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Wednesday
September 8, 1993

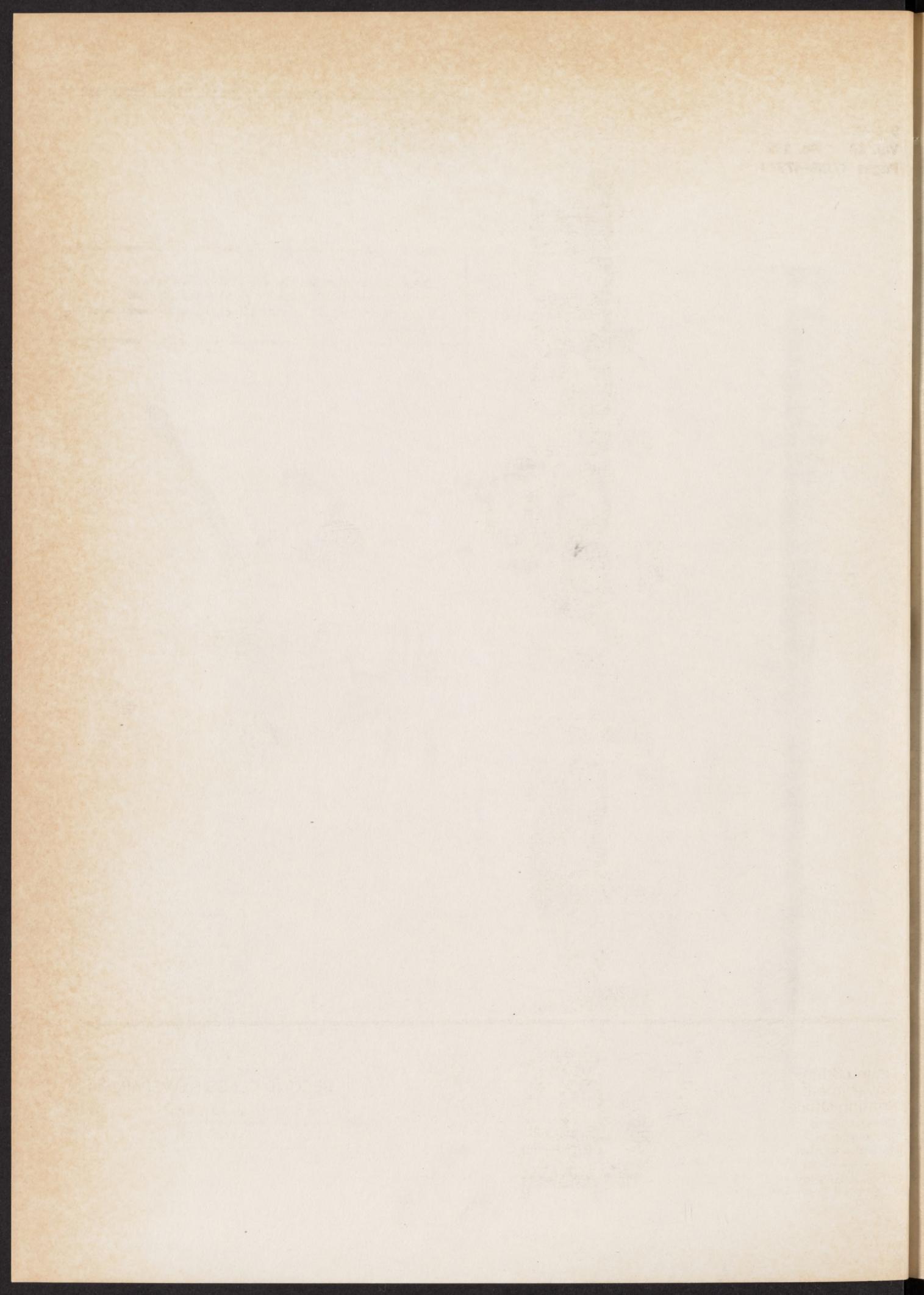
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Briefings on How To Use the Federal Register
For information on briefings in Atlanta, GA, and
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of this issue.



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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR:	Any person who uses the Federal Register and Code of Federal Regulations .
WHO:	The Office of the Federal Register .
WHAT:	Free public briefings (approximately 3 hours) to present:
	1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
	2. The relationship between the Federal Register and Code of Federal Regulations .
	3. The important elements of typical Federal Register documents.
	4. An introduction to the finding aids of the FR/CFR system.
WHY:	To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

When:	September 15 at 9:30 a.m.
Where:	Jimmy Carter Presidential Library One Copenhill Avenue, Atlanta, GA Federal Information Center 1-800-347-1997

WASHINGTON, DC

When:	(two briefings)
Where:	September 17 at 9:00 am and 1:30 pm Office of the Federal Register , 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
Reservations:	202-523-4538



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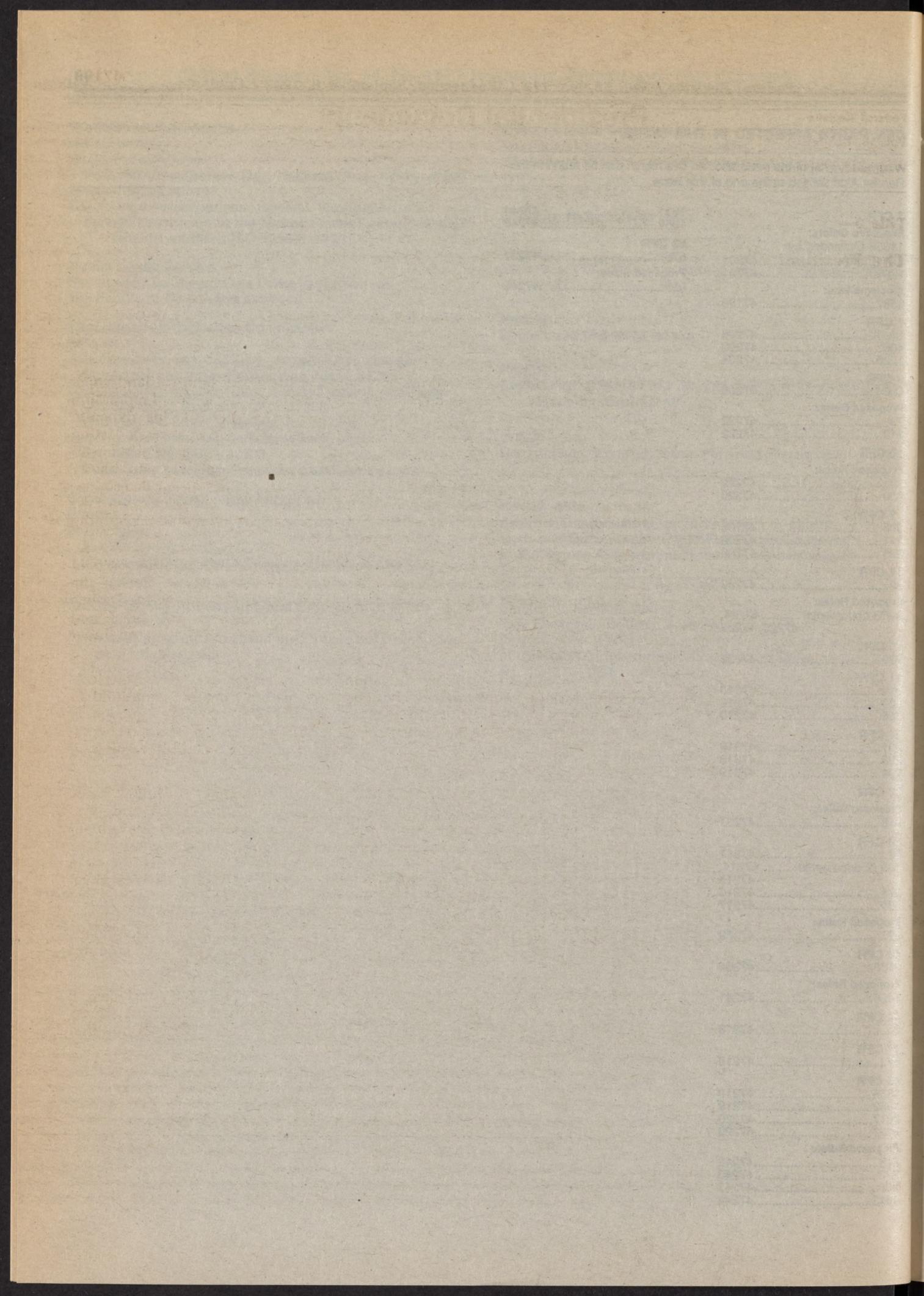
Electronic Bulletin Board

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202-275-1538 or 275-0920.

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The President

Proclamation 6587 of September 3, 1993

National POW/MIA Recognition Day, 1993

By the President of the United States of America

A Proclamation

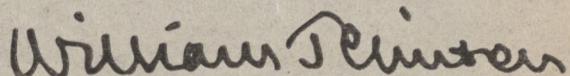
This year we have witnessed major changes in the global political landscape. Although democracy is taking root in many new areas, the forces of repression pose continuing challenges around the world. Throughout this dynamic period, one theme rings true to all Americans: Our Nation owes a lasting debt of gratitude to all those selfless members of our Armed Forces who have risked their own freedom and safety to defend the lives and liberty of others. As a measure of our thanks and as an expression of our determination to keep faith with those who faithfully serve and defend us, we take this occasion to remember those special Americans for whom an accounting has not yet been made.

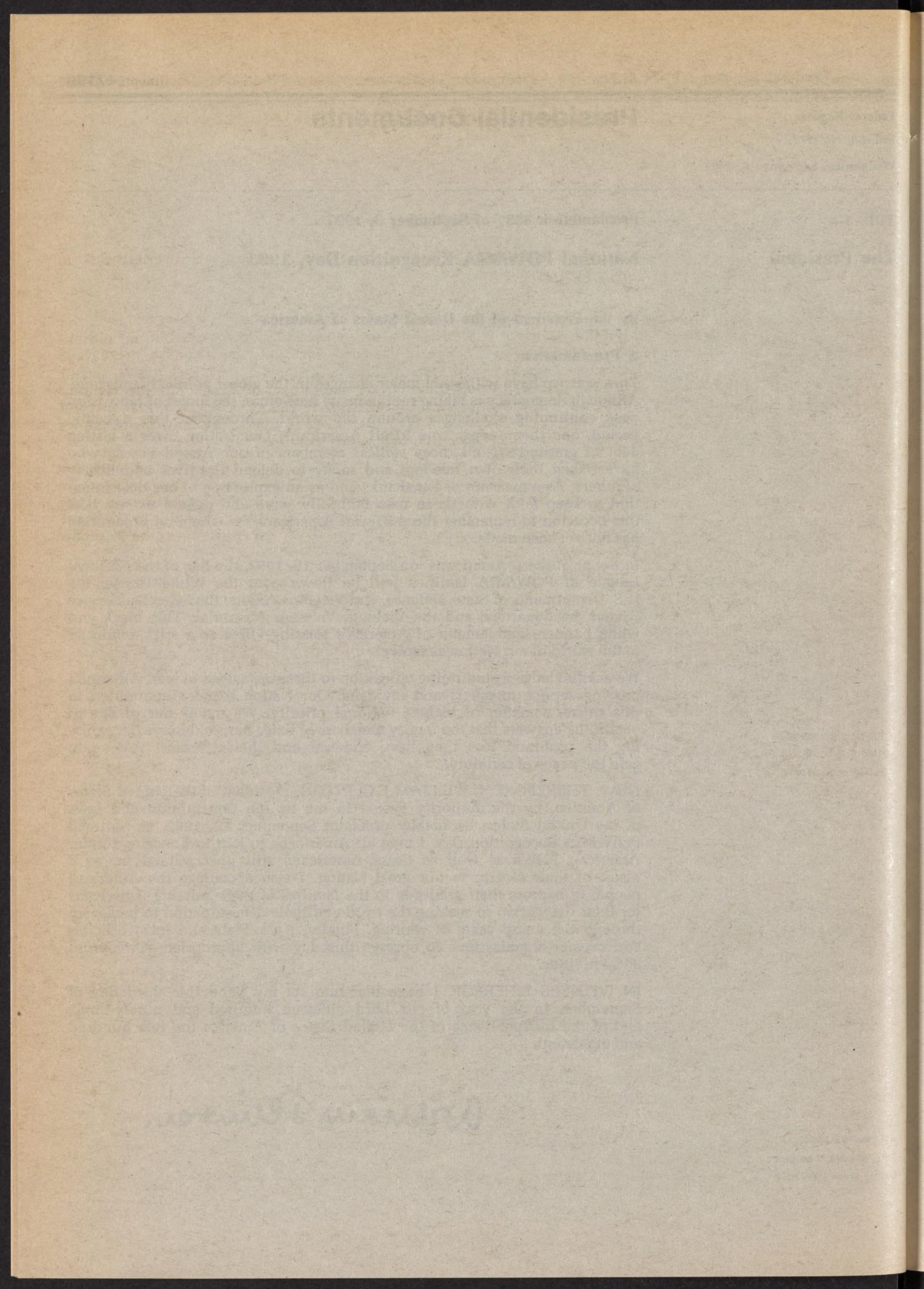
In honor of these Americans, on September 10, 1993, the flag of the National League of POW/MIA families will be flown over the White House; the U.S. Departments of State, Defense, and Veterans Affairs; the Selective Service System headquarters; and the Vietnam Veterans Memorial. This black and white banner—emblematic of America's missing—flies as a stark reminder to the world of our Nation's resolve.

We acknowledge a continuing obligation to these casualties of war, America's missing service members and civilians. Our Nation remains committed to this cause, a matter of highest national priority. We renew our pledge to obtain the answers that the family members of these heroes deserve, recognizing the profound loss they have endured and their steadfast resolve to gain the peace of certainty.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 10, 1993, as National POW/MIA Recognition Day. I urge all Americans to join in honoring former American POWs as well as those Americans still unaccounted for as a result of their service to our great Nation. I also encourage the American people to express their gratitude to the families of these missing Americans for their dedication to seeking the truth and their determination to persevere through the many years of waiting. Finally, I ask State and local officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of September, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.





Presidential Documents

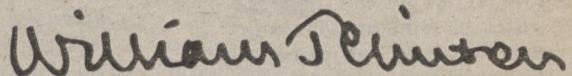
Executive Order 12860 of September 3, 1993

Adding Members to the Committee on Foreign Investment in the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418; 102 Stat. 1107), section 301 of title 3, United States Code, and in accordance with the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 106 Stat. 2315), to designate additional members to the Committee on Foreign Investment in the United States, it is hereby ordered as follows:

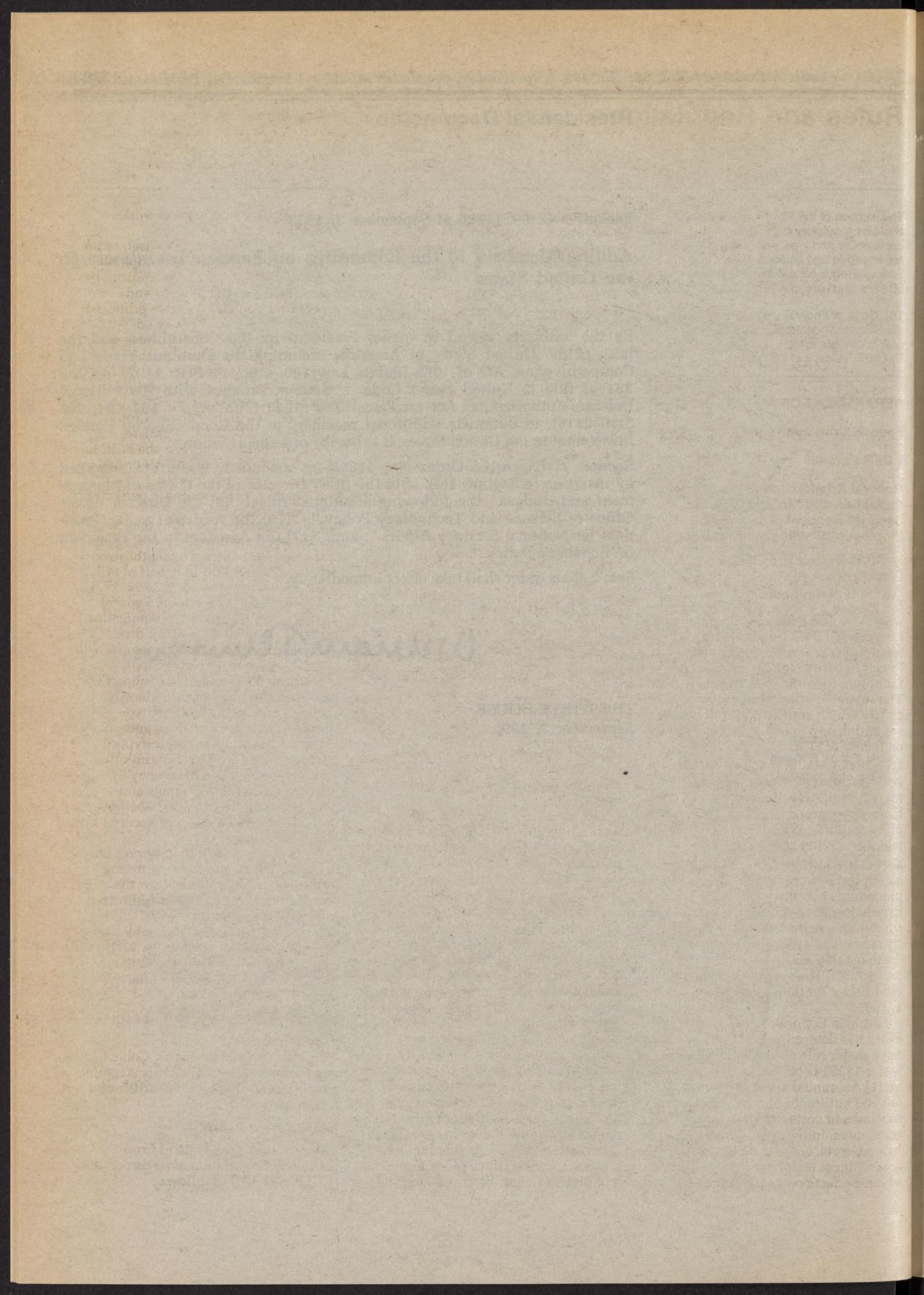
Section 1. Executive Order No. 11858, as amended, is further amended by inserting in Section 1(a), after the title "Director of the Office of Management and Budget," the following additional titles: "(9) the Director of the Office of Science and Technology Policy.;" "(10) the Assistant to the President for National Security Affairs.;" and "(11) the Assistant to the President for Economic Policy.;"

Sec. 2. This order shall take effect immediately.



THE WHITE HOUSE,
September 3, 1993.

[FR Doc. 93-22106
Filed 9-3-93; 4:35 pm]
Billing code 3195-01-P



Rules and Regulations

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

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the regulations governing the collection of Social Security Numbers (SSN) and Employer Identification Numbers (EIN). The intended effect of this rule is to clarify which entities and individuals are authorized to collect SSNs and EINs on behalf of FCIC.

EFFECTIVE DATE: September 8, 1993.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254-8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1997.

Kathleen Connelly, Acting Manager, FCIC, has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (1) An annual effect on the economy of \$100 million or more; (2) major increases in costs or prices for consumers, individual industries, federal, state, or local governments, or a geographical region; or (3) significant adverse effects on competition,

employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Acting Manager also certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities. This program is strictly voluntary. This regulation does not require or impose any requirement on the delivery agent or company that is not already required by the Privacy Act of 1974 (5 U.S.C. 552a). Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Acting Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule are not retroactive and will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 1, subpart H must be exhausted before judicial action may be brought for actions taken under proceedings for the imposition of civil penalties or under the Program Fraud Civil Remedies sections of these regulations.

This amendment does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44

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U.S.C. chapter 35, the Paperwork Reduction Act.

The Office of General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this proposed rule will not have an increased substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Section 506 of the Federal Crop Insurance Act (7 U.S.C. 1506), as amended (FCI Act), directs the FCIC to require submission of an SSN or EIN as a condition of eligibility for participation in the multiple peril crop insurance program.

This amendment clarifies that reinsured companies, agencies, agents and employees thereof are authorized to collect SSN and EIN on behalf of FCIC.

On Thursday, October 8, 1992, FCIC published a final rule in the **Federal Register** at 57 FR 46295, promulgating rules affecting how the FCIC, direct insurance and reinsured companies will collect, use, and store documents containing SSNs and EINs (Subpart Q). However, the rule failed to identify agencies and agents of reinsured companies as those who are authorized to have access to those identifying numbers for FCIC. This interim rule serves to correct this deficiency by identifying those individuals and entities in the "Definitions" section and in the "Required System of Records" section of Subpart Q.

Because this amendment serves only to clarify terms, and those terms are immediately required to allow the access of SSNs and EINs to authorized individuals and entities, FCIC determines that notice and public procedure is unnecessary, impracticable, and contrary to the public interest. This rule is effective upon publication.

List of Subjects in 7 CFR Part 400

Crop Insurance, General Administrative Regulations, Collection and Storage of Social Security Account Numbers and Employer Identification Numbers.

Interim Final Rule

Accordingly, the Federal Crop Insurance Corporation amends part 400 (7 CFR part 400) as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. The authority citation for part 400 continues to read as follows:

Authority: 7 U.S.C. 1506, 1508.

2. Section 400.402 is amended by revising paragraphs (e) and (k) to read as follows:

§ 400.402 Definitions.

(e) *Authorized person*—An officer, employee, general or special agent, or loss adjuster of the FCIC, insurance company, reinsured company, or ASCS whose duties require access in the administration of the FCI Act.

(k) *Government contract employees*—authorized persons employed by a direct insurance or reinsured company, former officers or employees of such company, and general or special agents and loss adjusters.

3. Section 400.406 is revised to read as follows:

§ 400.406 Restricted access.

The Manager, other officer, or employee of the FCIC or authorized person (as defined in § 400.402(e)) may have access to the EINs and SSNs obtained pursuant to § 400.404 only for the purpose of establishing and maintaining a system of records necessary for the effective administration of the FCI Act in accordance with § 400.404 of this part. These numbers may be used in administering the FCI Act.

Done in Washington, DC, on September 1, 1993.

Robert Fenton,

Assistant Manager, Federal Crop Insurance Corporation.

[FR Doc. 93-21745 Filed 9-7-93; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service**7 CFR Part 1230**

[No. LS-93-002]

RIN 0581-AA92

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 and the Order issued thereunder, this final rule

decreases the amount of the assessment per pound due on imported pork and pork products to reflect a decrease in the 1992 six market average price for domestic barrows and gilts and to bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals.

EFFECTIVE DATE: October 8, 1993.

FOR FURTHER INFORMATION CONTACT:
Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720-1115.

SUPPLEMENTARY INFORMATION: This final rule was reviewed in accordance with Executive Order No. 12291 and Departmental Regulation 1512-1 and is hereby classified as a nonmajor rule because it does not meet the criteria contained therein for a major rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule is not intended to have retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order, or an obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which such person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the *Federal Register* (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities.

Many importers may be classified as small entities. This final rule decreases the amount of assessments on imported pork and pork products subject to assessment by three- to five-hundredths of a cent per pound, or as expressed in cents per kilogram, seven- to eleven-hundredths of a cent per kilogram. Adjusting the assessments on imported pork and pork products will result in an estimated decrease in assessments of \$200,000 over a 12-month period. Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. However, that rate was increased to 0.35 percent effective December 1, 1991 (56 FR 51635). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the *Federal Register* (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, and 56 FR 51635) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay to the U.S. Customs Service (USCS), upon importation, the assessment of 0.35 percent of the animal's declared value and importers of pork and pork products to pay to the USCS, upon importation, the assessment of 0.35 percent of the market value of the live porcine animals from which such pork and pork products were produced. This final rule decreases the assessments on all of the imported pork and pork products subject to assessment listed in 7 CFR 1230.110 (October 30, 1992; 57 FR 49135). This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 1992 as reported by the USDA, AMS, Livestock and Grain Market News (LGMN) Branch. This decrease in assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent decrease in the market value of domestic porcine animals, thereby promoting

comparability between importer and domestic assessments. This final rule will not change the current assessment rate of 0.35 percent of the market value.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. The annual average price, which was based on price data from seven major markets, is now based on only six markets. One of the seven markets—Kansas City—closed in 1991; and the 1992 annual average price is based on price data from only six markets. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics."

Finally, the equivalent value is multiplied by the applicable assessment rate of 0.35 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cents-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

The average annual market price decreased from \$48.46 in 1991 to \$42.11 in 1992, a decrease of about 13 percent.

This decrease will result in a corresponding decrease in assessments for all the Harmonized Tariff Systems (HTS) numbers listed in the table in § 1230.110 of an amount equal to three-to five-hundredths of a cent per pound, or as expressed in cents per kilogram, seven- to eleven-hundredths of a cent per kilogram. Based on the most recent available Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products the decrease in assessment amounts will result in an estimated \$200,000 decrease in assessments over a 12-month period.

On June 10, 1993, AMS published in the **Federal Register** (58 FR 32468) a proposed rule which would decrease the per pound assessment on imported pork and pork products consistent with decreases in the 1992 average prices of domestic barrows and gilts to provide comparability between importer and domestic assessments. The proposal was published with a request for comments by July 12, 1993. No comments were received. However, a review of calculations used to convert the cents-per-pound assessments to cents-per-kilogram for the HTS numbers listed in § 1230.110 of the proposed rule revealed that the cents-per-kilogram assessments for all HTS numbers were incorrect because the cents-per-pound assessments were not rounded correctly prior to the conversion calculations. The cents-per-pound assessments for all of the HTS numbers shown in § 1230.110 of the proposed rule are correct. Accordingly, this final rule establishes the per-pound and per-kilogram assessments on imported pork and pork products as proposed and corrected herein.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR part 1230 is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart B—[Amended]

2. Subpart B—Rules and Regulations by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.00004	0.35 percent Customs Entered Value.
0103.91.00006	0.35 percent Customs Entered Value.
0103.92.00005	0.35 percent Customs Entered Value.

The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	Cents/lb	Cents/kg
0203.11.00002 .....	.21	.462966
0203.12.10107 .....	.21	.462966
0203.12.10205 .....	.21	.462966
0203.12.90100 .....	.21	.462966
0203.12.90208 .....	.21	.462966
0203.19.20108 .....	.24	.529104
0203.19.20901 .....	.24	.529104
0203.19.40104 .....	.21	.462966
0203.19.40907 .....	.21	.462966
0203.21.00000 .....	.21	.462966
0203.22.10007 .....	.21	.462966
0203.22.90000 .....	.21	.462966
0203.29.20008 .....	.24	.529104
0203.29.40004 .....	.21	.462966
0206.30.00006 .....	.21	.462966
0206.41.00003 .....	.21	.462966
0206.49.00005 .....	.21	.462966
0210.11.00101 .....	.21	.462966
0210.11.00209 .....	.21	.462966
0210.12.00208 .....	.21	.462966
0210.12.00404 .....	.21	.462966
0210.19.00103 .....	.24	.529104
0210.19.00906 .....	.24	.529104
1601.00.20105 .....	.29	.639334
1601.00.20908 .....	.29	.639334
1602.41.20203 .....	.32	.705472
1602.41.20409 .....	.32	.705472
1602.41.90002 .....	.21	.462966
1602.42.20202 .....	.32	.705472
1602.42.20408 .....	.32	.705472
1602.42.40002 .....	.21	.462966
1602.49.20009 .....	.29	.639334
1602.49.40005 .....	.24	.529104

Dated: September 1, 1993.

