection of gene mutation in somatic cells in culture, 40 CFR 798.5300; and a mouse *in vivo* micronucleus assay, 40 CFR 798.5395. If any of these indicate a hazard for genetic toxicity, EPA will consider the need for further testing.

TESTING PLAN FOR TGME

Test	Test standards	Report [1] date
Mutagenicity:		
Salmonella typhimurium.	40 CFR 798.5265..	12
Somatic cells in culture.	40 CFR 798.5300..	12
Mouse micronucleus.	40 CFR 798.5395..	12
Developmental toxicity.	40 CFR 798.4900..	12
Subchronic toxicity.	40 CFR 798.2250..	18
Subchronic neurotoxicity:		
Neurobehavioral battery.	40 CFR 798.6050..	18
Motor activity	40 CFR 798.6200..	18
Neuropathology.	40 CFR 798.6400..	18

[1] Months after effective date of Consent Order.

The above Table delineates the tests, test standards, and final reporting dates for all the tests incorporated in the Testing Consent Order. The test standards with modifications are attached to the Order. EPA will use the data generated by these tests to determine the potential risk to human health from exposure to TGME and to determine whether any additional testing of TGME, TGEE, or TGBE is necessary.

EPA believes that testing may not be necessary for all three glycol ethers. In the lower congeners (the monoethylene glycol ethers) the methyl compound is the most toxic of the three in developmental (Ref. 5), reproductive (Refs. 6, 7, and 8), and neurotoxic effects (Refs. 9 and 10). Therefore, EPA will wait until the TGME testing is completed before determining whether testing on the other two is necessary. Although EPA does not intend to withdraw at this time its May 15, 1986 (51 FR 17883) proposal for testing triethylene glycol ethers, EPA will not issue any final test rules on the types of tests covered in this Testing Consent Order for any of the three triethylene glycol ethers in the proposed test rule during the period in which testing on TGME is conducted pursuant to the Consent Order to EPA's satisfaction.

VI. Export Notification

The issuance of the Consent Order subjects any person who exports or intends to export TGME, TGEE, or TGBE to the export notification requirements of section 12(b) of TSCA. The specific requirements are listed in 40 CFR Part 707. On June 23, 1987, EPA established 40 CFR 799.5000 as a listing of Consent Orders issued by EPA (52 FR 23548). This listing serves as notification to persons who export or who intend to export chemical substances or mixtures which are the subject of Testing Consent Orders that 40 CFR Part 707 applies.

VII. Rulemaking Record

EPA has established a record for this rule and the Consent Order (docket number OPTS–42080D). This record contains the information EPA considered in developing the Consent Order and includes the following:

A. Supporting Documentation

(1) Testing Consent Order for TGME, TGEE, and TGBE.

(2) **Federal Register** notices pertaining to this rule and the Consent Order consisting of:

(a) Notice containing the ITC designation of TGME, TGEE, and TGBE.

(b) Rules requiring TSCA sections 8 (a) and (d) reporting on TGME, TGEE, and TGBE.

(c) Proposed TSCA section 4(a) test rule on TGME, TGEE, and TGBE.

(d) Notice soliciting interested parties for Testing Consent Order negotiation on TGME, TGEE, and TGBE.

(3) Communications consisting of:

(a) Letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

B. References

(1) NIOSH. National Occupational Exposure Survey (1980–1983). Cincinnati, OH: Department of Health and Human Services. National Institute for Occupational Safety and Health (1985).

(2) OTS. Memorandum from R. Craig Matthiessen to Carol Glasgow on Response to Comment on Exposure to the Triethylene Glycol Ethers. Office of Toxic Substances (July 10, 1980).

(3) OTS. Report by Roger Swarup on test rules exposure analysis of triethylene glycol monomethyl ether, triethylene glycol monoethyl ether, triethylene glycol monobutyl ether. Office of Toxic Substances (July 24, 1985).

(4) Yano, B.L., Phillips, J.E. and Battjes, J.E. "Triethylene glycol monomethyl ether: 2-week dermal

toxicity study in male and female Sprague-Dawley rats." Dow Chemical Company ID: K-005610-001 (1987).

(5) European Chemical Industry Ecology & Toxicology Centre. (ECETOC). Technical Report No. 17. "The toxicology of glycol ethers and its relevance to man: an up-dating of ECETOC Technical Report No. 4." Brussels, Belgium: ECETOC (1985).

(6) NTP. "Ethylene glycol monomethyl ether: Reproduction and fertility assessment in CD-1 mice when administered in drinking water." NTIS Publication #86-163136/XAB Washington, DC (1985).

(7) NTP. "2-Ethoxyethanol: Reproduction and fertility assessment in CD-1 mice when administered in water." NTIS Publication #85-118651/XAB Washington, DC (1984).

(8) NTP. "Ethylene glycol monobutyl ether: Reproduction and fertility assessment in CD-1 mice when administered in drinking water." NTIS Publication #85-226827/XAB Washington, DC (1985).

(9) Goldberg, M.E., Haun, C. and Smyth, H.F., Jr. "Toxicologic implication of altered behavior induced by an industrial vapor." *Toxicology and Applied Pharmacology* 4:148-162 (1962).

(10) Goldberg, M.E., Johnson, H.E., Pozzani, U.C. and Smyth, H.F., Jr. "Effect of repeated inhalation of vapors of industrial solvents on animal behavior. I. Evaluation of nine solvent vapors on pole-climb performance in rats." *American Industrial Hygiene Association Journal* 25:369-375 (1964).

VIII. Other Regulatory Requirements

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 *et seq.* and have been assigned OMB control number 2070-0033.

Public reporting burden for this collection of information is estimated to average 506 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 799

Testing procedures, Environmental protection, Hazardous substances Chemicals, Chemical export, Recordkeeping and reporting requirements.

Dated: March 24, 1989.

Susan F. Vogt,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 799 is amended as follows:

PART 799—[AMENDED]

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

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

2. Section 799.5000 is amended by adding triethylene glycol monomethyl, monoethyl, and monobutyl ethers in the table in CAS Number order, to read as follows:

§ 799.5000 Testing consent orders.

* * * * *

CAS number	Substance or mixture name	Testing	Federal Register citation
*	*	*	*
112-35-6	Triethylene glycol monomethyl ether.	Health effects.	53 FR....., April 3, 1989.
112-50-5	Triethylene glycol monoethyl ether.	Health effects.	.....do.
143-22-6	Triethylene glycol monobutyl ether.	Health effects.	.....do.
*	*	*	*

[FR Doc. 89-7789 Filed 3-31-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42080E; FRL-3549-2]

Triethylene Glycol Monomethyl Ether; Final Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final test rule under section 4 of the Toxic Substances Control Act (TSCA) requiring manufacturers and processors of triethylene glycol monomethyl ether (TGME, CAS No. 112-35-6) to perform developmental neurotoxicity testing. This action is in response to the TSCA Interagency Testing Committee's (ITC) designation of TGME for priority testing. Also, appearing elsewhere in this issue of the **Federal Register**, is a Testing Consent Order rule for triethylene glycol monomethyl ether, triethylene glycol monoethyl ether, and triethylene glycol monobutyl ether.

DATES: For purposes of judicial review in accordance with 40 CFR 23.5, this rule shall be promulgated at 1 p.m. eastern (standard or daylight as appropriate) time on April 17, 1989. This rule shall become effective on May 17, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is promulgating a final test rule requiring developmental neurotoxicity testing of TGME.

Public reporting burden for this collection of information is estimated at 1375 hours including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.

I. Introduction

A. Test Rule Development Under TSCA

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

Under section 4(a) of TSCA, EPA must require testing of a chemical to develop data if the Administrator makes certain findings as described in TSCA under section 4(a)(1) (A) or (B). Detailed discussions of the statutory section 4 findings are provided in the Agency's first and second proposed test rules

published in the **Federal Registers** of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

B. Regulatory History

The Interagency Testing Committee (ITC) designated TGME for priority testing consideration in its sixteenth report published in the **Federal Register** of May 21, 1985 (50 FR 20930). In response to this designation, EPA issued a proposed test rule in the **Federal Register** of May 15, 1986 (51 FR 17883) requiring that manufacturers and processors of TGME test the chemical for developmental neurotoxicity among other health effects, under sections 4(a)(1) (A) and (B) of TSCA. EPA recently entered a Consent Order with five manufacturers of triethylene glycol ethers to conduct certain toxicologic tests of TGME (notice published elsewhere in this **Federal Register**). Regarding developmental neurotoxicity testing, EPA has chosen to proceed by issuing a final test rule.

II. Response to Comments

The proposed rule (51 FR 17883) also proposed the developmental neurotoxicity guideline (40 CFR 795.250), and comments were received on both the proposed rule and guideline. Responses to comments on the guideline were published when the guideline was promulgated with the diethylene glycol butyl ether and diethylene glycol butyl ether acetate final test rule (53 FR 5932; February 26, 1988).

Only the Chemical Manufacturers Association (CMA) Glycol Ethers Program Panel and the American Industrial Health Council (AIHC) commented on the proposed test rule. Responses to those comments are given below.

A. Findings

EPA based the proposed test rule on both TSCA sections 4(a)(1) (A) and (B).

CMA and AIHC commented that the Agency did not provide justification for the section 4(a)(1)(A) finding. Comments 1 through 4 address this finding.

1. *Comment:* CMA commented that "the toxicity data on which EPA relies do not demonstrate any likelihood of unreasonable risks". They further went on to state "EPA argues that adverse effects would be expected from human exposures to the triethylene glycol ethers (51 FR 17885)."

Response: EPA has not reached any conclusion as to effects of exposure, but has merely found "that the use of the triethylene glycol ethers * * * *may* present an unreasonable risk * * * *". EPA has based its finding of potential unreasonable risk on (1) a toxicity prediction by use of a structure-activity relationship, discussed below in EPA's response to comments 2 and 3a, and (2) human exposure potential as discussed in the response to comment 5. Findings are detailed in Unit III.A. Testing is required because available data are insufficient to show whether "adverse effects would be expected". If EPA knew with certainty the extent of the risk, EPA would not require testing.

2. *Comment:* AIHC commented on EPA's structure-activity relationship (SAR) analysis, which was conducted only with ethylene glycol monomethyl ether (EGME). AIHC believes that a more refined SAR analysis should be used. The AIHC comments refer to the fact that "Data on series of glycol ethers and experience using similar materials has never resulted in neurologic effects similar to those observed with EGME for any other glycol ether".

Response: EPA is not aware of specific neurotoxicity testing on the higher congeners, the diethylene or triethylene glycol ethers, but Goldberg *et al.* (Refs. 1 and 2) have done adult neurotoxicity testing with the monoethylene compounds, just as Nelson *et al.* (Refs. 3, 6, and 7) have done with developmental neurotoxicity. Furthermore, the results of Goldberg *et al.*'s 1962 study with EGME (Ref. 1) on active avoidance paralleled the effects seen in the offspring exposed *in utero* to EGME (Ref. 3). In addition, effects of EGME seen in adult humans (Ref. 4) are comparable to the symptoms, ataxia and lethargy, seen in rat acute toxicity studies with TGME (Ref. 5). Without data on the higher congeners, EPA believes it cannot reasonably predict the neurotoxicity potential of TGME, and that testing is necessary.

3a. *Comment:* AIHC also commented that EPA's use of a single study (Ref. 3) to support the requirement for developmental neurobehavioral toxicity testing may be inadequate.

Response: In addition to the reference used in the proposed rule to support the requirement for developmental neurotoxicity (Ref. 3), Nelson's group tested another ethylene glycol ether, ethylene glycol monoethyl ether (EGEE), following prenatal exposure in rats (Refs. 6 and 7). At 100 ppm (Ref. 6) statistically significant changes occurred with the rotorod test, the activity wheel test, and avoidance conditioning. At 200 ppm, a maternally toxic dose, even greater alterations were observed in these tests (Ref. 7). All these results (Refs. 3, 6, and 7), constitute an adequate basis for concern about the potential for developmentally neurotoxic effects.

3b. *Comment:* AIHC and CMA questioned the use of a 1984 paper by Nelson *et al.* (Ref. 3) to support the finding. The comments quoted all or part of the following sentence in this paper: "The absence of more robust differences here raises doubt regarding the biological significance of the difference in this group, as compared with those seen in the 2ME 7–13 group."

Other AIHC and CMA comments discuss the following problems with the protocol of the same paper: (1) No appropriate controls of the exposed males; and (2) no randomization in assigning females in the various exposure groups, which they felt might account for the "consistency of the neurochemical findings".

Response: These comments (3a, 3b) refer to toxicity testing in the Nelson paper (Ref. 3) (paternal exposure, neurochemical alterations) which EPA is not requiring in this rule, and which do not bear on the proposed finding that TGME exposure may present an unreasonable risk of developmental neurotoxicity.

4. *Comment:* CMA also commented on the rationale for developmental neurotoxicity testing for risk assessment purposes, and concluded that "although such testing may be of academic interest, it is of no proven value to the risk assessment needs that must exist to justify section 4 testing requirements".

Response: At the time of the proposal, EPA had not previously required developmental neurotoxicity testing and had never used such testing for risk assessment purposes. However, EPA has long recognized that there is a need for this testing, as is discussed below. To fulfill this need, EPA has developed a guideline for this test (40 CFR 795.250).

In the early 1970's, the scientific community became concerned that exposure of the mother to drugs or toxic chemicals may result in neurologic effects in the offspring, as reports proliferated indicating that children born to chronic alcoholic mothers not only had physical malformations, but an increased incidence of mental retardation or performance deficits (Refs. 8 and 9). The fetal alcohol syndrome, as it is now termed (Ref. 10), is no longer considered an unproven theory, and there have been numerous studies investigating neurobehavioral problems in offspring exposed to other substances *in utero* (Ref. 11).

Scientists from various governmental agencies (National Institute for Environmental Health Sciences, NIEHS; National Center for Toxicological Research, NCTR; Food and Drug Administration, FDA; National

Toxicology Program, NTP; National Institute for Occupational Safety and Health, NIOSH; and EPA) instituted a Collaborative Behavioral Teratology Study (CBTS) in 1978 to evaluate the intra- and interlaboratory reliability and sensitivity of several behavioral test methods as a preliminary for developing tests useful for "safety evaluation in the area of postnatal function" (Ref. 12). CBTS was initiated, in part, because of a belief that available tests had not been validated sufficiently for regulatory agencies' risk assessment needs.

In addition, EPA's Scientific Advisory Panel (SAP) recently reviewed the rationale for developmental neurotoxicity testing and concluded that EPA should require that such testing be conducted in a number of instances including "strong structure-activity relationships to known neurotoxicants" (Ref. 13).

5. *Comment:* CMA submitted the only comment on the section 4(a)(1)(B) finding, stating that the NIOSH figures are not specific enough about the number of persons exposed to the chemical or the duration or extent of any such exposure to serve as the basis for requiring testing under TSCA sections 4(a)(1)(B). CMA also asserted that EPA failed to take into account instructions to the worker about handling the fluid carefully.

Response: EPA believes that the record supports the TSCA section 4(a)(1)(B) finding of "significant or substantial human exposure" for TGME. EPA has routinely used and intends to continue to use NIOSH survey statistics to make section 4(a)(1)(B) findings where appropriate unless better estimates of occupational exposure are developed. Furthermore, EPA has recently prepared an updated exposure profile of the estimated 175,000 mechanics exposed to brake fluids with at least one contact per day resulting in exposures ranging from 250 to 2,300 mg/day for 250 days per year (Ref. 14). In addition, the NIOSH figures are not the total basis for the section 4(a)(1)(B) finding, and as stated in the proposed rule, EPA believes that consumer exposure also occurs through the use of products containing TGME, since some individuals can be expected to add brake fluid or perform brake maintenance on their own automobiles. Thus EPA has properly concluded that substantial numbers of people may be exposed to TGME and that many of these people may be exposed to significant levels of TGME.