L.P. Massaro,
Acting Administrator.
[FR Doc. 93-21859 Filed 9-7-93; 8:45 am]

BILLING CODE 3410-02-P

Animal and Plant Health Inspection Service**7 CFR Chapter III****9 CFR Chapter I**

[Docket No. 93-105-1]

Use of Direct Final Rulemaking**AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Policy statement.

SUMMARY: The Animal and Plant Health Inspection Service is implementing a new rulemaking procedure to expedite making noncontroversial changes to regulations. Rules that the agency judges to be noncontroversial and unlikely to result in adverse comments will be published as "direct final" rules. ("Adverse comments" are comments that suggest that a rule should not be adopted or suggest that a change should be made to the rule.) Such direct final rules will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notice of intent to submit adverse comments are received within 30 days, the revision made by the rule will be effective 60 days from the date the direct final rule is published in the **Federal Register**. This new policy should expedite the promulgation of routine or otherwise noncontroversial rules by reducing the time that would be required to develop, review, clear, and publish separate proposed and final rules.

ADDRESSES: If you wish to submit comments on this notice, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 93-105-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Nancy Chamberlain, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8682.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) is committed to improving the efficiency of its regulatory processes to fulfill agency missions in a manner that imposes the least necessary burden. In pursuit of this

goal, APHIS plans to employ the rulemaking technique known as "direct final rulemaking" to promulgate some of its rules.

The Direct Final Rule Process

Rules that the agency judges to be noncontroversial and unlikely to result in adverse comments will be published as direct final rules. Such direct final rules will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notice of intent to submit adverse comments are received within 30 days, the revision made by the rule will be effective 60 days from the date the direct final rule is published in the **Federal Register**.

By "adverse comments" we mean comments that suggest that the rule should not be adopted, or that suggest that a change should be made to the rule. A comment expressing support for the rule as published would obviously not be considered adverse. Neither would a comment suggesting that requirements in the rule should, or should not, be employed by APHIS in other programs or situations outside the scope of the direct final rule.

In accordance with the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), this procedure gives the public general notice of APHIS' intent to adopt a rule, and gives interested persons an opportunity to participate in the rulemaking through submission of comments. The major feature of direct final rulemaking is that if APHIS receives no written adverse comments within 30 days of the publication of a direct final rule, nor any written notice of intent to submit adverse comments, the rule will become effective without the need to publish a separate final rule.

If APHIS receives written adverse comments or written notice of intent to submit adverse comments within 30 days of the publication of a direct final rule, a notice of withdrawal of the direct final rule will be published in the **Federal Register** and a proposed rule will be published establishing a comment period for the rulemaking action. Following the close of the comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if APHIS receives no written adverse comments within 30 days of the publication of a direct final rule, nor any written notice of intent to submit adverse comments, the direct final rule will become effective 60 days following its publication. However, APHIS will publish a notice in the **Federal Register** indicating that no

adverse comments were received on the direct final rule, and confirming that it is effective on the date indicated in the direct final rule.

Determining When To Use Direct Final Rulemaking

Not all APHIS rules are good candidates for direct final rulemaking. Many APHIS rules address complex animal and plant health situations where the public may have a variety of opinions to offer on the need for the rule, or possible alternative methods for achieving the purpose of the rule. In these cases, APHIS plans to continue to publish a proposed rule and establish a comment period to allow submission of comments, followed by a final rule addressing the comments.

APHIS plans to use direct final rulemaking on a case-by-case basis when we do not anticipate adverse comments. The decision to use direct final rulemaking for a rule would be based on our experience with similar rules. If similar rules were published in the past as proposals that did not elicit adverse comments, we would consider publishing such rules in the future as direct final rules.

Done in Washington, DC, this 20th day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-21862 Filed 9-7-93; 8:45 am]

BILLING CODE 3410-34-P

FEDERAL RESERVE SYSTEM**12 CFR Parts 208, 211, and 225**

[Regulations H, K and Y; Docket No. R-0792]

Membership of State Banking Institutions in the Federal Reserve System; International Banking Operations; Bank Holding Companies and Change in Bank Control; Criminal Referral Report

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: An interagency task force has designed a uniform multi-agency criminal referral form in order to facilitate compliance with financial institutions' criminal activity reporting requirements, to enhance law enforcement agencies' ability to investigate and prosecute the matters reported in the criminal referrals, and to develop and maintain a new interagency database. This uniform criminal referral form will replace the various criminal

referral forms that are currently being used by Federal bank, thrift and credit union regulatory agencies and by the banking organizations they supervise. The purpose of the regulation is to create a uniform criminal referral reporting requirement for all domestic and foreign financial institutions operating in the United States.

EFFECTIVE DATE: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Herbert A. Biern, Deputy Associate Director, (202/452-2620), Richard A. Small, Special Counsel, (202/452-5235), or Mark Leemon, Senior Attorney, (202/452-5206), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf, Dorothea Thompson, (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The Federal financial institutions regulatory agencies are the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA). These agencies are charged with safeguarding the safety and soundness of financial institutions with operations in the United States, including national banks, credit unions, savings associations, state-chartered banks, bank and thrift holding companies and their nonbank subsidiaries, Edge and Agreement corporations, and all U.S. offices of foreign banks. Pursuant to their respective enabling statutes, these agencies are responsible for ensuring that financial institutions apprise federal law enforcement authorities of any violation or suspected violation of a criminal statute. Fraud, abusive insider transactions, check kiting schemes, money laundering and other crimes can cause significant financial losses, pose serious threats to a financial institution's continued viability and, if unchecked, may undermine the public confidence in the financial services industry. The law enforcement community needs to receive timely information regarding criminal and suspected criminal activity that is sufficiently detailed to determine whether investigations and prosecutions are warranted.

The Interagency Bank Fraud Working Group (Working Group) was formed in

1984 to promote interagency cooperation toward the goal of improving the federal government's response to white collar crime in financial institutions. The Working Group now consists of representatives from twelve Federal agencies, including the Board, the other federal financial institutions regulators, the Federal Bureau of Investigation, the U.S. Secret Service, the Department of Justice and the U.S. Department of the Treasury. A subcommittee of the Working Group studied the criminal referral process and developed a new uniform criminal referral form (the Form). The purpose of the Form is to standardize criminal referral data and to facilitate its automation. Because the Form is machine readable, it is anticipated that the resulting interagency criminal referral database will be fully functional in a relatively short period of time. The database will provide information, *inter alia* to the OCC, Board, FDIC, OTS, NCUA, and U.S. Department of the Treasury. In order to promote use of the Form, each of the Federal financial institutions regulatory agencies has decided to adopt similar regulations relating to the filing of criminal referral reports in specific situations and the use of the same Form in the making of such criminal referral reports. The new regulations would replace requirements mandating the filing of criminal referrals and designating separate agency forms for such referrals.

Comments Received

On January 8, 1993, a proposed regulation was published in the **Federal Register** (58 FR 3235). Thirty-four comments were received on the proposed regulation. Fourteen comments were from holding companies, eighteen comments were from commercial banks or Federal Reserve Banks, and two comments were from attorneys representing financial institutions. Twenty-five of the comments expressed general support for the regulation. Four of the comments were critical of any reporting requirement whatsoever, a view that we must reject in light of the responsibility of financial institutions to assist law enforcement authorities in the performance of their duties. Ten of the comments suggested raising the dollar thresholds for required reporting. Five of the comments suggested computer software be made available to simplify the reporting requirement. One comment expresses concern for possible liability to financial institutions that might arise under various privacy laws.

With respect to potential civil liability that might arise in connection with the

submission of a criminal referral, Congress has enacted a statute that provides protection from civil liability for the reporting of criminal acts to appropriate authorities. Amendments to the Bank Secrecy Act made by the Housing and Community Development Act of 1992 (31 U.S.C. 5314(g)(3)) provide that financial institutions, and their directors, officers, employees and agents, that disclose, in good faith, possible violations of law in connection with the preparation of criminal referral forms shall not be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure. This law also requires that financial institutions, and their directors, officers, employees and agents, refrain from communicating that a criminal referral has been made and the information reported in a criminal referral to any person involved in the suspicious transaction.¹

Several commenters recommended that the dollar minimums on reportable offenses be raised. Although these comments raise a valid concern, particularly for financial institutions that may file numerous criminal referrals, the appropriate law enforcement authorities have advised the staff of the Board and the other bank and thrift regulatory agencies that the present limits are necessary for their law enforcement functions. Additionally, with the advent of the new banking and law enforcement agency databases, patterns of crime throughout the financial community should become more easily detectable. Especially in the cases of credit card fraud, money laundering, and check kiting, seemingly minor individual reports often are analyzed to detect major fraud schemes.

Several commenters queried whether the requirement to notify the boards of directors of financial institutions of the filing of criminal referrals should be viewed as mandating a communication to the board every time a criminal referral is filed or whether the notification requirement could be satisfied by a periodic or summary report. Consistent with current practice, the requirements of the regulation will be satisfied by a summary or periodic report to the board of directors, unless a criminal referral relates to a material event that necessitates a more prompt notification to the board of directors.

¹ The new criminal referral form prominently provides a description of this new law on the front page of the form's instructions.

Several commenters recommended that a computerized model be developed to facilitate the task of completing the forms. The use of a computer shell was contemplated from the inception of the interagency database; and, as a result, a computer shell will be made available contemporaneously with the distribution of the new form, at no, or a very minimal, cost to financial institutions. The computer shell will enable the completion of the form using a personal computer and a laser printer. The computer shell should reduce the costs and burdens associated with the preparation of the Form.

It is important to note that the regulation requires that financial institutions use only the Form or the computer shell that has been authorized by the Federal regulators. Use of another form, a facsimile of the Form, or any computer software shell of the Form other than the shell distributed by the regulators is not permitted and could result in a determination that a financial institution or an institution-affiliated party has not complied with this regulation.

Regulatory Flexibility Act Analysis

The Board certifies that this proposed regulation will not have a significant financial impact on a substantial number of small banks or other small entities.

Executive Order 12291

The Board has determined that this proposed regulation is not a "major rule" and therefore does not require a regulatory impact analysis.

Paperwork Reduction Act

In accordance with Section 3507 of the Paperwork Reduction Act of 1980, the criminal referral report regulation was approved under authority delegated to the Board by the Office of Management and Budget. The Board has determined that the regulation does not significantly increase the burden of the reporting institutions. The estimated average burden associated with the collection of information contained in a criminal referral report is approximately .6 hour per respondent. The burden per respondent will vary depending on the nature of the criminal activity being reported.

Comments concerning the accuracy of this burden estimate should be directed to the Herbert A. Biern, Deputy Associate Director, Division of Banking Supervision and Regulation, Mail Stop 175, Federal Reserve Board, 20th and C Streets, NW., Washington, DC 20551.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Currency, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

Exports, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, parts 208, 211, and 225 of chapter II of title 12 of the Code of Federal Regulations are amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for 12 CFR part 208 is revised to read as follows:

Authority: 12 U.S.C. 248(a) and (c), 321-328, 461, 481-486, 601, 611, 814, 1818, 1823(j) and 1831o.

2. Section 208.20 is added to read as follows:

§ 208.20 Reports of crimes and suspected crimes.

(a) **Purpose.** This section applies to known or suspected crimes involving state member banks. This section ensures that law enforcement agencies are notified by means of criminal referral reports when unexplained losses or known or suspected criminal acts are discovered. Based on these reports, the Federal government will take appropriate measures and will maintain an interagency database that is derived from these reports.

(b) **Institution-affiliated party.** *Institution-affiliated party* means any institution-affiliated party as that term is defined in sections 3(u) and 8(b)(3) and (4) of the FDIA (12 U.S.C. 1813(u) and 1818(b)(3) and (4)).

(c) **Reports required.** A state member bank shall file a criminal referral report using a standardized form (Form),¹³ in accordance with instructions for the Form, in every situation where:

(1) The State member bank suspects one of its directors, officers, employees, agents, or other institution-affiliated

parties of having committed or aided in the commission of a crime;

(2) There is an actual or potential loss to the state member bank (before reimbursement or recovery) of more than \$1,000 where the State member bank has a substantial basis for identifying a possible suspect or group of suspects and the suspect(s) is not an director, officer, employee, agent, or institution-affiliated party of the State member bank;

(3) There is an actual or potential loss to the state member bank (before reimbursement or recovery) of \$5,000 or more and where the State member bank has no substantial basis for identifying a possible suspect or group of suspects; or

(4) The State member bank suspects that it is being used as a conduit for criminal activity, such as money laundering or structuring transactions to evade the Bank Secrecy Act reporting requirements.

(d) **Time for reporting.** (1) A state member bank shall file the report required by paragraph (c) of this section no later than 30 calendar days after the date of detection of the loss or the known or suspected criminal violation or activity. If no suspect has been identified within 30 calendar days after the date of the detection of the loss or the known, attempted or suspected criminal violation or activity, reporting may be delayed an additional 30 calendar days or until a suspect has been identified; but in no case shall reporting of known or suspected crimes be delayed more than 60 calendar days after the date of the detection of the loss or the known, attempted or suspected criminal violation or activity. When a report requirement is triggered by the identification of a suspect or group of suspects, the reporting period commences with the identification of each suspect or group of suspects.

(2) When a State member bank detects a pattern of crimes committed by an identifiable individual, the State member bank shall file a report no later than 30 calendar days after the aggregated amount of the crimes exceeds \$1,000.

(3) In situations involving violations requiring immediate attention or where a reportable violation is ongoing, the State member bank shall immediately notify by telephone the appropriate law enforcement agency and the appropriate Federal Reserve Bank in addition to filing a timely written report.

(e) **Reporting to state and local authorities.** State member banks are encouraged to file copies of the Form with State and local authorities where appropriate.

¹³ Copies of the Form (FR 2230) are available from the Federal Reserve Banks. The Form may be prepared using a computer shell that is distributed by the Board.

(f) *Exceptions.* A State member bank need not file the Form:

(1) For those robberies and burglaries that are reported to local law enforcement authorities; and

(2) For lost, missing, counterfeit or stolen securities if a report is filed pursuant to the reporting requirements of 17 CFR 240.17f-1.

(g) *Retention of records.* A State member bank shall maintain copies of any Form that it filed and the originals of all related documents for a period of 10 years from the date of the report.

(h) *Notification to board of directors.* The management of a State member bank shall promptly notify its board of directors of any report filed pursuant to this section.

(i) *Penalty.* Failure to file a report in accordance with the instructions on the Form and this regulation may subject the State member bank, its directors, officers, employees, agents, or other institution-affiliated parties to supervisory action.

PART 211—INTERNATIONAL BANKING OPERATIONS

1. The authority citation for 12 CFR part 211 is revised to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*, and Pub. L. 100-418, 102 Stat. 1384 (1988).

2. Section 211.8 is added to read as follows:

§ 211.8 Reports of crimes and suspected crimes.

An Edge corporation or any branch or subsidiary thereof or an Agreement corporation or branch or any subsidiary thereof shall file a criminal referral form in accordance with the provisions of § 208.20 of the Board's Regulation H, 12 CFR 208.20.

3. Section 211.24 is amended by adding a new paragraph (f) to read as follows:

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

(f) *Reports of crimes and suspected crimes.* Except for a federal branch or a federal agency or a state branch that is insured by the Federal Deposit Insurance Corporation, a branch or agency or a representative office of a foreign bank operating in the United States shall file a criminal referral form in accordance with the provisions of § 208.20 of the Board's Regulation H, 12 CFR 208.20.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for 12 CFR part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13); 1818(b); 1844(b); 3106 and 3108; and Pub. L. 98-181, title IX.

2. Section 225.4 is amended by adding a new paragraph (g) to read as follows:

§ 225.4 Corporate practices.

(g) *Criminal referral report.* A bank holding company or any nonbank subsidiary thereof, or a foreign bank that is subject to the BHC Act or any nonbank subsidiary of such foreign bank operating in the United States, shall file a criminal referral form in accordance with the provisions of § 208.20 of the Board's Regulation H, 12 CFR 208.20.

Board of Governors of the Federal Reserve System, August 31, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-21658 Filed 9-7-93; 8:45 am]

BILLING CODE 8210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-41-AD; Amendment 39-8682; AD 93-17-11]

Airworthiness Directives; de Havilland, Inc., Model DHC-8-100 and -300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-8-100 and -300 series airplanes, that requires an inspection of the horizontal stabilizer midspar attachment bolts to detect cracks at the radius transition between the bolt head and shank, and replacement of cracked bolts. This amendment is prompted by reports of defects found on several bolts that attach the horizontal stabilizer midspar to the top of the vertical fin. The actions specified by this AD are intended to prevent reduced strength and fail-safe capability of the structural attachment of the horizontal stabilizer to the airplane.

DATES: Effective October 8, 1993.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of October 8, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE-172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6220; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC-8-100 and -300 series airplanes was published in the **Federal Register** on May 14, 1993 (58 FR 28526). That action proposed to require a one-time magnetic particle inspection of the horizontal stabilizer midspar attachment bolts to detect cracks at the radius transition between the bolt head and shank, and replacement of cracked bolts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 133 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is \$55 per work hour. Required parts will cost approximately \$60 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$44,555, or \$335 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-17-11 De Havilland, Inc.: Amendment 39-8682. Docket 93-NM-41-AD.

Applicability: Model DHC-8-100 series airplanes, serial numbers 003 through 315 inclusive, 317 through 334, inclusive, and 346 through 349 inclusive; and Model DHC-8-300 series airplanes, serial numbers 100 through 319 inclusive, 321 through 337 inclusive, 339, 341, and 342; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced strength and fail-safe capability of the structural attachment of the horizontal stabilizer to the airplane, accomplish the following:

(a) Within 250 landings after the effective date of this AD, perform a one-time magnetic particle inspection of the horizontal stabilizer midspan attachment bolts to detect cracks at

the radius transition between the bolt head and shank in accordance with de Havilland Alert Service Bulletin S.B. A8-55-18, dated February 5, 1993.

(b) If any crack is found in a bolt, prior to further flight, replace both midspan attachment bolts with serviceable bolts in accordance with de Havilland Alert Service Bulletin S.B. A8-55-18, dated February 5, 1993.

(c) As of the effective date of this AD, no person shall install a midspan attachment bolt, part number MS21250-10070, on any airplane unless, prior to installation, the bolt has been inspected using magnetic particle techniques to detect cracks in accordance with de Havilland Alert Service Bulletin S.B. A8-55-18, dated February 5, 1993.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement shall be done in accordance with de Havilland Alert Service Bulletin S.B. A8-55-18, dated February 5, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 8, 1993.

Issued in Renton, Washington, on August 31, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-21748 Filed 9-7-93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 556

Animal Drugs, Feeds, and Related Products; Streptomycin Oral Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Veterinary Service, Inc., that provide for use of Strep Sol® Solution 25 percent (25 percent streptomycin sulfate oral solution) in drinking water of chickens, swine, and calves for treatment of enteritis. One supplement reflects compliance with the results of the National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Implementation (DESI) evaluation of the drug's effectiveness and FDA's conclusions concerning that evaluation. The other supplement provides for revising the tolerance for residues of streptomycin in edible tissues of chickens, swine, and calves to 2.0 parts per million (ppm) in kidney and 0.5 ppm in all other tissues.

EFFECTIVE DATE: September 8, 1993.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1623.

SUPPLEMENTARY INFORMATION: Veterinary Service, Inc., 416 N. Jefferson St., P.O. Box 2467, Modesto, CA 95354, is sponsor of NADA 65-252. The NADA provides for use of Strep Sol® Solution 25 percent (25 percent streptomycin sulfate oral solution) in drinking water of chickens for treatment of nonspecific infectious enteritis caused by organisms susceptible to streptomycin, and swine and calves for treatment of bacterial enteritis caused by *Escherichia coli* and *Salmonella* spp. susceptible to streptomycin. The product was originally approved on February 18, 1954.

The product was the subject of a NAS/NRC DESI report published in the *Federal Register* of November 21, 1969 (34 FR 18560) (DESI 2-0136 NV) and found to be probably effective for treatment of bacterial diseases involving the gastrointestinal tract in poultry, swine, and calves. The report stated that:

1. Each disease claim should be qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)," or if not so qualified, dropped.

2. Label claims must be restricted to diseases involving the gastrointestinal tract.

3. The label should warn that treated animals must consume sufficient medicated water to constitute a therapeutic dose under the conditions that prevail.

4. Label claims "for prevention of" or "to prevent" should be replaced with "as an aid in the control of" or, "to aid in the control of."

5. Labeling should carry a warning pertaining to the development of resistant organisms.

6. Dosage levels recommended in the labeling are low.

FDA concurs with the NAS/NRC DESI evaluation.

The NAS/NRC evaluation concerns the drug's safety and effectiveness to the treated animal. It does not concern the safety for food use of treated animals.

Veterinary Service, Inc., filed a supplement which reflected compliance with the results of the NAS/NRC DESI review and FDA's conclusions based on that review.

Veterinary Service, Inc., filed an additional supplement to revise the tolerances for residues of streptomycin in the uncooked, edible tissues of chickens, swine, and calves to 2.0 ppm in kidney and 0.5 ppm in all other tissues. The current tolerance of zero is an outmoded expression of an intent to regulate residues at the sensitivity of the existing analytical method. The revised tolerances are supported by available toxicological data relating to streptomycin.

The supplements are approved as of August 5, 1993, and the regulations are amended in 21 CFR 520.2158a and 21 CFR 556.610 to reflect the approvals. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals do not qualify for an exclusivity period because the supplements do not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) essential to approval of the supplements and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the

action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.2158a is amended by removing paragraph (d)(3), and by revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 520.2158a Streptomycin sulfate oral solution.

* * * * *

(d) * * *

(1) *Calves and swine*—(i) *Amount.* 10 to 15 milligrams per pound (mg/pound) of body weight (1.0 to 1.5 grams per gallon).

(ii) *Indications for use.* Treatment of bacterial enteritis caused by *Escherichia coli* and *Salmonella* spp. susceptible to streptomycin.

(iii) *Limitations.* Calves: Do not administer for more than 5 days. Swine: Do not administer for more than 4 days. Prepare fresh solution daily. Calves: Withdraw 2 days before slaughter. As sole source of streptomycin. Warning: Certain strains of bacteria may develop a tolerance for streptomycin. Consult a veterinarian or animal pathologist for diagnosis.

(2) *Chickens*—(i) *Amount.* 10 to 15 mg/pound of body weight (0.6 to 0.9 grams per gallon).

(ii) *Indications for use.* Treatment of nonspecific infectious enteritis caused by organisms susceptible to streptomycin.

(iii) *Limitations.* Chickens: Do not administer for more than 5 days. Withdraw 4 days before slaughter. Do

not administer to chickens producing eggs for human consumption. Prepare fresh solution daily. As sole source of streptomycin. Warning: Certain strains of bacteria may develop a tolerance for streptomycin. Consult a veterinarian or animal pathologist for diagnosis.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

4. Section 556.610 is revised to read as follows:

§ 556.610 Streptomycin.

Tolerances are established for residues of streptomycin in uncooked, edible tissues of chickens, swine, and calves of 2.0 parts per million (ppm) in kidney and 0.5 ppm in other tissues.

Dated: August 31, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FIR Doc. 93-21797 Filed 9-7-93; 8:45 am]

BILLING CODE 4160-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH4-1-5062; FRL-4701-2]

Approval and Promulgation of Air Quality Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Final rulemaking.

SUMMARY: U.S. EPA is today announcing limited approval of a revision to the Ohio New Source Review (NSR) State Implementation Plan (SIP). This approval relates to the State's revised NSR regulations, which were developed to satisfy U.S. EPA's earlier conditional approval of Ohio's Part D NSR Program.

U.S. EPA's action is based upon a revision request which was submitted to satisfy the requirements of Part D of the Clean Air Act (CAA). As a result of this action, the original condition of approval of the State's NSR program at 40 CFR 52.1879(e) is removed.

U.S. EPA has evaluated the proposed revision to the plan and is granting limited approval under Sections 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990. Even though there are two new deficiencies relating to offsets requirements in the plan, U.S.

EPA is approving the plan because it is substantially better than the underlying October 31, 1980, Ohio NSR plan.

EFFECTIVE DATES: This action will be effective November 8, 1993, unless notice is received by October 8, 1993, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the *Federal Register*.

ADDRESSES: Copies of the SIP revision, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Maggie Greene, at (312) 886-6088, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Air Enforcement Branch, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE-17J), U.S. Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

Copies of this revision to the Ohio SIP are available for inspection at: U.S. Environmental Protection Agency, Jerry Kurtzwieg (ANR-443), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Regulation Development Section, Air Enforcement Branch (AE-17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: In 1977 the Clean Air Act was amended to address, *inter alia*, the continued nonattainment of the National Ambient Air Quality Standards (NAAQS) found in certain areas of the United States. Part D of the Act set forth the SIP requirements for nonattainment areas. Part D includes Section 173, which governs the review and issuance of construction permits for new and modified sources in nonattainment areas. The Clean Air Act Amendments of 1990 also require the States to revise their SIPs to provide approvable nonattainment area New Source Review plans. Requirements for approvable Part D SIPs are described in a "General Preamble for Part D rulemakings published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979). The requirements for SIP revisions mandated by the Clean Air Act Amendments of 1990 are set forth in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR

13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992), Appendix D.

On July 25, 1980, and September 25, 1980, Ohio submitted its NSR plan designed to meet the requirements of Part D. After review and public comment, U.S. EPA conditionally approved this plan on October 31, 1980 (codification corrected on December 17, 1980 at 45 FR 82927). (For more detail on "conditional approvals" see 44 FR 38583 (July 2, 1979) and 44 FR 67182 (November 23, 1979).) The conditional approval (40 CFR 52.1879(e)) required the State to submit a Part D NSR plan which refined the criteria under which permits were to be issued and assured that the requirements of Section 172 (b)(11) (Section 173(a)(5) of the 1990 Amendments enacted on November 15, 1990) and Section 173 were met.

On October 4, 1982, and January 24, 1983, the Ohio Environmental Protection Agency (OEPA) submitted revisions to the Ohio Administrative Code (OAC), Rules 3745-31-01 through 3745-31-08, to satisfy the October 31, 1980, conditional approval of Ohio's Part D NSR plan. Additional clarification was submitted on June 30, 1987, and October 28, 1987. Ohio's revised NSR rule essentially incorporates the Federal NSR provisions at 40 CFR Part 51, Appendix S, as the Ohio NSR plan. The Ohio Rule meets the requirements of U.S. EPA's conditional approval of Ohio's earlier Part D NSR plan for all source categories in Ohio, except for temporary emission sources and resource recovery facilities.

Two provisions of Ohio's NSR plan (OAC Rule 3745-31-01 (H)(1)(b) and (M)) are not required by U.S. EPA's NSR rules, and they are not included as part of this SIP revision. Also, the current Appendix S differs from Ohio's original Part D NSR plan in that it uses a "plantwide" definition of source which U.S. EPA approves without restriction.¹

¹ On October 14, 1981, the U.S. EPA revised the NSR regulations in 40 CFR part 51 to give States the option of adopting the "plantwide" definition of stationary source in nonattainment areas (46 FR 50766). This definition provides that only physical or operational changes that result in a net increase in emissions at the entire plant require a NSR permit. For example, if a plant increased emissions at one piece of process equipment but reduced emissions by the same amount at another piece of process equipment at the plant, then there would be no net increase in emissions at the plant and therefore no "modification" to the "source." The plantwide definition is in contrast to the so-called "dual" definition (or a definitional construction like that in the 1979 offset ruling (44 FR 3274) which has much the same effect as the dual definition); under the dual definition, the emissions increases from physical or operational changes at an individual piece of process equipment are gauged without regard to offsetting reductions elsewhere at the plant.

In the October 14, 1981, *Federal Register* notice, U.S. EPA set forth its rationale for allowing use of

Prior to the passage of the Clean Air Act, U.S. EPA imposed certain restrictions on the adoption of a plantwide definition of source for nonattainment areas with an inadequate SIP. See J. Potter, "Plantwide Definition of Major Stationary Sources for Air Pollution" (February 27, 1987). However, with passage of the Clean Air Act Amendments of 1990, Congress has mandated a new set of attainment strategies and given areas new deadlines to eliminate NAAQS violations. In addition, while the existence of U.S. EPA's plantwide definition was well known by 1990, nothing in the Clean Air Act Amendments overturns U.S. EPA's position on this issue. To the contrary, several new nonattainment provisions employ a plantwide source definition. See, e.g., CAA section 182(c)(6). For this reason, U.S. EPA finds that the Ohio plantwide source definition may be approved without any restrictions.

U.S. EPA evaluated Ohio's revised plan with respect to the Agency's Part D NSR policy applicable at that time and found that the plan was approvable. Since the State had yet to submit and receive approval of an attainment demonstration for the relevant areas, U.S. EPA did not rely on any reductions from the operation of the new NSR program in an approved attainment demonstration². This rulemaking includes approval of a plantwide definition of source for Ohio in accordance with U.S. EPA's 1981 action, inasmuch as the State has shown that it is making and will continue to make

the plantwide definition (46 FR 50766-89). In the Agency's view, allowing use of the plantwide definition was a reasonable accommodation of the conflicting goals of Part D of the Act; reasonable further progress (RFP) and timely attainment of the NAAQS versus maximum State flexibility and economic growth.

In 1984, the Supreme Court upheld U.S. EPA's position as a reasonable accommodation of the conflicting purposes of Part D of the Act within U.S. EPA's broad discretion. *Chevron U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837. Specifically, the Court agreed that the plantwide definition is fully consistent with the Act's goal of maximizing State flexibility and allowing reasonable economic growth. Likewise, the Court recognized that U.S. EPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Act's environmental objectives as well. 467 U.S. at 863.

² U.S. EPA ruled that a State wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one restriction on that discretion. If a State had specifically projected emission reductions from its NSR program as a result of a dual or similar definition and had relied on those reductions in an attainment strategy that U.S. EPA later approved, then the State needed to revise its attainment strategy as necessary to accommodate reduced NSR permitting under the plantwide definition (46 FR 50767 Col. 2, 50769 Col. 1).

reasonable efforts to adopt and submit the necessary additional SIP revisions.

U.S. EPA reevaluated Ohio's rule in relationship to the current 40 CFR part 51 Subpart I (formerly 40 CFR 51.18). As stated before, Ohio's NSR rule essentially incorporates the Federal NSR provisions in 40 CFR part 51, Appendix S. However, U.S. EPA has determined that Appendix S as incorporated by Ohio is deficient with respect to certain of the requirements in Subpart I and the current requirements of the Clean Air Act. U.S. EPA's review of the Ohio NSR regulation's effectiveness identified the following regulation deficiencies:

1. Appendix S exempts for resource recovery facilities from offset requirements, whereas Section 173 of the Clean Air Act and 40 CFR 51.165 do not provide for such exemption.

2. Appendix S exempts temporary sources from obtaining offsets, whereas Section 173 of the Clean Air Act and 40 CFR 51.165 do not provide for such an exemption.

In addition, it should be pointed out that Appendix S as proposed by Ohio is not as explicit as the current regulations in Subpart I (or the underlying statutory provisions of Part D of the Clean Air Act) in requiring that emissions offsets meet Reasonable Further Progress (RFP) requirements by providing actual emissions reductions. Section IV.C. of Appendix S, as amended in 1979 (44 FR 3274), explicitly requires offsets only on a short-term (i.e., pounds per hour) basis, although it also provides for annual offsets (expressed, e.g., in tons per year) "if necessary to carry out the intent of this Ruling."

However, the current U.S. EPA regulations governing approval of NSR programs, which were adopted in 1980, require that emission offsets necessary to demonstrate RFP be based in all cases on "actual emissions." See 40 CFR 51.165 (a)(3)(i)(A), 51.165 (a)(xii)(B) (45 FR 52676). Accordingly, it is U.S. EPA's position that in those areas which have still not attained the NAAQS despite the passage of the statutory deadline, the overall intent of Appendix S, to insure that major new sources and major modifications result in RFP, cannot be satisfactorily met unless all such sources obtain federally enforceable actual offsets as necessary to provide annual emission reductions as required by current U.S. EPA regulations. Thus, U.S. EPA interprets Appendix S, Section IV.B. to require, in all instances, that federally enforceable actual emissions offsets be obtained as a condition of any permit purporting to satisfy the requirements of Part D of the Act. This interpretation is hereby made an express part of today's approval of Ohio's NSR SIP, which must be met by

all permits issued by Ohio pursuant to U.S. EPA's approval of the State's NSR program.

The Clean Air Act Amendments of 1990 impose additional NSR requirements for certain types of nonattainment areas. These changes include for example, in ozone nonattainment areas, decreased source thresholds and increased offset ratios and the extension of NSR requirements to certain Nitrogen Oxides sources. See Sections 182(a)-(f). The SIP changes submitted by Ohio and approved today were submitted prior to the passage of the Clean Air Act Amendments of 1990 and were not intended to satisfy the Amendments' new NSR requirements. For this reason, today's approval of Ohio's NSR SIP does not relieve Ohio of its responsibility to submit additional nonattainment NSR SIP revisions in accordance with the deadlines Congress established in Title I of the Act.

Final Action: U.S. EPA is today granting limited approval of the revision to Ohio's NSR SIP. U.S. EPA is approving the revision to the regulations in the SIP because the revised regulations are a substantial enhancement of the existing SIP. However, the approval is "limited" in the sense that U.S. EPA is not granting full approval of the NSR SIP as meeting Part D requirements. Ohio's NSR regulations are deficient, in that they exempt resource recovery facilities and temporary sources from offset requirements. Nevertheless, U.S. EPA is not today taking action to disapprove Ohio's NSR SIP. Ohio has made a submittal with respect to NSR regulations to meet the requirements of the Clean Air Act Amendments of 1990 (CAAA). That submittal is under review. U.S. EPA will require that any regulations intended to satisfy those CAAA requirements shall also address the deficiencies identified here. Therefore, U.S. EPA intends to complete action on the approvability of Ohio's NSR SIP when it takes action on the NSR regulations submitted to satisfy the 1990 CAAA requirements.

Because U.S. EPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on November 8, 1993. However, if we receive notice by October 8, 1993, that someone wishes to submit critical comments, then U.S. EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting, allowing or

establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et. seq., U.S. EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, U.S. EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Sections 110 and 103, and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The CAA forbids U.S. EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 256-66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

U.S. EPA has reviewed this request for revision of the SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. These Amendments require extensive changes to nonattainment SIPs for new source permitting. The Agency has set forth the new NSR requirements in the General Preamble to Title I and is preparing a rulemaking incorporating these requirements into Federal regulations. As has been discussed, U.S. EPA's actions today do not in any way relieve Ohio of the new requirements for NSR SIP submittals imposed by the 1990 Amendments.

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

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial

review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

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

Dated: August 24, 1993.

Carol M. Browner,
Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1870 is amended by adding paragraph (c)(83) to read as follows:

§ 52.1870 Identification of plan.

*(c) *

(83) On October 4, 1982, and January 24, 1983, the Ohio Environmental Protection Agency (OEPA) submitted revisions to the Ohio Administrative Code (OAC) Chapter 3745–31–01 through 3745–31–08 to satisfy the New Source Review conditional approval of October 31, 1980 (45 FR 72119). U.S. EPA is granting limited approval of the revision to Ohio's New Source Review State Implementation Plan (SIP) because the revised regulations strengthen the SIP.

(i) Incorporation by reference.

(A) OAC Rule 3745–31 through 3745–31–03—Permits to Install New Sources of Pollution (Adopted June 30, 1982, effective August 15, 1982), as found in the State of Ohio Environmental Protection Agency Laws and Regulations.

(ii) Additional material.

(A) A June 30, 1987, letter from OEPA certified that the State did not rely upon additional reductions through the offset policy to attain or maintain the National Ambient Air Quality Standards.

§ 52.1879 [Amended]

3. Section 52.1879 is amended by removing paragraph (e).

[FR Doc. 93–21783 Filed 9–7–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300252A; FRL–4628–8]

RIN No. 2070–AB78

Acetic Acid and Sodium Diacetate; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the exemptions from the requirement of a tolerance for residues resulting from postharvest use as a fungicide, as follows: (1) all raw agricultural commodities (RACs) listed in 40 CFR 180.1029 for residues of acetic acid; and (2) certain RACs listed in 40 CFR 180.1058 for residues of sodium diacetate. EPA is initiating this action because all registered uses of acetic acid and sodium diacetate on these commodities have been canceled.

EFFECTIVE DATE: This regulation becomes effective September 8, 1993.

ADDRESSES: Written objections, identified by document control number, [OPP–300252A], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Downing, Registration Division (H–7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Crystal Drive, Arlington, VA 22202, (703)–308–8319.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule in the Federal Register of August 12, 1992 (57 FR 36046), which proposed revoking exemptions from the requirement of a tolerance established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of acetic acid and sodium diacetate resulting from postharvest use of these chemicals as fungicides, as follows: (1) acetic acid in or on the RACs alfalfa, barley grain, Bermuda grass, bluegrass, bromegrass, clover, corn grain, cowpea hay, fescue hay, lespedeza, lupines, oat grain, orchard grass, peanut hay, peavine hay, rye grass, sorghum grain, soybean hay, sudan grass, timothy, vetch hay, and wheat grain listed in 40 CFR 180.1029;

and (2) sodium diacetate in or on the RACs barley grain, cowpea hay, fescue hay, lespedeza hay, lupines, peanut hay, peavine hay, soybean hay, vetch hay, and wheat grain listed in 40 CFR 180.1058.

EPA's decision to revoke these exemptions from the requirement of a tolerance for acetic acid and sodium diacetate was based on the fact that before February 1991, all registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of pesticide products ingredients that were registered for these uses on food or animal feed commodities were canceled. In the case of acetic acid these registrations were canceled for failure by affected registrants to respond to a January 1987 generic data call-in, and also for nonpayment of required annual pesticide registration maintenance fees. In the case of sodium diacetate, these registrations were canceled for nonpayment of required annual pesticide registration maintenance fees.

No significant comments or requests for referral to an advisory committee were received in response to the proposed rule.

Therefore, based on the information considered by EPA and discussed in detail in the August 12, 1992 proposal and in this final rule, EPA is hereby revoking the exemptions from the requirement of a tolerance listed in 40 CFR 180.1029 for acetic acid since acetic acid is no longer registered in the U.S. as a pesticide-active ingredient for use on any food or animal feed commodities. EPA is hereby revoking the exemptions from the requirement of a tolerance listed in 40 CFR 180.1058 for sodium diacetate since sodium diacetate also is no longer registered as an active ingredient for use on any food or animal feed commodities, except alfalfa, clover, field corn, grasses, oats sorghum, and timothy.

The registered postharvest applications of acetic acid and sodium diacetate to livestock feed crops were primarily within farm facilities so there was limited environmental exposure. Exposure to aquatic environments from runoff would have resulted only in short-term pH changes that would have been counteracted by the natural buffering capacity of the water. Thus, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the acetic acid and sodium diacetate exemptions upon their revocation.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the *Federal Register*, file written objections

and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Executive Order 12291

As explained in the proposal published in the *Federal Register* of August 12, 1992, EPA has determined, pursuant to the requirements of Executive Order 12291, that the removal of these exemptions from the requirement of a tolerance will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the August 12, 1992 proposal.

List of Subjects in 40 CFR Part 180

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

Dated: August 26, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

§ 180.1029 [Removed]

2. Section 180.1029 *Acetic acid; exemption from the requirement of a tolerance* is removed.

3. Section 180.1058 is revised, to read as follows:

§ 180.1058 Sodium diacetate; exemption from the requirement of a tolerance.

Sodium diacetate, when used postharvest as a fungicide, is exempt from the requirement of a tolerance for residues in or on alfalfa hay, Bermuda grass hay, blue grass hay, brome grass hay, clover hay, corn grain, oat grain, orchard grass hay, sorghum grain, sudan grass hay, rye grass hay, and timothy hay.

[FR Doc. 93-21819 Filed 9-7-93; 8:45 a.m.
BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300261A; FRL-4630-1]

RIN 2070-AB78

Dinoseb; Revocation of Tolerances

AGENCY: Environmental Protection Agency

ACTION: Final rule.

SUMMARY: This document revokes the tolerances in 40 CFR 180.281 for residues of the herbicide, insecticide, and fungicide dinoseb (2-sec-butyl-4,6-dinitrophenol) from application of its phenol or its readily hydrolyzable salts (alkanolamine salts, ammonium salt, or sodium salt) in or on various raw agricultural commodities. EPA initiated this action because all registered uses of dinoseb have been canceled.

EFFECTIVE DATE: This regulation becomes effective September 8, 1993.

ADDRESSES: Written objections, identified by document control number, [OPP-300261], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Melissa Chun, Registration Division (H-7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8318.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the

Federal Register of November 12, 1992 (57 FR 53676), which proposed revoking the tolerances for residues of the herbicide, insecticide, and fungicide dinoseb (2-sec-butyl-4,6-dinitrophenol) from application of its phenol or its readily hydrolyzable salts (alkanolamine salts, ammonium salts, or sodium salt) in or on various raw agricultural commodities in food or animal feed commodities established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, listed in 40 CFR 180.281.

No public comments or requests for referral to an advisory committee were received in response to the proposed rule.

Therefore, based on the information considered by EPA and discussed in detail in the November 12, 1992 proposal and in this final rule, the Agency is hereby revoking the tolerances listed in 40 CFR 180.281 for residues of dinoseb in or on the following raw agricultural commodities: alfalfa, alfalfa hay, almonds, almond hulls, apples, apricots, barley forage, barley grain, barley straw, beans, bean forage, bean hay, birdsfoot trefoil, birdsfoot trefoil hay, blackberries, blueberries, boysenberries, cherries, citrus, clover, clover hay, corn fodder, corn forage, fresh corn (including sweet corn and corn kernels plus cob with husk removed (K+CWHR)), corn grain (including popcorn), cotton forage, cottonseed, cottonseed hulls, cucurbits, currants, dates, figs, filberts, garlic, gooseberries, grapes, hops, lentils, loganberries, nectarines, oat forage, oat grain, oat straw, olives, onions, peaches, peanuts, peanut forage, peanut hay, peanut hulls, pears, peas, pea forage, pea hay, pecans, plums (prunes), potatoes, raspberries, rye forage, rye grain, rye straw, soybeans, soybean forage, soybean hay, strawberries, vetch, vetch hay, walnuts, wheat forage, wheat grain, wheat straw, pasture grass, and pasture grass hay.

Since the sale, distribution, and shipment of existing stocks of dinoseb for use on caneberries in Washington and Oregon was prohibited after the 1989 use season, the existing stocks of those remaining products should be depleted. EPA believes there has been adequate time for legally treated agricultural commodities to have gone through channels of trade. Surveillance and compliance monitoring data on domestic commodities have shown no detectable residues of dinoseb for the past 3 years. Further, since dinoseb is not a persistent chemical, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be

recommended to replace these tolerances upon their revocation.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which the hearing is requested, the requestor's contentions must include a statement of factual contentions on each issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and the resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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

Executive Order 12291

As explained in the proposal published in the **Federal Register** of November 12, 1992, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the November 12, 1992 proposal.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities,

Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 18, 1993.

Susan H. Wayland,
Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

§ 180.281 [Removed]

2. By removing § 180.281 *Dinoseb; tolerances for residues.*

[FR Doc. 93-21404 Filed 9-7-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 271

[FRL-4725-9]

South Dakota; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of South Dakota has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed South Dakota's application and has made a decision, subject to public review and comment, that South Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve South Dakota's hazardous waste program revisions. South Dakota's application for program revision is available for public review and comment.

DATES: Final authorization for South Dakota shall be effective November 8, 1993 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on South Dakota's program revision application must be received by the close of business October 8, 1993.

ADDRESSES: Copies of South Dakota's program revision application are available during regular business hours at the following addresses for inspection and copying: Division of Environmental Regulation, Department of Water and Natural Resources, Office of Waste Management, 319 S. Coteau, Pierre,

South Dakota 57501, phone: 605/773-3153 and U.S. EPA Region VIII Library, 999 18th Street, Suite 500, Denver, CO 80204-2466, Phone 303/293-1444. Written comments should be sent to: Marcella DeVargas (HWM-WM), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202-2466, Phone 303/293-1670.

FOR FURTHER INFORMATION CONTACT: Marcella DeVargas, Waste Management Branch, U.S.EPA, 999 18th Street, Suite 500, Denver, CO 80202-2466, Phone: 303/293-1670.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or the "the Act"), 42 U.S.C. 6929 (b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, section 3006(f) of RCRA requires state hazardous waste programs to provide for the public availability of information. Such a program must provide for the public availability of information obtained by the State regarding facilities and sites for the treatment, storage, and disposal of hazardous waste; and such information must be available to the public in substantially the same manner and to the same degree, as would be the case if the Administrator was carrying out the provisions of subtitle C of RCRA in such State.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 268 and 270.

B. South Dakota

South Dakota initially received final authorization in November 1984. South Dakota received authorization for revisions to its program on June 17, 1991. On June 29, 1992, South Dakota submitted a draft program revision application for additional program approvals. Today, South Dakota is seeking approval for public availability of information requirements (RCRA 3006(f)), pursuant to 40 CFR 271.21.

EPA has reviewed South Dakota's, 3006(f) application, and has made an immediate final decision that South Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final

authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to South Dakota. The public may submit written comments on EPA's immediate final decision up until October 8, 1993. Copies of South Dakota's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of South Dakota's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

In June 1992, South Dakota submitted a draft application for EPA review. EPA's comments on the draft application were adequately addressed in the final application. Thus, the South Dakota program is granted immediate final authorization for Availability of Information (RCRA 3006(f)).

South Dakota has not requested hazardous waste program authority on Indian Country. The Environmental Protection Agency retains all hazardous waste authority under RCRA which applies to Indian Country in South Dakota.

C. Decision

I conclude that South Dakota's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, South Dakota is granted final authorization to operate its hazardous waste program as revised.

South Dakota now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. South Dakota also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to issue orders under sections 3008, 3013, and 7003 of RCRA.

In addition, South Dakota has submitted a draft application for non-HSWA clusters 3, 4, 5, and 6; and HSWA cluster 1, and 2, excluding land disposal restriction and Toxicity Characteristics (TC) rules. The State has agreed to submit a final application from South Dakota for the above clusters

by September 30, 1993, in addition, a draft application for RCRA cluster 1 and land disposal restriction rules by December 31, 1993, a draft application for RCRA cluster 2 by December 31, 1994. Final applications will be submitted within 60 working days of receipt of EPA's comments on the draft application. The State has agreed to submit a final application for the TC rules within six months of EPA's decision on the proposed rule (December 24, 1992) to suspend the Toxicity Characteristics rule (Hazardous Waste Codes D018 through D043).

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of South Dakota's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous materials transportation, Hazardous waste Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912 (a), 6926, 6974(b).

Dated: August 30, 1993.

Jack W. McGraw,
Acting Regional Administrator,
[FR Doc. 93-21802 Filed 9-7-93; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 281

[FRL-4725-7]

Washington; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Washington's application for final approval.

SUMMARY: The State of Washington has applied for final approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Washington's application and has reached a final determination that Washington's underground storage tank program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State of Washington to operate its program.

EFFECTIVE DATE: Final approval for Washington shall be effective October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Joan Cabreza, Chief, Underground Storage Tank Section, EPA Region 10, WD-133, 1200 Sixth Ave., Seattle, WA 98101. Phone: (206) 553-1643.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve State underground storage tank (UST) programs to operate in the State in lieu of the Federal UST program. To qualify for final authorization, a state's program must: (1) Be "no less stringent" than the Federal program; and (2) provide for adequate enforcement of compliance with UST standards (Sections 9004(a) and 9004(b) of RCRA, 42 U.S.C. 6991c(a) and 6991c(b)).

On December 2, 1992, Washington submitted an official application for final program approval. On April 19, 1993, EPA published a tentative decision announcing its intent to grant Washington final approval of its program. Further background on the tentative decision to grant approval appears at 58 FR 21135 (April 19, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment. Also, EPA provided notice that a public hearing would be provided only if significant public interest on substantive issues was shown. EPA received no comments, and, therefore, a public hearing was not scheduled regarding EPA's approval of Washington's UST program.

B. Decision

I conclude that the State of Washington's application for final approval meets all the statutory and

regulatory requirements established by Subtitle I of RCRA. Accordingly, Washington is granted final approval to operate its UST program. The State of Washington now has the responsibility for managing all regulated UST facilities within its borders and carrying out all aspects of the Federal UST program except with regard to Indian lands, where EPA will retain and otherwise exercise regulatory authority.

Washington also has primary enforcement responsibility, although EPA retains the right to conduct inspections under Section 9005 of RCRA, 42 U.S.C. 6991d, and to take enforcement actions under Section 9006 of RCRA, 42 U.S.C. 6991e.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. This approval effectively suspends the applicability of certain Federal regulations in favor of Washington's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6974(b), and 6991(c).

Dated: August 6, 1993.

Randall F. Smith,

Acting Regional Administrator.

[FR Doc. 93-21713 Filed 9-7-93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 3

RIN 3067-AC19

Removal of Standards of Conduct

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule removes 44 CFR part 3, Standards of Conduct, which is superseded by governmentwide standards of conduct, and reserves part 3.

EFFECTIVE DATE: April 22, 1993.

FOR FURTHER INFORMATION CONTACT: William R. Cumming, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4103.

SUPPLEMENTARY INFORMATION: On August 7, 1992, the Office of Government Ethics (OGE) published revised Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, 57 FR 35006. Those standards became effective February 3, 1993. They supersede existing agency standards of ethical conduct. FEMA's agency standards of conduct are published in 44 CFR part 3.

FEMA's rules on Conduct and Responsibilities of Employees include provisions relating to the filing and review of financial disclosure reports. Those rules were superseded by OGE's revised rules on financial disclosure published on April 7, 1992, 5 CFR parts 2633 and 2634, 47 FR 11800.

By memorandum of April 22, 1993 FEMA's Designated Agency Ethics Officer (DAEO) and Deputy DAEOs revoked 44 CFR part 3, and determined that no supplemental FEMA regulations concerning ethics were required at that time. Subsequently, FEMA Instruction 1100.1, Standards of Conduct, dated April 27, 1993, adopting OGE regulations relating to standards of conduct, was published and distributed to FEMA employees.

National Environmental Policy Act

This rule is excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Director of FEMA certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5

U.S.C. 601 et seq., because the rule relates to the responsibilities of employees of FEMA, and will have no direct effect on small business or governmental entities. Accordingly, no regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule as defined under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 3

Conflict of interests.

PART 3—[REMOVED]

Accordingly, under the authority of 5 U.S.C. App. 402, and Executive Order 12674 of April 12, 1989, as modified by Executive Order 12731, 44 CFR part 3 is removed and reserved in its entirety.

Dated: September 1, 1993.

James L. Witt,
Director.

[FR Doc. 93-21799 Filed 9-7-93; 8:45 am]

BILLING CODE 6718-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 92-136; FCC 93-352]

Relaxing Restrictions on the Scope of Permissible Communications in the Amateur Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule, which was published Friday, August 13, 1993 (58 FR 43071). The rule lessened restrictions on the scope of the

permissible communications that amateur stations may transmit.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT:

William T. Cross, Federal Communications Commission, Private Radio Bureau, Personal Radio Branch, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction revises § 97.113 on the effective date and effects the scope of the permissible communications that amateur stations may transmit.

Need for Correction

As published, the final rule inadvertently omitted paragraph (f) of § 97.113. This paragraph permits certain amateur stations to automatically retransmit the radio signals of other amateur stations.

Correction of Publication

Accordingly, the publication on August 13, 1993, of the final rule amending § 97.113, which was the subject of FR Doc. 93-19313, is corrected as follows:

§ 97.113 [Corrected]

On page 43072, in the third column, in § 97.113, paragraph (f) is added to read as follows:

* * * * *
(f) No amateur station, except an auxiliary, repeater, or space station, may automatically retransmit the radio signals of other amateur station.

William F. Caton,
Acting Secretary.

[FR Doc. 93-21727 Filed 9-7-93; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1808 and 1852

Interim Changes to the NASA FAR Supplement Pertaining to Restrictions on Printing and Duplication by Contractors

AGENCY: National Aeronautics and Space Administration.

ACTION: Interim rule with request for comments.

SUMMARY: The NASA FAR Supplement (NFS) clause on restrictions on printing and duplicating is revised to clarify the terms used and specific restrictions. This is being done in response to section 207 of the Legislative Branch Appropriation Act of 1993.

DATES: Effective Date: This interim rule is effective September 8, 1993.

Comments: Comments must be received by October 8, 1993.

ADDRESSES: Comments should be addressed to Mr. Thomas L. Deback, Chief, Policy Development Branch B, Procurement Policy Division (Code HP), NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT:

Mr. Thomas L. Deback, Telephone: (202) 358-0431.

SUPPLEMENTARY INFORMATION:

Background

FAR subpart 8.8 sets forth the requirement that Government printing must be done by or through the Government Printing Office (GPO). The agency head of the GPO is called the Public Printer. Government agencies and their contractors are bound by the provisions of the Government Printing and Binding Regulations, published by Joint Committee on Printing, Congress of the United States. Audits performed by the Office of the Inspector General revealed that some contractors were performing printing services for the Government, as opposed to limited duplicating/copying of contract reports. Subsequently Public Law 102-392, section 207, Legislative Branch Appropriation Act of 1993, expanded the definition of "printing" to include silkscreen processes and microform, and forbade the use of appropriated funds for the procurement of any printing related to the production of Government publications (including printed forms) unless by or through the GPO.

The revised clause makes clear the prohibition is not only on any printing, but also on substantial duplicating/copying. Costs associated with these items are unallowable if the contractor does not receive prior written approval from the contracting officer. The contracting officer processes deviation requests in accordance with NFS 1808.802 and the Government Printing and Binding Regulations. Acceptable deviations are narrowly defined.

Regulatory Flexibility Act

This interim rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. It is impossible to accurately estimate the number of small entities that will be impacted. It is anticipated that few, if any, entities doing business with NASA are involved.

Paperwork Reduction Act

This interim rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 1808 and 1852

Government procurement.

Thomas S. Luedtke,

Acting Deputy Associate Administrator for Procurement.

1. The authority citation for 48 CFR parts 1808 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Subpart 1808.8 is revised to read as follows:

1808.802 Policy.

Acquisition of printing or duplicating/copying is governed by the provisions of the Government Printing and Binding Regulations, No. 26, S. Pub. 101-9, U.S. Government Printing Office, published by the Joint Committee on Printing, U.S. Congress. Approval of printing supplies or services in contracts shall be in accordance with NMI 1490.1, NASA Printing Management Program. Regulations prohibit the use of appropriated funds for the acquisition of any printing and substantial duplicating/copying outside of the Government Printing Office (GPO). An exception to the restriction exists if the requirement meets all of the following: an individual order is under \$1,000, not of a continuing or repetitive nature, and the Public Printer certifies if cannot be provided more economically through the GPO. A request for an exception would be processed by the contracting officer, through NASA Headquarters Code JTT, to the Public Printer of the GPO; however, circumstances under which approval would be granted are rare.