B. Route of Exposure

Comment: Several comments suggested that the oral route of exposure would be more appropriate than the dermal route in treating females caged with offspring.

Response: EPA agrees and has changed the route of administration to oral by gavage.

C. Economic Impact

Comment: CMA commented that the proposed testing would be too expensive and would have a substantial economic impact on manufacturers.

Response: EPA has greatly reduced the impact of this final test rule by requiring testing only of TGME, which will represent all three of the glycol ethers in the proposed test rule. If EPA concludes that testing of the other two is necessary after evaluating the data from this test, it will require this by a separate final rule.

III. Final Test Rule

A. Findings

This test rule is based on the authority of TSCA section 4(a)(1) (A) and (B). Under section 4(a)(1)(A) EPA finds that the use of TGME may present an unreasonable risk of developmental neurotoxicity on the basis of SAR with EGME and EGEE (Refs. 3, 6, and 7), both of which demonstrate developmental neurotoxicity, and the exposure to brake fluid which may contain TGME during use at levels up to 250 to 2,300 mg/day for up to 250 days per year by mechanics (Ref. 14). Other workplace personnel may be exposed to even higher levels (Ref. 20). Under section 4(a)(1)(B) EPA finds that TGME is produced in substantial quantities (30 million lbs. in 1986) (Ref. 15). EPA also finds that there is or may be substantial human exposure to brake fluids (which may contain TGME) in the workplace, where approximately 250,000 workers including 8,000 females (Ref. 16) are exposed. An updated exposure report (Ref. 14) confirms exposure in that an estimated 175,000 of these 250,000 workers are mechanics exposed to brake fluids at least once a day. There also may be substantial consumer exposure to TGME during maintenance of consumers' own vehicles. EPA also finds that there is or may be significant human exposure to TGME in the workplace.

EPA also finds that there are no available data to reasonably predict or determine the developmental neurotoxicity of TGME and that testing is necessary to develop this data.

Data resulting from the developmental neurotoxicity screen will help EPA determine whether TGME is developmentally neurotoxic and whether further testing is necessary, and are relevant to determining whether exposure to TGME during use does or does not present an unreasonable risk to human health.

B. Required Testing and Test Standard

EPA is requiring that developmental neurotoxicity be conducted on TGME in accordance with the specific guideline in 40 CFR 795.250, as published in the **Federal Register** of February 26, 1988 (53 FR 5947).

C. Test Substance

EPA is requiring that TGME of at least 90 percent purity shall be used as the test substance. TGME of such purity is available at reasonable cost.

D. Persons Required To Test

Section 4(b)(3)(B) specifies that the activities for which EPA makes section 4(a) findings (manufacture, processing, distribution in commerce, use, and/or disposal) determine who bears the responsibility for testing a chemical. Manufacturers and persons who intend to manufacture the chemical are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors and persons who intend to process the chemical are required to test if the findings are based on processing. Manufacturers and processors and persons who intend to manufacture and process the chemical are required to test if the exposures giving rise to the potential risk occur during distribution in commerce, use, or disposal of the chemical.

Because EPA has found that the use of TGME gives rise to exposure that may lead to an unreasonable risk, EPA is requiring that persons who manufacture or process, or who intend to manufacture or process, TGME, other than as an impurity, at any time from the effective date of this final test rule to the end of the reimbursement period are subject to the testing requirements contained in this final rule. The end of the reimbursement period will be 5 years after the last final report is submitted or an amount of time equal to that which was required to develop data, whichever is later.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf.

Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of this final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790. Although EPA has not identified any individuals who manufacture TGME as a byproduct, such persons will be subject to the requirements of this test rule.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. EPA expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or other reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, EPA will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR Part 790.

EPA is not requiring the submission of equivalence data as a condition for exemption from the required testing for TGME. As noted in Unit III.C., EPA is interested in evaluating the effects attributable to TGME and has specified a relatively pure substance for testing.

Manufacturers and processors subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

E. Reporting Requirements

EPA requires that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards, which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790, under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 45 days before initiation of each test.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data.

The proposed rule would have required that for range finding for this developmental neurotoxicity test, developmental toxicity testing in the rat be completed before initiating the developmental neurotoxicity study. However, developmental toxicity testing in the rat is being performed by the manufacturers under a negotiated Testing Consent Order using the TSCA guideline in 40 CFR 798.4900, as modified (Ref. 17), and developmental neurotoxicity testing under this rule shall be initiated when the results of the developmental toxicity study are submitted to EPA. If neither developmental or maternal toxicity is seen in the developmental toxicity study, the high dose in the developmental neurotoxicity study shall be 5 grams/kilogram (g/kg). The developmental neurotoxicity test results shall be submitted within 21 months of EPA's publication in the **Federal Register** of a notice announcing the receipt of the developmental toxicity test results. Interim progress reports for the developmental neurotoxicity study shall be provided to EPA at 6-month intervals after the initiation of this test, until the final report is submitted to EPA.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, EPA will publish a notice of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707. In brief, as of the effective data of this test rule, an exporter of TGME must report to EPA the first annual export or intended export of TGME to each country. EPA will notify the foreign country concerning the test rule for TGME.

F. Enforcement Provisions

EPA considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by TSCA or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by TSCA section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *." EPA considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of EPA for the purpose of determining compliance with this final rule for TGME. These inspections may be conducted for purposes which include verification that testing has begun, schedules are being met, and reports accurately reflect the underlying raw data, interpretations, and evaluations, and to determine compliance with TSCA GLP standards and the test standards established in this rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and to include such other requirements as are necessary to provide such assurance. EPA maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 of TSCA could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers that fail to submit a letter of intent or an exemption request and that continue manufacturing after the deadlines for such submissions. This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after EPA has notified them of their obligation to submit such documents (see 40 CFR 790.28(b)). Knowing or willful violations could lead to the imposition of criminal

penalties of up to $25,000 for each day of violation or imprisonment for up to 1 year, or both. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in TSCA section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

IV. Economic Analysis of Final Rule

To assess the potential economic impact of this rule, EPA has prepared an economic analysis (Ref. 18) that evaluates the potential for significant economic impact on the industry as a result of the required testing. The economic analysis estimates the cost of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of TGME: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations. If there is no indication of adverse effect, no further economic analysis is performed; however, if the first level of analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted which more precisely predicts the magnitude and distribution of the expected impact.

Total testing costs for the final rule for TGME are estimated to range from $113,800 to $151,900. To predict the financial decision-making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period to finance the testing expenditure in the first year.

The annualized test costs (using a cost of capital of 7 percent over a period of 15 years) range from $13,494 to $16,677. Based on the 1986 estimated production volume for TGME of 29.6 million pounds, the unit test costs will be about 0.06 cents per pound. In relation to the selling price of $5.00 per gallon for TGME, these costs are equivalent to 0.17 percent of price.

Based on these costs and the uses of TGME, the economic analysis indicates that the potential for significant adverse economic impact as a result of this testing rule is low. This conclusion is based on the following observations:

1. The estimated unit test costs are very low, 0.17 percent of current price in the upper-bound case.

2. The overall demand for TGME appears relatively inelastic.

Refer to the economic analysis for a complete discussion of test cost estimation and the potential for economic impact resulting from these costs.

V. Availability of Test Facilities and personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule". Therefore, EPA conducted a survey to assess the availability of test facilities and personnel to handle the additional demand for testing services created by this section 4 test rule (Ref. 19). On the basis of this study, EPA believes that there will be available test facilities and personnel to perform the testing specified in this rule.

VI. Rulemaking Record

EPA has established a record for this rulemaking proceeding (docket number OPTS 42080E). This record includes:

A. Supporting Documentation

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

(a) Notice containing the ITC designation of TGME to the Priority List (50 FR 20930; May 21, 1985).

(b) Rules requiring TSCA section 8(a) and 8(d) reporting on TGME (50 FR 20909; May 21, 1985).

(c) Notice of EPA's proposed test rule on TGME (51 FR 17883; May 15, 1986).

(d) TSCA developmental neurotoxicity test guideline final rule (53 FR 5947; February 26, 1988).

(e) Notice of final rulemaking on data reimbursement (48 FR 31786; July 11, 1983).

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

(g) TSCA GLP standards (48 FR 53992; November 29, 1983).

(2) Communications consisting of:

(a) Written public comments.

(b) Transcript of public meeting.

(c) Summaries of phone conversations.

(d) Summaries of public meetings.

(e) Letters.

B. References

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(3) Nelson, B.K., Brightwell, W.S., Burg, J.R., and Massari, V.J. "Behavioral and neurochemical alterations in the offspring of rats after maternal or paternal inhalation exposure to the industrial solvent 2-methoxyethanol." *Pharmacology, Biochemistry & Behavior* 20:269–279 (1984).

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(11) Riley, E.P. and Vorhees, C.V. (Eds.). "*Handbook of Behavioral Teratology*". NY: Plenum (1986).

(12) Kimmel, C.A. and Buelke-Sam, J. "Collaborative behavioral teratology

study: Background and overview." *Neurobehavioral Toxicology and Teratology* 7:541–545 (1985).

(13) Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel Subpanel. A set of scientific issues being considered by the Agency concerning neurotoxicity testing under FIFRA. Report of SAP subpanel recommendations. October 16, 1987.

(14) OTS. Memorandum from R. Craig Matthiessen to Carol Glasgow on Response to Comment on Exposure to the Triethylene Glycol Ethers. Office of Toxic Substances (July 7, 1988).

(15) USITC. "Synthetic organic chemicals. United States production and sales, 1986." Washington, DC: U.S. International Trade Commission, U.S. Government Printing Office (1986).

(16) NIOSH. National Occupational Exposure Survey (1980–1983). Cincinnati, OH: Department of Health and Human Services. National Institute for Occupational Safety and Health (1985).

(17) USEPA. "Testing Consent Order for triethylene glycol monomethyl, monoethyl, and monobutyl ethers." U.S. Environmental Protection Agency (1989).

(18) OTS. "Economic impact analysis of final test rule for triethylene glycol monomethyl ether." Office of Toxic Substances (1988).

(19) Mathtech, Inc. Memorandum from J.K. Orrell to Edmund Coe, OTS, on Developmental Neurotoxicity Laboratory Capability. (September 19, 1988).

(20) OTS. Report by Roger Swarup on test rules exposure analysis of triethylene glycol monomethyl ether, triethylene glycol monoethyl ether, triethylene glycol monobutyl ether. Office of Toxic Substances (July 24, 1985).

VII. Other Regulatory Requirements

A. Executivce Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in costs or prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprise to compete with foreign enterprises.

This rule was submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., Pub. L. 96 354, September 19, 1980), EPA is certifying that this test rule will not have a significant impact on a substantial number of small businesses because: (1) they are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 *et seq.* and have been assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated at 1375 hours, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: March 24, 1989.

Susan F. Vogt,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 799 is amended as follows:

PART 799—[AMENDED]

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

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

2. By adding § 799.4440 to read as follows:

§ 799.4440 Triethylene glycol monomethyl ether.

(a) *Identification of test substance.* (1) Triethylene glycol monomethyl ether (TGME, CAS No. 112–35–6) shall be tested in accordance with this section.

(2) TGME of at least 90 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture or process TGME, other than as an impurity, after May 17, 1989, to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests and submit data, or submit exemption applications as specified in this section, Subpart A of this part, and Parts 790 and 792 of this chapter for single-phase rulemaking.

(c) *Developmental neurotoxicity*—(1) *Required testing.* Developmental neurotoxicity testing shall be performed in the Sprague-Dawley rat by gavage in accordance with § 795.250 of this chapter except for the provision in paragraph (c)(3)(iii) of § 795.250.

(2) For the purpose of this section, the following provision also applies:

(i) *Dose levels and dose selection.* In the absence of developmental toxicity or maternal toxicity the maximum dose shall be 5 grams/kilogram.

(ii) [*Reserved*]

(3) *Reporting requirements*—(i) The developmental neurotoxicity test shall be completed and the final report submitted to EPA within 21 months of the initiation of the test. The test shall be initiated within 44 days of the publication in the **Federal Register** of notice of EPA's receipt of TGME developmental toxicity data.

(ii) Progress reports shall be submitted to EPA at 6- month intervals, beginning six months after the initiation of the test.

(d) *Effective date.* (1) The effective date of the final rule is May 17, 1989.

(2) The guideline cited in this section is referenced here as it exists on May 17, 1989.

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070–0033.)

[FR Doc. 89–7786 Filed 3–31–89; 8:45 am]

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federal register

Monday
April 3, 1989

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 358

Pediculicide Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 81N-0201]

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

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) pediculicide drug products (products used for the treatment of head, pubic (crab), and body lice) are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by June 2, 1989. New data by April 3, 1990. Comments on the new data by June 4, 1990. Written comments on the agency's economic impact determination by August 1, 1989.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 29, 1982 (47 FR 28312), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC pediculicide drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug case. Interested persons were invited to submit comments by September 27, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by October 27, 1982.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (address above), after deletion of a small amount of trade secret information. In response to the advance notice of proposed rulemaking, four manufacturers submitted comments and one manufacturer submitted a reply comment. Copies of the comments received are on public display in the Dockets Management Branch (address above).

In order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10), the present document is designated as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) to establish Subpart G of Part 358 (21 CFR Part 358; proposed in the **Federal Register** of September 3, 1982; 47 FR 39108) FDA states for the first time its position on the establishment of a monograph for OTC pediculicide drug products. Final agency action on this matter will occur with the publication at a future date of a final monograph, which will be a final rule establishing a monograph for OTC pediculicide drug products.

This proposal constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC pediculicide drug products as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

The OTC procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available date are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug products subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the advance notice of proposed rulemaking for OTC pediculicide drug products (published in the **Federal Register** of June 29, 1982, 47 FR 28312), the agency suggested that the conditions included in the monograph (Category I) be effective 6 months after the date of publication of the final monograph in the **Federal Register**. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 6 months after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products will have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the Federal Register. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace.

If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the Federal Register of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch (address above).

I. The Agency's Tentative Conclusions on the Comments

1. One comment submitted a copy of a label of an OTC aerosol pediculicide drug product, Personal Insecticide, bearing an Environmental Protection Agency registration number and which to the best of the comment's knowledge was being marketed for use on humans, and requested information regarding the procedure for registering this type of product with FDA.

In the Federal Register of November 5, 1979 (44 FR 63749), the United States Environmental Protection Agency (EPA) issued a final regulation to clarify its policy regarding the registration of pesticide products (which included pediculicide products) that are not new drugs or new animal drugs. Basically, EPA has jurisdiction over pesticide products marketed OTC and used as pediculicides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and regulations in 40 CFR Part 162, whereas FDA has jurisdiction over pediculicide drug products under the Federal Food, Drug, and Cosmetic Act (the act) and regulations in 21 CFR Parts 314 and 330. Section 162.5(d)(1) of EPA's regulations (40 CFR 162.5(d)(1)) provides that a pesticide, such as pyrethrins, is exempt from the requirements of FIFRA if the product is offered solely for human use and is a new drug within the meaning of section 201(p) of the act (21 U.S.C. 321) or has been determined not to be a new drug by the Secretary of Health and Human Services by a regulation establishing conditions for use of the product. At the present time, FDA has not declared pediculicide products containing pyrethrins to be new drugs nor established conditions for use of these products in a regulation. Therefore, EPA currently has jurisdiction over such products. However, as the EPA final rule explains (see 44 FR 63749), when FDA develops a monograph, products meeting its conditions will be exempt from FIFRA registration. Therefore, the tentative final monograph in this document, when finalized, would be an FDA regulation that establishes conditions for use of these products and, thus, would exempt pediculicide drug products containing pyrethrins from the requirements of FIFRA. Accordingly, once the final monograph becomes effective, a pesticide product containing pyrethrins labeled for use as an OTC pediculicide drug product for human use would no longer be under EPA's jurisdiction, but would have to conform to the labeling requirements of the final monograph. In the meantime, a pediculicide drug product may receive either FDA approval for marketing via a new drug application (NDA) under section 505 of the act (21 U.S.C. 355) and 21 CFR Part 314 or EPA approval for marketing under 40 CFR Part 162.