1808.870 Contract clause.

The contracting officer shall insert the clause at 1852.208-81, Restrictions on Printing and Duplicating, in solicitations and contracts where there is a requirement for any printing, and/or any duplicating/copying in excess of that described in paragraph (c) of the clause.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**1852.208-81 [Amended]**

3. Section 1852.208-81 is revised to read as follows:

1852.208-81 Restrictions on printing and duplicating.

As prescribed in 1808.870, insert the following clause:

Restrictions on Printing and Duplicating (August 1993)

(a) The Contractor shall reproduce any documentation required by this contract in accordance with the provisions of the Government Printing and Binding Regulations, No. 26, S. Pub. 101-9, U.S. Government Printing Office, Washington, DC 20402, published by the Joint Committee on Printing, U.S. Congress.

(b) The Contractor shall not perform, or procure from any commercial source, any printing in connection with the performance of work under this contract. The term "printing" includes the processes of composition, platemaking, presswork, silk screen processes, binding, microform, and the end items of such processes and equipment.

(c) "Duplicating/copying" is not considered to be printing. It is material produced by duplicating equipment employing the lithographic process and automatic copy-processing or copier-duplicating machines employing electrostatic, thermal, or other copying processes not requiring the use of negatives or metal plates. The Contractor is authorized to duplicate production units provided the requirement does not exceed 5,000 production units of any one page or 25,000 units in the aggregate of multiple pages. Such plates may not exceed a maximum image size of 10% by 14½ inches. A "production unit" is one sheet, size 8½ x 11 inches (215 x 280 mm), one side only, and one color ink.

(d) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the Contractor to respond to the terms of the contract).

(e) Costs associated with printing or duplicating/copying in excess of the limits set forth above are unallowable without prior written approval of the Contracting Officer. If the Contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or substantial duplicating/copying, it immediately shall provide written notice to the Contracting Officer and request approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with the provisions of the Government Printing and Binding Regulations and NFS 1808.802.

(f) The Contractor shall include in each subcontract which may involve a requirement for any printing and/or any

duplicating/copying in excess of the limits specified in paragraph (c) of this clause, a provision substantially the same as this clause, including this paragraph (f).

(End of clause)

[FR Doc. 93-21692 Filed 9-7-93; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION**48 CFR Parts 2017 and 2052**

RIN 3150-AE78

Nuclear Regulatory Commission Acquisition Regulation; Minor Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: This final rule makes a number of minor corrective and conforming amendments to the NRC's acquisition regulation. The final rule is necessary to correct the errors and inform the public of the corrections.

EFFECTIVE DATE: September 8, 1993.

FOR FURTHER INFORMATION CONTACT:

Edward L. Halman, Director, Division of Contracts and Property Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-4347.

SUPPLEMENTARY INFORMATION: On December 23, 1992 (57 FR 61152), the Nuclear Regulatory Commission (NRC) published a final rule which expanded the existing Nuclear Regulatory Commission Acquisition Regulation (NRCAR) to implement and supplement the government-wide Federal Acquisition Regulation. The final rule established requirements for the procurement of goods and services within the NRC that were necessary to satisfy the particular needs of the agency. This document makes minor corrections and conforming changes to the NRCAR. The necessary changes are as follows:

Section 2017.204 is amended to revise the duration of contract extensions that the Head of the Contracting Activity may approve.

In part 2052, the "Security" clause is revised to identify the Changes Clause as the authority under which changes to the Commission's security regulations and requirements will be incorporated into a contract.

Administrative Procedure Act: Waiver

Because these amendments make minor corrections to an existing regulation pertaining to the acquisition

of goods and services by contract, the NRC has determined pursuant to 5 U.S.C. 553(a)(2), that the rulemaking provisions of the Administrative Procedure Act do not apply.

Environmental Impact: Categorical Exclusion

The NRC has determined that this rule is the type of action described in the categorical exclusion set forth in 10 CFR 51.22(c) (5) and (6). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final 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, approval number 3150-0169.

Regulatory Analysis

This final rule is administrative in that it corrects and conforms the text of an existing regulation. These amendments will not have a significant impact. Therefore, the NRC has not prepared a regulatory analysis for this final rule. The regulatory analysis for the NRCAR was contained in the final rule published December 23, 1992 (57 FR 61152).

Backfit Analysis

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

List of Subjects**48 CFR Part 2017**

Government procurement, Nuclear Regulatory Commission Acquisition Regulation.

48 CFR Part 2052

Government procurement, Nuclear Regulatory Commission Acquisition Regulation, 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 corrective amendments to 48 CFR parts 2017 and 2052.

PART 2017—SPECIAL CONTRACTING METHODS

1. The authority citation for part 2017 continues to read as follows:

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

2017.204 [Amended]

2. In 2017.204(b), the phrase "one year" is revised to read "five years."

PART 2052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for part 2052 continues to read as follows:

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

4. In 2052.204–70 paragraph (d) is revised to read as follows:

2052.204–70 Security.

* * * * *

(d) Regulations. The contractor agrees to conform to all security regulations and requirements of the Commission which are subject to change as directed by the NRC Division of Security and the Contracting Officer. These changes will be under the authority of the changes clause.

* * * * *

Dated at Rockville, Maryland, this 31st day of August, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–21707 Filed 9–7–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 675**

[Docket No. 921185–3021; I.D. 083193A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Atka mackerel in the Eastern Aleutian District (statistical area 541) and the Bering Sea (BS) subarea of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that incidental catches of Atka mackerel be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Atka mackerel total allowable catch (TAC) specified for these areas has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), September 3, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT:

Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP)

prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Atka mackerel TAC specified for the combined Eastern Aleutian District and BS subarea (Eastern AI District/BS) was established by a revision to the final 1993 initial specifications (58 FR 37660, July 13, 1993) as 3,520 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the Atka mackerel TAC specified for the combined Eastern AI District/BS has been reached. Therefore, NMFS is requiring that further catches of Atka mackerel in the Eastern AI District/BS be treated as prohibited species in accordance with § 675.20(c)(3), effective 12 noon, A.l.t., September 3, 1993, through 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under § 675.20 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–21800 Filed 9–2–93; 3:57 pm]

BILLING CODE 3510–22–M

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 92-044-2]

Brucellosis; Interstate Movement of Swine; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: We are correcting an editorial error in a proposed rule to revise the swine brucellosis regulations. The proposed rule was published in the **Federal Register** on July 23, 1993 (58 FR 39458-39462, Docket No. 92-044-1).

FOR FURTHER INFORMATION CONTACT: Dr. Delorias Lenard, Senior Staff Veterinarian, Swine Health Staff, VS, APHIS, USDA, room 736, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7767.

In Docket No. 92-044-1, pages 39458-39462, the following correction is made:

On page 39458, the third column, in the Summary, and on page 39459, the second column, in the Background, in the fourth line from the top, the words "validated brucellosis-free herds must be tested to maintain" are removed and the words "breeding swine must be tested to qualify States for" are added in their place.

Done in Washington, DC, this 1st day of September 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-21863 Filed 9-7-93; 8:45 am]

BILLING CODE 3410-34-P

9 CFR Part 113

[Docket No. 92-112-2]

In Vitro Tests In Place of Animal Tests for Immunogenicity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: We are withdrawing a proposed rule to amend the regulations regarding the use of in vitro tests in place of animal tests for immunogenicity. The proposed amendment would have provided for the use of a parallel line assay for determining the relative antigenic content (potency) of a serial of product derived from an approved Master Seed. Based on comments received, the Agency believes that the subject should be further explored, and the rule should be repropoosed. It also appears that there was some confusion concerning the proposed rule. For example, it may not have been clear that the rule, if adopted, would have been to standardize all in vitro immunoassay test methods used in place of animal tests to determine the antigenic content of inactivated products, and to require that all such tests involve the use of a parallel line assay. Therefore, we are withdrawing the proposed rule and will postpone further rulemaking until we gather additional information.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245, fax (301) 436-8669.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 113 pertain to the use of in vitro tests in place of animal tests for determining the relative potency of veterinary biological products. On March 3, 1993, we published a document in the **Federal Register** (58 FR 12187-12188, Docket No. 92-112-1) proposing to amend the regulations in 9 CFR 113.8 to provide for the use of a parallel line assay in determining the relative antigenic content (potency) of a serial of product derived from an approved Master Seed which has been tested for immunogenicity in a manner acceptable

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to the Animal and Plant Health Inspection Service (APHIS). In addition, the proposed rule provided that all immunoassay potency tests used in place of animal tests to determine relative potency be conducted with an unexpired reference.

APHIS solicited comments on the proposed rule for a 60-day period ending May 3, 1993. Six comments were received for the proposed rule. APHIS carefully considered all of the comments that were received. While generally supportive of the rule as proposed, the commenters raised issues that suggest that some confusion exists concerning certain provisions and areas such as the scope of the rule and the procedures that may be used for requalification of references in order to extend the period of time that the references may be used.

In order to provide a more complete notice including more information regarding procedures for the requalification of references, APHIS is withdrawing its proposed rule and postponing rulemaking until we have gathered additional information. In this issue of the **Federal Register**, we are publishing a separate notice ("Public Meeting; In Vitro Potency Testing," Docket No. 92-112-3) in which we announce our intention to hold a public meeting on this subject.

Accordingly, the proposed amendments to 9 CFR 113.8, published at 58 FR 12187-12188, March 3, 1993, are withdrawn.

Authority: 21 U.S.C. 151-159; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 2nd day of September 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-21861 Filed 9-7-93; 8:45 am]
BILLING CODE 3410-34-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[Docket No. PRM-72-1]

Maryland Safe Energy Coalition; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking dated June 23, 1993, which was filed with the Commission by Maryland Safe Energy Coalition. The petition was docketed by the NRC on June 30, 1993, and has been assigned Docket No. PRM-72-1. The petitioner requests that the NRC amend its regulations regarding generic issues related to dry cask storage.

DATES: Submit comments by November 22, 1993. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to 1155 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For a copy of the petition, write the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission's regulations contained in 10 CFR part 72 provide licensing requirements for the independent storage of spent nuclear fuel and high-level radioactive waste. In particular, subpart K to part 72 provides a general license for storage of spent fuel to nuclear power reactor licensees, and subpart L sets forth procedures and criteria for approval of storage casks for the storage of spent fuel under the general license provided in subpart K.

The Petitioner

On June 30, 1993, the Maryland Safe Energy Coalition filed a request for

action under 10 CFR 2.802 with the Nuclear Regulatory Commission (NRC). The petitioner is an environmental consumer organization that is interested in the minimization and safe storage of nuclear waste, including spent fuel at nuclear power plants in general and at the Calvert Cliffs Nuclear Power Plant in particular. The petitioner represents the interests of more than a hundred signers, most of whom reside in the vicinity of the Calvert Cliffs plant. The petitioner also supports the efforts of similar organizations in several states where dry cask storage of spent fuel is an issue.

Reasons for the Petition

According to the petitioner, the purpose of the petition is to change the rules regarding dry cask storage of spent fuel at nuclear power plant sites. The petitioner is particularly concerned about spent fuel storage at the Calvert Cliffs Nuclear Power Plant, which is operated by Baltimore Gas and Electric Company (BG&E). (The petitioner believes that even though the spent fuel at the Calvert Cliffs plant is stored under a specific part 72 license, many of the generic requirements proposed by the petitioner would be the same or similar to the specific requirements applicable to independent spent fuel storage at Calvert Cliffs).

Discussion

The petitioner recommends that 10 CFR 72.22(e)(2) be amended to require an application for a license to store spent fuel to specify the planned life of the independent spent fuel storage installation (ISFSI). The petitioner asserts that if the storage of spent fuel is temporary, it follows that the planned life has a definite duration. The petitioner further states that licensees should be required to state the length of time that each storage canister and/or cask will be used. The petitioner also believes that, in the absence of a stated lifetime, it should not be assumed that the storage is temporary. The petitioner indicates that any storage which might become either permanent or indefinite would require additional regulatory control.

The petitioner suggests a change to § 72.22(e)(3) because the petitioner believes that the NRC should not assume that removal of nuclear waste, including spent fuel from a reactor site, is the safest policy. The petitioner further states that the lack of a national waste repository or monitored retrievable storage installation (MRS) and the hazards of transporting high-level nuclear waste may make a

prolonged or indefinite on-site storage the only option or the safest policy.

The petitioner recommends a change to § 72.42 to require a period of 90 days between the final safety evaluation report (SER) and the issuing of a license to allow potential petitioners time to intervene based on issues in the final SER. The petitioner also requests a change to § 72.44(c)(3)(ii) that would require the dry storage casks to be monitored continuously at the exit cooling vents, since according to the petitioners, the exit vents are the most likely location of radioactive venting.

The petitioners request that § 72.46(d) be amended to prescribe a period for a notice of opportunity for a hearing or petition for leave to intervene until 90 days after the final SER is published. In support of this suggested amendment, the petitioner states that "If a notice of opportunity for a hearing or intervention is limited to a short period after the license application, interested parties may be prevented from obtaining a hearing based on the second or final SER. Information in the latter safety reports may impact on the advisability of issuing a license. The public should have the right and opportunity to comment on the final safety analysis report (SAR) and SER before a license is issued."

The petitioner suggests a change to § 72.72(a) to require that licensees document the history and condition of all spent fuel because defective fuel can cause problems for safe storage.

In § 72.104(a), the petitioner believes that the radiation limit should be based on a dose to a maximally exposed individual at the perimeter of the controlled area and that the possibility of a pregnant person working and/or living at the perimeter should be a safety assumption for setting radiation limits. According to the petitioner, recent studies have shown that women, children, and fetuses are especially sensitive to radiation damage. The petitioner also states that the National Academy of Science's Committee on the Biological Effects of Ionizing Radiation cited a report in 1990 by Dr. Alice Steward that established a direct correlation of childhood cancers and leukemias with background levels of gamma radiation from natural and man-made sources in England, Wales, and Scotland. The cumulative outdoor doses due to this source during fetal life varied between only 10 and 40 millirads, with an average of 22 millirads. According to the petitioners, this study indicates that the standards set for exposure of adults to low-level radiation are too high for the developing fetus.

The Suggested Amendments

The petitioner requests that the NRC amend 10 CFR Part 72 to read as follows:

1. In § 72.22(e)(2), add "Specify the planned life of the ISFSI."
2. In § 72.22(e)(3), change "after the removal of spent fuel and/or high-level radioactive waste" to "if the spent fuel and/or the high-level radioactive waste is removed."
3. In § 72.42, add a new paragraph (d) to read "No license will be issued before 90 days after the final safety evaluation report (SER) is published."
4. In § 72.44(c)(3), add paragraph (v) to read "dry storage casks must be monitored continuously for radioactivity at the exit cooling vents."
5. In § 72.46(d), add "The time prescribed for a notice of opportunity for a hearing or petition for leave to intervene will extend from the notice of proposed action through 90 days after the final SER is published."
6. In § 72.72(a), add after the first sentence "The records must include the history and condition of all spent fuel assemblies including a description of any defective fuel, such as fuel that is cracked, swollen, blistered, pinholed, or offgassing."
7. In § 72.104(a) in place of "real" put "maximally exposed"; after "individual" add "or fetus"; change "25 mrem" to "5 mrem"; change "75 mrem" to "15 mrem"; and change "25 mrem" to "5 mrem". The sentence will then read, ". . . dose equivalent to any maximally exposed individual or fetus who is located beyond the controlled area must not exceed 5 mrem to the whole body, 15 mrem to the thyroid and 5 mrem to any other organ. . . ."

Dated at Rockville, Maryland, this 1st day of September, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93-21822 Filed 9-7-93; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 93-NM-106-AD]

Airworthiness Directives; Boeing Model 747-100, -200, -300, and -400 Series Airplanes Equipped With BFGoodrich Evacuation Ramp/Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747-100, -200, -300, and -400 series airplanes. This proposal would require various modifications of certain evacuation ramp/slides. This proposal is prompted by reports of several evacuation ramp/slide malfunctions. The actions specified by the proposed AD are intended to prevent delayed inflation of evacuation ramp/slides, which could delay or impede the evacuation of passengers during an emergency.

DATES: Comments must be received by November 2, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-106-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from the BFGoodrich Company, Aircraft Evacuation Systems, Sustaining Engineering, D/7916, Phoenix, AZ 85040. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM-131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5338; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic,

environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-106-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-106-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The FAA has received reports that the door 3 evacuation ramp/slide installed on certain Boeing Model 747-100, -200, -300, and -400 series airplanes failed to inflate automatically when the door was opened. In other instances, the door 3 ramp/slide deployed into (or on top of) the door 4 slide/raft. Other reports indicate that the ramp/slide deployment indicator tube caught under the door 4 slide/raft, preventing the indicator tube from being visible from the door 3 exit. These conditions, if not corrected, could result in delayed inflation of evacuation ramp/slides, which could delay or impede the evacuation of passengers during an emergency.

The FAA has reviewed and approved BFGoodrich Service Bulletin 7A1418-25-253, dated April 28, 1993, that describes procedures for various modifications of certain evacuation ramp/slides. Those modifications are described as follows:

1. Modifying certain reservoir assemblies to another configuration by replacing the currently-installed actuator. Accomplishment of this modification will prevent the door 3 evacuation ramp/slide from failing to inflate automatically when the door is opened.

2. Modifying the inflatable assembly by installing a picture frame pre-form between the toe support bag and the inflatable bottom ply; adding a velcro hook patch and a velcro pile patch to the toe support bag; adding a deployment indicator tube support strap; modifying the bottle bag; and

removing the restraint pad from the bottom of the inflatable assembly. Accomplishment of this modification will prevent the door 3 ramp/slide from failing to inflate automatically when the door is opened; will prevent the door 3 ramp/slide from deploying into (or on top of) the door 4 slide/raft; and will correct the indicator tube visibility problem discussed previously.

3. Adding a force-increasing lever to the firing lanyard. Accomplishment of this modification will also prevent the door 3 ramp/slide from failing to inflate automatically when the door is opened.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require various modifications of certain evacuation ramp/slides. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 1,100 BFGoodrich ramp/slides of the affected design installed on Boeing Model 747-100, -200, -300, and -400 series airplanes in the worldwide fleet. The FAA estimates that 300 of these subject ramp/slides are installed on Boeing Model 747-100, -200, -300, and -400 series airplanes of U.S. registry, and would be affected by this proposed AD. It would take approximately 22 work hours per ramp/slide to accomplish the proposed actions, and the average labor rate is \$55 per work hour. Required parts would be provided by the ramp/slide manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$363,000; or \$1,210 per ramp/slide. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93-NM-106-AD.

Applicability: Model 747-100, -200, -300, and -400 series airplanes equipped with BFGoodrich evacuation ramp/slides, as listed in BFGoodrich Service Bulletin 7A1418-25-253, dated April 28, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent delayed inflation of evacuation ramp/slides, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 24 months after the effective date of this AD, modify the reservoir assembly, modify the inflatable assembly and the bottle bag, and add a lever to the firing lanyard, as applicable, in accordance with paragraphs 2.D.(2), 2.E., and 2.F. of the Accomplishment Instructions of BFGoodrich Service Bulletin 7A1418-25-253, dated April 28, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the

requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 1, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-21784 Filed 9-7-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 93-NM-111-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Rolls Royce RB211-535E4/E4B Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes. This proposal would require tests of the thrust reverser system, and repair, if necessary; installation of a modification that would terminate those tests; and repetitive operational checks of that installation, and repair, if necessary. This proposal is prompted by results of a safety review, which revealed that in-flight deployment of a thrust reverser could result in a significant reduction in the controllability of the airplane. The actions specified by the proposed AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

DATES: Comments must be received by November 2, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-111-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jeffrey Duven, Aerospace Engineer,

Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2688; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-111-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-111-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The FAA has conducted a safety review of the thrust reverser system installed on Boeing Model 757 series airplanes equipped with Rolls Royce RB211-535E4/E4B engines. The results of that review revealed that in-flight deployment of a thrust reverser could result in a significant reduction in the controllability of the airplane.

Consequently, Boeing has developed a modification for these airplanes, which, when accomplished, will ensure that the level of safety inherent in the original type design of the thrust reverser system is further enhanced. The

FAA has determined that the installation of these additional features will further reduce the likelihood of an in-flight thrust reverser deployment.

The FAA has reviewed and approved Boeing Service Bulletin 757-78-0032, Revision 1, dated April 8, 1993, that describes procedures for installation of an additional thrust reverser system locking feature (denoted as a "sync-lock"), which will reduce the possibility of an uncommanded in-flight deployment of the thrust reversers. The sync-lock is controlled independently of the existing electro-mechanical safety features of the thrust reverser system. This additional locking feature has been certified by the FAA and is installed on new-production Model 757 series airplanes equipped with Rolls Royce RB211-535E4/E4B engines. The FAA has determined that installation of the sync-lock is necessary in order to positively address the identified unsafe condition with regard to these airplanes.

The FAA has determined that, prior to installation of the sync-lock, interim tests of the thrust reverser system must be accomplished to ensure that the safety features of the existing thrust reverser system are functioning properly and are being checked at regular intervals. Two interim tests must be accomplished: a "restow test" is necessary to verify proper operation of the auto restow system, including checks of the system sensors, indicators, and system components; and an "integrity test" is necessary to ensure the mechanical integrity of the existing thrust reverser actuator locks and the connecting crossover shaft.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require restow and integrity tests to verify proper operation of the thrust reverser system on certain airplanes, and repair, if necessary. Those tests would be required to be accomplished in accordance with certain procedures described in the Boeing 757 Maintenance Manual.

This AD would also require the installation of an additional thrust reverser system locking feature (sync-lock). Installation of the sync-lock would terminate the requirement for the restow and integrity tests discussed previously. The sync-lock installation would be required to be accomplished in accordance with the service bulletin described previously.

In addition, this AD would require that the integrity of the sync-lock installation be verified by periodic operational tests of the installation, and repair of any discrepancies. These tests

are necessary in order to ensure that the sync-lock has not failed in the unlocked state. These test procedures and any necessary repairs would be required to be accomplished in accordance with certain procedures described in the Boeing 757 Maintenance Manual.

There are approximately 250 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 95 airplanes of U.S. registry would be required to accomplish the restow and integrity tests required by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish those tests, and that the average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators to accomplish those tests is estimated to be \$5,225, or \$55 per airplane.

The FAA estimates that 95 airplanes of U.S. registry would be required to accomplish the modification required by this proposed AD, that it would take approximately 506 work hours per airplane to accomplish that proposed modification, and that the average labor rate is \$55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators to accomplish the proposed modification is estimated to be \$2,643,850, or \$27,830 per airplane.

The FAA also estimates that 113 airplanes of U.S. registry would be required to accomplish the periodic operational tests of the sync-lock installation required by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish each test, and that the average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators to accomplish each functional test is estimated to be \$6,215, or \$55 per airplane.

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$2,655,290. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The FAA recognizes that the proposed modification would require a large number of work hours to accomplish. However, the 5-year compliance time specified in paragraph (b) of this proposed AD should allow ample time for the sync-lock installation to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby

minimizing the costs associated with special airplane scheduling.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93-NM-111-AD.

Applicability: All Model 757 series airplanes equipped with Rolls Royce RB211-535E4/E4B engines; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane, accomplish the following:

(a) For airplanes on which the sync-lock feature was not installed during production

or as a modification in accordance with Boeing Service Bulletin 757-78-0032: Within 4,000 hours time-in-service after the effective date of this AD; and thereafter at intervals not to exceed 4,000 hours time-in-service until the modification required by paragraph (b) of this AD is accomplished; accomplish paragraphs (a)(1) and (a)(2) of this AD to verify proper operation of the thrust reverser system. Prior to further flight, repair any discrepancy found, in accordance with the procedures described in the Boeing 757 Maintenance Manual.

(1) Perform a thrust reverser-auto restow test in accordance with Section 78-31-00, pages 513-517, dated December 20, 1992, of the Boeing 757 Maintenance Manual.

(2) Perform an actuator lock and crossover shaft integrity test in accordance with Section 78-31-00, page 517, dated December 20, 1992, and pages 518-519, dated March 20, 1993, of the Boeing 757 Maintenance Manual.

(b) For airplanes on which the sync-lock feature was not installed during production or as a modification in accordance with Boeing Service Bulletin 757-78-0032: Within 5 years after the effective date of this AD, install an additional thrust reverser system locking feature (sync-lock installation), in accordance with Boeing Service Bulletin 757-78-0032, Revision 1, dated April 8, 1993. Installation of this additional locking feature constitutes terminating action for the tests required by paragraph (a) of this AD.

(c) Within 1,000 hours time-in-service after accomplishing the modification required by paragraph (b) of this AD, or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 1,000 hours time-in-service: Accomplish paragraphs (c)(1) and (c)(2) of this AD to verify that the sync-locks have not failed in the "unlocked" state. Prior to further flight, repair any discrepancy found, in accordance with procedures described in the Boeing 757 Maintenance Manual.

(1) Perform a thrust reverser-auto restow test in accordance with Section 78-31-00, pages 534-538, dated December 20, 1992, of the Boeing 757 Maintenance Manual.

(2) Perform an actuator lock, crossover shaft, and sync-lock integrity test in accordance with Section 78-31-00, page 538, dated December 20, 1992, and pages 539-540, dated March 20, 1993, of the Boeing 757 Maintenance Manual.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 1, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-21786 Filed 9-7-93; 8:45 am]
BILLING CODE 4610-13-P

14 CFR Part 39

[Docket No. 92-CE-63-AD]

Airworthiness Directives: Piper Aircraft Corporation PA-25 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Piper Aircraft Corporation (Piper) PA-25 series airplanes. The proposed action would require repetitively inspecting the wing forward spar fuselage attachment assembly for cracks or corrosion, and replacing or repairing any cracked or corroded part. This action is a result of an accident investigation where corrosion and cracks in the wing forward spar fuselage attach fittings were found on a Piper Model PA-25-235 airplane. The actions specified by the proposed AD are intended to prevent possible in-flight separation of the wing from the airplane caused by a cracked or corroded wing forward spar fuselage attachment assembly.

DATES: Comments must be received on or before November 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-63-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information that relates to the proposed AD may be inspected at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Perry, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-2910; Facsimile (404) 991-3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-63-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-63-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A Piper Model PA-25-235 airplane was involved in a recent accident where the left wing separated from the airplane. Investigation of the referenced accident revealed corrosion and cracks in the wing forward spar fuselage attachment fittings.

The two clevis ears on the wing forward spar fuselage attach fitting assembly of the Piper PA-25 series airplanes are formed by welding a front spar fitting, part number (P/N) 64003-0, to front spar fitting assembly, P/N 64412-0. The forward clevis ear of the left wing forward spar fuselage attach fitting assembly of the referenced airplane fractured at the base of the clevis ear and contained extensive corrosion. Some of the fractures were along flat transverse planes, indicating progressive cracking. A strong oxidation layer between the sections of the fitting assembly indicates that the corrosion occurred over a long period of time.

The aft clevis ear of the left wing forward spar fuselage attach fitting assembly was extensively deformed and had broken through at the wing attachment bolt hole. The fracture of the forward clevis ear caused severe stress upon the aft clevis ear, which resulted in the left wing separating from the airplane.