2. Two comments contended that aerosol forms of pediculicide drug products containing "OTC concentrations" of pyrethrins and piperonyl butoxide can be safely marketed as OTC drugs (Refs. 1 and 2). One of the comments stated that pulmonary absorption of any significant percentage of aerosolized pyrethrins and other potentially harmful product constituents can be minimized by utilizing an applicator and a method of application which restrict delivery of the aerosol "solely" to the infested area, and, additionally, by minimizing the number of aerosol particles below about 15 microns in diameter (Ref. 1). The comment referred to a specific aerosolized pediculicide drug product with an applicator which facilitates application in close proximity to skin and scalp to ensure essentially complete dermal impaction of the drug. The applicator generates an aerosol particle size distribution such that less than 2 percent of the delivered aerosol (by weight) is comprised of particles smaller than 16 microns in diameter and presents no inhalation toxicity problem. The comment stated that if all the aerosolized particles under 16 microns in size that are present in one average effective treatment using this product were absorbed systemically, they would represent approximately 0.15 milligram (mg) pyrethrins or less than 1/1,000,000 of the estimated LD_{50} in humans. The comment added that untoward chance contact of the product with mucous membrane can be minimized by delivery of the aerosol via use of a special applicator, limiting small, inhalable particle distribution, and by closing the mouth and eyes and covering the facial area with a damp cloth during spraying. The comment stated that an average patient treatment of head lice infestation requires five 1-second atomizations which approximate 2.25 grams (g) of the product, representing 7.5 mg pyrethrin extract and 62 mg piperonyl butoxide. The comment referred to the toxicity data (oral toxicity studies in mice and inhalation studies in rats and guinea pigs) previously submitted (Ref. 3) and stated that these data support the safety of the aerosol product. The comments concluded that broad international experience with this product has confirmed its safety as an OTC drug product.

The agency has reviewed the data previously submitted (Ref. 3), the Panel's statements, and the additional data and information submitted by the comments (Refs. 1 and 2) and has determined that the data are sufficient to establish the safety of aerosolized OTC pediculicide drug products as an alternative suitable dosage form provided that (1) an appropriate applicator is used which facilitates application of the product in close proximity to the affected area, (2) less than 2 percent of the delivered aerosol (by weight) is comprised of particles smaller that 16 microns in diameter, (3) the labeling states that the mouth and eyes are closed during application and the facial area is appropriately covered (e.g., with a damp cloth during spraying), (4) the labeling based upon adequate data, states an appropriate time period during which

the product can be safely and effectively used before washing off the affected area, and (5) the directions provide for an initial treatment followed by a second treatment in 7 to 10 days to kill any nits that may have hatched. Although the proposed labeling submitted to the Panel (Ref. 3) contained directions for treatment and preventative treatment, the agency has determined that the data do not support the use of aerosolized pediculicides every third day for prevention of lice infestation. Additional safety data for such use in aerosol and nonaerosol dosage forms would be needed to establish a preventative treatment claim.

The agency's evaluation of the data follows:

Using an aerosol product containing 0.33 percent pyrethrins and 2.67 percent piperonyl butoxide in petroleum oil, Mercier (Ref. 1) conducted four trials:

(1) *Acute toxicity after oral administration to albino mice.* This test was intended to determine toxicity in case of accidental ingestion or the vaporization of massive doses of the product on foodstuffs.

The LD_{50} was determined to be 8.77 grams/kilogram (g/kg). On histological examination only half of the controls, which had been given only 0.2 milliliter (mL)/20 g of olive oil, showed moderate steatosis of the liver while the treated animals all showed an excess of hepatic lipids. The excess was not always in proportion to the dose given. Nevertheless, vacuolation of the cytoplasm accompanied the excess lipids but no other inflammatory or sclerotic deterioration of the liver was found.

(2) *Trial to determine any possible toxic effect after inhalation of massive doses.* This test was conducted to demonstrate the bronchopulmonary or general toxicity by atomizing the product in a 4,700 liter semi-closed chamber containing guinea pigs and albino Wistar rats. The animals breathed the aerosol for 15 minutes during atomization and were kept in the chamber for 15 minutes after atomization. The animals were then observed for 1 week. This experiment showed that inhalation of large doses causes bronchopulmonary, bucconasal, and ocular irritation in test animals. The irritant effects were reversible within a few hours and did not lead to any lethal effect.

(3) *Trial to determine any toxic effect after inhalation of low dosages and the ingestion of food on which the vaporized material has fallen.* This experiment was conducted to determine whether the atomization of large quantities of the product into a room or the use of the aerosol, without precaution, could have a toxic effect.

Six female albino Wistar rats and 12 female albino Swiss mice, in ordinary cages, were placed in a room with a volume of 43 cubic meters. Over a 15-minute period, the contents of four 90 g containers were atomized near the animals. The animals were monitored every 15 minutes for 1 hour, then every 30 minutes for 3 hours for 4 days, in the same room where atomization occurred. This experiment showed that low doses of aerosol do cause moderate eye irritation and bucconasal irritation. Neither congestion of the eyes nor nasal or salivary hypersecretion was found. Also, there was no sign of bronchopulmonary irritation resulting in cough or dyspnea. No lethal effect due to inhalation of the product or to the ingestion of food on which it had fallen was observed.

(4) *Local tolerance of the finished product in macaca monkeys.* Each day except Sunday, three females and one male were given an atomization of the product using the nozzle intended for treatment of the occipital region. Each spray lasted 10 seconds, and a total of 18 atomizations were given.

Daily spraying for 3 weeks did not cause lesions in the treated area. The skin did not show any inflammatory reaction and no desquamation. No anomaly was found in the pilary system. The aerosol product did not appear to cause irritation to mucous membranes; there were no bouts of sneezing, watering eyes, or rhinorrhea. The 10-second spraying did not appear to cause reactions which could correspond with a painful or disagreeable sensation.

After reviewing the submitted data, the agency finds that the animal studies submitted support the safety of an aerosolized dosage form for human treatment use. Based on the above discussion, at this time, the agency is classifying aerosolized pediculicides for treatment use in Category I for safety. Preventative treatment use is being classified in Category III for safety. The effectiveness of these products (Category III) is discussed in comment 3 below. Should aerosolized pediculicides be included in the monograph, the agency will propose appropriate standards at that time.

References

(1) Comment No. C00002, Docket No. 81N-201, Dockets Management Branch.

(2) Comment No. C00004, Docket No. 81N-0201, Dockets Management Branch.

(3) OTC Volume 160403.

3. One comment stated that FDA should only consider an aerosol as a method of administration of a pediculicide on the basis of a full NDA in which clinical studies of the effectiveness of the aerosol are compared with that of currently approved methods of treatment. The comment argued that spraying the hair with an aerosol would require a probe to get the spray to the scalp area, that using this technique would be extremely difficult to cover adequately all areas of the scalp, and that delivery of the medication onto the lice and nits could not be assured. The comment contended that adequate coverage of a topically applied medication requires the use of a liquid which will bring the active ingredient to the entire scalp and hair. The comment added that inadequate treatment, such as might be provided via the use of an aerosol, could result in the exposure of lice to sublethal levels of the drug and that, over a period of many generations, adaptive mechanisms could enable the lice to withstand what originally had been a lethal concentration of drug.

A reply comment stated that its aerosol pediculicide product with a unique applicator has been used extensively and effectively outside the United States. The reply comment argued that the adequacy of distribution of aerosolized particles over the infested ("scalp") area, and the completeness of effective contact of the drug with infesting parasites, is supported not only by efficacy as an OTC pediculicide, but also by laboratory studies and human clinical evaluation (Refs. 1, 2, and 3). The reply comment added that two Canadian researchers compared the ovicidal activity of its aerosol product with other pediculicides marketed in Canada and showed a 100-percent ovicidal activity of the product (Ref. 4).

Based on the submitted data, the reply comment concluded that its aerosol pediculicide with unique applicator appears to be at least as effective as nonaerosol pediculicide products marketed in the United States. Accordingly, the reply comment stated that the comment's suggestion that an aerosol pyrethrin pediculicide (with suitable applicator) would provide inferior therapy for head lice infestations, and hence increase the potential for development of pyrethrin-resistant strains of lice, is not valid. The reply comment indicated that it was unaware of any reported development of significant resistance to pyrethrin-piperonyl butoxide formulations, that its experimental evidence indicates greater effectiveness for aerosol-administered pyrethrins, and that aerosol administration might reduce the change

of ineffective treatment and development of parasite resistance.

The agency has evaluated the studies submitted by the reply comment. In one study, Timon-David (Ref. 1) investigated the activity of an aerosol formulation containing 0.33 percent pyrethrins and 2.67 percent piperonyl butoxide in vitro against head, body, and public lice using three techniques of exposure: (1) Immersion of the lice in the spray premix (total formulation less propellant), (2) placement of the lice in a Petri dish containing a cotton disk impregnated with spray premix, and (3) spraying of the lice with a "microfog" generated by an aerosol container.

Using the immersion technique, 10 body lice (then 10 head lice, then 5 pubic lice) were placed into each of 10 dishes containing 5 mL of pyrethrins and piperonyl butoxide with petroleum oil. The closed dishes were incubated at 28°C at 60 percent humidity in the dark, as were the dishes containing untreated controls. The male and female lice of the three species died in under 5 minutes (100 percent killed), while the control lice survived for longer than 72 hours.

Using a 5.5-centimeters (cm) disc of cotton impregnated with the same pyrethrin mixture, the disc in five dishes were impregnated with 0.1 mL of the mixture while the discs in another five dishes were impregnated with 0.2 mL of the mixture. A group of 10 head lice (then 10 body lice, then 5 pubic lice) were placed into each dish with no distinction between males and females. The dishes were closed and placed in the dark and incubated at 28°C and 60 percent humidity. The survival of the lice was monitored with a low-power binocular microscope every 5 minutes. The untreated lice survived for over 72 hours while the lice treated with the 0.2 mL solution were 100 percent killed in under 10 minutes. The head and body lice were more sensitive and were 100 percent killed in under 5 minutes. In the 0.1 mL solution treated dishes, head and body lice were 100 percent killed in under 30 minutes while the pubic lice were 100 percent killed in under 45 minutes.

The technique using the "microfog" generated from the aerosol container most nearly approaches the conditions of use in vivo. Each species of louse (head, body, and pubic) was divided into three lots. The first lot was given a 2-second atomization, 25 cm from the lice-containing dishes. The second lot was given a 5-second atomization at 25 cm, while the third lot was given a 15-second atomization at 25 cm. Using the applicator nozzle, 100 percent kill was achieved in under 15 minutes. The 5- and 15-second atomizations were too long a period on the small surface area of the petrie dish and resulted in the lice lying paralyzed and drowned in the test solution comparable to the conditions in the immersion technique. However, the 15-second atomization corresponds with the time necessary to carry out the complete spraying of the average scalp. Timon-David concluded that the comparative effect (of equal quantities of drug) was much more rapid via aerosol application. He attributed this observation to the "immediate contact" of the micromist with the whole of the cerolipid cuticle of the insect and the micromist's rapid penetration of the respiratory system leading to more rapid paralysis and death. Timon-David also demonstrated that eggs of the respective parasite species were killed in under three to five hours when treated with a 2-second spray of the aerosol, larvae which had reached the hatching stage were killed on hatching, and larvae treated at an earlier stage of development were killed in situ without development to the hatching stage.

In a second controlled study, Coz (Ref. 2) studied the activity of the aerosol against a strain of body louse adapted to the rabbit, including lice of different ages (nymphs and adults) and eggs. The age of treated lice varied between 4 and 48 days with adults considered as being over 14 days of age. Each lot of lice, placed on a fabric support, was treated with a 2-second spray containing 0.33 percent pyrethrins and 2.67 percent piperonyl butoxide. The lice were left in contact with the product for periods varying between 2 to 5 minutes. When the time of contact had elapsed, the lice were washed with water to simulate usual conditions of use of the material. Lots of control lice, similar in age to the treated lice, were kept under conditions similar to those of the lots treated by spraying with the aerosol. The controls were also given a water wash. The number of dead lice on rabbits was recorded after 24 hours. During the period of observation the lice were kept on fabric, incubated at 28°C with 70 to 80 percent humidity. In the control lice, 12.4 percent dead insects occurred from natural causes while the aerosol treated lice reflected a death rate of 100 percent independent of age and of time of contact between the parasite and the mixture of active ingredients. The efficacy of the aerosol is complete even for periods of less than 2 minutes.

Eggs of body lice were treated on a fabric support with a 2-second spray of the aerosol and left in contact with the material for 2, 5, or 10 minutes. After the contact period, the lice eggs were washed with water to simulate usual conditions of use. Each treated lot was paired with a control lot. The eggs were incubated at 28 °C with 70 to 80 percent humidity. Every day except Sunday, the cloths supporting the eggs were placed on the shaved stomach of a rabbit. Hatching occurred over several days. The day on which the maximum number of hatched lice were seen was chosen for the determination of the percentage hatch. Analysis of the results showed that with a 2-minute contact time a hatch of 0 percent of the eggs was obtained from 328 eggs treated with the aerosol whereas, for the control lots, the mean level of 44.4 percent hatchings from 408 eggs occurred. With a 5-minute contact time, 0 percent eggs hatched from 391 treated eggs compared to a mean level of 55.7 percent hatches from 406 control eggs. With a 10-minute contact time, 0 percent eggs hatched from 353 treated eggs while the mean level of hatching for the control was 62.81 percent from 449 eggs.

In the third study, Privat (Ref. 3) treated 118 patients having pediculosis (90 with head lice, 26 with public lice, and 2 with body lice) with the aerosol product containing 0.33 percent pyrethrins and 2.6 percent piperonyl butoxide. Treatment consisted of a series of 1-second atomizations in such a way as to cover the whole of the hair or the hair-covered areas. After a 24-hour contact period, the hair or hair covered areas were washed two to three times followed by rinsing. A single treatment was considered sufficient provided the individual was not re-exposed to infestation and provided there was regular clinical supervision for the four weeks following treatment to reveal any possible failure in the therapy. Of the 113 patients available for followup evaluation, 109 showed complete eradication of parasitosis. In only four cases (two head lice and two public lice) was there a reappearance of infestation; however, the investigator was unable to determine whether these recurrences were treatment failures or reinfestations following effective treatment.

Although the reply comment referred to a personal communication with two Canadian researchers, no details of the communication were provided (Ref. 4). Because no data were provided to confirm the claimed 100 percent ovicidal activity of the aerosol under experimental conditions, the agency cannot determine the validity of this claim and any reference to these researchers' findings cannot be used to support the effectiveness of the aerosol product.

The agency has also considered the comment's arguments that an aerosol

would not provide adequate treatment, that an aerosol would not bring the active ingredient to the entire scalp and hair, and that an aerosol would cause formation of sublethal levels of drug which would cause a tolerance to be developed over generations; however, because the comment did not document its arguments, the agency cannot fully address them. Instead, the agency welcomes the submission of data and comments addressing these arguments. Any comments submitted will be addressed in the final monograph. The agency believes that most of these questions would be answered by additional clinical studies.

The agency finds that the two laboratory studies (Refs. 1 and 2) are supportive of the effectiveness of the aerosolized pediculicide; however, they are not adequate to establish general recognition of effectiveness. Although the clinical study (Ref. 3) did demonstrate the effectiveness of an aerosol form of pyrethrins/piperonyl butoxide after 24 hours, the study was not comparable to the directions contained in the labeling proposed for the aerosol product i.e., that the treated area should be shampooed 30 minutes after application of the product. In addition, because the aerosolized pediculicide product was allowed to act for 24 hours, there are no data demonstrating at which point in time the product was effective. Data are needed to demonstrate an appropriate time period for which an aerosolized pediculicide drug product must remain on the affected area in order to be effective before it is then washed off. It should be further noted that, based upon the safety data, the Panel recommended that products containing pyrethrins/piperonyl butoxide be limited to topical use for 10 minutes but no longer (47 FR 28315–28319). If new data demonstrating effectiveness indicate that a longer period of exposure is necessary for effective treatment, additional safety data may be necessary. Any new data submitted should include information as to any observed adverse effects. Therefore, at this time the agency is proposing a Category III classification for effectiveness for treatment use of aerosolized pediculicide products containing pyrethrins and piperonyl butoxide.

References

(1) Timon-David, P., "Report on Parasitological Trial," Centre De Recherche D'Applications Pharmaceutiques, Laboratoires Applipharm, Marseille, March, 1979, in Reply Comment coded RC0001, Docket No. 81N-0201, Dockets Management Branch.

(2) Coz, J., "Report on a Supplementary Parasitological Experimental Trial," Centre De Recherche D'Applications Pharmaceutiques, Laboratoires Applipharm, Marseille, February, 1979, in Reply Comment coded RC0001, Docket No. 81N-0201, Dockets Management Branch.

(3) Privat, Y., "Clinical Trial of the Activity and Tolerance of the Para 2 Aerosol," Centre De Recherche D'Applications Pharmaceutiques, Laboratoires Applipharm, Marseille, October, 1979, in Reply Comment coded RC0001, Docket No. 81N-0201, Dockets Management Branch.

(4) Reply Comment coded RC0001, Docket No. 81N-0201, Dockets Management Branch.

(5) OTC Volume 160403.

4. One comment contended that using the term "pediculicide" may be meaningless to many persons and suggested that the phrase "for lice control" would be a better statement of identity.

The agency agrees with the comment that the term "pediculicide" may not be well understood by many consumers. If manufacturers wish to use the technical term as the statement of identity, the agency believes it should be used with a nontechnical term that would be understood by consumers. Alternatively, the nontechnical term used alone would be an adequate statement of identity.

The agency has determined that "lice treatment" would be a more appropriate nontechnical term than the phrase "for lice control" because "treatment" language is more consistent with the indications for use of these products and is similar to other statements of identity which the agency has proposed in other OTC drug rulemakings, e.g., "nocturnal leg muscle cramps treatment" or "pinworm treatment." (See the **Federal Registers** of November 8, 1985 (50 FR 46582) and August 1, 1986 (51 FR 27756).) Accordingly, the following statements of identity are being proposed in § 358.650(b) of this tentative final monograph: "pediculicide (lice treatment)" or "lice treatment."

The agency has no objection to terms such as "for lice control" appearing elsewhere in the labeling provided they do not appear in any portion of the labeling required by the monograph and do not detract from the required information. The agency believes that this approach will minimize the likelihood of confusion.

5. Referring to the Panel's recommended indication in § 358.650(b), one comment stated that the term "body lice" is a misnomer because "body lice do not live on the body but rather in the clothing, going to the body only for feeding." The comment contended that body lice are almost exclusively confined to persons who do not regularly change their clothing and, accordingly, it would not be necessary to treat the body with a pediculicide but would only be necessary to launder the clothing in hot water (135 °F) for 10 minutes or more. Therefore, the comment recommended that the agency not include the indication for body lice in the tentative final monograph.

The agency disagrees with the comment's contention that the term "body lice" is a misnomer. "Body lice" is an appropriate and commonly accepted name for blood-sucking lice particularly affecting the skin on the waist and armpits where there is close contact between garment and wearer (47 FR 28314 to 28315). At any given time, some lice will be in the clothing, but others, during feeding time, will be on the body. Even though body lice can be removed by changing clothing and laundering the infested clothes in hot water, as suggested by the comment, any lice that were feeding on the body would remain to reinfest other clothing. Accordingly, the agency believes that it would be inadequate treatment to only launder clothes in hot water without treating the body at the same time with a pediculicide. Therefore, the agency is including the Panel's recommended indication "for * * * body lice" in the tentative final monograph.

6. Stating that "it is important that the entire scalp and hair are covered with the product," one comment suggested that the first sentence of the directions recommended by the Panel in § 358.650(d) be revised as follows: "Apply to the hair and scalp until all the hair is thoroughly wet with the product."

The agency agrees in substance with the comment's suggested revision, i.e., that the affected area, whether scalp, body, or pubic area, should be covered with the pediculicide drug product until all the hair is thoroughly wet. However, the comment's suggested revision to include the term "scalp" would refer only to treatment of head lice, whereas the intent of the directions in § 358.650(d) is to provide a general direction that is applicable for the treatment of all lice that affect humans, i.e., head lice, body lice, and pubic lice. Therefore, in this tentative final monograph, the first sentence of the directions in § 358.650(d) is not being modified as suggested by the comment.

7. Contending that pyrethrins with piperonyl butoxide need not necessarily be limited to formulation as a lotion, one comment suggested that the directions recommended by the Panel in § 358.650(d), which in part read "Wash area thoroughly with warm water and soap or shampoo," be revised to provide for products which are formulated in a

shampoo base. The comment pointed out the marketing of an EPA-approved product formulated with pyrethrins and piperonyl butoxide in a shampoo base and contended that it would be unnecessary to add soap or shampoo, but merely water. The comment therefore suggested that for products formulated in a shampoo base the directions for use should provide for alternate wording, such as, "Add sufficient warm water to form a lather and shampoo as usual."

The agency agrees with the comment that specific directions should be included in the tentative final monograph for pediculicide shampoo products. Therefore, the agency is revising the directions in § 358.650(d) as suggested by the comment. Regarding the comment's reference to an EPA approved product, the agency notes that EPA has the authority to regulate these products pending the promulgation of a final FDA monograph on OTC pediculicide drug products. (See comment 1 above.)

8. Referring to that part of the Panel's recommended labeling in § 358.650(e)(1) that states "Personal articles of clothing or bedding that cannot be washed may be dry-cleaned or sealed in a plastic bag for a period of about two weeks," one comment pointed out the marketing of several EPA-approved aerosol sprays containing either pyrethrins with piperonyl butoxide or one of several pyrethroids intended to kill lice on personal articles. The comment contended that the use of these products would eliminate the need to quarantine bedding or objects that can be neither washed nor dry-cleaned. The comment suggested that § 358.650(e)(1) be revised to provide for the use of these products by adding the following sentence: "In lieu of this, such articles can be treated with an aerosol product specifically designed for this purpose."

The agency agrees with the comment's suggestion; however, because not all of the products used as sprays to treat inanimate objects are aerosols, i.e., some are pump sprays, the agency is revising the sentence suggested by the comment for clarity and is including it in § 358.650(e)(1) of the tentative final monograph. Section 358.650(e)(1) will now read as follows: "Personal articles of clothing or bedding that cannot be washed may be dry-cleaned, sealed in a plastic bag for a period of about 2 weeks, or sprayed with a product specifically designed for this purpose."

II. The Agency's Tentative Adoption of the Panel's Report

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. Summary of ingredient categories

The agency has reviewed all claimed active ingredients submitted to the Panel, as well as other data and information available at this time, and has made no changes in the categorization of pediculicide active ingredients recommended by the Panel. As a convenience to the reader, the following list is included as a summary of the categorization of pediculicide active ingredients recommended by the Panel and the proposed categorization by the agency.

Pediculicide active ingredients	Panel	Agency
alkaloids of sabadilla	II	II
aqueous coconut oil soap	II	II
benzocaine	II	II
benzyl alcohol	II	II
benzyl benzoate	II	II
copper oleate	II	II
dichlorodiphenyl trichloroethane (DDT).	II	II
dioctyl sodium sulfosuccinate	II	II
isobornyl thiocyanoacetate	II	II
picrotoxin	II	II
propylene glycol	II	II
pyrethrins with piperonyl butoxide (aerosol).	N/A	III [1]
pyrethrins with piperonyl butoxide (nonaerosol).	I	I
sublimed sulfur	II	II
thiocyanoacetate	II	II

[1] Safe (Category I) for treatment use.

2. Testing of Category II and Category III conditions

Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any pediculicide ingredient or condition (including aerosol dosage forms) included in the review by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740), and clarified April 1, 1983 (48 FR 14050). That policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes in the Panel's Recommendations

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows.

1. The agency has determined that effectiveness of aerosolized products containing pyrethrins and piperonyl butoxide has not been established at this time. Such products are classified in Category III in this rulemaking. The treatment use of aerosolized pediculicides is Category I for safety. Preventative treatment use is being classified in Category III for safety. (See comments 2 and 3 above.)

2. In the Panel's discussion of pyrethrins with piperonyl butoxide (47 FR 28315 to 28319), the Panel noted that pyrethrins are brown, viscous, liquid oleoresins that must be extracted and then refined. Pyrethrins are obtained from the flowers of *Chrysanthemum cinerariaefolium* and that extraction produces two pyrethrin fractions—pyrethrins I which contains the esters of chrysanthemic acid (pyrethrin I, cinerin I, and jasmolin I) and pyrethrins II which contains the esters of pyrethric acid (pyrethrin II, cinerin II, and jasmolin II). The pyrethrin content ranges from 0.7 percent to as high as 3 percent with the active constituents reaching their highest concentration in mature flower heads. There are two methods of extracting the crude oleoresin with the pyrethrum concentration varying from 25 to 35 percent. The reduction and refinement of the crude oleoresin containing the pyrethrins produces a light-colored relatively nonstaining extract. The Panel described two methods of refinement which use a low temperature process to decrease the possibility that the molecular structure of the pyrethrins will change. These processes have a high recovery of pyrethrins (about 95 percent); however, there are other methods in which the percent of pyrethrins recovered is not as great.

The active insecticidal constituents of pyrethrum flowers have been identified as four compounds: cinerin I, cinerin II, pyrethrin I, and pyrethrin II (Ref. 1). The first and third of these compounds are esters of chrysanthemum monocarboxylic acid with the alcohols cinerolone and pyrethrolone; the second and fourth are esters of the same alcohols with chrysanthemum dicarboxylic acid. The monocarboxylic acid esters are claimed to be more effective (Ref. 1). In discussing the results of a study submitted to the Panel (Ref. 2), an investigator noted that one factor to be considered in interpreting

results is the fact that pyrethrins are natural products consisting of 6 esters with potency ("activity") variability. In this study, the investigator also noted that "although each pyrethrum-containing product was tested at least three times, different lot-numbered products were used for each separate test. Thus, activity varied within products. However, the findings of this study are consistent across separate experiments."

Nevertheless, the agency is concerned that before general recognition of the safety and effectiveness of these pyrethrins can be established, the composition of the pyrethrins must be more clearly defined. The agency's concerns, as discussed above, were communicated in a letter to each interested party who had previously submitted data on the composition of pyrethrins (Refs. 3 through 8). Subsequently, data were submitted by a manufacturers' association (Ref. 9). Those data have been reviewed and the agency has determined that, while the data provide a broader understanding of the composition of the pyrethrin fractions and suggest that there is little disconformity in potency, variation is possible. It is because of the possibility of potency variations that the agency believes that extracts derived from different purification processes should be compared with caution in terms of pyrethrins recovery and chemical composition and should be compared in terms of biological activity (Ref. 10). Further, the agency is concerned that these compounds are heat and light sensitive, prone to oxidation, and tend to become increasingly unstable with increasing concentration and purity (Ref. 10). The agency believes that it would be appropriate for interested parties to develop with the United States Pharmacopeial Convention (USPC) suitable standards for the quality and purity of pyrethrins. Accordingly, the agency has referred the data to the USPC for consideration (Ref. 11). In this tentative final monograph, pyrethrins are proposed in Category I. However, should interested parties fail to provide necessary information so that an appropriate standard may be established, pyrethrins will not be included in a final monograph.

In order for pyrethrins to be generally recognized as safe and effective as a pediculicide, the agency must have sufficient data on the composition and concentration of the different pyrethrin constituents and the quantity (range) of each that is contained in marketed products. For an ingredient or mixture to be included in an OTC drug final monograph, it is necessary to have publicly available chemical information that can be used by all manufacturers to determine that the ingredient is appropriate for use in their products.

References

(1) Melnikov, N.N., "Chemistry of Pesticides," Edited by Gunther, F. and J.D. Gunther, Springer-Verlag, New York, pp. 130–132, 1971.

(2) Gerberg, E., "Comparative in-vitro Activity of Commercial Pediculicidal Products," Report Number Rx–18–80, OTC Volume 160400.

(3) Letter from W.E. Gilbertson, FDA, to Norcliff Thayer, Inc., coded LET00003, Docket No. 81N–0201, Dockets Management Branch.

(4) Letter from W.E. Gilbertson, FDA, to Fairfield American Corporation, coded LET00004, Docket No. 81N–0201, Dockets Management Branch.

(5) Letter from W.E. Gilbertson, FDA, to AMLAB, Inc., coded LET00005, Docket No. 81N–0201, Dockets Management Branch.

(6) Letter from W.E. Gilbertson, FDA, to Pfizer Pharmaceuticals, coded LET00006, Docket No. 81N–0201, Dockets Management Branch.

(7) Letter from W.E. Gilbertson, FDA, to Block Drug Company, Inc., coded LET00007, Docket No. 81N–0201, Dockets Management Branch.

(8) Letter from W.E. Gilbertson, FDA, to Laboratories Applipharm, coded LET00008, Docket No. 81N–0201, Dockets Management Branch.

(9) Comment No. LET00009, Docket No. 81N–201, Dockets Management Branch.

(10) Hopkins, L.O., "Processes for Preparing Refined Pyrethrum Extract. A Review," *Pyrethrum Post*, 7:34–44 and 48, 1964.

(11) Letter from J. Davis, FDA, to J.G. Valentino, United States Pharmacopeial Convention, Inc., dated June 17, 1968 in OTC Volume 16KTFM.

3. The agency is expanding the statement of identity so that these products can now be identified as a "pediculicide (lice treatment)" or "lice treatment." (See comment 4 above.)

4. The agency is adding directions in the tentative final monograph for the use of pediculicide products formulated as shampoos. (See comment 7 above.)

5. The agency is revising the Panel's recommended "Other required statements" in § 358.650(e)(1) by adding the phrase * * * or sprayed with a product specifically designed for this purpose * * *" in order to provide for the use of EPA approved spray products that eliminate the need to quarantine bedding or objects that can be neither washed nor dry-cleaned. (See comment 8 above.)

6. In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for "physician" in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood by consumers. Based on comments received to these proposals, the agency has determined that final monographs and any applicable OTC drug regulation will give manufacturers the option of using either the word "physician" or the word "doctor." This tentative final monograph proposes that option.

7. In the warnings section, the agency is adding the statement "For external use only." Use of this statement is consistent with a number of other OTC drug monographs for topical drug products. (See, for example, the tentative final monograph for OTC external analgesic drug products (February 8, 1983; 48 FR 5852); the tentative final monograph for OTC skin protectant drug products (February 15, 1983; 48 FR 6820); and the final monograph for OTC topical otic drug products (August 8, 1986; 51 FR 28656).) Based on the warning against use of a pediculicide near the eyes, the agency is also proposing the statement, "Consult a doctor if infestation of eyebrows or eyelashes occurs," to provide additional information for consumers. Accordingly, the warning in § 358.650(c)(2) will now read as follows: "For external use only. Do not use near the eyes or permit contact with mucous membranes. If product gets into the eyes, immediately flush with water. Consult a doctor if infestation of eyebrows or eyelashes occurs."

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that not one of these rules, including this proposed rule for OTC pediculicide drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC pediculicide drug

products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invited public comment in the advance notice of proposed rulemaking regarding any impact that this rulemaking would have on OTC pediculicide drug products. No comments on economic impacts were received. Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by August 1, 1989. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined that under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under 21 CFR 330.1(c)(2), the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All other OTC drug labeling required by a monograph or other regulation (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under the OTC drug monograph or other regulation where exact language has been established and identified by quotation marks, e.g., 21 CFR 201.63 or 330.1(g). The proposed rule in this document is subject to the labeling provisions in § 330.1(c)(2).