After examining the circumstances and reviewing all available information related to the accident described above, the FAA has determined that AD action should be taken to prevent possible in-flight separation of the wing from the airplane caused by a cracked or corroded wing forward spar fuselage attachment assembly.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA-25 series airplanes of the same type design, the proposed AD would require repetitively inspecting the wing forward spar fuselage attach fittings for cracks or corrosion, and replacing or repairing any cracked or corroded part.

The compliance time for the proposed AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time for compliance is the most desirable method because the unsafe condition described by the proposed AD is caused by corrosion. Corrosion can occur on airplanes regardless of whether the airplane is in service or in storage. Therefore, to ensure that corrosion is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is proposed.

The FAA estimates that 1,272 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately \$55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$139,920.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major

rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Piper Aircraft Corporation: Docket No. 92-CE-63-AD.

Applicability: Models PA-25-150, PA-25-235, and PA-25-260 airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 12 calendar months.

To prevent possible in-flight separation of the wing from the airplane caused by a cracked or corroded wing forward spar fuselage attachment assembly, accomplish the following:

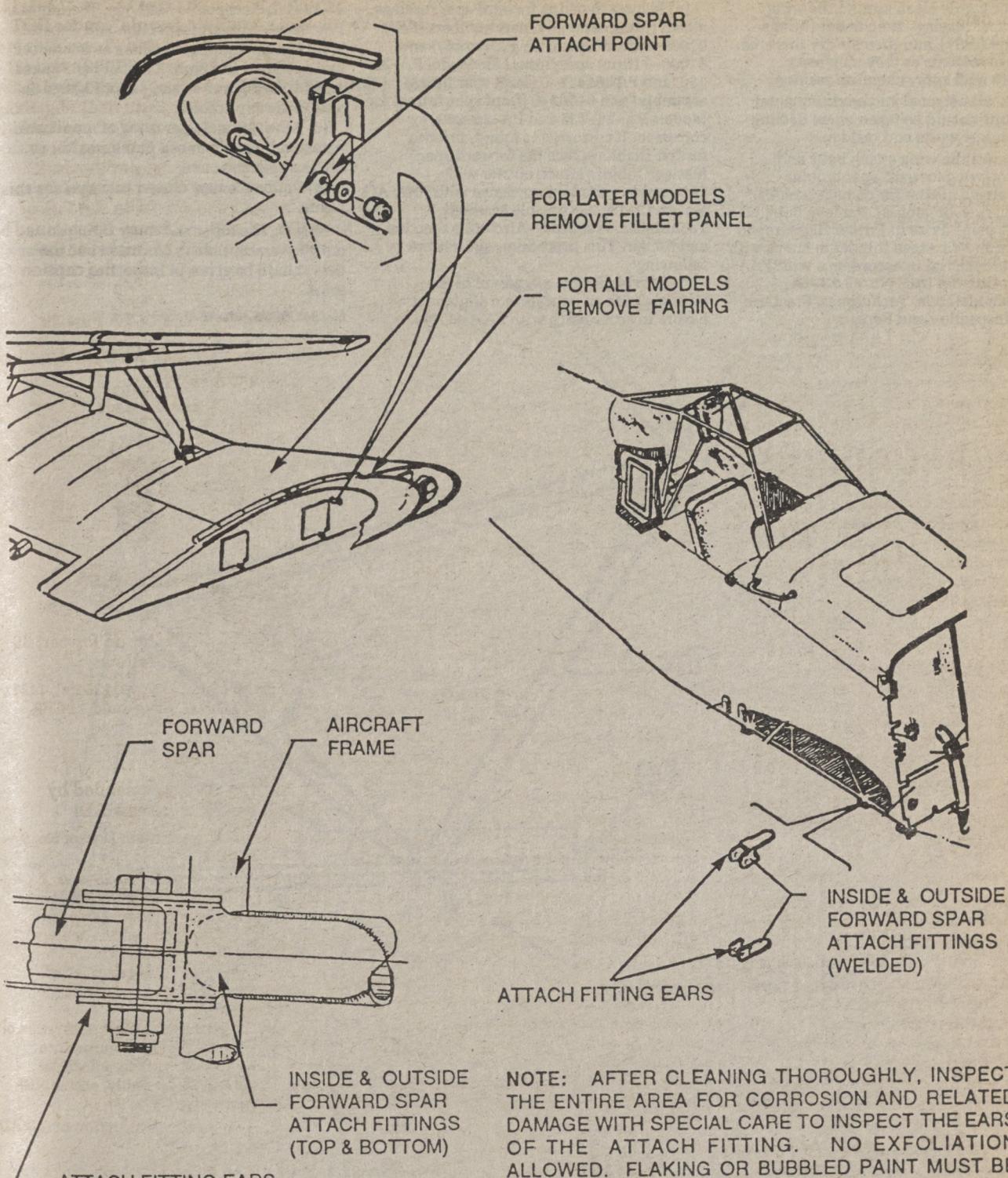
Note 1: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.

Level 2: (1), (2), (3), etc.

Level 2 structures are designations of the Level 1 paragraph they immediately follow.

(a) Gain access to the left and right wing forward spar fuselage attach fittings by removing the screws retaining the wing fairing. On later models, dismantle the wing fillet by removing the screws on the aft edge top and bottom and removing the wing fairing (see FIGURE 1 of this AD).



NOTE: AFTER CLEANING THOROUGHLY, INSPECT THE ENTIRE AREA FOR CORROSION AND RELATED DAMAGE WITH SPECIAL CARE TO INSPECT THE EARS OF THE ATTACH FITTING. NO EXFOLIATION ALLOWED. FLAKING OR BUBBLED PAINT MUST BE REMOVED TO FACILITATE INSPECTION. DISASSEMBLY WILL BE AS REQUIRED BASED ON CONDITION. RETURN TO SERVICE INCLUDES PRIME, PAINT AND RUST INHIBITOR.

FIGURE 1

(b) Thoroughly clean around the wing forward spar fuselage attachment fittings with water (only), and then air dry this area. Do not use solvents as they may react negatively with spray chemical residue.

Note 2: All personal and environmental precautions should be taken when dealing with chemical waste and residue.

(c) Remove the wing attach bolts and inspect the wing forward spar tubular fuselage attach cluster for damage (cracks, corrosion, rust, or gouges). Remove bubbled or flaking paint. Prior to further flight, repair or replace any damaged tubular member with equivalent material in accordance with FAA Advisory Circular (AC) No. 43.13-1A, Acceptable Methods, Techniques, Practices—Aircraft Inspection and Repair.

(d) Inspect the wing forward spar fuselage attach fitting assembly, part numbers (P/N) 61005-0 (front spar fitting assembly) and 61006-0 (front spar fitting) for Model PA-25-150; and P/N 64412-0 (front spar fitting assembly) and 64003-0 (front spar fitting) for Models PA-25-235 and PA-25-260, for corrosion. If corrosion is found, prior to further flight, replace the forward spar fuselage tubular attach cluster with serviceable parts in accordance with FAA AC No. 43.13-1A, Acceptable Methods, Techniques, Practices—Aircraft Inspection and Repair. This procedure requires the following:

(1) Provide for the alignment of the airframe with an appropriate alignment fixture in accordance with FAA AC No.

43.13-1A, Acceptable Methods, Techniques, Practices—Aircraft Inspection and Repair.

(2) Cut the tubular members as referenced and specified in Figure 2 and either Figures 3a and 3b; Figures 4a and 4b; or Figures 5a and 5b, as applicable.

(3) Fabricate a cluster using all applicable part numbers referenced in Figures 3b, 4b, or 5b, as applicable; and

(4) Splice the new cluster into the fuselage frame.

Note 3: The inner and outer fitting areas are very susceptible to corrosion and extreme care should be given in inspecting these areas.

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PA-25

Side View of the Front Wing Fitting
and Landing Gear Fittings

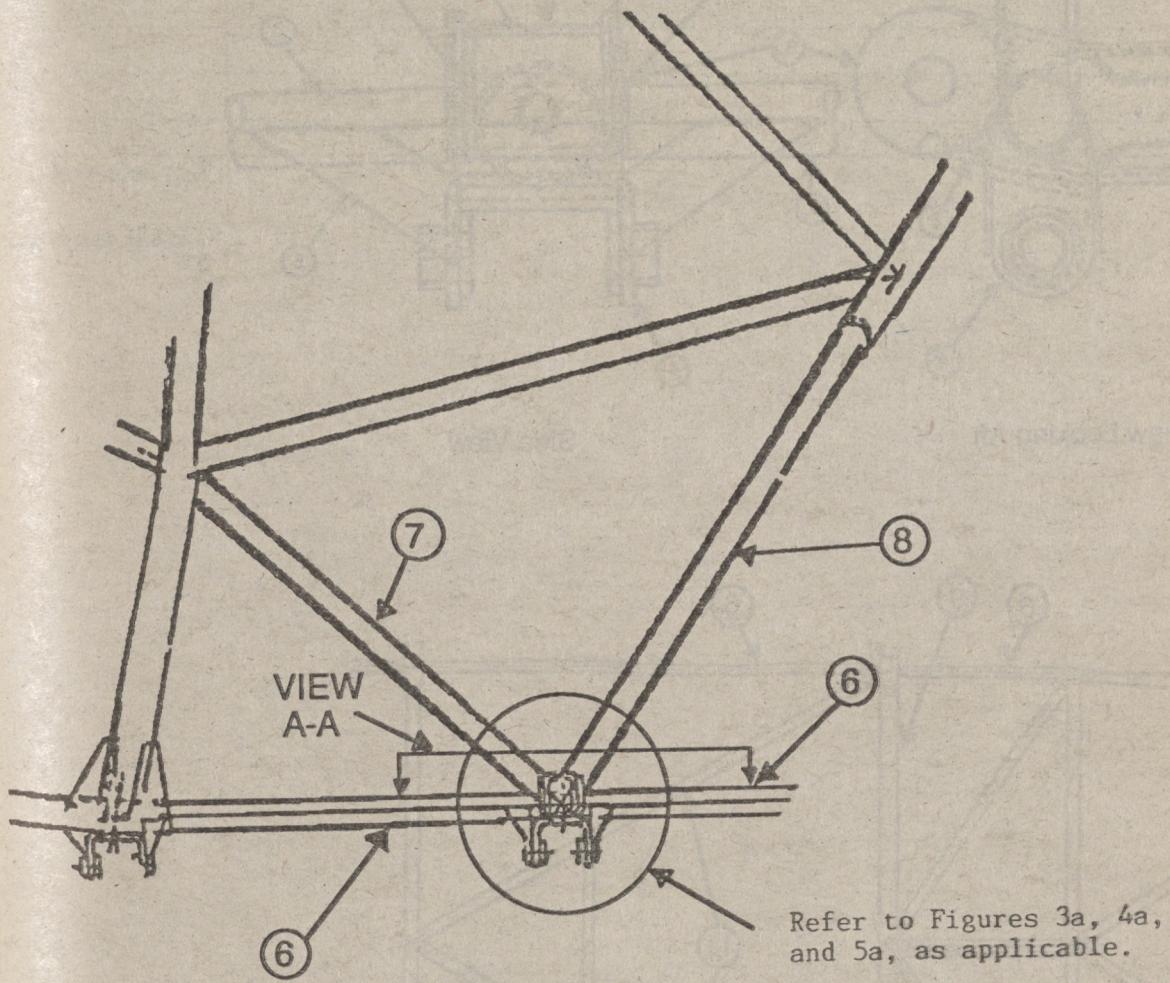
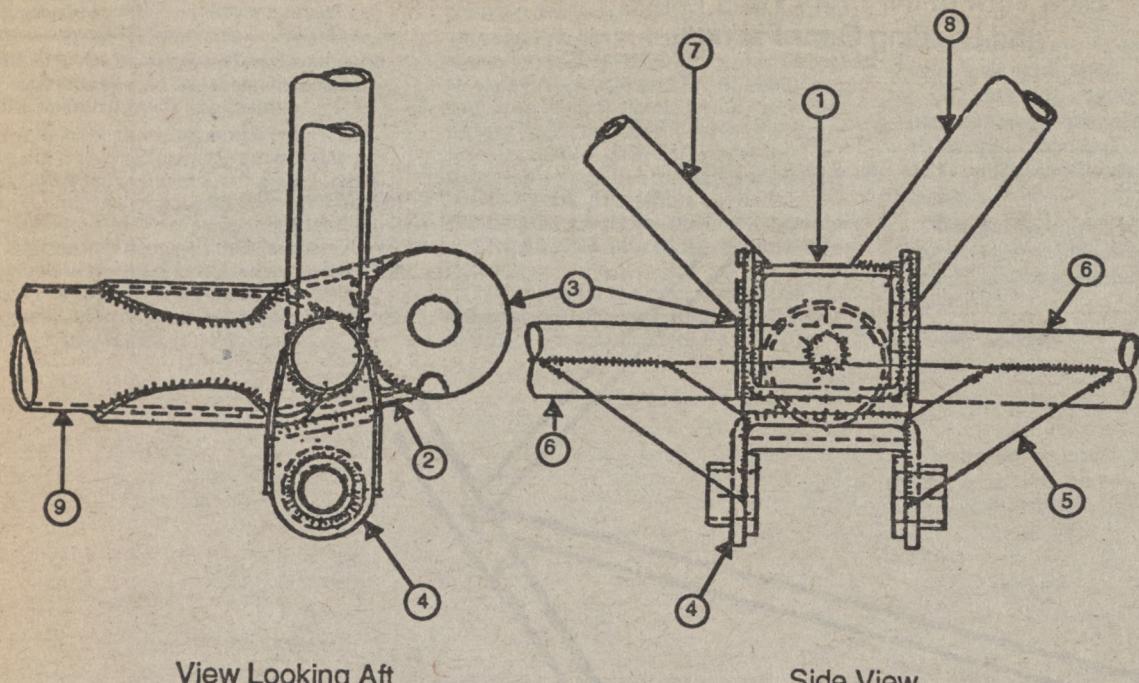


Figure 2

PA-25-150

S/N - ALL



BILLING CODE 4910-13-C

Bottom View (View A-A)
(Both Sides)

Figure 3a

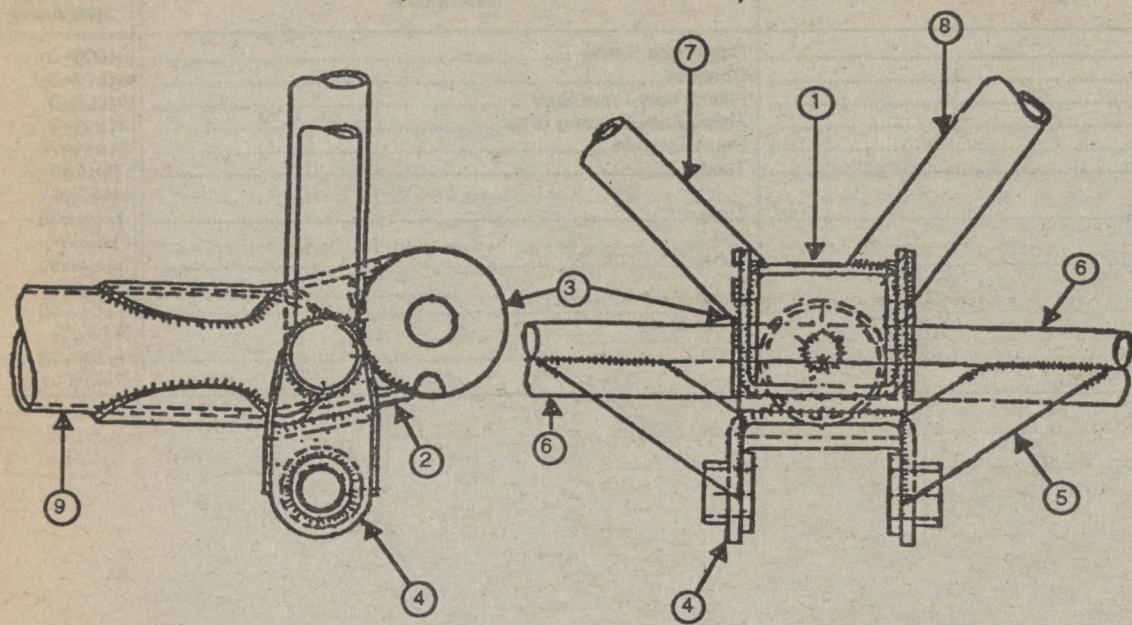
PA-25-150, S/N-ALL, FRONT WING SPAR ATTACHMENT-FITTINGS AND TUBES

No.	Description	Part No./tube dimensions
1	Front Spar Fitting	61006-0
2	Channel	61007-0
3	Fitting Assy-Front Spar	61005-0
4	Fitting Assy-Landing Gear	21242-2
5	Brace-Bracket	11994-28
6	Tube .....	.75x.035 (4130) ^{N1}
7	Tube .....	.625x.035 (4130) ^{N1}
8	Tube .....	.75x.035 (4130) ^{N1}
9	Tube	1.25x.058 (4130) ^{N1}
11	Tube .....	.625x.028 (1025)

¹MIL-T-6736 Type 1.

BILLING CODE 4910-13-U

PA-25-235
(S/N - 25-2000 To 25-2985)



View Looking Aft

Side View

BILLING CODE 4910-13-C
Bottom View (View A-A)
(Both Sides)

Figure 4a

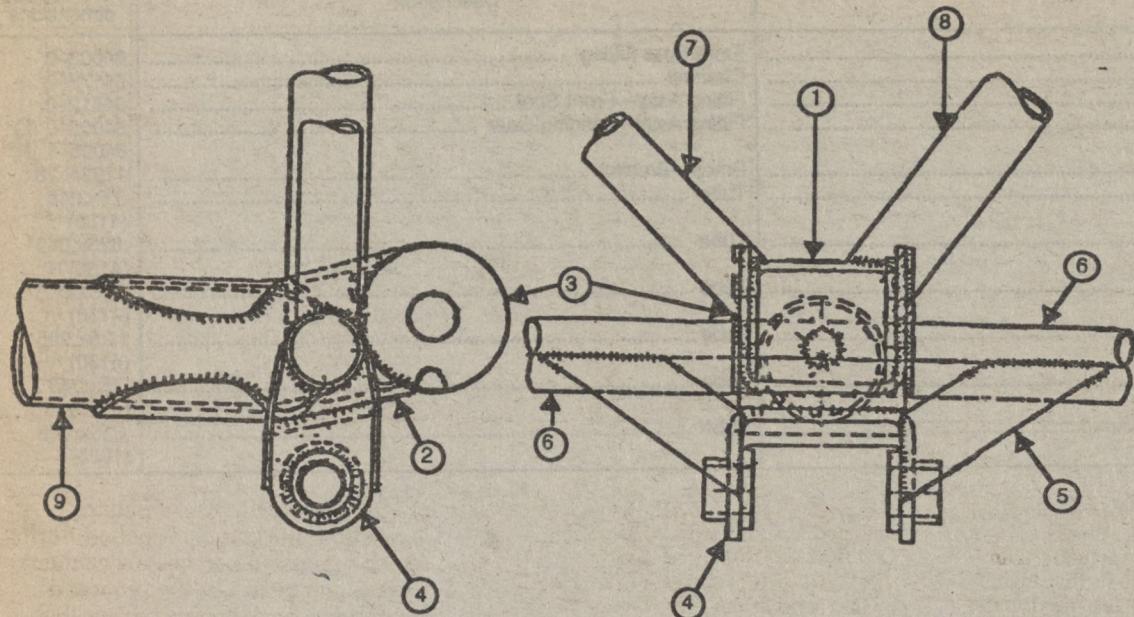
PA-25-235, S/N-25-2000 TO 25-2985, FRONT WING SPAR ATTACHMENT—FITTINGS AND TUBES

No.	Description	Part No./tube dimensions
1	Front Spar Fitting	64003-0
2	Channel	64175-0
3	Fitting Assy—Front Spar	64412-0
4	Fitting Assy—Landing Gear	64005-0 (L) 64005-1 (R)
5	Brace—Bracket	11994-28
6	Tube .....	.75x.049 (4130) ^{N1}
7	Tube .....	.625x.049 (4130) ^{N1}
8	Tube .....	.875x.065 (4130) ^{N1}
9	Tube	1.25x.095 (4130) ^{N1}
10	Tube .....	.75x.049 (4130) ^{N1}
11	Tube .....	.625x.028 (1025)

¹MIL-T-6736 Type 1.

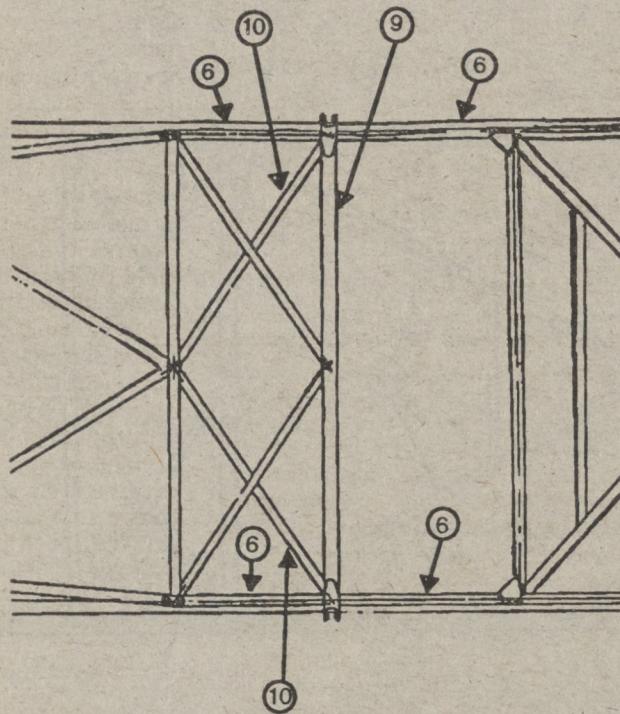
BILLING CODE 4910-13-U

PA-25-235, PA-25-260
S/N - 25-2986 and Up



View Looking Aft

Side View



Bottom View (View A-A)
(Both Sides)

Figure 5a

PA-25-235,-260, S/N-25-2986 AND UP, FRONT WING SPAR ATTACHMENT—FITTINGS AND TUBES

No.	Description	Part No./tube dimensions
1	Front Spar Fitting	64003-0
2	Channel	64175-0
3	fitting Assy—Front Spar	64412-0
4	Fitting Assy—Landing Gear	64005-0 (L) 64005-1 (R)
5	Brace—Bracket	11994-28
6	Tube .....	.75x.049 (4130) ^{N1}
7	Tube .....	.625x.049 (4130) ^{N1}
8	Tube .....	.875x.065 (4130) ^{N1}
9	Tube	1.25x.095 (4130) ^{N1}
10	Tube .....	.75x.049 (4130) ^{N1}

¹MIL-T-6736 Type 1.

(e) Inspect the wing forward spar fuselage attach fitting assembly for cracks using FAA-approved dye penetrant methods. If any cracks are found, prior to further flight, replace the forward spar fuselage tubular attach cluster with serviceable parts in accordance with FAA AC No. 43.13-1A, Acceptable Methods, Techniques, Practices—Aircraft Inspection and Repair. This procedure requires the following:

(1) Provide for the alignment of the airframe with an appropriate alignment fixture in accordance with FAA AC No. 43.13-1A, Acceptable Methods, Techniques, Practices—Aircraft Inspection and Repair.

(2) Cut the tubular members as referenced in Figure 2 and either Figures 3a and 3b; Figures 4a and 4b; or Figures 5a and 5b, as applicable.

(3) Fabricate a cluster using all applicable part numbers referenced in Figures 3b, 4b, or 5b, as applicable; and

(4) Splice the new cluster into the fuselage frame.

(f) Replacement parts required by this AD shall be of those referenced and specified in either Figures 3a and 3b, 4a and 4b, or 5a and 5b, as applicable.

(g) Prime and paint all areas where parts were replaced or where paint is bubbled or gone. Use epoxy paint and primer, and, after paint has cured, rust inhibit the entire area.

(h) Reinstall all items that were removed.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(j) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(k) Information that relates to this AD may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri.

Issued in Kansas City, Missouri, on August 31, 1993.

Barry D. Clements,
Manager, Small Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment was initiated by Illinois to revise the Illinois program to address statutory changes to the Surface Coal Mining Land Conservation and Reclamation Act (State Act) which were signed into law on July 7, 1993, and August 4, 1993, by the Governor of Illinois.

This document sets forth the times and locations that the Illinois program and proposed amendment to that

program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on October 8, 1993. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on October 4, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on September 23, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to: Mr. James F. Fulton, Director, Springfield Field Office, at the address listed below. Copies of the Illinois program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSM's Springfield Office.

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 511 West Capitol, suite 202, Springfield, Illinois 62704, Telephone: (217) 492-4495 Illinois Department of Mines and Minerals, 300 West Jefferson Street, Suite 300, Springfield, Illinois 62791, Telephone: (217) 782-4970.

FOR FURTHER INFORMATION CONTACT:
James F. Fulton, Director, Springfield Field Office; (217) 492-4495.

SUPPLEMENTARY INFORMATION:**I. Background**

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, *Federal Register* (47 FR 23683). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.15, 913.16, and 913.17.

II. Discussion of Proposed Amendment

Pursuant to 30 CFR 732.17(b)(3), the Illinois regulatory authority notified the Director by letter dated August 17, 1993 (Administrative Record No. IL-1500), of a proposed amendment to the Illinois program to incorporate statutory changes to the Surface Coal Mining Land Conservation and Reclamation Act (State Act) at 225 ILCS 720/2.11 and 6.01. The statutory changes were enacted through Public Act 88-63 (HB 2183) and Public Act 88-185 (SB 632), and they were signed into law by the Governor of Illinois on July 7, 1993, and August 4, 1993, respectively.

1. 225 ILCS 720/2.11 (Formerly Ch. 96½, par. 7902.11)—Procedures for Approval

The change to section 2.11(c), enacted through HB 2183, concerns requirements for notices of permit decision hearings. The new provision reads as follows: The notice shall be published in a newspaper of general circulation published in each county in which any part of the area of the affected land is located. The notice shall appear no more than 14 days nor less than 7 days prior to the date of the hearing. The notice shall be no less than one eighth page in size, and the smallest type used shall be twelve point and shall be enclosed in a black border no less than ¼ inch wide. The notice shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear.

The changes to sections 2.11(a), (b), all but the last sentence of (c), and (g), enacted through SB 632, are stylistic changes only which do not affect the provisions within the sections. The new last sentence of section 2.11(c) concerns judicial review of a permit decision. The new provision reads as follows: No party to a formal adjudicatory hearing under this subsection may seek judicial review of the Department's final decision on the permit application until after the issuance of the hearing officer's

written decision granting or denying the permit.

2. 225 ILCS 720/6.01 (Formerly Ch. 96½, par. 7906.01)—Requirement of a Bond

The change to section 6.01, enacted through SB 632, allows Illinois to implement a self-bonding program. New subsection (b) was added and reads as follows: (b) the Department may accept the bond of the applicant, without separate surety, when the applicant demonstrates to the Department's satisfaction the existence of a suitable agent to receive service of process, a history of financial solvency and continuous operation, and a current financial soundness sufficient for authorization to self-insure or bond the required amount.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15.

If the amendment is deemed adequate, it will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the OSM Springfield Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by September 23, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end

after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT". All such meetings will be open to the public, and, if possible, notices of meetings will be posted at the locations under "ADDRESSES". A written summary of each meeting will be made a part of the Administrative Record.