Interested persons may, on or before June 2, 1989, submit to the Dockets Management Branch (address above) written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before Agusut 1, 1989. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register.**

Interested persons, on or before April 3, 1990, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before June 4, 1990. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch. Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on June 4, 1990. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 358

Labeling, Over-the counter drugs, Pediculicide drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 358 (proposed in the **Federal Register** of September 3, 1982; 47 FR 39108), by adding new Subpart G, to read as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 358 is revised to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Part 358 is amended by adding new Subpart G to read as follows:

Subpart G—Pediculicide Drug Products

Sec.

358.601 Scope.
358.603 Definition.
358.610 Pediculicide active ingredients.
358.650 Labeling of pediculicide drug products.

Subpart G—Pediculicide Drug Products

§ 358.601 Scope.

(a) An over-the-counter pediculicide drug product in a form suitable for topical application is generally recognized as safe and effective and is not misbranded if it meets each condition in this subpart and each general condition established in § 330.1 of this chapter.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 358.603 Definition.

As used in this subpart:

Pediculicide drug product. A drug product for the treatment of head, pubic (crab), and body lice.

§ 358.610 Pediculicide active ingredients.

The active ingredients of the product consist of the combination of pyrethrins (0.17 to 0.33 percent) with piperonyl butoxide (2 to 4 percent) in a nonaerosol dosage formulation.

§ 358.650 Labeling of pediculicide drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "pediculicide (lice treatment)" or "lice treatment."

(b) *Indications.* The labeling of the product states, under the heading "Indications," the following: "For the treatment of head, pubic (crab), and body lice." Other truthful and nonmisleading statements, describing only the indications for use that have

been established and listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce or unapproved new drugs in violation of section 505(a) of the act.

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "Use with caution on persons allergic to ragweed."

(2) "For external use only. Do not use near the eyes or permit contact with mucous membranes. If product gets into the eyes, immediately flush with water. Consult a doctor if infestation of eyebrows or eyelashes occurs."

(3) "If skin irritation or infection is present or develops, discontinue use and consult a doctor."

(4) The word "physician" may be substituted for the word "doctor" in any of the warning statements in this paragraph.

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For nonshampoo products.* "Apply to affected area until all the hair is thoroughly wet with product. Allow product to remain on area for 10 minutes but no longer. Wash area thoroughly with warm water and soap or shampoo. A fine-toothed comb may be used to help remove dead lice or their eggs (nits) from hair. A second treatment must be made in 7 to 10 days to kill any newly hatched lice."

(2) *For products formulated for use as a shampoo.* "Apply to affected area until all the hair is thoroughly wet with product. Allow product to remain on area for 10 minutes but no longer. Add sufficient warm water to form a lather and shampoo as usual. Rinse thoroughly. A fine-toothed comb may be used to help remove dead lice or their eggs (nits) from hair. A second treatment must be made in 7 to 10 days to kill any newly hatched lice."

(e) *Other required statements.* (1) "*Head Lice:* Head lice live on the scalp and lay small white eggs (nits) on the hair shaft close to the scalp. The nits are most easily found on the nape of the neck or behind the ears. All personal headgear, scarfs, coats, and bed linen should be disinfected by machine washing in hot water and drying, using the hot cycle of a dryer for at least 20 minutes. Personal articles of clothing or bedding that cannot be washed may be dry-cleaned, sealed in a plastic bag for a period of about 2 weeks, or sprayed with a product specifically designed for this purpose. Personal combs and brushes may be disinfected by soaking in hot water (above 130 °F) for 5 to 10 minutes. Thorough vacuuming of rooms inhabited by infected patients is recommended."

(2) "*Pubic (Crab) Lice:* Pubic lice may be transmitted by sexual contact, therefore, sexual partners should be treated simultaneously to avoid reinfestation. The lice are very small and look almost like brown or grey dots on the skin. Pubic lice usually cause intense itching and lay small white eggs (nits) on the hair shaft generally close to the skin surface. In hairy individuals, pubic lice may be present on the short hairs of the thighs and trunk, underarms, and occasionally on the beard and mustache. Underwear should be disinfected by machine washing in hot water; then drying, using the hot cycle for at least 20 minutes."

(3) "*Body Lice:* Body lice and their eggs are generally found in the seams of clothing, particularly in the wasteline and armpit area. They move to the skin to feed, then return to the seams of the clothing where they lay their eggs. Clothing worn and not laundered before treatment should be disinfected by the same procedure as described for head lice, except that sealing clothing in a plastic bag is not recommended for body lice because their nits (eggs) from these lice can remain dormant for a period of up to 30 days."

Dated: February 27, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-7833 Filed 3-31-89; 8:45 am]

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federal register

Monday
April 3, 1989

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 347 and 348

Skin Protectant Drug Products for Over-the-Counter Human Use; Astringent Drug Products; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR PARTS 347 and 348

[Docket No. 78N-021A]

Skin Protectant Drug Products for Over-the-Counter Human Use; Astringent Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking amending the notice of proposed rulemaking for over-the-counter (OTC) skin protectant drug products and establishing conditions under which OTC astringent drug products are generally recognized as safe and effective, and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the reports and recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products and public comments on advance notices of proposed rulemaking that were based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed rulemaking before the Commissioner of Food and Drugs by June 2, 1989. New data by April 3, 1990. Comments on the new data by June 4, 1990. Written comments on the agency's economic impact determination by August 1, 1989.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 7, 1982 (47 FR 39412 and 39436), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), advance notices of proposed rulemaking and reopened the administrative records for OTC external analgesic drug products and OTC skin protectant drug products to allow for consideration of the reports and recommendations on OTC astringent drug products prepared by the Advisory Review Panel on OTC Miscellaneous External Drug Products (Miscellaneous External Panel), which was the advisory review panel responsible for evaluating data on the active ingredients used as astringents. Interested persons were invited to submit comments by December 6, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by January 5, 1983.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch, after deletion of a small amount of trade secret information.

In response to the advance notice of proposed rulemaking relating to the external analgesic use of OTC astringent drug products, four drug manufacturers, two trade associations, and one health professional submitted comments. In response to the advance notice of proposed rulemaking relating to the skin protectant use of OTC astringent drug products, one of the same manufacturers and the two same trade associations submitted comments. Copies of the comments received are on public display in the Dockets Management Branch.

In the **Federal Register** of February 15, 1983 (48 FR 6820), the agency published a notice of proposed rulemaking for OTC skin protectant drug products. The agency issued this notice after considering the report and recommendations of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (Topical Analgesic Panel) and public comments on an advance notice of proposed rulemaking that was based on those recommendations. Interested persons were invited to submit comments by April 18, 1983, new data by February 15, 1984, and comments on the new data by April 16, 1984.

The agency has determined that the external analgesic and skin protectant uses of OTC astringent drug products are so closely related that it would not serve the public interest to proceed with two separate rulemakings for the same ingredients. Accordingly, the agency is proposing in this document to combine the rulemakings for the external analgesic and skin protectant uses of OTC astringent drug products and to place the monograph for these products in the OTC skin protectant monograph. In this notice of proposed rulemaking, FDA states for the first time its position on the OTC uses of astringent drug products. Final agency action on this matter will occur with the publication at a future date of a final rule for OTC skin protectant drug products.

This proposal constitutes FDA's tentative adoption of the Panel's reports and recommendations on OTC astringent drug products as modified on the basis of the comments received and the agency's independent evaluation of the Panel's reports.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established.

Similarily, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notices published in the Federal Register of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179), or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch (address above).

I. The Agency's Tentative Conclusions on the Comments

1. One comment requested that the agency make clear in all future publications that astringents applied to skin or mucous membrane to check oozing, discharge, or bleeding are "drug" products, and that astringent products used as cosmetics are not covered by this rulemaking. The comment stated that astringent products are well recognized as cosmetic products when used as skin cleansers and freshners; such uses are intended to produce temporary contractions of the skin surface resulting in a smoother and more aesthetically pleasing appearance. The comment stated that the Panel itself recognized that "there are several varied definitions for astringents," one of which is as "a liquid cosmetic for cleansing the skin and contracting the pores." (See the Federal Register of September 7, 1982; 47 FR 39427 and 39445.) The comment added that in the original skin protectant publication in this proceeding, the agency noted that skin protectant products are often components of cosmetics. (See the Federal Register of August 4, 1978; 43 FR 34628.)

The comment argued that it is well-established that the legal status of a product as a cosmetic or a drug, or both, is not determined by its ingredients or physical properties, but by reference to the representations made for the product by the vendor. The comment stated that this principle derives from the definitions for "cosmetic" and "drug" in the Federal Food, Drug, and Cosmetic Act (the act) and noted that these definitions in sections 201(i) and (g)(1) of the act (21 U.S.C. 321(i) and (g)(1)) both state "articles *intended* * * *" (emphasis added). The comment maintained that the intended use is determined by reference to the vendor's intent, usually as shown by the labeling and advertising for the product, and cited *National Nutritional Foods Assn.* v. *Mathews*, 557 F.2d 325, 333, 335 (2d Cir. 1977); *National Nutritional Foods Assn.* v. *FDA*, 504 F.2d 761, 789 (2d Cir. 1974); *United States* v. *"Sudden Change,"* 409 F.2d 734, 739 (2d Cir. 1969). The comment stated "The manufacturer of the article, through his representations in connection with its sale, can determine the use to which the article is to be put," and then cited S. Rep. No. 361, 74th Cong., 1st Sess. (1935), quoted in Dunn, *Federal Food, Drug, and Cosmetic Act* (Stechert & Co. 1938) at 240. The comment stated that at least one court has regarded products for which astringency claims are made as cosmetics and cited *United States* v. *Magic Secret*, 331 F.Supp. 912 (D. Md. 1971).

The comment also expressed concern that well recognized astringent cosmetic products not be inadvertently and improperly affected by the rulemaking for OTC astringent drug products. The comment suggested that the Panel's recommended monographs be amended to insert the words "drug product" after "astringent" wherever that term appears in the monograph. The comment contended that such a clarification is consistent with the agency's statement in the preamble to the tentative final monograph for OTC skin bleaching drug products that the OTC [drug] panels lack jurisdiction to review or make recommendations with respect to cosmetic claims (See the Federal Register of September 3, 1982; 47 FR 39109.) The comment concluded that the regulations (21 CFR Part 330) covering the OTC drug review program grant the agency and the expert panel authority to review drug claims only, not cosmetic claims.

The agency agrees that this rulemaking, which amends the tentative final monograph for OTC skin protectant drug products, applies only to astringent products that fall within the statutory definition of "drugs." In fact, in the tentative final monograph for OTC skin protectant drug products, the agency revised the scope of the rulemaking in order to make it clear that the rulemaking extends only to drug products. (See comment 6 at 48 FR 6822.) Based on that revision, which occurred after the advance notices or proposed rulemaking for OTC astringent drug products were published, the agency has already clarified that this rulemaking applies to drug products only and not to cosmetics. The agency concludes that there is no need to add the term "drug product" after the word "astringent" wherever that term appears in the monograph, as suggested by the comment.

Any product marketed solely as a cosmetic need not conform to the final monograph. However, a product marketed as both a cosmetic and a drug must conform to the requirements of the final monograph as relates to the drug aspects of the product. (See comment 6 at 48 FR 6822 to 6823.)

2. One comment requested that the Panel's Category II classification of borax and boric acid as "active" ingredients for use as an astringent be reconsidered and that these ingredients be redesignated as "inactive" ingredients. The comment noted that these ingredients are listed at 47 FR 39425 as *"Labeled ingredients contained in marketed products submitted to the Panel"* and at 47 FR 39426 as Category II astringent active ingredients because the Panel had no data. The comment stated that it has examined the OTC volumes (Refs. 1 through 11) submitted to the Panel for products containing boric acid and/or borax and these submissions did not disclose any claims for their use as active ingredients. The comment added that these ingredients are not active when used as buffering agents (Refs. 1 and 9) and that boric acid is present in concentrations of 0.012 percent and 2 percent in two submissions (Refs. 1 and 7) listed as astringent drug products. The comment stated that test data on boric acid in a number of submissions (Refs. 2, 4, 5, and 11) contradict the Panel's statement that it was not able to locate nor is it aware of data demonstrating the safety and effectiveness of boric acid when used as an OTC astringent active ingredient. The comment added that aluminum acetate (modified Burow's solution) was classified in Category I as an astringent based on three submissions for a product containing 0.012 percent boric acid (Refs. 1, 2, and 3). The comment contended that Burow's solution contains aluminum acetate and also contains boric acid as a buffering agent or preservative, neither of which uses make the boric acid an "active" ingredient. The comment concluded that some of the ingredients which the Panel considered to be "active" were not intended to be so classified within the meaning of the agency's definition of "active ingredient" in 21 CFR 210.3(b)(7) and that boric acid and borax in astringent drug products were inactive ingredients as defined in 21 CFR 210.3(b)(7) and (8).

The agency has reviewed the submissions referred to by the comment and determined that the labeling and information contained in the submissions represent boric acid as an ingredient for buffering and stabilizing

properties. These uses of boric acid are considered inactive uses of this ingredient. However, other submissions to the Panel represent borax or boric acid as active ingredients for astringent and/or other OTC drug uses (Refs. 4 through 9). Based on the labeling in those submissions, the Panel appropriately classified the ingredients as active ingredients for astringent use as well as for other OTC drug uses. Because the Panel had no data demonstrating the safety and effectiveness of these ingredients for use as an astringent, the Panel classified them in Category II. This Category II designation does not, of course, prevent the use of boric acid as a stabilizer or as a buffer at appropriate concentrations in OTC astringent or other drug products.

Boric acid is considered an inactive ingredient when used as part of a buffering system or stabilizer in OTC drug products. Inactive ingredients, although not included in OTC drug monographs, must meet the requirements of § 330.1(e) (21 CFR 330.1(e)) that they be suitable ingredients that are safe in the amounts administered and do not interfere with the effectiveness of the product or with tests to be performed on the product. Boric acid may be included as a buffering agent or stabilizer in the formulation of OTC drug products provided that it meets the above criteria.

References

(1) OTC Volume 160022.
(2) OTC Volume 160140.
(3) OTC Volume 160230.
(4) OTC Volume 160040.
(5) OTC Volume 160077.
(6) OTC Volume 160091.
(7) OTC Volume 160093.
(8) OTC Volume 160233.
(9) OTC Volume 160236.
(10) OTC Volume 160024.
(11) OTC Volume 160213.

3. One comment stated that the pharmacological action of OTC ingredients used on lesions amenable to treatment by external analgesics and astringents is well known, but that the Panel did not include the combination of these ingredients in its recommended monograph. The comment requested that § 348.20 (permitted combinations) of the tentative final monograph for OTC external analgesic drug products be amended to include combinations of ingredients listed in § 348.10 (a) and (b) of the advance notice of proposed rulemaking for OTC external analgesic drug products (published in the **Federal Register** of December 4, 1979 at 44 FR 69864) and an astringent listed in § 348.10(c) of the advance notice of proposed rulemaking for OTC astringent drug products at 47 FR 39432, provided that such products are appropriately labeled for both classes of ingredients. The comment also stated that the pharmacological action of OTC ingredients used on lesions amenable to treatment by skin protection and astringents is well known. The comment requested that § 347.20 (permitted combinations) of the tentative final monograph for OTC skin protectant drug products be amended to include combinations of a skin protectant listed in the tentative final monograph in proposed § 347.10 (48 FR 6832) and an astringent listed in the advance notice of proposed rulemaking for OTC astringent drug products in recommended § 347.12 (47 FR 39450).

In the advance notice of proposed rulemaking for OTC astringent drug products, the Panel stated that it concurred with the FDA guidelines for OTC combination drug products (Ref. 1), which state that Category I active ingredients from different therapeutic categories may be combined to treat different symptoms concurrently only if each ingredient is present within its established safe and effective dosage range and the combination meets the OTC combination policy in all other respects. (See 47 FR 39430 and 39448). Although stating that it was aware of products that combine various OTC ingredients with an astringent (47 FR 39429 and 39448), the Panel did not provide for any combinations in its recommended monograph nor did it specifically mention the combination of an external analgesic or a skin protectant with an astringent.

In response to the comment's request to include the combination of an external analgesic and an astringent in the tentative final monograph for OTC external analgesic drug products, the agency has surveyed the OTC drug marketplace to determine if there are any such combinations. The agency has determined that such combinations are currently being marketed with claims as for temporary relief of itching or for anal/perianal itching and discomfort (Refs. 2 and 3). These products contain Category I external analgesics with Category I astringents, such as menthol and camphor with aluminum acetate and pramoxine hydrochloride with witch hazel (Refs. 2 and 3).

In § 346.22(g) of the tentative final monograph for OTC anorectal drug products, the agency proposed the combination of an astringent and an external analgesic (analgesic, anesthetic, and antipruritic) in Category I based on the recommendations of the Advisory Review Panel on OTC Hemorrhoidal Drug Products (Hemorrhoidal Panel). (See the **Federal Register** of August 15, 1988; 53 FR 30756.) Thus, the agency has proposed that ingredients in the astringent and external analgesic therapeutic categories may be combined to treat anorectal symptoms, i.e., an astringent to relieve irritation and/or burning and an external analgesic to relieve pain and/or burning. (See 53 FR 30782.) In addition, the agency has proposed that the labeling for such products would be a combination of the respective monograph labeling for each ingredient and that the information may be combined in such a way to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

In response to the comment's request to include the combination of a skin protectant and an astringent in the tentative final monograph for OTC skin protectant drug products, the agency has surveyed the OTC drug marketplaces to determine if there are any such combinations. The agency has determined that such combinations are currently being marketed with claims such as relief of anorectal and/or vaginal irritation, burning, and itching (Ref. 4). These products contain Category I skin protectants with Category I astringents, such as glycerin with witch hazel and white petrolatum with which hazel (Ref. 4).

The rulemaking on OTC vaginal drug products does not address the combination of an astringent and a skin protectant because no such products were submitted for consideration. The agency invites comments or new data to support such combinations to be submitted to the rulemaking for OTC vaginal drug products following publication of the tentative final monograph for those drugs in a future issue of the **Federal Register**. However, data were submitted to the rulemaking for OTC anorectal drug products, and in the tentative final monograph for OTC anorectal drug products, the agency proposed this combination in Category I based on the recommendations of the Hemorrhoidal Panel. (See the **Federal Register** of August 15, 1988; 53 FR 30756.) Thus, the agency has proposed that ingredients in the astringent and skin protectant therapeutic categories may be combined to treat anorectal symptoms, i.e., an astringent to relieve irritation and/or burning and a protectant to protect inflamed perianal skin. In addition, the agency has proposed that the labeling for such products would be a combination of the respective monograph labeling for each ingredient and that the information may

be combined in such a way to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

Because the comment provided no information on specific products containing an external analgesic or a skin protectant with an astringent, on the symptons/conditions to be treated concurrently, or on the proposed labeling for such combinations, the agency is proposing Category III status for these combinations at this time for any other uses other than those already proposed in Category I in the rulemaking for OTC anorectal drug products. The agency invites public comment and the submission of data, including product formulation, proposed labeling, any test data, and marketing history related to the appropriateness of such combinations containing an astringent for uses other than those already included in the rulemaking for OTC anorectal drug products.

References

(1) "General Guidelines for OTC Drug Combination Products—September 1978," Docket No. 78D–0322, Dockets Management Branch.

(2) Boyd, J. R., "Facts and Comparisons," Facts and Comparisons, Inc., St. Louis, p. 633, January, 1985.

(3) Billups, N.F., and S. M. Billups, "American Drug Index," 31st Ed., J. B. Lippincott Co., Philadelphia, pp. 272 and 465, 1987.

(4) "Physicians' Desk Reference—For Nonprescription Drugs," 9th Ed., Medical Economics Co., Inc., Oradell, NJ, pp. 604 and 633, 1988.

4. One comment requested clarification of the Panel's effectiveness recommendation for which hazel. Referring to reference 8 (Ref. 1) of the Panel's discussion at 47 FR 39428, the comment stated anorectal the Panel failed to distinguish between witch hazel extract, which contains hamamelitannin, and witch hazel water, which contains no tannin because it is distilled. The comment contended that these two preparations contain different active ingredients but are discussed in a commingled and confusing way under the single title "Witch Hazel." Quoting one of the Panel's statements regarding distilled witch hazel extract, i.e., "The tannin of witch hazel bark on distillation remains in the residue and is absent from the distilled extracts," the comment contended that this statement was incompatible with another statement that the Panel made in discussing the effectiveness of witch hazel, i.e., "Literature reports have attributed the astringent action of witch hazel to its tannin content." The comment explained that both statements are correct, but they are incompatible because the first statement refers to the distilled witch hazel extract and the second statement refers to witch hazel extract (a nondistilled alcoholic extract). The comment added that the distilled witch hazel extract is used chiefly as an astringent in after-shave lotions and the nondistilled extract is used in preparations for relief of hemorrhoids. Because the Panel used the name "Witch Hazel" to refer to both preparations, the comment requested that the Panel's discussion be clarified as to which of the "witch hazel" preparations is effective.

The agency believes that the 2 statements in the Panel's report are general statements intended to provide background information concerning this ingredient and were not intended to be a definitive statement on witch hazel preparations. The Panel's recommended monograph clearly identifies "Witch hazel, NF XI" (Ref. 2) as the appropriate astringent active ingredient. NF XI refers to the ingredient as "Hamamlis Water," with synonyms of "Witch hazel Water" and "Distilled Witch-hazel Extract," and provides the method of preparation. Because this ingredient is no longer listed in an official compendium, the agency has determined that "Hamamelis water, NF XI" will be the accepted name for this ingredient in this tentative final monograph. In addition, in the tentative final monograph for OTC anorectal drug products (53 FR 30782), the agency also identified witch hazel water as Hamamelis water, NF XI" and not as witch hazel extract, as suggested by the comment.

References

(1) "Martindale. The Extra Pharmacopoeia," 26th Ed., edited by N. W. Blacow, The Pharmaceutical Press, London, p. 265, 1972.

(2) "The National Formulary," 11th Ed., Mack Publishing Co., Easton, PA, p. 158, 1960.

5. One comment contended that the Panel's report (47 FR 39412) erroneously classified aluminum sulfate in Category III as an OTC astringent ingredient in styptic pencils. Citing the transcript and minutes of the Panel's December 15, 1980 final meeting, the comment stated that the Panel by a five to two vote reclassified aluminum sulfate from Category III to Category I. The comment suggested that the Panel's published report may have been based on the Panel's November 15, 1980, Information Copy in which aluminum sulfate was tentatively classified in Category III. The comment requested that the published report be corrected in several places to reflect a Category I status.

The comment added that the Panel's report at 47 FR 39429 erroneously said that "In 75 years of marketing styptic pencils there have been reported instances of human toxicity." The comment stated that the Information Copy said that no instances of human toxicity were reported in 75 years of marketing styptic pencils and requested that the published report be corrected to read, "In 75 years of marketing styptic pencils there have been no reported instances of human toxicity."

In a letter dated November 15, 1982 (Ref. 1), the agency acknowledged that the requested corrections were valid, and stated that an apparent administrative error had occurred in that the Panel's vote at its final meeting to move aluminum sulfate to Category I was not incorporated into the final document.

Although one submission to the Panel (Ref. 2) indicated an average aluminum sulfate concentration of approximately 57 percent, which served as the basis for the Panel's recommendations, subsequent information from the manufacturer (Ref. 3) indicated that the 57-percent concentration was an average value based on the analysis of a limited number of samples and that subsequent assays over time have shown that there is a significant variation in concentration based on the amount of water physically bound to the aluminum sulfate. Experience from a larger number of batches of styptic pencils has shown concentrations ranging from 45.5 to 60.1 percent, with an average value of 53.9 percent. The manufacturer recommended a range of 46 to 61 percent anhydrous aluminum sulfate concentration for styptic pencils based on this actual manufacturing experience. Another submission (Ref. 4) provided a label claiming its product contained aluminum sulfate 90 percent; however, the submission contained no information to support the 90-percent concentration and stated that it adopted the content of the other submission (Ref. 2). Subsequent information (Ref. 5) from the latter manufacturer indicated that the concentration range of its product ranged from 51.7 to 62.3 percent (with an average value of 56.2 percent) anhydrous aluminum sulfate based on batches in its manufacturing experience.

Based on the Panel's recommendations, the information contained in the submissions (Refs. 2 and 4), and the additional information (Refs. 3 and 5), the agency has determined that a range of 46 to 63 percent aluminum sulfate (based on the anhydrous equivalent) is acceptable for use as a styptic pencil and this

concentration range is being proposed as Category I in this tentative final monograph. In addition, based on the same information, the agency is proposing the following indication: "Stops bleeding caused by minor surface cuts and abrasions as may occur during shaving"; warning: "For external use only. Avoid contact with the eyes"; and directions: "Moisten tip of pencil with water and apply to the affected area. Dry pencil after use."

References

(1) Letter from W. E. Gilbertson, FDA, to R. G. Pinco, Perito, Duerk, Carlson and Pinco, P. C., coded ANS, Docket No. 78N-0301, Dockets Management Branch.

(2) OTC Volume 160409.

(3) Letter from J. Geils, Requa, Inc., to W. E. Gilbertson, FDA, coded C00103, Docket No. 78N-0301, Dockets Management Branch.

(4) OTC Volume 160413.

(5) Letter from K. Rempell, Woltra Corporation, to W. E. Gilbertson, FDA, coded C00104, Docket No. 78N-0301, Dockets Management Branch.

6. Noting the Panel's reference to aluminum acetate solution as a "clear solution" (47 FR 39427), one comment stated that this reference was based on "The United States Pharmacopeia XIX" (U.S.P. XIX) (Ref. 1), which describes Burow's Solution (aluminum acetate solution) prepared de novo. The comment contended that the U.S.P. procedure does not pertain to modified aluminum acetate solutions prepared from tablets or powders, which do not result in a clear solution but do conform with all other requirements set forth in the Panel's recommended monograph. The comment requested that the reference to a clear aluminum acetate solution be deleted from the proposed monograph.

The reference to aluminum acetate topical solution being a clear solution was included as part of the Panel's discussion of a U.S.P. XIX dispensing requirement for this solution. (See 47 FR 39427.) This statement of the U.S.P. XIX dispensing requirement did not appear in the Panel's recommended monograph, nor will it appear as a requirement in this tentative final monograph. Therefore, no agency action is necessary in response to the comment's request.

The tentative final monograph proposes monograph status for aluminum acetate as an active ingredient in a use concentration of 0.13 to 0.5 percent. The final product may be prepared from tablets, powders, or liquid solutions. The tentative final monograph does not propose to address the clarity of the final solution that is prepared. However, any product that is marketed as Aluminum Acetate Topical Solution, U.S.P., would have to meet the compendial dispensing requirement of being a clear solution (Ref. 2).

References

(1) "The United States Pharmacopeia," 19th Revision, Mack Publishing Co., Easton, PA, p. 20, 1975.

(2) "United States Pharmacopeia XXI—National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD, p. 29, 1985.

7. One comment contended that the Panel's recommended monograph contains several errors regarding aluminum acetate. The comment stated that Burow's Solution, which is a 5-percent aluminum acetate solution, is further diluted to yield a 1:20 to 1:40 solution for use as an astringent. Therefore, the comment suggested that § 348.10(c)(1) and all references in the monograph to aluminum acetate be revised to read "Aluminum acetate solution, 2.5 to 5 percent (equivalent to a 1:40 and 1:20 dilution, respectively)."

The agency agrees that the use concentration for aluminum acetate was incorrectly stated in the Panel's recommended monograph. Further, as discussed in Part III, paragraph B. 1, below, the agency has revised the use concentration for aluminum acetate for astringent use. The active ingredient listing being proposed for aluminum acetate in this tentative final monograph reads "Aluminum acetate, 0.13 to 0.5 percent (depending on the formulation and concentration of the marketed product, the manufacturer must provide adequate directions so that the resulting solution to be used by the consumer contains 0.13 to 0.5 percent aluminum acetate)." The 0.13 to 0.5 percent solutions correspond to 1/40 and 1/10 dilutions of a 5-percent aluminum acetate solution, respectively, and, therefore, include the concentrations mentioned by the comment. Because the rulemakings for the external analgesic and skin protectant uses of OTC astringent drug products have been combined (see discussion above), this information about aluminum acetate appears in proposed § 347.12(a) of this rulemaking on skin protectants and is being removed from the external analgesic rulemaking as it appeared in the Panel's recommended monograph in § 348.10(c)(1), published in the **Federal Register** of September 7, 1982 (47 FR 39412).

8. Referring to the Panel's recommended indication for products containing aluminum acetate, that states "For use as a wet dressing, compress, or soak for relief of inflammatory conditions and minor skin irritations due to allergies, insect bites, athlete's foot, poison ivy, or swelling associated with minor bruises and ulcerations of the skin," one comment proposed that the indication be revised to state more clearly the uses for aluminum acetate solution as follows: "A soothing wet dressing for relief of skin irritations caused by conditions such as insect bites, diaper rash, sunburn, or those caused by poison ivy, poison oak, poison sumac, soaps, detergents, cosmetics, and jewelry. A cleansing and drying agent to prepare the skin prior to the application of other medications for athlete's foot or hydrocortisone for rashes due to dermatitis and eczema. Helps to soften and remove crusts."

The agency has determined that some of the comment's suggestions are useful, while others are not. The agency does not normally include the word soothing in an indication for topical OTC drug products because many topical products can be soothing when applied but the "soothing" effect has no relationship to the pharmacologic action of the drug. In addition, the agency has previously stated that it considers the term "soothes" to be a cosmetic claim in the context of skin protectant products. (See comment 22 in the tentative final monograph for OTC skin protectant drug products at 48 FR 6827 to 6828). The agency does not consider the phrase "for use as a wet dressing (compress or soak)" to be an indication, and is including such information in the "Directions" section.

The agency agrees that "relief of inflammatory conditions and minor skin irritations" can be replaced with "relief of skin irritations" because the latter phrase is shorter and conveys the same meaning. However, the agency is including the word "minor" in this phrase for consistency with the indications for a number of other OTC topical drug products. The agency sees no need to replace the shorter phrase "due to" with the longer phrase "caused by conditions such as."

The Panel included "poison ivy" in its recommended indications for aluminum acetate. The agency concurs with this recommendation and is further extending the indications to also include "poison oak" and "poison sumac." The Panel also included "insect bites" in its recommended indications for aluminum acetate, and the agency concurs with this recommendation. The Panel did not include "diaper rash" in its recommended indications, and the agency is not aware of any data that support the use of aluminum acetate for the treatment of diaper rash. Therefore, the agency is not including "diaper rash" in the indications being proposed for aluminum acetate.

The agency agrees with the comment that the terms "soap, detergents, cosmetics, and jewelry" are informative to describe some of the likely sources of skin irritation that may be caused by allergies. However, because these products are being used by the relief of minor skin irritations, the agency believes that it would be more informative and understandable by consumers if the labeling stated that the products relieved "rashes" caused by these items, rather than "allergies" caused by these items. The "rash" is the physical manifestation of the allergy that the consumer is treating with the skin protectant astringent product.