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(b)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on

proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 31, 1993.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI16-01-5760; FRL-4725-8]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The USEPA proposes approval of revisions to the State Implementation Plan (SIP) for ozone submitted by the State of Michigan. This portion of the implementation plan was submitted by the State to satisfy Clean

Air Act (Act) requirements for adoption of rules for application of reasonably available control technology (RACT) for oxides of nitrogen (NO_x) in the Detroit-Ann Arbor, Grand Rapids, and Muskegon ozone nonattainment areas in Michigan. Under the Act, USEPA must approve or disapprove SIPs or portions of SIPs within time frames specified in the Act; failure to do so would render USEPA liable to citizen suits to rulemake on those SIPs and would delay making approvable rules federally enforceable. In this document, USEPA is proposing action, not on the rules themselves, but on a commitment by the State to submit the NO_x RACT rules at a later date.

DATES: Comments on this proposed action must be received in writing by October 8, 1993.

ADDRESSES: Comments should be addressed to: Douglas Aburano, U.S. Environmental Protection Agency (AT-18J), 77 W. Jackson Boulevard, Chicago, Illinois 60604-3590.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5 Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano at (312) 353-6960.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for the reduction of oxides of nitrogen (NO_x) emissions through RACT are set out in section 182(f) of the Act. Section 182(f) requirements are described by USEPA in guidance titled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990." (NO_x Supplement to the General Preamble) published November 25, 1992 (57 FR 55620). The November 25, 1992, guidance should be referred to for further information on the NO_x requirements and is incorporated into this proposal by reference.

Section 182(f) of the Act requires States with ozone nonattainment areas at moderate or above classifications, or within the ozone transport region, to apply the same requirements to major stationary sources of NO_x ("major" as defined in sections 302 and 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs). For more

information on what constitutes a major source, see section 2 of the NO_x Supplement to the General Preamble (57 FR 55620, 55622).

Section 182(b)(2) requires submittal of RACT rules for the following sources: (A) Each category of VOC sources in the area covered by a control technologies guidelines (CTG) document issued by the Administrator between November 15, 1990, and the date of attainment; (B) all VOC sources in the area covered by any CTG issued before November 15, 1990; and (C) all other major stationary sources of VOC emissions located in the area. The sources described in (A), above, must submit RACT rules by the date specified by the Administrator in issuing the relevant CTG document. The sources described in (B) and (C) must submit RACT rules by November 15, 1992.

Section 182(f) of the Act provides that the plan provisions required under this subpart shall also apply to major stationary sources (as defined at sections 302 and 182(c), (d), and (e)) of nitrogen oxides. Because no CTG documents have been issued for NO_x sources, section 182(b)(2) is applicable to all major stationary sources of nitrogen oxides and requires RACT rules for such sources by November 15, 1992. In these RACT rules, States are expected to require final installation of the actual NO_x controls by May 31, 1995, from those sources for which installation by that date is practicable. (See 57 FR 55623)

Under section 110(k)(4) of the Act, the Administrator may approve a plan revision based on a commitment from the State to adopt specific enforceable measures by a specified date, but not later than 1 year after the date of USEPA approval of the plan revision that incorporated that commitment. Refer to the NO_x Supplement to the General Preamble (57 FR 55620, 55622-55623) for details of this conditional approval with respect to the NO_x requirements.

Three memoranda also outline general requirements for conditional approval actions. These are:

(1) July 22, 1992, "Guidance for State Implementation Plan (SIP) Submittals Due November 15, 1992," from Michael H. Shapiro, Deputy Assistant for Air and Radiation, to the Air Division Directors of Regions I-X;

(2) September 1, 1992, "Correction of State Implementation Plan Submittals Table," from Michael H. Shapiro, Deputy Assistant for Air and Radiation, to the Air Division Directors of Regions I-X; and

(3) February 2, 1993, "Questions and Answers on Nitrogen Oxides (NO_x)

Emissions Policy," from G.T. Helms, Chief of the Ozone/Carbon Monoxide Programs Branch to the Air Branch Chiefs of Regions I-X.

II. Today's Action—Analysis of State Submission

As noted above, section 110(k)(4) of the Act allows USEPA to accept a commitment from States to adopt portions of SIPs rather than the SIP itself. For example, USEPA may, in certain cases, accept a commitment from States to adopt NO_x RACT rules rather than the NO_x RACT rule itself. The NO_x Supplement to the General Preamble (57 FR 55620, 55623), the memoranda of July 22, 1992, and September 16, 1992, from Deputy Assistant Administrator Michael Shapiro concerning the SIP submittals due November 15, 1992, and the February 2, 1993, memorandum from G.T. Helms, Chief of the Ozone/Carbon Monoxide Programs Branch, outline USEPA's criteria for acceptability of committal SIPs for the NO_x RACT rules. These criteria are:

1. A description of the reason for the committal SIP versus a full SIP submittal.
2. Documentation that credible photochemical grid modeling is not available or did not consider the effects of NO_x reductions (The NO_x Supplement to the General Preamble requires States to include such modeling analyses that consider control strategies with and without NO_x reductions. 57 FR 55620, 55623)
3. Identification of resources to complete such modeling.
4. A schedule outlining the milestones that have been and will be achieved toward completion of NO_x RACT rules. The schedule must include a date for final submittal of rules to USEPA. The date for submitting the final rules to USEPA must be no later than 12 months after USEPA's final approval of the committal SIP.

The USEPA is proposing to approve a commitment to adopt NO_x RACT rules for the Detroit-Ann Arbor, Grand Rapids, and Muskegon areas in Michigan because it meets the requirements of section 110(k)(4) of the Act and conforms to the policy in the NO_x Supplement to the General Preamble (cited above) and the memoranda from Deputy Assistant Administrator Michael Shapiro of July 22, 1992, and September 16, 1992, concerning the SIP submittals due November 15, 1992, and the February 2, 1993, memorandum from G.T. Helms, Chief of the Ozone/Carbon Monoxide Branch, concerning nitrogen oxides emissions policy. A detailed analysis of the submittal can be found in an April

28, 1993, Region 5 technical support document.

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to USEPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.¹ Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. The State of Michigan held a public hearing on November 10, 1992, on the commitment to adopt NO_x RACT rules for the Detroit-Ann Arbor, Grand Rapids, and Muskegon ozone nonattainment areas. Following the public hearing, the commitment was adopted by the State and signed by the Governor's Designee, Roland Harmes, Director of the Michigan Department of Natural Resources, on November 13, 1992, and submitted to USEPA on November 13, 1992, as a proposed revision to the SIP.

2. RACT Determination and Implementation

States—including those for which USEPA approves a commitment to adopt a NO_x RACT rule—are expected to require final installation of the actual NO_x controls by May 31, 1995, from sources for which installation by that date is practicable. The NO_x Supplement to the General Preamble (57 FR 55620, 55623) contains a detailed discussion of USEPA's interpretation of the RACT requirement.

By this notice, USEPA is proposing to approve the State's commitment to adopt NO_x RACT rules.

III. Implications of Today's Action

The USEPA is proposing to approve the commitment for adoption of NO_x RACT rule(s) as a SIP revision submitted to USEPA for the Detroit-Ann Arbor, Grand Rapids, and Muskegon ozone nonattainment areas in Michigan on November 13, 1992. Section 110(k)(4) of the Act provides that where USEPA takes final action to approve a commitment to submit a SIP or portion of a SIP, the State must fulfill that commitment (i.e., submit the required SIP or portion thereof) within 1 year following USEPA approval. If the State does not fulfill its commitment by

submitting the SIP or revision to USEPA within that year, section 110(k)(4) of the Act requires that the SIP be disapproved. If USEPA disapproves the SIP for failing to meet the commitment, there are several additional consequences. As provided at section 179(a) of the Act, the State of Michigan would have up to 18 months after a final SIP disapproval to correct the deficiency(ies) that is(are) the subject of the disapproval before USEPA is required to impose either the highway funding sanction or the requirement to provide 2 to 1 new source review offsets. If the State has not corrected its deficiency(ies) within 6 months thereafter, USEPA must impose the second sanction. Any sanction USEPA imposes must remain in place until USEPA determines that the State has come into compliance. If USEPA ultimately disapproves all or part of the SIP submittal for the Ann Arbor, Grand Rapids, and Muskegon nonattainment areas and the State of Michigan fails to correct the deficiency within 18 months of such disapproval, USEPA anticipates that the first sanction it would impose would be the two-to-one offset requirement. Note also that any final disapproval would trigger the requirement for USEPA to impose a Federal implementation plan as provided at section 110(c)(1) of the Act.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Request for Public Comments

The USEPA is requesting comments on all aspects of today's proposal.

V. Executive Order (EO) 12291

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214, 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2214, 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

¹ Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities; 5 U.S.C. sections 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals at section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on affected small entities.

Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds.

Union Electric Co. v. United States Environmental Protection Agency, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410 (a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 18, 1993.

Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 93-21801 Filed 9-7-93; 8:45 am]

BILLING CODE 6580-50-F

The potential exists for purchasers of timber sales from the Forest Service to default on such sales and then purchase timber sales from the Bureau of Land Management (BLM) under the same conditions as purchasers who have been responsible and performed satisfactorily on their contracts. BLM believes that such default on Forest Service timber sale contracts indicates some lack of responsibility and that the Government takes a greater risk to deal with such entities. Defaults on timber sale contracts create forest management problems and reduce timber revenues to the Federal Treasury and local governments. This rule would require that a purchaser provide additional security if he/she has defaulted on Forest Service contracts and has not paid or provided a bond for damages associated with these defaults. Under this rule, defaults on past timber sale contracts would be treated the same whether they were on BLM or Forest Service contracts.

DATES: Comments should be submitted by November 8, 1993. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ed Shepard, (202) 653-8864.

SUPPLEMENTARY INFORMATION: Current regulations at 43 CFR 5450.1(b) authorize the authorized officer to require additional security from persons submitting the highest bids who have defaulted on past BLM timber sale contracts and have not paid or bonded for damages resulting from such defaults. Default on one or more past contracts indicates that a purchaser may not be able to meet, or may willfully disregard, his contractual obligations. Regardless of the cause, a likelihood of failure to perform new contractual obligations is unacceptable to the United States, and presents the need for additional security against such failure in appropriate circumstances.

Failure to perform or a default on Federal timber sale contracts impairs the land management ability of the Federal Government and reduces local and Federal Government revenue. Furthermore, participation in bidding by defaulters may distort bidding

patterns or contract prices, and thereby affect other timber purchasing companies. This rule would tend to discourage defaulters from bidding at all. Reoffering defaulted timber sales interrupts the orderly offering of timber sales in the same vicinity by requiring the adjustment and repetition of actions already completed. Efficient reforestation is complicated by the uncertain timing associated with potential default and resale. The complications associated with the determination of cumulative environmental impacts are increased because of the passage of time. The collection of receipts shared by the United States and local government is delayed and actual amounts collected may be reduced.

Default on past timber sale contract(s) indicates that a purchaser may not be responsible whether the timber sale contract is issued by the BLM or Forest Service, and the Government needs some additional security to offset the risks of doing business with such purchasers.

The proposed rule would authorize the authorized officer to require that persons submitting the highest bids who have defaulted on past Forest Service timber sale contract(s), and have not paid or bonded for the damages resulting from such default(s), establish responsibility in the same manner as bidders who have defaulted on BLM timber sale contracts.

The principal author of this proposed rule is Richard Bird of the Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, Washington, DC.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not significantly affect the ten criteria for exceptions listed in 516 DM 2,

Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human

environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or 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. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Few timber companies are expected to default and thereby become affected by the rule, and all members of the timber harvest community are treated equally.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. No private property would be taken under the rule, and no rights would be curtailed without due process. Accordingly, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 5450

Administrative practice and procedure, Forest and forest products, Government contracts, Public lands.

For the reasons stated in the Preamble, under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), part 5450, group 5400, subchapter E, chapter II, subtitle B of title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 5450—AWARD OF CONTRACT; GENERAL

1. The authority citation for part 5450 is revised to read as follows:

Authority: 30 U.S.C. 601 *et seq.*, 43 U.S.C. 1181e.

2. Section 5450.1 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 5450.1 Pre-award qualifications of high bidder.

(b) A purchaser who has defaulted on a timber sale contract, whether such contract was issued by the BLM or the Forest Service, by failing to complete payment of its total purchase price by the expiration date of the contract, is considered a risk for the purposes of being awarded future timber sale contracts.

Dated: July 28, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93-21829 Filed 9-7-93; 8:45 am]

BILLING CODE 4310-84-P

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule originated based on a recommendation in the DoD Inspector General's Report on the Cost-Effectiveness of Dual Sourcing Major Components of the Aegis Weapon System (OAE-5005/Report No. 92-009). That report recommended that the DFARS be revised to improve internal controls in dual source acquisitions. The proposed rule modifies 215.804-3 to clarify the need for contracting officers to perform price analyses for dual source acquisitions. Further, the proposed rule advises contracting officers that if price reasonableness cannot be determined on the basis of price analysis, the exemption from submission of certified cost or pricing data based on adequate price competition on dual source programs does not apply.

B. Regulatory Flexibility Act

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it clarifies current guidance on pricing of dual source acquisitions. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 93-610 in correspondence.

C. Paperwork Reduction Act

The proposed rules does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 49 CFR Part 215

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR part 215 be amended as follows:

1. The authority citation for 48 CFR part 215 continues to read as follows:

Authority: 41 U.S.C. 421 and FAR Subpart 1.3.

PART 215—CONTRACTING NEGOTIATION

2. Section 215.804-3 is amended by revising paragraph (b)(3)(B)(2) and

FOR FURTHER INFORMATION CONTACT:
Mrs. Alyce Sullivan, (703) 697-7266.

adding paragraph (b)(3)(B)(3) to read as follows:

215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(b)(3)(B)(2) Adequate price competition normally exists when—

(i) prices are solicited across a full range of step quantities, normally including a 0-100 percent split, from at least two offerors who are individually capable of producing the full quantity; and

(ii) the price reasonableness of all prices awarded is clearly established on the basis of price analysis (see FAR 15.805-2).

(3) If price reasonableness cannot be determined on the basis of price analysis, including the results of negotiations, the exemption at FAR 15.804-3(a)(1) from submission of certified cost of pricing data shall not apply.

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BILLING CODE 3810-01-M

48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; Restriction on Machine Tools and Powered and Non-Powered Valves

AGENCY: Department of Defense (DOD).

ACTION: Proposed rule with request for public comments.

SUMMARY: Based on an analysis of public comments on an interim rule, the Defense Acquisition Regulations Council is proposing changes to the Defense FAR Supplement to clarify the machine tool acquisition restriction and to add a contract provision for identification of machine tool accessories.

DATES: Comments on the proposed DFARS rule should be submitted in writing to the address shown below on or before (insert 30 days after publication) to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to the Defense Acquisition Regulations Council, ATTN: IMD 3D139, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301-3062. FAX (703) 697-9845. Please cite DFARS Case 91-320 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT:
Mrs. Alyce Sullivan, (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule would revise the interim rule published in Defense Acquisition Circular 91-2 (Item VIII) (57 FR 14988). Based on the analysis of public comments on the interim rule, revisions to the interim rule are proposed to clarify DFARS 225.7004-3, Evaluating offers. A new provision, 252.225-70XX, Machine Tool List, is proposed that requires offeror identification of machine tool accessories which are not listed in the schedule as separate line items.

B. Regulatory Flexibility Act

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it imposes restrictions on the acquisition of foreign products. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 93-610 in correspondence.

C. Paperwork Reduction Act

The proposed rule imposes reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.* The proposed provision requires offerors to provide information as to the place of manufacture and cost when certain machine tool accessories are not of U.S. or Canadian origin. Accordingly, a request for clearance was forwarded to OMB and was approved April 20, 1993, through April 30, 1996, under OMB Control Number 0704-0350.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR parts 225 and 252 be amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and FAR Subpart 1.3.

PART 225—FOREIGN ACQUISITION

2. Section 225.7004-1 is amended by revising paragraph (b) to read as follows:

225.7004-1 Applicability.

(b) Machine tool accessories classified under FSC 3460 or 3461 are not components under 225.7004-4. Where a solicitation for machine tools includes machine tool accessories, list known machine tool accessories which are not separate line items in the provision at 252.225-70XX, Machine Tool List. Identify accessories which are separate line items in the schedule. The contracting activity must exercise judgment in determining whether an item is an accessory or a component. This determination should be based on the use of the item in the machine tool being purchased.

3. Section 225.7004-2 is amended by revising paragraph (b) (3) to read as follows:

225.7004-2 Restrictions.

(b)* * * * *
(3) The contracting officer shall waive the restriction in paragraph (a) of this section when it would result in unreasonable costs. The cost of a machine tool, machine tool accessory, or valve of U.S. or Canadian origin is unreasonable where it is not the low evaluated offer when evaluated under 225.7004-3.

4. Section 225.7004-3 is revised to read as follows:

225.7004-3 Evaluating offers.

Unless the restriction is waived under 225.7004-2(b) (1) or (2), evaluate offers for cost reasonableness by adding 50 percent of the offered price, inclusive of duty, to offers of machine tools, machine tool accessories, or valves which are not of U.S. or Canadian origin.

(a) If the solicitation specifies award on a group basis, add the evaluation factor to individual line items and add together the line items in the group to determine if the unreasonable cost waiver applies.

(b) If a line item contains machine tool accessories in the list at 252.225-70XX, add 50 percent of the cost, inclusive of duty, of the accessories not of U.S. or Canadian origin to the offered price for the line item.

5. Section 225.7004-5 is revised to read as follows:

225.7004-5 Contract provision and clauses.

(a) Unless a waiver has been granted, use the clause at 252.225-7017, Preference for United States and Canadian Valves and Machine Tools, in all solicitations and contracts for valves

and machine tools. When the restrictions of the fiscal year 1987-1989 appropriations acts apply, delete paragraph (c) of the clause.

(b) Consider using the clause at 252.225-7001, Buy American Act and Balance of Payments Program, and, if applicable, the clause at 252.225-7007, Trade Agreements Act, whenever an exception or waiver is anticipated. Where these clauses are used, state in the solicitation that offers which do not conform to the restrictions of the more restrictive clause will only be considered if an exception applies or a waiver is granted.

(c) Use the provision at 252.225-70XX, Machine Tool List, in all solicitations for machine tools which contain the clause at 252.225-7017 except where—

(1) All machine tool accessories are listed as separate line items; and

(2) The solicitation does not allow offerors to provide accessories which are not specifically required by the specifications.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.225-7017 is amended by adding a new sentence at the end of paragraph (a)(2) to read as follows:

252.225-7017 Preference for United States and Canadian valves and machine tools.

Preference for United States and Canadian valves and machine tools

(a)(2) * * * It does not include costs associated with manufacturing the end item.

7. A new provision, 252.225-70XX, is added to read as follows:

252.225-70XX Machine tool list.

As prescribed in 225.7004-5(c), use the following provision:

Machine Tool List (XXX 199X)

The Government has identified those items listed as machine tool accessories which are not listed in the schedule as separate line items. The Offeror must also list any accessories to be provided which are not specifically required by the specifications. Where the machine tool accessory is not of U.S. or Canadian Origin, as defined in the Preference for United States and Canadian Valves and Machine Tools clause of this solicitation, indicate the country in which the accessory was manufactured and the cost of the accessory.

Line item No.	Accessory	Country of manufacture	Cost

(End of Provision)

[FR Doc. 93-21666 Filed 9-7-93; 8:45 am]
BILLING CODE 3810-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815, 1831 and 1852

Addition of Coverage to the NASA FAR Supplement on the Review of Contractor and Subcontractor Compensation for Reasonableness

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the NASA Federal Acquisition Regulation Supplement (NFS). This rule sets forth the policies for reviewing the reasonableness of contractor and subcontractor compensation for support service contracts, as well as the solicitation provision for obtaining such information. It also sets forth the requirement for the prenegotiation position memorandum to discuss excessive wages, if any are found.

DATES: Comments must be received on or before November 8, 1993.

ADDRESSES: Submit comments to Mr. Joseph Le Cren, NASA, Code HC, Washington, DC 20546. Comments regarding paperwork reduction, in addition to being forwarded to NASA, may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Jonas Neihardt, Desk Officer for NASA, Telephone (202) 395-4814, 3235 NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, Telephone: (202) 358-0003.

SUPPLEMENTARY INFORMATION:

Background

A recent Office of the Inspector General (OIG) audit report criticized the agency for paying excessive wages under some of its support service contracts. According to the OIG, this situation was due to contractor

compensation not being monitored during contract performance, and contractors not using survey data in establishing their proposed wage rates.

The Federal Acquisition Regulation 31.205-6 already discusses the factors for determining the reasonableness of contractor compensation, which includes wage surveys. However, it does not provide guidance as to when contractor compensation is to be reviewed for reasonableness. The purpose of this proposed change is to provide such guidance with respect to the agency's support service contracts.

Impact

NASA certifies that this proposed regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). NASA will request OMB approval on reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1815, 1831 and 1852

Government procurement.

Thomas S. Luedtke,
Acting Deputy Associate Administrator for Procurement.

Accordingly, NASA proposes to amend 48 CFR parts 1815, 1831, and 1852 as follows:

1. The authority citation for 48 CFR parts 1815, 1831 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2743(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

2. In section 1815.807-70, paragraph (d)(1) is revised to read as follows:

1815.807-70 Content of the prenegotiation position memorandum.

(d) **Cost analysis.** (1) Include a parallel tabulation, by element of cost and profit/fee, of the contractor's proposal, the Government's negotiation objective, and the Government's maximum position, if applicable. For each element of cost, compare the contractor's proposal and each Government position, explain the differences and how the Government position(s) were developed, including the estimating assumptions and projection techniques employed, and how the positions differ in approach. Include a discussion of excessive wages found (if applicable) and their planned resolution (see 1831.205-670). Explain how historical costs, including costs incurred under a letter contract (if

applicable), were used in developing the negotiation objective.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Sections 1831.205-670 and 1831.205-671 are added to read as follows:

1831.205-670 Evaluation of contractor and subcontractor compensation for support service contracts.

(a) The contracting officer shall evaluate the reasonableness of compensation for support service contracts:

(1) Prior to the award of a cost reimbursement or non-competitive fixed-price type contract which has a total potential value in excess of \$500,000; and

(2) Periodically after award for cost reimbursement contracts, but at least every three years.

(b) The contracting officer shall ensure the reasonableness of compensation is evaluated for cost reimbursement or non-competitive fixed-price type support service subcontracts under a prime contract meeting the criteria in paragraph (a)(1) of this section where:

(1) The subcontract has a total potential value in excess of \$500,000; and

(2) The cumulative value of all of a subcontractor's support service subcontracts under the prime contract is in excess of 10 percent of the prime contract's total potential value.

(c)(1) Offerors shall be required to submit as part of their proposals a compensation plan addressing all proposed labor categories. Offerors also shall demonstrate in writing that their proposed compensation is reasonable.

(2) Subcontractors meeting the criteria in paragraph (b) of this section shall be required to comply with paragraph (c)(1).

(d) The contracting officer's preaward evaluation of each offeror's and their subcontractors' compensation should be done as part of, or in addition to DCAA audits, price analyses, or any other means deemed to be necessary.

(e) The results of the contracting officer's evaluation, including any excessive compensation found and its planned resolution, shall be addressed in the prenegotiation position memorandum, with the final resolution discussed in the price negotiation memorandum.

(f) The contracting officer shall ensure that the reasonableness of compensation for cost reimbursement subcontracts

meeting the criteria in paragraphs (b)(1) and (2) of this section is periodically reviewed after award, but at least every three years.

(g) The results of the periodic evaluations of contractor and subcontractor compensation after contract award shall be documented in the contract file.

1831.205-671 Solicitation provision.

The contracting officer shall insert a provision substantially the same as the provision at 1832.231-71, Determination of Compensation, in solicitations for support services which contemplate the award of a cost reimbursement or non-competitive fixed-price type contract having a total potential value in excess of \$500,000.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 1852.231-71 is added to read as follows:

1852.231-71 Determination of Compensation Reasonableness.

As prescribed at 1831.205-671, insert the following provision.

Determination of Compensation Reasonableness (XXX 199X)

(a) The proposal shall include a total compensation plan. This plan shall address all proposed labor categories, including those personnel subject to union agreements, the Service Contract Act, and those exempt from both of the above. The total compensation plan shall include the salaries/wages, fringe benefits and leave programs proposed for each of these categories of labor. The plan also shall include a discussion of the consistency of the plan among the categories of labor being proposed. Differences between benefits offered professional and non-professional employees shall be highlighted. The requirements of this plan may be combined with that required by the clause at FAR 52.222-46, "Evaluation of Compensation for Professional Employees."

(b) The offeror shall provide written support to demonstrate that its proposed compensation is reasonable.

(c) The offeror shall include the rationale for any conformance procedures used for those Service Contract Act employees proposed that do not fall within the scope of any classification listed in the applicable wage determination.

(d) The offeror shall require all support service subcontractors (1) with proposed cost reimbursement or non-competitive fixed-price type subcontracts having a total potential value in excess of \$500,000 and (2) the cumulative value of all their support service subcontracts under the proposed prime contract is in excess of 10 percent of the prime contract's total potential value, provide as part of their proposals the information identified in paragraphs (a) through (c) of this provision.

(End of provision)

[FR Doc. 93-21693 Filed 9-7-93; 8:45 am]
BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 930932-3232 I.D. #081693C]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the conservation and management measures prescribed in Amendment 5 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). This rule proposes to allow two or more states, under mutual agreement and with the concurrence of the Regional Director, to transfer or combine their summer flounder commercial quota. The intent of Amendment 5 is to provide a mechanism within the overall coastwide quota to give the states flexibility in quota management in order to respond to changes in landing patterns or emergency situations. An emergency interim rule that is effective from August 23, 1993, through November 24, 1993, with a possible 90-day extension, would be superseded by this amendment, if implemented.

DATES: Comments on the proposed rule must be received on or before October 25, 1993.

ADDRESSES: Comments on the proposed rule, the FMP, or supporting documents should be sent to Richard Roe, Director, Northeast Region, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope "Comments on Summer Flounder Plan".

Copies of Amendment 5, the environmental assessment (EA), and the regulatory impact review (RIR) are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 S. New Street, Dover, DE.

Copies regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this proposed rule should

be sent to the Director, Northeast Region, NMFS (see ADDRESSES) and the Office of Management and Budget (Attention: NOAA Desk Officer), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:
Hannah Goodale, Fishery Policy Analyst, 508-281-9101.

SUPPLEMENTARY INFORMATION: The summer flounder fishery is managed under the FMP, which was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border. The objectives of the FMP are to: (1) Reduce fishing mortality in the summer flounder fishery to assure that overfishing does not occur; (2) reduce fishing mortality on immature summer flounder to increase spawning stock biomass; (3) improve the yield from the fishery; (4) promote compatible management regulations between state and Federal jurisdictions; (5) promote uniform and effective enforcement of regulations; and (6) minimize regulations to achieve the management objectives stated above.

Implementing regulations for the summer flounder fishery are issued under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are found at 50 CFR part 625. The regulations were amended on December 4, 1992 (57 FR 57358), by the final rule to implement Amendment 2 to the FMP, and on July 27, 1993 (58 FR 40072), by the final rule to implement Amendment 3. These regulations imposed several management measures, including an annual commercial quota allocated on a percentage basis to the Atlantic coast states from North Carolina to Maine. The total annual coastwide quota is divided among eleven coastal states on a percentage basis, with the percentages based on state shares of commercial landings for the period 1980-1989. State percentage shares of the quota are based on these historic landings so that each state receives an initial allocation in the same proportion as past landings to overall landings for the period 1980-89.

In recent years, however, vessel landing patterns have changed, in some cases significantly, from the period of time used to establish the state allocations. In response to this, state fisheries agencies have requested a

regulatory change to enable them to transfer or combine quota with NMFS approval. At its July 1993 meeting, the Council voted to adopt Amendment 5 to the Summer Flounder FMP to enact this regulatory change. The Council also voted to request emergency implementation of Amendment 5 in order to allow the State of Virginia the opportunity to seek to transfer of 1993 quota. A notice of availability for the proposed Amendment 5 was published in the *Federal Register* on August 20, 1993, 58 FR 44318.

The intent of Amendment 5 is to provide states with flexibility to manage their commercial quota. The ability to transfer or combine quotas provides a mechanism to respond to changes in landing patterns which may result from changes in stock availability or fishing behavior, navigational problems, vessel emergencies, or hazardous weather. The ability to transfer or combine quota would enable the states to offset the increased usage of one state's ports by another state's fishermen, and address situations that might otherwise mean that a vessel would be forced to dump a catch of summer flounder or pay a fine if it was forced to dock during an emergency in a state with a closed fishery.

A separate application would be required for each quota transfer or combination. One or more states would agree to transfer or combine a certain amount of quota to or with one or more other states who in return would agree to accept or share the amount. The application would have to be in writing to the Director, Northeast Region, NMFS (Regional Director), and be signed by an appropriate official from each state involved. Each application would have to identify each state involved and the amount of quota to be transferred or combined. The Regional Director would consider each application under the criteria outlined in § 625.20(f) and would notify the states submitting the application of his/her disposition of it within 10 working days of the written submission.

If the Regional Director approves the application, NMFS would publish a notice to that effect in the *Federal Register*. NMFS law enforcement agents would be notified of quota transfers or combinations before any landings could be made under the adjusted quota. For these reasons, only one application from a state for a quota transfer or combination could be in process at any given time from that state.

The transfer or combination of quota would not revise the coastwide commercial quota or alter the handling of quota overages specified in § 625.20

(d)(2) and (d)(3). Transfers and combinations would remain in effect only for the calendar year for which the application was made. As a result, authorizing quota transfers and combinations among states would not be expected to impact negatively other states because there would be no overall adjustment in the total allowable quota and no permanent redistribution of quota shares.

In the case of quota transfer, the recipient state would be responsible for a quota overage, which would be deducted from the following year's quota for that state. In the case of a quota combination, an overage would be deducted in the following year from the quotas of all participant states, with the deduction made in the same proportion as their contribution to the combined quota. For example, states A and B combine quota, with state A contributing 70 percent and state B contributing 30 percent of the combined quota amount. If there is a quota overage, 70 percent of the overage would be deducted from the following year's quota for state A and 30 percent would be deducted from the following year's quota for state B.

Technical Changes

This proposed rule also includes two technical changes proposed by NMFS to the FMP implementing regulations. The first is in response to a request from NMFS law enforcement agents to add a clear definition of "land" to the regulations. NMFS proposes to adopt the definition that is currently used in the FMP for Atlantic Sea Scallops. "Land means to begin offloading fish, to offload fish, or to enter port with fish." This change is being proposed to enhance enforcement of landing prohibitions and restrictions.

The second technical change would modify the size of the container required in § 625.25, to be consistent with similar requirement proposed by the New England Fishery Management Council as part of Amendment 5 to the Fishery Management Plan for the Northeast Multispecies Fishery. Because many vessels participate in both of these fisheries, NMFS proposes to use the same definition in the summer flounder regulations as in the Multispecies regulations to prevent confusion to the industry and improve enforcement efforts.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of the receipt of

the Amendment and proposed regulations. At this time the Secretary has not determined that the Amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the draft Regulatory Impact Review (RIR), that demonstrates that there would be no adverse impact to fishermen in the affected states. It is unknown what transfers and combinations of quotas would be mutually agreed upon by the directors of the state fisheries agencies, if this rule is implemented; therefore, specific effects of a given action could not be assessed until requests are submitted by respective state fisheries directors. Quota transfers or combinations will be made to address circumstances which arise on an annual basis and will have no permanent effect on the distribution of commercial quota among the states. Fishermen in states which are not involved in the quota transfer or combination should not be negatively impacted because the transfer or combination does not alter either the overall coastwide quota or the quota in their state. A copy of the RIR may be obtained from the Council (see ADDRESSES).

This proposed rule is exempt from the procedure of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because of the reasons set forth in the RIR prepared by the Council, a copy of which may be obtained from the Council (see ADDRESSES). As a result, a regulatory flexibility analysis was not prepared.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget (OMB) for approval under OMB Control Number

0648-0202. The public's reporting burden for this requirement is 15 minutes for each written submission for request for quota transfers or combinations. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: September 2, 1993.

Samuel W. McKeen,
Program Management Officer, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 625 is proposed to be amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. The following definition is added to § 625.2:

§ 625.2 Definitions.

* * * * *
Land means to begin offloading fish, to offload fish, or to enter port with fish.

* * * * *
3. Section 625.20 is amended by adding a new paragraph (f):

§ 625.20 Catch quotas and other restrictions.

* * * * *
(f) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder may apply to the Regional Director to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may apply to the Regional Director to combine their quotas, or part of their quotas, into an overall regional quota. Applications for transfer or combination of commercial quotas for summer flounder must be in writing and signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The application must certify that all pertinent state requirements have been met. Each application must identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following receipt of an application, the Regional Director shall notify the appropriate

state officials of the disposition of the request. The Regional Director shall consider the following criteria in the evaluation of requests to transfer or combine quota.

(i) The transfer or combination will not preclude the overall annual quota from being fully harvested;

(ii) The transfer addresses an unforeseen variation or contingency in the fishery; and

(iii) The transfer is consistent with the objectives of the FMP and Magnuson Act.

(2) The transfer or combination of quota shall be valid only for the calendar year for which the application was made and will be effective upon the filing by NMFS of a notification of the approval of the transfer or combination with the Office of the Federal Register.

(3) A state may not submit a request to transfer or combine quota if a request to which it is party is pending before the Regional Director. A state may submit a new request when it receives notice that the Regional Director has disapproved the previous request or when notification of the transfer or combination of quota has been filed at the Federal Register.

(4) If there is a quota overage among states involved in the combination of quota at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer or combination of quota does not alter any state's percentage share of the overall quota specified in paragraph (d) of this section.

* * * * *
4. Section 625.25, paragraph (d) is revised to read as follows:

§ 625.25 Possession limit.

* * * * *
(d) Neither owners nor operators of otter trawlers issued a permit under § 625.4 and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh-size requirements (except pieces of netting no larger than 3 feet square (0.9 m square) that may be necessary to repair smaller mesh sections of the net forward of the terminal portion of the net to which the minimum mesh-size requirement applies) may possess 100 pounds (45.4 kg) or more of summer flounder May 1 through October 31 or 200 pounds (90.8 kg) or more of summer flounder November 1 through April 30. Summer flounder on board these vessels shall be stored in a separate box with a liquid capacity of 18.2 gallons (70

liters), which is readily available for inspection.

* * * * *

[FR Doc. 93-21855 Filed 9-2-93; 3:57 pm]

BILLING CODE 3510-22-M

Notices

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

Animal and Plant Health Inspection Service

[Docket No. 93-116-1]

Calgene, Inc.; Receipt of Petition for Determination of Nonregulated Status of Genetically Engineered Cotton Lines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from Calgene, Inc., seeking a determination regarding the regulatory status of its BXN™ cotton. In accordance with our regulations, we are soliciting public comments on whether such cotton presents a plant pest risk. This action is necessary to enable interested persons to advise APHIS on any plant pest issues raised by this petition.

DATES: Written comments must be received on or before November 8, 1993.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-116-1. A copy of the Calgene petition and any written comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, or at USDA, suite 7 (first floor) Federal Building, 6505 Belcrest Road, Hyattsville MD 20782 between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. To facilitate entry at either location or to obtain a copy of the Calgene petition, contact Ms. Kay Peterson at 301-436-7601.

FOR FURTHER INFORMATION CONTACT: Mr. Michael G. Schechtman, Senior Staff Microbiologist, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7601.

SUPPLEMENTARY INFORMATION: On July 15, 1993, the Animal and Plant Health Inspection Service (APHIS) received a "Petition for Determination of Nonregulated Status under 7 CFR Part 340" from Calgene, Inc. (Calgene), of Davis, CA. The Calgene petition seeks a determination that its BXN cotton is not a "regulated article" under regulations at 7 CFR part 340 (the regulations).

The Calgene petition states that BXN™ cotton should not be regulated by APHIS because it does not present a plant pest risk. BXN™ cotton has been described by Calgene as any previously field tested cotton cultivar containing the BXN gene, a gene isolated from the bacterium *Klebsiella pneumoniae* subsp. *ozaenae* that encodes an enzyme (nitrilase) that degrades the herbicide bromoxynil, thus conferring tolerance to the herbicide. In the BXN™ cotton lines subject to this petition, the regulatory sequences associated with the nitrilase gene are the 35s promoter sequence from cauliflower mosaic virus and the tml 3' terminator sequence derived from *Agrobacterium tumefaciens*.

BXN™ cotton is currently considered a regulated article under the regulations because it contains gene sequences (vectors, promoters and terminators) derived from plant pathogenic sources. In the process of reviewing 15 field trials with BXN™ cotton, APHIS determined that the vectors and other elements were disarmed, and that the trials did not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease,

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Wednesday, September 8, 1993

or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The United States Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 135 *et seq.*). FIFRA requires that pesticides, including herbicides, be registered prior to distribution and sale unless exempt by regulation. Plants which have been genetically modified to confer herbicide tolerance or resistance to the plants are not regulated under this act since they are not themselves considered pesticides.

In cases where the genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. In conducting such an approval, EPA considers the possibility of adverse effects to human health and the environment from the use of the herbicide.

When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 201 *et seq.*). The Food and Drug Administration (FDA) enforces tolerances set by the EPA under the FFDCA. FDA's policy statement concerning regulation of plants derived from new plant varieties was published in the Federal Register on May 29, 1992, and appears at 57 FR 22984-23005.

Under § 340.8 of the regulations, any person may submit a petition to seek a determination that a particular regulated article should not be regulated by APHIS. In accordance with the regulations, this notice establishes that comments on the petition will be accepted for a period of 60 days from the date of this notice. After reviewing the data submitted by the petitioner,

written comments received during the comment period, and other relevant information, APHIS will prepare a decision document on the regulatory status of BXNT™ cotton.

Authority: 7 U.S.C. 150aa-150jj, 151-167, 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 1st day of September 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-21867 Filed 9-7-93; 8:45 am]

BILLING CODE 3410-34-P

[Docket No. 93-108-1]

Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its

finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690-2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set

forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact associated with conducting the field tests.

The environmental assessment and finding of no significant impact have been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
93-203-01R, renewal of permit 92-156-01, issued on 09-23-92.	Calgene, Incorporated ...	08-05-93	Rapeseed plants genetically engineered to express sense or anti-sense desaturase genes, a thioesterase gene, and a reductase gene for oil modification.	Georgia.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 1st day of September 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-21866 Filed 9-7-93; 8:45 am]

BILLING CODE 3410-34-P

[Docket No. 93-091-1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that seven environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the interstate movement and release into the environment of biological control agents. The environmental assessments provide a basis for our conclusion that the interstate movement and release into the environment of the biological control agents will not present a risk of introducing into or disseminating within the United States a plant pest and will not have a significant impact on the quality of the human

environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690-2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Matthew H. Royer, Chief Operations Officer, Biological Assessment and Taxonomic Support, Operational Support, PPQ, APHIS, USDA, room-626, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8896. For copies of the environmental assessments and findings of no significant impact, write to Ms. Deborah Knott at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: Under the Federal Plant Pest Act as amended (7 U.S.C. 150aa *et seq.*) and the Plant

Quarantine Act as amended (7 U.S.C. 151 *et seq.*) (the Acts), the U.S. Department of Agriculture (USDA) has broad authority to regulate the importation, interstate movement, and release into the environment of organisms in order to prevent the dissemination of plant pests into the United States or interstate. The Animal and Plant Health Inspection Service (APHIS) regulates biological control agents that are plant pests under regulations promulgated pursuant to the Acts and contained in 7 CFR part 330 (referred to below as the regulations). The regulations require, among other things, that a permit be obtained for the movement of a plant pest into or through the United States or interstate. The regulations and Acts also allow the Department to include in the permit conditions to prevent the dissemination of plant pests. Under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), APHIS is required to prepare an environmental assessment before issuing a permit for the movement of a plant pest into or through the United States or interstate.

In accordance with applicable regulations, APHIS has received seven applications for permits for the interstate movement and release into the

environment of biological control agents. In the course of reviewing each permit application, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit application. APHIS has issued permits for the interstate movement and release into the environment of the organisms listed below after concluding that their movement and release will not present a risk of the introduction into or dissemination within the United States of plant pests and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact associated with releasing the biological control agents into the environment.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits for the interstate movement and release into the environment of the following biological control agents:

Permit No.	Permittee	Date permit issued	Organisms	Field test location
932449	Neal Spencer, USDA-ARS.	5-3-93	<i>Aphthona lacertosa</i> , a beetle for the control of leafy spurge.	Montana.
932451	Neal Spencer, USDA-ARS.	5-3-93	<i>Chamaesphecia hungarica</i> , a root-boring moth for the control of leafy spurge.	Montana.
939277	James Wagner, ZENECA Ag Products.	6-2-93	<i>Heliothis armigera</i> NPV, a baculovirus for the control of <i>Heliothis</i> spp.	Louisiana.
939461	James Wagner, ZENECA Ag Products.	7-19-93	<i>Heliothis armigera</i> NPV, a baculovirus for the control of <i>Heliothis</i> spp.	Arkansas.
939522	James Wagner, ZENECA Ag Products.	6-18-93	<i>Heliothis armigera</i> NPV, a baculovirus for the control of <i>Heliothis</i> spp.	Arizona.
939685	Donald Dahlsten, University of California, Albany.	7-16-93	<i>Bassus rufipes</i> , a parasitoid for the control of <i>Cydia pomonella</i> .	California.
939686	Donald Dahlsten, University of California, Albany.	7-16-93	<i>Pristomerus vulnerator</i> , a parasitoid for the control of <i>Cydia pomonella</i> .	California.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) NEPA, (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 1st day of September 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-21864 Filed 9-7-93; 8:45 am]

BILLING CODE 3410-34-P

[Docket No. 93-107-1]

Receipt of a Permit Application for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant

Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are encouraged to call ahead on (202) 690-2817 to

facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a

person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
93-214-01	PanAmerican Seed	08-02-93	Carrot plants genetically engineered to express modified nutritional value.	Illinois.

Done in Washington, DC, this 1st day of September 1993.

Terry L. Medley,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-21865 Filed 9-7-93; 8:45 am]
BILLING CODE 3410-34-P

[Docket No. 92-112-3]

Public Meeting; In Vitro Potency Testing

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This document provides notice to producers of veterinary biologics and other interested persons that the Animal and Plant Health Inspection Service will be conducting a public meeting in Baltimore, MD, on September 28, 1993, to discuss issues related to in vitro potency testing.

PLACE, DATE, AND TIME OF MEETING: The meeting will be held at the Sheraton International Hotel, Baltimore-Washington International Airport, 7032 Elm Road, Baltimore, MD 21240, (410) 859-3300, on Tuesday, September 28, 1993, from 8:30 a.m. to 11 a.m.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245, fax (301) 436-8669.

SUPPLEMENTARY INFORMATION: On March 3, 1993, the Animal and Plant Health

Inspection Service (APHIS) published in the *Federal Register* (58 FR 12187-12188, Docket No. 92-112-1) a proposed rule to amend 9 CFR 113.8 on in vitro tests in place of animal tests for immunogenicity. We are publishing a separate notice in this issue of the *Federal Register* ("In Vitro Tests in Place of Animal Tests for Immunogenicity," Docket No. 92-112-2) in which we explain that APHIS is withdrawing the proposed rule with the intent to seek additional public input.

APHIS is conducting a public meeting specifically to discuss in vitro potency testing on September 28, 1993, in the Sheraton International Hotel, at the Baltimore-Washington International Airport in Baltimore, MD.

The agenda for the public meeting will be limited to issues related to in vitro potency testing. The purpose of the meeting is to have an open discussion of this topic by all interested persons.

Persons wishing to attend the meeting should notify the person listed under **FOR FURTHER INFORMATION CONTACT**. Please indicate whether you wish to make a prepared statement at the public meeting, the subject of your remarks, and the approximate time you would like to speak. APHIS welcomes and encourages the presentation of comments at the meeting.

Done in Washington, DC, this 2nd day of September 1993.

Terry L. Medley,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-21860 Filed 9-7-93; 8:45 am]
BILLING CODE 3410-34-M

Forest Service

Southern Region; Exemption From Appeal of Three Decisions To Control Southern Pine Beetle Infestations on the Poteau and Womble Ranger District of the Quachita National Forest, Arkansas

AGENCY: Forest Service, USDA.

ACTION: Notice; exemption of decision from administrative appeal.

SUMMARY: Pursuant to 36 CFR 217.4(a)(11), the Regional Forester for the Southern Region has determined that good cause exists and notice is hereby given to exempt from administrative appeal three decisions to control infestations of southern pine beetle on the Poteau and Womble Ranger Districts of the Quachita National Forest. Infested trees and a small buffer strip immediately around them will be cut, and where appropriate removed by commercial sale. A total of approximately 75 areas of active infestation have been identified on the two ranger districts; further outbreaks are occurring in these areas on a daily basis. Most "spots" average about $\frac{1}{4}$ acre in size (20-30 trees), but a few are up to 2-3 acres, and almost all grow rapidly. If uncontrolled, this activity could reach outbreak proportions, and many more trees could be killed. In addition, the salvage value of beetle-killed pine trees declines rapidly with the spread of blue stain fungi.

EFFECTIVE DATE: September 8, 1993.

FOR FURTHER INFORMATION CONTACT:

Questions about the exemption should be directed to Jean P. Kruglewicz, Appeals and Litigation Group Leader, Southern Region, Forest Service-USDA, 1720 Peachtree Road, NW., Atlanta, GA 30367 (404) 347-4867.

SUPPLEMENTARY INFORMATION: Southern pine beetle activity on the Poteau and Womble Ranger Districts has reached epidemic levels this summer, following a succession of warm and mild winters and a hot, dry summer. District personnel and logging contractors have been hard-pressed to control active infestations early. The Womble Ranger District has identified twenty-five sites on the east part of the district with active infestations. The Poteau Ranger District foresees the development of an additional 20 sites of activity on the east half of the district and another 30 on the west half of the district. We expect the bulk of the activity to be in management areas 14, 16, 17, and 18 on suitable land. A few trees may also be cut from unsuitable land in management areas 3, 9, 11, 12, 13, 16, 17, 18, and/or 20. Within the vicinity of each active infestation, additional outbreaks of beetle activity are common.

If treated quickly by cutting infested trees, most pine beetle "spots" can be limited to less than an acre in size, and very few will exceed 3 acres. This will prevent the creation of large gaps in the forest canopy, and protect soil and water quality, and habitat for some species of wildlife.

The district rangers propose to cut infested pine trees and a small buffer strip around them to halt the spread of the beetle. Within the areas described in the three decision documents, existing infestations and future associated outbreaks will be treated as they occur. Where appropriate and consistent with Forest Plan guidelines, cut trees will be removed by commercial timber sale. Blue-stain fungi spread rapidly in beetle-killed timber, and dramatically decrease its value as lumber—rapid salvage will avoid the loss of this raw material.

None of the areas to be treated involve Wilderness or other Congressionally designated areas. Altogether, less than 100 acres will be directly affected by the three decisions, and less than one million board feet of timber will be salvaged. The infestations larger than one acre in size may be planted with shortleaf pine to replace the trees killed by the beetle.

Interdisciplinary teams on the Womble and Poteau Ranger districts are currently completing environmental analyses of these three proposals to

control southern pine beetle infestations, and preparing appropriate documentation of these decisions. Given the present high level of beetle activity, the rapid growth of infestations as they occur, and the rapid spread of blue-stain fungi in beetle-killed trees, the need for action is critical. Any delay will result in the growth of these infestations to unmanageable proportions, the destruction of valuable timber, and the loss of much larger areas of mature forest to the beetle.

Dated: September 1, 1993.

Ralph F. Mumme,

Acting Regional Forester.

[FR Doc. 93-21788 Filed 9-7-93; 8:45 am]

BILLING CODE 3410-11-M

SUPPLEMENTARY INFORMATION:**Background**

On June 15, 1993, the Department of Commerce (the Department) published in the *Federal Register* (58 FR 33071) the preliminary results of its administrative review of the antidumping duty order on gray portland cement and clinker from Mexico (55 FR 35371, August 29, 1990). From June 28, 1993, to July 2, 1993, the Department conducted verification of respondent CEMEX, S.A.'s (CEMEX's) submissions with respect to the fictitious markets and cost-of-production (COP) issues. The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29, and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and U.S. Customs Service purposes only; our written description of the scope of the proceeding is dispositive.

This review covers two manufacturers/exporters of the subject merchandise to the United States, CEMEX and Apasco, S.A. de C.V. (Apasco). Apasco made no shipments of subject merchandise to the United States during the period of review (POR). As a result, the cash deposit for Apasco remains the margin percentage from the last administrative review.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from the Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement and the National Cement Company of California (petitioners), and respondent CEMEX on July 29, 1993. We received written rebuttal comments from petitioners and CEMEX on August 5, 1993. On August 10, 1993, we held a public hearing.

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-201-802]

Gray Portland Cement and Clinker From Mexico; 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 June 15, 1993, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers two manufacturers/exporters of the subject merchandise, CEMEX, S.A., and Apasco, S.A. de C.V.; and the period August 1, 1991, through July 31, 1992.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and on the correction of certain clerical errors, we have revised the preliminary rates. The final dumping margins range from 42.74 percent to 53.26 percent.

EFFECTIVE DATE: September 8, 1993.

FOR FURTHER INFORMATION CONTACT:

Gabriel Adler or Tom Prosser, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-5505.

Comment 1: Petitioners allege that through different movements in the home market prices of Type I, Type II, and Type V cement, CEMEX has established a fictitious market within the meaning of section 773(a)(5) of the Tariff Act. Petitioners allege that sharply different movements in net, ex-factory prices for these types of cement are in themselves dispositive of a fictitious market, and that the Department should not consider CEMEX's stated business reasons for these price movements.

Petitioners further argue that CEMEX's business reasons are "pretextual." According to petitioners, CEMEX, in the aftermath of the antidumping duty order, consolidated production of Type II and Type V cement at the Hermosillo plant in the northwest of Mexico with the clear intent of lowering the antidumping duty margins by increasing freight costs to customers of these types of cement in central Mexico. According to petitioners, the increased freight costs result in a larger deduction from gross prices, which in turn lowers the foreign market value (FMV). Petitioners point to the findings of the Department's team at verification as evidence of numerous misrepresentations by CEMEX, and argue that CEMEX failed to supply critical documents requested by the Department. Petitioners note that the Department in the final results of the first review accepted CEMEX's business reasons for the price movements at issue "in the absence of information to rebut them" (*Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 25803, 25806, (April 28, 1993)). Petitioners argue that the record of this review is much more extensive and revealing than that of the first review, and that CEMEX's sales volumes of and prices for different types of cement in the home market in the period of this review show a continued pattern consistent with the establishment of a fictitious market. Petitioners therefore contend that CEMEX's home market sales of Type II and Type V cement should not be used as the basis for the calculation of FMV.

Petitioners, in the alternative, argue that CEMEX's home market sales of Type II and Type V cement are not in the ordinary course of trade, and therefore should not be used as the basis for FMV, as stipulated in section 773(a)(1)(A) of the Tariff Act.

In making this assertion, petitioners emphasize that the Department's approach to the ordinary-course-of-trade provision of the statute "does not rely on one factor taken in isolation but rather considers all the circumstances

particular to the sales in question" (*Certain Welded Carbon Steel Standard Pipes and Tubes from India, Final Results of Antidumping Duty Administrative Review*, 56 FR 64753, 64755 (December 12, 1991)).

Petitioners point to cases wherein the Department considered the following factors to be pertinent: (a) The frequency and volume of sales of the product type under investigation, (b) the number of buyers of the product, (c) disparities in the price of the product type under investigation and the predominant product type sold in the home market, (d) differences in the profit margins for the product type under investigation and for the predominant product type sold in the home market, (e) changes in selling patterns after issuance of the antidumping duty order, and (f) special shipping arrangements. Petitioners argue that examination of each of these factors in the instant review leads to the conclusion that home market sales of Type II and Type V cement were not made in the ordinary course of trade.

In response to petitioners' fictitious market allegations, CEMEX argues that the Department, both in the final results of the first administrative review and the preliminary results in the instant administrative review, found that CEMEX had not established a fictitious market after the issuance of the order. CEMEX argues that no hard evidence to the contrary has been offered that would lead the Department to reverse its previous decisions.

CEMEX maintains that gross prices are the correct yardstick for gauging the movements in prices as addressed by the statute. CEMEX argues that petitioners' "net prices" are a hybrid concept that reflect neither gross prices nor FMV.

CEMEX further argues that any movements in net prices since the issuance of the order were incidental effects of legitimate business strategies. According to CEMEX, its production strategies after issuance of the order reflected (a) a capacity glut in the northwest of Mexico, arising from the acquisition of another Mexican cement producer in July of 1989; (b) a natural abundance of raw materials required for Type II production in Hermosillo; (c) a large market for Type II cement in the southwest United States; (d) the cessation of Type I exports to the eastern United States in reaction to the issuance of the order; (e) a comparatively small home market for Type II and Type V cement; and (f) an increasing demand for CEMEX's primary products in Mexico, Type I and Pozzolanic cement, resulting in capacity problems at numerous plants. CEMEX

emphasizes that the decision to supply Mexican customers of Type II cement from Hermosillo was driven by the decision regarding the much larger U.S. market, and by system-wide production considerations. According to CEMEX, it makes no sense to look at the Hermosillo domestic-supply decision in isolation.

In response to petitioners' ordinary-course-of-trade argument, CEMEX contends that home market sales of Type II and Type V cement are and have always been within the ordinary course of trade. CEMEX contends that Type II cement was sold by CEMEX, Apasco, and other cement producers prior to and during the investigation of sales at less than fair value (LTFV), and that there is no evidence that any of these producers has ceased selling Type II cement in Mexico. CEMEX similarly argues that Type V cement was sold in Mexico by Tolteca (and by CEMEX after the acquisition of Tolteca), prior to the LTFV investigation, and CEMEX continues to sell Type V cement in Mexico to the present day.

CEMEX further claims that Type II cement is distributed through the same channels of distribution as Type I and pozzolanic cement. According to CEMEX, all three types were and still are either sold directly to end-users from the manufacturing plants or sent to regional distribution centers for subsequent sale to end-users. CEMEX argues that the Department has verified that there is a real and historical demand for both Type II and Type V cement among CEMEX's customers in Mexico.

CEMEX finally contends that petitioners do not relate the Department's analysis in the cases cited in their brief to the facts in the record of the instant review. CEMEX argues that the circumstances in the cited cases are not applicable to the instant review, and in some instances support CEMEX's contention that Type II and Type V cement sales are in the ordinary course of trade.