Use of the term "sunburn" and the phrases "A cleansing and drying agent to prepare the skin prior to the application of other medications for athlete's foot or hydrocortisone for rashes due to dermatitis and eczema" and "helps to soften and remove crusts" as suggested by the comment are not being included in the revised indication because the comment did not provide any information or data to support these claims and no information on these claims has been submitted by any other interested person. The term "crusts" is unclear and appears to be an inappropriate term for consumer labeling. The claims relating to "cleansing" and "drying" used alone would be cosmetic claims and would not be subject to the monograph. These terms could appear outside of the indications section. Although the agency does not specifically prohibit commingled drug and cosmetic labeling separate from the indications section, the agency requests that such claims be appropriately described so that consumers will more readily be able to differentiate the drug aspects from the cosmetic aspects of such labeling. If commingled drug and cosmetic labeling claims are confusing or misleading, the agency may determine that the product's labeling is misleading within the meaning of the act and declare the product misbranded under sections 502(a) and 602(a) of the act.

Finally, the agency is deleting that portion of the Panel's recommended indication that reads "swelling associated with minor bruises and ulcerations of the skin." The Panel did not cite and the ageny is not aware of any data that show that aluminum acetate reduces swelling. Further, the word "ulcerations" is not a consumer term. In addition, the agency does not consider a number of the conditions which the Panel discussed at 47 FR 39427 and 39446, e.g., varicose ulcers, acute cutaneous inflammation, planter perforation ulcers, to be conditions which consumers should self-treat without a physician's supervision.

Because there are a number of conditions that aluminum acetate may be used for and manufacturers may not wish to include all of these conditions in their labeling, the agency is providing that manufacturers may select those conditions which they wish to include in the labeling for their product. Based on the above discussion, the revised indication proposed for aluminum acetate in this tentative final monograph reads as follows: "For temporary relief of minor skin irritations due to" (select one or more of the following: "poison ivy," "poison oak," "poison sumac," "insect bites," "athlete's foot," or "rashes caused by soaps, detergents, cosmetics, or jewelry").

II. The Agency's Evaluation of a Submission

9. Because the Panel inadvertently did not review a submission for the ingredient aluminum chloride hexahydrate (Ref. 1), the agency has evaluated the submission. The submission contained information on a marketed product containing aluminum chloride hexahydrate labeled to help relieve inflammation often associated with such common skin conditions as poison ivy, sunburn, athlete's foot, and insect bites. The product is marketed as a packet containing 12.9 grams (g) of aluminum chloride hexahydrate crystals for dissolving in approximately 12 ounces (oz) of water resulting in a 2-percent aluminum chloride solution for use as a wet dressing. The label states that a clean dressing or bandage soaked in the solution is to be applied loosely on inflamed skin and that such dressings are to be removed, remoistened, and reapplied every 10 to 15 minutes for 4 to 8 hours or as directed by a physician; the dressing should not be allowed to dry out; and the dressing material and used solution should be discarded daily and not reused. The label also cautions consumers that the product is for external use only; to avoid contact with the eyes; and if irritation occurs or persists, discontinue use and consult a physician.

The submission contained a study by Leyden and Kligman (Ref. 2) who used aluminum chloride hexahydrate as an astringent. The authors stated that astringency cannot be precisely defined and probably encompasses multiple actions involving the alterations of protein's ability to swell and to hold water and the production of dryness. The study (Ref. 2) used protein precipitation as a criterion for astringent activity. To each 2-milliliter (mL) portion of a 4-percent bovine albumin solution, 2 mL of the following were added: 30 percent, 20 percent, and 10 percent aluminum chloride hexahydrate, 30 percent aluminum acetate, 30 percent aluminum chlorohydrate, and 30 percent aluminum sulfate. Readings were made at 5 minutes, at 1 hour, and 24 hours.

The 30 percent aluminum chloride hexahydrate solution produced a thick precipitate within 5 minutes. With the 20 percent solution, there was turbidity at 5 minutes that became flocculent by 24 hours. The 10 percent solution had no effect. The 30 percent solutions of the other salts produced no precipitation except for 30 percent aluminum chlorohydrate, which became turbid in 24 hours.

Aluminum chloride was the only salt tested that possessed protein-precipitating properties to a high degree. From these results, the authors stated that one would expect aluminum chloride to be more drying than the other agents tested.

Two general references (Refs. 3 and 4) contained in the submission cited the use of aluminum chloride as an astringent at concentrations from 10 to 25 percent but provided no supporting data. A textbook (Ref. 5) cited the use of 2-percent aluminum chloride as an astringent and stated that it is a rare sensitizer but provided no supporting data. The remaining references in the submission were general textbook references on the use of wet dressings and did not mention the use of aluminum chloride. Several of the references describe the use of 1.5 to 2.5 percent aluminum chloride as an antimicrobial; and one reference described a sensitization study using 10 percent aluminum chloride. The majority of the references have no bearing on the effectiveness of aluminum chloride hexahydrate as an astringent.

The agency reviewed the data submitted and concludes that they are insufficient to establish the effectiveness of aluminum chloride hexahydrate as an OTC astringent drug product for use as a wet dressing for relief of inflammatory conditions.

Because aluminum chloride is classified in Category I at 15 percent or less concentration (calculated as the hexahydrate form) in the tentative final monograph for OTC antiperspirant drug products in the **Federal Register** of August 20, 1982 (47 FR 36504), the safety of a 2-percent aluminum chloride solution has been established.

Because some of the references in the submission are supportive of the effectiveness of aluminum chloride hexahydrate as an astringent, the

agency is classifying this ingredient in Category III at this time. Additional effectiveness data will be needed to upgrade the ingredient to Category I at a 2-percent aluminum chloride concentration.

The agency has not addressed specific guidelines for the testing of the effectiveness of topically applied astringents in this document. In revising the OTC drug review procedures relating to Category III, published in the **Federal Register** of September 29, 1981 (46 FR 47730), the agency advised that tentative final monographs will not include recommended testing guidelines for conditions that industry wishes to upgrade to monograph status. Instead, the agency will meet with industry representatives at their request to discuss testing protocols. The revised procedures also state the time in which test data must be submitted for consideration in developing the final monograph. (See also part III. paragraph A. 2. below—*Testing of Category II and Category III conditions.*)

References

(1) OTC Volume 160396.

(2) Leyden, J., and A. Kligman, "Aluminum Chloride in the Treatment of Symptomatic Athlete's Foot," *Archives of Dermatology*, 111:1004–1010, 1975.

(3) National Formulary XIV, American Pharmaceutical Association, Washington, pp. 33–34, 1975.

(4) A. Osol, et al., "The United States Dispensatory and Physicians' Pharmacology," J. B. Lipincott Co., Philadelphia, p. 47, 1967.

(5) A. A. Fisher, "Contact Dermatitis," Lea and Febiger, Philadelphia, p. 360, 1973.

III. The Agency's Tentative Conclusions and Adoption of the Panel's Recommendations

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. Summary of ingredient categories

The agency has reviewed all claimed active ingredients submitted to the Panel, as well as other data and information available at this time. As a convenience to the reader, the following list is included as a summary of the categorization of active ingredients recommended by the Panel in both the external analgesic and skin protectant rulemakings and the proposed categorization by the agency in this document.

Astringent Active Ingredients	Panel	Agency
Acetone	II	II
Alcohol	II	II
Alcohol (14 percent)	II	II
Alum (powdered alum)	II	II
Aluminum acetate	I	I
Aluminum chlorhydroxy complex	II	II
Aluminum Chloride hexahydrate	N/A	III
Aluminum sulfate [1]	III	I
Ammonium alum	II	II
Aromatics	II	II
Benzalkonium chloride	II	II
Benzethonium chloride	II	II
Benzocaine	II	II
Benzoic acid	II	II
Borax	II	II
Boric acid	II	II
para-tertiary-Butyl-*meta*-cresol	II	II
Calcium acetate	II	II
Camphor (gum camphor)	II	II
Colloidal oatmeal	II	II
Cresol	II	II
Cupric sulfate	II	II
Eugenol	II	II
Ferric subsulfate	II	II
Hamamelis water, NF XI [2]	I	I
Honey	II	II
Isopropyl alcohol	II	II
Menthol	II	II
Oil of cloves	II	II
Oil of eucalyptus	II	II
Oil of peppermint	II	II
Oil of sage	II	II
Oil of wintergreen	II	II
Oxyquinoline sulfate	II	II
Phenol (carbolic acid)	II	II
Polyoxyethylene monolaurate	II	II
Potassium alum	II	II
Potassium ferrocyanide	II	II
Silver nitrate	II	II
Sodium diacetate	II	II
Starch	II	II
Talc	II	II
Tannic acid	II	II
Tannic acid glycerite	II	II
Thymol	II	II
Zinc chloride	II	II
Zinc oxide	II	II
Zinc phenolsulfonate	II	II
Zinc stearate	II	II
Zinc sulfate	II	II

[1] Appeared incorrectly in the Panel's recommended monograph as Category III.

[2] "Witch hazel, NF XI" was the name designated by the Panel for this ingredient. The name should have read "Hamamelis water" to reflect the title when it was officially recognized in the National Formulary XI.

2. Testing of Category II and Category III conditions

Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any astringent ingredient or condition included in the review by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740), and clarified April 1, 1983 (48 FR 14050). That policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes in the Panel's Recommendations

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report with the changes described in FDA's responses to the comments above and with other changes described in the summary below.

1. The Panel had recommended directions for aluminum acetate as follows: the manufacturer must provide adequate directions so that the resulting solution to be used by the consumer contains 2.5 to 5 percent aluminum acetate. The Panel also stated "Based on the current literature and wide clinical usage, the Panel concludes that aluminum acetate solution 1:20 to 1:40 is safe and effective for topical use as an astringent." (See 47 FR 39428 and 39446.)

The agency finds that the above two statements are somewhat inconsistent. Aluminum acetate solution, more commonly known as Burow's solution, is an approximately 5 percent solution of aluminum acetate (Ref. 1). As the Panel noted, aluminum acetate solution has been used for many years as an astringent by dilution with 10 to 40 parts of water as a wet dressing (47 FR 39427 and 39445). In diluting the 5 percent solution 1/40 to 1/10, the actual use concentration of aluminum acetate is 0.13 to 0.5 percent. Because this use concentration may be prepared by dilution of aluminum acetate solution or from tablet or powder concentrates, the agency is revising § 347.12(a) to delete the percent of aluminum acetate recommended by the Panel and is proposing that this section read as follows: "Aluminum acetate, 0.13 to 0.5 percent (depending on the formulation and concentration of the marketed product, the manufacturer must provide adequate directions so that the resulting solution to be used by the consumer contains 0.13 to 0.5 percent aluminum acetate)." (See also comment 7 above.)

Reference

(1) "United States Pharmacopeia XXI—National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD, p. 29, 1985.

2. The agency is revising the indication for aluminum acetate. (See comment 8 above.)

3. The agency is reclassifying aluminum sulfate 46 to 63 percent (based on the anhydrous equivalent) for use as a styptic pencil from Category III to Category I. (See comment 5 above.)

4. After reviewing a submission not reviewed by the Panel, the agency is classifying aluminum chloride

hexahydrate in Category III. (See comment 9 above.)

5. The agency is classifying the combinations of an external analgesic and an astringent and a skin protectant and an astringent in Category III at this time. (See comment 3 above.)

6. The agency is clarifying the Panel's recommended name for witch hazel and is proposing the name "Hamamelis water, NF XI" as the only witch hazel active ingredient. (See comment 4 above.) In addition, the agency is revising and combining the indications recommended for this ingredient by the Panel. The agency agrees with the Panel that hamamelis water may be used for treating insect bites. However, the terms "sunburn," "bruises," "contusions," and "sprains" as well as the claim "for relieving muscular pains" are not being included in the revised indication because the agency is not aware of any data to support these claims. The claim for external hemorrhoids is not being included in this rulemaking because the use of hamamelis water for anorectal conditions, including external hemorrhoids, is more fully covered in the rulemaking for OTC anorectal drug products. More extensive indications for hamamelis water are proposed in § 346.50(b) of the tentative final monograph for OTC anorectal drug products. (See the **Federal Register** of August 15, 1988; 53 FR 30756.) Manufacturers may label hamamelis water products with those claims and the claims proposed in this rulemaking provided the conditions of both monographs are fully met. After combining and revising the remaining indications, the new indication being proposed in § 347.52(b)(3) for hamamelis water reads as follows: "For temporary relief of minor skin irritations due to" (select one or more of the following: "insect bites," "minor cuts," or "minor scrapes"). As stated above (see comment 8), the agency is providing that manufacturers may select those conditions which they wish to include in the labeling for their product. The agency considers this revised indication to be more consistent with the indications proposed by the agency for OTC skin protectant drug products in § 347.50(b) of the tentative final monograph for OTC skin protectant drug products (48 FR 6832) and with the definition of an astringent being proposed in this document. (See paragraph 7 below.)

7. The agency is changing the Panel's recommended definition for an astringent drug to be consistent with the definition proposed in the tentative final monograph for OTC anorectal drug products in the **Federal Register** of (53 FR 30781).

The revised definition is as follows: "A drug that is applied to the skin or mucous membranes for a local and limited protein coagulant effect."

8. In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for "physician" in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood by consumers. Based on comments to these proposals, the agency has determined that final monographs and any applicable OTC drug regulation will give manufacturers the option of using either the word "physician" or the word "doctor." This tentative final monograph proposes that option. (See § 347.52(c)(1)(i).)

9. The agency is not including in the tentative final monograph the Panel's recommended warning for aluminum acetate to "store in a cool dry place." The official compendium does not require such a storage condition for the only official aluminum acetate product, aluminum acetate topical solution (Ref. 1). Manufacturers of powder or tablet products containing aluminum acetate may include such a statement in the labeling of their products if they determine this type of storage is necessary to preserve the stability of the product. However, such a statement will not be a monograph requirement.

Reference

(1) "The United States Pharmacopeia XXI—The National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD, p. 29, 1985.

10. The agency is revising and combining the warnings recommended by the Panel to be consistent with the format and style of other tentative final monographs.

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under 21 CFR 330.1(c)(2), the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All other OTC drug labeling required by a monograph or other regulation (e.g., statement of indentity, warnings, and directions) must appear in the specific wording established under the OTC drug monograph or other regulation where exact language has been established and identified by quotation marks, e.g., 21 CFR 201.63 or 330.1(g). The proposed rule in this document is subject to the labeling provisions in § 330.1(c)(2).

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC external analgesic and skin protectant drug products used as an astringent, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96–354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC external analgesic and skin protectant drug products used as an astringent is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC skin protectant drug products when used as an astringent. Types of impact may include, but are not limited to, costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC skin protectant drug products when used as an astringent

should be accompanied by appropriate documentation. Because the agency has not previously invited specific comment on the economic impact of the OTC drug review on external analgesic and skin protectant drug products used as an astringent, a period of 120 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subect to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency invited public comment in the advance notice of proposed rulemaking regarding any impact that this rulemaking would have on OTC external analgesic and skin protectant drug products used as an astringent. No comments on economic impacts were received. Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by August 1, 1989. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Because the rulemakings for the external analgesic and skin protectant uses of OTC astringent drug products have been combined and are being proposed as part of the tentative final monograph for OTC skin protectant drug products (see 21 CFR Part 347 as proposed in the **Federal Register** of February 15, 1983; 48 FR 6820), the agency is removing in their entirety all paragraphs related to the external analgesic use of astringents that were included in the advance notice of proposed rulemaking for OTC external analgesic drug products. The paragraphs removed, which appeared in the **Federal Register** of September 7, 1982 (47 FR at 39432 and 39433), are § 348.3(h), § 348.10(c), and § 348.50(a)(3), (b) (4) and (5), (c) (7) and (8), and (d)(2) (i) and (ii).

Interested persons may, on or before June 2, 1989, submit to the Dockets Management Branch (address above), written comments, objections, or requests for oral hearing before the Commissioner on the proposed rulemaking. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before August 1, 1989. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before April 3, 1990, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before June 4, 1990. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch. Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph for OTC skin protectant drug products used as an astringent, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on June 4, 1990. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph for OTC skin protectant drug products is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects

21 CFR Part 347

Labeling, Over-the-counter drugs, Skin protectant drug products.

21 CFR Part 348

External analgesic drug products, Labeling, Over-the-counter drugs.

Therefore, under the Federal, Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 347 (proposed in the **Federal Register** of February 15, 1983; 48 FR 6820), and certain proposed amendments to Part 348 (proposed in the **Federal Register** of September 7, 1982; 47 FR 39412) are withdrawn to read as follows:

PART 347—SKIN PROTECTANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 347 is revised to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 347.3 is amended by adding new paragraph (c), to read as follows:

§ 347.3 Definitions.

* * * * *

(c) *Astringent drug product.* A drug product that is applied to be skin or mucous membranes for a local and limited protein coagulant effect.

3. Section 347.12 is added, to read as follows:

§ 347.12 Astringent active ingredients.

The active ingredient of the product consists of the following within the specified concentration:

(a) Aluminum acetate, 0.13 to 0.5 percent (depending on the formulation and concentration of the marketed product, the manufacturer must provide adequate directions so that the resulting solution to be used by the consumer contains 0.13 to 0.5 percent aluminum acetate).

(b) Aluminum sulfate, 46 to 63 percent (the concentration is based on the anhydrous equivalent).

(c) Hamamelis water, NF XI.

4. Section 347.52 is added, to read as follows:

§ 347.52 Labeling of astringent drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "astringent."

(b) *Indications.* The labeling of the product states, under the heading "Indications" any of the phrases listed in this paragraph (b), as appropriate. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to

the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For products containing aluminum acetate identified in § 347.12(a).* "For temporary relief of minor skin irritations due to" (select one or more of the following: "poison ivy," "poison oak," "poison sumac," "insect bites," "athlete's foot," or "rashes caused by soaps, detergents, cosmetics, or jewelry").

(2) *For products containing aluminum sulfate identified in § 347.12(b) for use as a styptic pencil.* "Stops bleeding caused by minor surface cuts and abrasions as may occur during shaving."

(3) *For products containing hamamelis water identified in § 347.12(c).* (i) "For relief of minor skin irritations due to" (select one or more of the following: "insect bites," "minor cuts," or "minor scrapes").

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings:"

(1) "For external use only. Avoid contact with the eyes."

(2) *For products containing aluminum acetate identified in § 347.12(a) or hamamelis water identified in § 347.12(c).* "If condition worsens or symptoms persist for more than 7 days, discontinue use of the product and consult a" (select one of the following: "physician" or "doctor.")

(3) *For products containing aluminum acetate identified in § 347.12(a) used as a compress or wet dressing.* "Do not cover compress or wet dressing with plastic to prevent evaporation."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions:"

(1) *For products containing aluminum acetate identified in § 347.12(a)*—(i) *For products used as a soak.* "For use as a soak: Soak affected area in the solution for 15 to 30 minutes. Repeat 3 times a day. Discard remaining solution after use."

(ii) *For products used as a compress or wet dressing.* "For use as a compress or wet dressing: saturate a clean, soft, white cloth (such as a diaper or torn sheet) in the solution, gently squeeze, and apply loosely to the affected area. Saturate the cloth in the solution every 15 to 30 minutes and apply to the affected area. Repeat as often as necessary. Discard remaining solution after use."

(2) *For products containing aluminum sulfate identified in § 347.12(b) for use as a styptic pencil.* "Moisten tip of pencil with water and apply to the affected area. Dry pencil after use."

(3) *For products containing hamamelis water identified in § 347.12(c).* "Apply to the affected area as often as necessary."

PART 348—EXTERNAL ANALYGESIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

5. The authority citation for 21 CFR Part 348 (proposed in the **Federal Register** of September 7, 1982; 47 FR 39412) is revised to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

§§ 348.8, 348.10, 348.50 [Amended]

6. In § 348.3 paragraph (h), in § 348.10 paragraph (c), and in § 348.50 paragraphs (a)(3), (b)(4) and (5), (c)(7) and (8), and (d)(2)(i) and (ii) are withdrawn.

Dated: February 27, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89–7834 Filed 3–31–89; 8:45 am]

BILLING CODE 4160–01–M

federal register

Monday
April 3, 1989

Part VI

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-3548-2]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's action makes several technical revisions to EPA's Stratospheric Ozone Protection Rule published on August 12, 1988 (53 FR 30566). As originally published, the rule's effective date was contingent on the Montreal Protocol on Substances that Deplete the Ozone Layer entering into force. The dates of the control periods established by the rule were similarly contingent on when the Protocol entered into force. Since the conditions for entry into force were satisfied just prior to the anticipated January 1, 1989 target date, EPA is revising the August 12 rule to set forth the dates for the rule's effective date and control periods.

DATE: The amendments to the effective date and control periods provisions (§§ 82.2 and 82.3(f), respectively) are effective April 3, 1989.

ADDRESS: Comments and other information relevant to this rulemaking are maintained in Docket A–88–27 at the Air Docket, Room M–1500, First Floor, Waterside Mall, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 3:30 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: David Lee, Senior Analyst, Regulatory and Analysis Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR–445, 401 M Street SW., Washington, DC 20460. (202) 475–7497.

SUPPLEMENTARY INFORMATION:

I. Addition of Dates

A. Effective Date of Regulation

EPA's final regulation limiting the production and consumption of certain ozone-depleting substances was published on August 12, 1988. However, the regulation specified that, with the exception of a single reporting requirement, it would take effect at the same time that the Montreal Protocol entered into force. According to the terms of that agreement, entry into force would occur on January 1, 1989, provided that at least 11 instruments of ratification, acceptance, approval of the Protocol or accession thereto had been deposited by States or regional economic integration organization representing at least two-thirds of 1986 estimated global consumption of the controlled substances.

On December 16, 1988, according to information provided by the United Nations Treaty Office in New York City, the conditions for entry into force were satisfied. On that day, instruments of ratification were deposited by 10 nations from the European Community (EC) and by the EC itself, which brought the number of nations ratifying the Protocol to 25. (The United States deposited its instrument of ratification in April 1988.) Together, these nations represent more than the two-thirds of 1986 global consumption of the controlled substances, which was the other condition for entry into force.

The change to the final rule contained in today's action is a technical revision altering the original conditional language to reflect the fact that the requirements for the Protocol's entry into force were met prior to January 1, 1989, and therefore that the Protocol and the domestic rule took effect on that date.

B. Timing of Control Periods

In the preamble to the August 12 final rule, EPA stated that the rule's control periods would coincide with those specified in the Montreal Protocol. Since the rule itself was contingent on the Protocol's entry into force and since the dates of some control periods were contingent on when the Protocol entered into force, EPA reserved the provision of the rule defining control periods. Now that the date of the Protocol's entry into force is known, the Agency is promulgating § 82.3(f) to specify the dates of the various control periods.

Article 2 of the Montreal Protocol sets forth the timing and magnitude of the reductions that each Party must make in controlled substances. It states that each Party shall limit its production and consumption of Group I substances (i.e. chlorofluorocarbons or "CFCs") to its 1986 levels for the twelve month period commencing on the first day of the seventh month following the date of entry into force.

Article 2 of the Protocol also requires that the freeze at 1986 levels for Group I substances be followed by a 20 percent reduction for the period from July 1, 1993 to June 30, 1994, and for each 12 month period thereafter. The 20 percent reduction is followed by an additional 30 percent cut that takes effect for the 12 month period beginning on July 1, 1998, and for each 12 month period thereafter. Group II controlled substances (i.e. halons) are to be frozen at 1986 levels beginning on the first day of the thirty-seventh month after entry into force.

Since the Protocol entered into force on January 1, 1989, § 82.3(f)(1) of EPA's rule now provides that the first control period will begin on July 1, 1989, and run until June 30, 1990, and that subsequent control periods will run from July 1 to June 30 thereafter. Similarly, § 82.3(f)(2) provides that for Group II substances, the first control period will run from January 1 to December 31, 1992, and that subsequent control periods will extend from January 1 to December 31 of each year thereafter.

C. Effective Date of Additions to Rule

The addition to the rule of the dates described above is effective immediately. EPA finds good cause for making an exception to the requirement that a regulation be published at least 30 days before its effective date (5 U.S.C. 553(d)(3)). The rule as originally published provided that it would take effect when the Montreal Protocol entered into force, which it stated would be January 1, 1989, if certain specified conditions were met by that date. Since those conditions were fulfilled by that date, the effective date section of the original rule itself provided for a January 1, 1989 start date. Thus, this notice does not change the substance of the effective date section, but only substitutes a date for the statement of conditions that determined that date. Under these circumstances, EPA finds it appropriate to make this revision to § 82.2 effective immediately.

For similar reasons, the Agency is making the revision to § 82.3(f) effective immediately. In the preamble to the final rule, EPA stated that the control periods established by the rule would coincide with the control periods defined by the Montreal Protocol, which in turn made the dates of some periods dependent on the date the Protocol entered into force. EPA described what those control periods would be if the Protocol entered into force on January 1, 1989, as has occurred. Since EPA decided at the time it promulgated the original rule that the control periods would be as defined here, provided the Protocol entered into force on January 1, 1989, the Agency finds good cause to make this change to the control period definition effective immediately.

Paperwork Reduction Act

The information collection requirements contained in the final rule published on August 12, 1988, 53 FR

3056, have been approved by the Office of Management and Budget (OMB) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et. seq.*, and have been assigned OMB control number 2060–0170.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (2060–0170), Washington, DC 20530, marked "Attention: Desk Officer for EPA."

Dated: March 28, 1989.

Don R. Clay,

Assistant Administrator, Office of Air and Radiation.

For the reasons set forth in the preamble, Title 40 CFR Part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7457(b).

2. Sections 82.2 and 82.3(f) are revised to read as follows:

§ 82.2 Effective date.

Section 82.13(f)(1) of this part takes effect September 12, 1988. The remainder of the regulations under this part takes effect January 1, 1989.

§ 82.3 Definitions.

* * * * *

(f) "Control periods" means those periods during which the prohibitions under § 82.4 apply. Those periods are:

(1) For Group I controlled substances: July 1, 1989–June 30, 1990, and each twelve-month period from July 1 to June 30 thereafter.

(2) For Group II controlled substances: January 1, 1992–December 31, 1992, and each twelve-month period from January 1 to December 31 thereafter.

* * * * *

[FR Doc. 89–7792 Filed 3–31–89; 8:45 am]

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Price	Revision Date
Individual copies	2.00	1989

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

CFR ISSUANCES 1989
January 1989 Editions and Projected April, 1989 Editions

This list sets out the CFR issuances for the January 1989 editions and projects the publication plans for the **April, 1989** quarter. A projected schedule that will include the **July, 1989** quarter will appear in the first **Federal Register** issue of July.

For pricing information on available 1988-1989 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1-16—January 1
Titles 17-27—April 1
Titles 28-41—July 1
Titles 42-50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1989 editions:

Title

CFR Index*

1-2 (Revised as of April 1, 1989)

3 (Compilation)*

4*

5 Parts:
1-699*
700-1199*
1200-End*

6 [Reserved]

7 Parts:
0-26*
27-45*
46-51*
52 (Cover only)
53-209*
210-299*
300-399*
400-699*
700-899*
900-999*
1000-1059*
1060-1119*
1120-1199*
1200-1499*
1500-1899*
1900-1939*
1940-1949*
1950-1999*
2000-End*

8*

9 Parts:
1-199*
200-End*

10 Parts:
0-50*
51-199*
200-399 (Cover only)
400-499*
500-End*

11 (Cover only)

12 Parts:
1-199*
200-219*
220-299*
300-499*
500-599*
600-End*

13*

14 Parts:
1-59*
60-139*
140-199*
200-1199*
1200-End*

15 Parts:
0-299*
300-799*
800-End*

16 Parts:
0-149*
150-999*
1000-End*

Projected April 1, 1989 editions:

Title

17 Parts:
1-199
200-239
240-End

18 Parts:
1-149
150-279
280-399
400-End

19 Parts:
1-199
200-End

20 Parts:
1-399
400-499
500-End

21 Parts:
1-99
100-169
170-199
200-299
300-499
500-599
600-799
800-1299
1300-End

22 Parts:
1-299
300-End

23

24 Parts:
0-199
200-499
500-699
700-1699
1700-End

25

26 Parts:
1 (§§ 1.0-1-1.60)
1 (§§ 1.61-1.169)
1 (§§ 1.170-1.300)
1 (§§ 1.301-1.400)
1 (§§ 1.401-1.500)
1 (§§ 1.501-1.640)
1 (§§ 1.641-1.850)
1 (§§ 1.851-1.1000)
1 (§§ 1.1001-1.1400)
1 (§ 1.1401-End)
2-29
30-39
40-49
50-299
300-499
500-599
600-End

27 Parts:
1-199
200-End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 1989

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

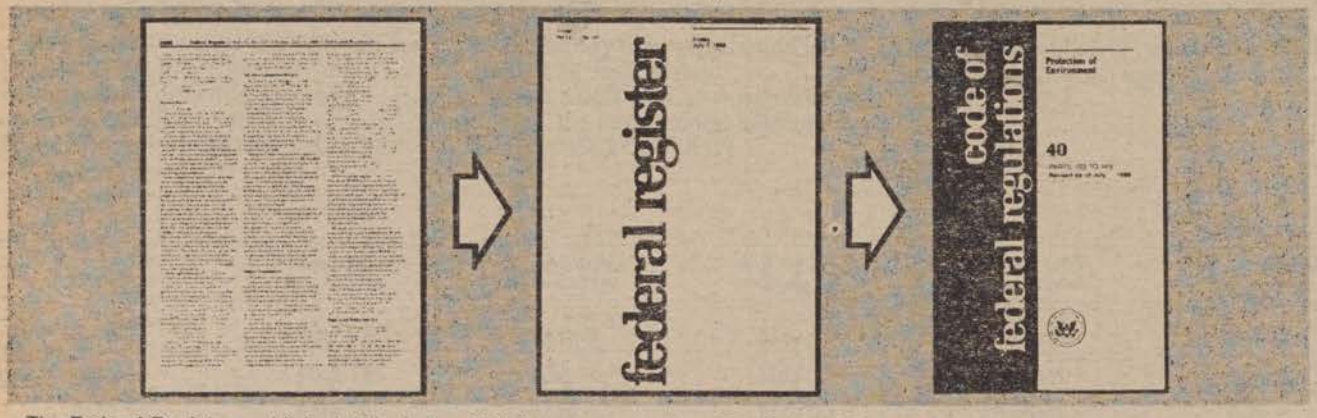
A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
April 3	April 18	May 3	May 18	June 2	July 3
April 4	April 19	May 4	May 19	June 5	July 3
April 5	April 20	May 5	May 22	June 5	July 5
April 6	April 21	May 8	May 22	June 5	July 5
April 7	April 24	May 8	May 22	June 6	July 6
April 10	April 25	May 10	May 25	June 9	July 10
April 11	April 26	May 11	May 26	June 12	July 10
April 12	April 27	May 12	May 30	June 12	July 11
April 13	April 28	May 15	May 30	June 12	July 12
April 14	May 1	May 15	May 30	June 13	July 13
April 17	May 2	May 17	June 1	June 16	July 17
April 18	May 3	May 18	June 2	June 19	July 17
April 19	May 4	May 19	June 5	June 19	July 18
April 20	May 5	May 22	June 5	June 19	July 19
April 21	May 8	May 22	June 5	June 20	July 20
April 24	May 9	May 24	June 8	June 23	July 24
April 25	May 10	May 25	June 9	June 26	July 24
April 26	May 11	May 26	June 12	June 26	July 25
April 27	May 12	May 30	June 12	June 26	July 26
April 28	May 15	May 30	June 12	June 27	July 27



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