Department's Position: We note that petitioners' allegations with respect to the creation of a fictitious market and sales outside the ordinary course of trade in this case are based upon the same fact pattern. Ultimately, both allegations point to the unique nature of CEMEX's domestic market for Type II and Type V cement, including the special shipping arrangements for sales of these types of cement that were instituted after issuance of the antidumping duty order.

At verification, we thoroughly investigated the nature of CEMEX's home market sales of Type I, Type II,

and Type V cement. Our findings are contained in a detailed verification report, issued on July 21, 1993, which is on file in room B-099 of the Department's main building.

Based on the fact pattern made evident at verification (and discussed below), and on consideration of the extensive evidence submitted in this review, we have determined that CEMEX's home market sales of Type II and Type V cement in the home market are outside the ordinary course of trade.

Section 773(a)(1)(A) of the Tariff Act and section 353.46(a) of the Department's regulations provide that FMV shall be based on the price at which "such or similar merchandise" is sold in the exporting country in the "ordinary course of trade for home consumption". Section 771(15) of the Tariff Act defines "ordinary course of trade" as "the conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind" (see also 19 CFR 353.46(b)).

Petitioners are correct in arguing that the Department, in determining whether home market sales are in the ordinary course of trade, does not rely on one factor taken in isolation but rather considers all of the circumstances particular to these sales (see *Murata Mfg. Co. v. United States*, Slip Op. 93-53 (Court of International Trade (CIT) April 20, 1993); *Certain Welded Carbon Steel Standard Pipes and Tubes from India; Final Results of Antidumping Duty Administrative Review*, 57 FR 54362 (November 18, 1992)).

We have considered the totality of circumstances surrounding CEMEX's Type II and Type V sales. These criteria included those listed in petitioner's brief. We also considered whether CEMEX sold Type II and type V cement in Mexico prior to exporting this merchandise, and whether there was a promotional element to these sales.

A full discussion of our conclusions, necessitating reference to proprietary information, is contained in a Departmental memorandum in the official file for this case (a public version of this memorandum is on file in room B-099 of the Department's main building). Generally, however, we have observed the following:

(a) In Mexico, Type II and type V cement are specialty cements sold to a "niche" market. These sales represent a minuscule percentage of CEMEX's total sales of cement.

(b) CEMEX did not sell Type II or Type V cement in the home market until

it began production for export in the mid-eighties, despite the fact that a small domestic demand for such cement existed prior to that time.

(c) Shipping arrangements for home market sales of Type II and Type V cement are not ordinary. More than 95 percent of cement shipments in Mexico are within a radius of 150 miles, yet during the POR CEMEX shipped types II and V cement for the domestic market over considerably greater distances and absorbed much of the freight costs for these longer shipments.

(d) CEMEX's profit on Type II and Type V cement sales in the POR is not ordinary, in comparison to the company's profits on sales of all types of cement.

(e) According to CEMEX officials at verification, CEMEX is interested in retaining customers of Type II and Type V cement in the home market because: (1) these customers may also purchase other types of cement in large quantities, and (2) sales of Type II and Type V cement promote CEMEX's corporate image. There is thus a promotional quality to these sales that is not evidenced in CEMEX's ordinary sales of cement.

These observations lead us to conclude that CEMEX's home market sales of Type II and Type V cement are not in the ordinary course of trade, and thus should not be used for purposes of calculating FMV. CEMEX's argument that there is a legitimate demand for Type II and Type V cement in the home market, and that this demand is supplied by a number of Mexican cement firms, is correct but is not relevant to the issue of whether these sales of cement are within CEMEX's ordinary course of trade in the home market.

We note that petitioners and respondents have made a number of comments on the issue of fictitious markets. The statute stipulates that in the ascertainment of FMV "no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account" (section 773(a)(1)(B) of the Tariff Act). Since the sales called into question by the fictitious markets allegation have been found to be outside the ordinary course of trade, and accordingly will not be used in the calculation of FMV, it is not necessary for us to address this issue.

In situations where identical product types cannot be matched, the statute expresses a preference for basing FMV on similar merchandise (see section 773(a)(1)(A) of the Tariff Act and section 353.46(a) of the Department's regulations). Normally, we would base

FMV on sales of Type I cement, since they are representative of CEMEX's sales of similar merchandise. However, in this review we have not specifically requested, and CEMEX has not provided, "difference in merchandise" (difmer) information that would permit an accurate comparison of home market sales of Type I cement to U.S. sales of Type II and Type V cement.

In instances where we determine that FMV of imported merchandise cannot be based on such or similar merchandise, the statute permits us to directly base FMV on the constructed value (CV) of such merchandise (section 773(a)(2) of the Tariff Act). We have therefore based FMV on the CV of Type II and Type V cement, in accordance with section 773(e) of the Tariff Act.

Comment 2: Petitioners and CEMEX have commented on several issues relating to home market sales of Type II and Type V cement: (1) the validity of CEMEX's reported inland freight expense, (2) the Department's rejection of home market sales of Type II cement to related parties, (3) the adjustment for uncollected taxes in the home market, (4) the possible recovery of costs on sales found to be below the cost of production, (5) an error in the reported freight expense for one sale of Type II cement, and (6) exclusion of rebates and discounts from the COP for purposes of determining the percentage of home market sales below cost.

Department's Position: For the final results, these issues are moot, given our finding that sales of Type II and Type V cement are outside the ordinary course of trade, and our subsequent use of CV for purposes of calculating FMV (see our response to Comment 1). Thus, it is not necessary for us to address these points.

Comment 3: Petitioners argue that cement production costs for this review should be based upon the cost information for calendar year 1992. Petitioners state that the Department's questionnaire requests that "the COP and the CV should be calculated on a weight average basis for the costs incurred during the fiscal year that most closely corresponds to the POR." Petitioners state that, because there are only five months of the POR in 1991 (August-December) and seven months of the POR in 1992 (January-July), and because CEMEX has a calendar fiscal year, 1992 is CEMEX's "fiscal year that most closely corresponds to the POR."

CEMEX argues that, in conformity with the Department's questionnaire instructions, it reported cost information for the fiscal quarters that most closely correspond to the POR (i.e., quarterly data for 1991 and three

quarters of 1992). CEMEX further argues that petitioners' suggestion of including information from the fourth quarter of 1993 ignores the Department's intent to determine the COP during a specific time period associated with the sales of subject merchandise. CEMEX also argues that the methodology used by the Department covers one full year and incorporates the entire cycle of seasonal fluctuations.

Department's Position: In accordance with our normal practice, we have calculated CV for the time period most closely associated with sales to which CV is being compared. More specifically, the POR was from August 1, 1992, through July 31, 1992. For the final results of review, the Department based its calculations on the quarterly information from July 1, 1991, through June 30, 1992.

Using information from the fourth quarter of 1992 would distort the U.S. and FMV comparisons as costs incurred during this quarter do not relate to sales which occurred during the POR. Moreover, the annual period used for calculating CV reflects any seasonal fluctuation which may occur, because it accounts for a full operating cycle.

Comment 4: Petitioners maintain that the cost of raw materials purchased from a related party should be based upon best information available (BIA), because CEMEX reported these costs in an inappropriate manner in its questionnaire response.

CEMEX argues that petitioners' argument is premised on a fundamental error of fact and misinterpretation of the Department's verification report. CEMEX asserts that the correct information, concerning the transactions in question, was reviewed at verification and that the Department should use the actual cost of materials supplied by the related party, as reported in the questionnaire response and substantiated at verification.

Department's Position: We agree with respondent. The related party from which CEMEX purchased the raw materials is a 100-percent-owned subsidiary. Accordingly, we accepted CEMEX's submitted methodology which valued these raw materials based upon the COP of the related party.

Comment 5: Petitioners argue that the Department should not include CEMEX's monetary position gain in calculating interest expense. Petitioners state that adjustments for monetary gains in non-inflationary-economy cases greatly distort the actual COP during the POR. In the alternative, petitioners argue that if the Department allows CEMEX's monetary position gain to offset interest expense it should do so

only to the extent that the monetary position gain on debt is specifically related to the production of the subject merchandise.

CEMEX claims that petitioners' position on the issue of monetary gains was rejected in the first administrative review of this case. CEMEX further notes that the Department followed the methodology used in the first administrative review in the preliminary results of the instant review, and that there is no reason to depart from this in the final results.

Department's Positions: Consistent with the approach outlined in *Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 25803, 25806, (April 28, 1993) we have included the effect of the monetary gain in our calculation of the financing costs of CEMEX.

Comment 6: Petitioners argue that the proper methodology for calculating profit to be used in CV is to use CEMEX's overall profit margin on the class or kind of merchandise sold in the home market. Petitioners believe that the CV used in the preliminary results incorrectly based profit upon sales of each specific type of cement (i.e., Type II and Type V cement).

Petitioners also argue that the Department's profit calculation incorrectly relies on profit earned by CEMEX on home market and U.S. cement sales, rather than only on home market sales.

CEMEX contends that petitioners have misread the Department's computer program. CEMEX contends that the Department's program calculates profit on Type II and Type V cement, and that the profit calculation is based only on home market sales.

Department's Position: We agree with CEMEX that the Department's computer program for the preliminary results bases profit calculations only on home market sales.

However, for the preliminary results we incorrectly relied on calculated profits for Type II and Type V cement. We agree with petitioners that the proper profit figure for the calculation of CV is the reported average home market profit for the general class or kind of merchandise. Therefore, in accordance with the Department's practice, we have relied on this figure as reported by CEMEX in our calculations of CV.

Comment 7: CEMEX argues that in calculating COP the Department should use the general and administrative (G&A) expenses reported by CEMEX. CEMEX states that since the submitted methodology, which reclassified certain plant administrative expense, was fully

examined by the Department at verification it should be relied upon in reaching the final results.

Department's Position: We agree with CEMEX. Since we have verified that the reclassified expenses were related to factory overhead, we have relied on the submitted information for these final results.

Comment 8: CEMEX believes that its adjustment to factory overhead for excess capacity related to all production facilities is correct and should be relied upon for the final results. CEMEX notes that companies routinely revise their accounting procedures and that this change to their prior accounting methodology should not be rejected simply because it represents a change. CEMEX further emphasizes that this change in methodology is reflected in CEMEX's internal cost accounting reports and records.

Petitioners argue that the Department's standard practice is to base COP on the fully-absorbed cost to produce each specific model. Petitioners believe that CEMEX's submitted excess capacity calculation is designed to distort COP by transferring costs to products not under review, and therefore should be rejected.

Department's Position: In this case, calculating excess capacity at the company-wide level would not reflect the costs incurred to manufacture the products under review. Pooling excess capacity costs incurred by specific plants and allocating these costs to all plants would result in shifting these costs to products which did not incur these costs. We have therefore rejected CEMEX's calculation of company-wide excess capacity costs and have relied on the weighted-average results of the actual costs incurred at each of the plants producing the subject merchandise.

Comment 9: CEMEX asserts that in the final results the Department should continue to apply the financial expense methodology used in the first review. In particular, CEMEX argues that interest income identified as relating to current assets should be included. CEMEX also argues that if income earned on certain financial investment is excluded then monetary expenses created by the same instruments must also be excluded.

Department's Position: We agree with CEMEX. In calculating financial income and expenses, we have followed the Department's normal practice of including all interest expense offset by short-term interest income. In addition, consistent with our past practice in cases where the country under review is experiencing significant inflation (but not hyperinflation) which is reflected

through a monetary correction to the financial statements, we have included the monetary correction in our calculation of financial expenses (see *Gray Portland Cement and Clinker from Mexico*, 58 FR 25803, 25806 (April 28, 1993)).

Comment 10: CEMEX argues that the Department should not calculate, as part of its COP analysis, a figure for mine depletion expenses incurred by CEMEX. CEMEX contends that its policy of not recording any mine depletion expense is reasonable and in accordance with Mexican generally accepted accounting practices (GAAP). CEMEX further argues that even the most unrealistic and adverse assumptions result in only an immaterial amount of depletion expenses.

Petitioners believe that the Department must impute depletion expenses in accordance with standard cost accounting practice.

Department's Position: In general, the Department adheres to a country's GAAP in determining the relevant costs on a fully absorbed basis. However, in this case following Mexican GAAP would result in an inaccurate measurement of cost since the mine depletion expenses would not be included as part of COP, yet all costs incurred must be reflected in COP. For the depletion expenses we have used the depletion cost calculated by CEMEX from the company's records.

Comment 11: Petitioners argue that the indirect selling expenses incurred by C.L. Pharris (Pharris), a U.S. concrete producer affiliated with CEMEX, must be deducted from U.S. price (USP) for sales subject to further manufacturing in the United States.

Department's Position: In our preliminary results, we inadvertently failed to deduct indirect selling expenses incurred by Pharris for the calculation of net USP for sales subject to further manufacturing. We have made the necessary deduction for these final results.

Comment 12: Petitioners argue that a transaction tax incurred by a U.S. subsidiary of CEMEX on sales of cement in Texas, and reported by CEMEX as a direct selling expense, should be deducted accordingly from USP.

Petitioners note that in the preliminary results of review the Department did not adjust for this tax since the Department considered that there is no provision in the Tariff Act for such an adjustment. Petitioners argue that section 772(e) of the Tariff Act provides for deductions to USP for expenses incurred by or for the account of exporters in the United States. Petitioners contend that the Department

has relied on this provision of the Tariff Act in prior reviews for the deduction of special state transaction taxes. Citing *Final Determination of Sales at Less than Fair Value: New Minivans from Japan*, 57 FR 21,937, 21,938 (May 26, 1992) (*Minivans*), petitioners contend that the Department made an adjustment to a respondent's USP (based on exporter's sale price (ESP)) for the payment of a wholesale tax on vehicles sold to Hawaiian dealers.

Department's Position: We agree with petitioners. In *Minivans*, the Department made an adjustment to a respondent's USP for the payment of a state-levied wholesale tax on vehicles sold to unrelated dealers. In accordance with section 772(e)(2) of the Tariff Act, we have made a similar adjustment to USP in this administrative review for the transaction tax incurred by a U.S. subsidiary of CEMEX on sales of cement in Texas.

Comment 13: CEMEX argues that the Department should use transfer prices between related parties, rather than the cost of imported merchandise, as the basis for its U.S. further manufacturing value-added calculations. During the instant POR, CEMEX purchased a concrete ready-mix operation in California, Pharris. Until the acquisition, Pharris was a customer of CEMEX's related California cement distributor, Pacific Coast Cement (PCC). Thus, sales from PCC to Pharris were sales of cement to an unrelated party and were reported as such on the sales tape. CEMEX has further reported to the Department all post-acquisition sales from PCC to Pharris, and claims that these sales are demonstrably arm's-length transactions. According to CEMEX, the Department should calculate the value added in the United States using Pharris's selling price for the further-manufactured product (concrete), less Pharris's movement charges and selling expenses, less the purchase price of the cement (the transfer price between PCC and Pharris), to arrive at the cost plus the profit on just the concrete production. CEMEX contends that the Department's usual methodology (*i.e.*, to calculate the value added in the United States based on the cost of the imported merchandise, the cost added in the United States, the profit on each sale, and the profit allocated across costs to the U.S. manufacturing), yields an incorrect figure and is therefore inappropriate. CEMEX argues that the Department normally relies on costs rather than transfer price in value-added calculations because usually there is no way of testing the validity of transfer prices; in this instance, CEMEX argues,

the Department can test the existence of arm's-length prices for the imported product.

Petitioners argue that CEMEX has not shown how the application of the Department's standard methodology for the calculation of value added is flawed in this case. Petitioners argue that the Department's methodology more accurately determines the correct amount of profit/loss on the concrete based on the actual cost of the imported cement and the further manufacturing into concrete in the United States. Petitioners further contend that the Department's methodology also more accurately allocates profit/loss based on relative cost, without the inclusion of discretionary profit/loss contained in an arbitrarily established transfer price between related parties.

Department's Position: CEMEX first suggested that we calculate value added using post-acquisition PCC sales prices to Pharris in its December 18, 1993, response to our antidumping questionnaire (see p. VII-23). However, at no time during this review (prior to the submission of the case briefs) has CEMEX claimed that its related party sales are at arm's length, or provided analysis to this effect. Furthermore, although CEMEX has alleged that the Department's calculation methodology leads to an incorrect result, CEMEX has provided no evidence on the record to support its claim that sales prices to related parties represent a more appropriate value for use in this calculation. Therefore, we have not revised our methodology for the calculation of value added in the final results.

Comment 14: CEMEX argues that the Department should include inventory carrying expenses in the calculation of the ESP offset. CEMEX also argues that for concrete sales the ESP offset should reflect the indirect selling expenses incurred by the U.S. subsidiary for sales of concrete.

Department's Position: In our preliminary results of review, we inadvertently failed to include inventory carrying expenses, which are indirect selling expenses, in the calculation of the ESP offset. We similarly failed to include in the ESP offset the indirect selling expenses incurred by the U.S. subsidiary. We have made the necessary correction to the computer program for the final results.

Comment 15: CEMEX points out that for concrete sales, the adjustment for post-sale credit and debit notes (CRDDEB) is incorrect by a factor of 100, leading to a distortion of the results for a large number of concrete transactions.

CEMEX suggests that the same problem may apply to the adjustments for revenue from sales of mix additives and color in conjunction with sales of concrete (OTHREV), revenue from minimum load charges (OTHREV2), and billing reconciliation for PCC sales (BILLAD).

Department's Position: Due to an error in the Department's reading of the computer tapes submitted by CEMEX, the values for CRDDEB, OTHREV, and OTHREV2 were inadvertently inflated by a factor of 100 in the database used by the Department in the margin calculations for the preliminary results. These values have been corrected through an appropriate statement in the computer program for the final results. We have not found any discrepancy between the values for BILLAD reported by CEMEX and those used in our database, and therefore have made no changes to this item in our computer program.

Comment 16: CEMEX argues that the Department's calculations did not include as additions to USP the reported adjustments for "other revenue" on concrete sales. CEMEX requests that the Department include these adjustments in the net price calculations for concrete.

Department's Position: In our preliminary results we inadvertently failed to adjust USP for "other revenue" on concrete sales. We have made the necessary adjustment in the computer program for the final results.

Comment 17: CEMEX claims that two changes in its U.S. data, regarding bad debt expenses and interest revenue on transactions, provided to the Department by CEMEX in a letter dated June 4, 1993, should be implemented in the final results.

Petitioners argue that CEMEX's letter of June 4, 1993, was unsolicited and submitted to the Department well after the applicable time limit imposed by the Department's regulations. Petitioners request that the Department return the June 4, 1993, submission to CEMEX, and that the Department not rely on untimely, new factual information in reaching the final results of review.

Department's Position: The Department's regulations stipulate that factual information must be submitted to the Department by " * * * the earlier of the date of notice of preliminary results of review or 180 days after the date of publication of the notice of initiation of review" (19 CFR 353.31 (a)(1)(ii)). CEMEX's letter of June 4, 1993, sought to introduce new factual information after the regulatory time window; we have thus disregarded it for purposes of the final results of review.

Comment 18: CEMEX argues that the Department included in the margin calculations those sales from PCC to Pharris which took place after CEMEX's acquisition of Pharris. According to CEMEX, these sales were included on the sales tape only in the event that the Department might want to use the data for the calculation of value added for further-manufactured sales.

Department's Position: The Department inadvertently included the post-acquisition PCC to Pharris sales in the margin calculations for the preliminary results. These sales have been excluded from the database used in the calculations for the final results.

Final Results of Review

As a result of our review, we determine the weighted-average dumping margins for the period August 1, 1991, through July 31, 1992, to be:

Company	Margin percentage
CEMEX, S.A.	42.74
Apasco, S.A. de C.V.	*53.26

* For the period August 1, 1991, to July 31, 1992, Apasco made no shipments. In the last administrative review, the Department determined a margin percentage of 53.26 percent for Apasco.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be the rates listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise. The cash deposit rate for all other manufacturers or exporters will be 58.05 percent. On May 25, 1993, the CIT in *Floral Trade Council v. United States*, Slip Op. 93-79, and *Federal-Mogul Corporation and the Torrington Company v. United States*, Slip Op. 93-

83, determined that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews.

In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical error or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 58.05 percent, the "all others" rate established in the final notice of LTFV investigation by the Department (55 FR 29244, July 18, 1990).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751 of

the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 31, 1993.

Joseph A. Spetrini,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 93-21854 Filed 9-7-93; 8:45 am]

BILLING CODE 3510-DS-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of Panel.

SUMMARY: On August 27, 1993, a Binational Panel issued its decision in the consolidated reviews of the Final Affirmative Material Injury

Determination in both the Antidumping Duty Investigation and the Countervailing Duty Investigation respecting Magnesium from Canada made by the U.S. International Trade Commission. These determinations were reviewed by the same panel under Secretariat File No. USA-92-1904-05/06 and the decision affected both determinations. The Binational Panel remanded the final determinations to the International Trade Commission for further action on two issues and affirmed the determination in all other respects. A copy of the complete panel decision is available from the Binational Secretariat.

FOR FURTHER INFORMATION CONTACT:

James Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force January 1, 1989, the Government of the United States and the Government of Canada

established Rules of Procedures for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter was conducted in accordance with these Rules.

Background

On August 26, 1992 the U.S. International Trade Commission published the Final Affirmative Material Injury Determinations in the Antidumping Duty and Countervailing Duty Investigations respecting Magnesium from Canada.

On September 25, 1992, Norsk Hydro Canada, Inc. filed Requests for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Separate Requests for Panel Review were filed for both the antidumping and countervailing duty injury determinations. In addition, the Government of Quebec filed Requests for Panel Review in this matter.

Panel Decision

On August 27, 1993, the Binational Panel remanded the final determinations to the U.S. International Trade Commission for detailed explanation as to:

(1) Whether the U.S. industry producing pure magnesium is materially injured or threatened with material injury by reason of dumped and subsidized imports of pure magnesium from Canada; and

(2) Whether the U.S. industry producing alloy magnesium is materially injured or threatened with material injury by reason of dumped and subsidized imports of pure magnesium from Canada.

The Commission was instructed to provide a complete analysis of all factors it considers relevant to its determination and may also analyze injury with respect to more than two domestic industries, as long as its determinations of additional like products is supported by the evidence of record and adequately explained.

The Binational Panel instructed the Commission to provide its determination on remand within 60

days of the panel decision (by October 25, 1993).

Dated: September 1, 1993.

James R. Holbein,
U.S. Secretary, FTA Binational Secretariat.
[FR Doc. 93-21858 Filed 9-7-93; 8:45 am]
BILLING CODE 3510-GT-M

National Oceanic and Atmospheric Administration

Marine Mammals

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

ACTION: Issuance of modification to permit (P545).

SUMMARY: Notice is hereby given that Permit No. 858 issued to Dr. James R. Gilbert, Professor, Wildlife Department, University of Maine, Orono, ME 04469-5755, on July 6, 1993 (58 FR 37715), has been modified. The modification becomes effective upon publication in the **Federal Register**.

ADDRESSES: The Permit, as modified, and associated documents are available upon written request or by appointment in the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20901 (301/713-2289); and Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200).

SUPPLEMENTARY INFORMATION: 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), the subject Scientific Research Permit was issued to conduct population census on an unspecified number of harbor seals (*Phoca vitulina*) on coastal ledges in New England from Isle of Shoals north to the Canadian border, and is modified to include incidental harassment of an unspecified number of gray seals (*Halichoerus grypus*) that might be located in the same area(s).

Dated: August 31, 1993.

Herbert W. Kaufman,
Acting Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 93-21787 Filed 9-7-93; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Meeting of the Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory

Committee Act (Pub. L. 92-463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

DATES: The Public Advisory Committee for Trademark Affairs will meet from 10 a.m. until 4 p.m. on October 5, 1993.

PLACE: U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, room 912, Arlington, Virginia.

STATUS: The meeting will be open to public observation, seating will be available for the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

MATTERS TO BE CONSIDERED: The agenda for the meeting is as follows:

- (1) Finance
- (2) Automation
- (3) Strategic Planning
- (4) Current Trademark Office Practice Issues
- (5) International Trademark Law

CONTACT PERSON FOR MORE INFORMATION:

For further information, contact Lynne Beresford, Office of the Assistant Commissioner for Trademarks, Building CPK2, room 910, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 305-9464.

Dated: August 30, 1993.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 93-21746 Filed 9-7-93; 8:45 am]

BILLING CODE 3510-16-M

COMMISSION ON IMMIGRATION REFORM

Hearing

AGENCY: U.S. Commission on Immigration Reform.

ACTION: Announcement of meeting.

SUMMARY: This notice announces a public hearing of the Commission on Immigration Reform. The Commission was established by the Immigration Act of 1990 under section 141. The Commission will be hearing from a panel of immigration policy experts on "Immigration and Community Relations." The focus of the hearing will be relations between recent immigrants and native-born populations and longer-resident immigrants. The Commission will be seeking to assess the impact of immigration on communities, discussing tensions which arise, the potential for future problems, and model programs and strategies for promoting improved relations. The Commission also seeks information about the benefits to communities that derive from increased ethnic diversity.

DATES: 2 p.m.-5 p.m., October 1, 1993.

ADDRESSES: Hall of States, room 333, 444 North Capitol Street, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT:

Beth Malks or Brett Endres, Telephone: (202) 673-5348.

Dated: September 1, 1993.

Susan Forbes Martin,

Executive Director.

[FR Doc. 93-21785 Filed 9-7-93; 8:45 am]

BILLING CODE 6820-97-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 171. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 171 is being published in the *Federal Register* to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: September 1, 1993.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective 1 June 1979. Per Diem Bulletins published periodically in the *Federal Register* now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 5000-04-M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE
COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND
POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN
EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
ALASKA:				
ADAK 5/	\$ 10	\$ 34	\$ 44	10-01-91
ANAKTUVUK PASS	83	57	140	12-01-90
ANCHORAGE				
05-15--09-15	174	71	245	05-15-93
09-16--05-14	81	66	147	12-01-92
ANIAK	73	36	109	07-01-91
ATQASUK	129	86	215	12-01-90
BARROW	86	73	159	06-01-91
BETHEL	82	64	146	01-01-93
BETTLES	65	45	110	12-01-90
COLD BAY	110	54	164	07-01-93
COLDFOOT	95	59	154	10-01-92
CORDOVA	66	77	143	12-01-92
CRAIG	67	35	102	07-01-91
DILLINGHAM	76	38	114	12-01-90
DUTCH HARBOR-UNALASKA	113	67	180	05-01-92
EIELSON AFB				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
ELMENDORF AFB				
05-15--09-15	174	71	245	05-15-93
09-16--05-14	81	66	147	12-01-92
EMMONAK	72	54	126	06-01-93
FAIRBANKS				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
FALSE PASS	80	37	117	06-01-91
FT. RICHARDSON				
05-15--09-15	174	71	245	05-15-93
09-16--05-14	81	66	147	12-01-92
FT. WAINWRIGHT				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
HOMER				
05-01--09-30	71	60	131	05-01-93
10-01--04-30	53	62	115	12-01-92
JUNEAU				
05-01--10-01	88	74	162	05-01-92
10-02--04-30	75	73	148	01-01-92
KATMAI NATIONAL PARK	89	59	148	12-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM		MAXIMUM	EFFECTIVE DATE
	LODGING AMOUNT (A)	M&IE RATE (B)	PER DIEM RATE (C)	
ALASKA: (CONT'D)				
KENAI-SOLDOTNA				
04-02--09-30	\$ 94	\$ 68	\$162	04-02-93
10-01--04-01	57	66	123	12-01-92
KETCHIKAN				
05-14--10-14	90	77	167	06-01-93
10-15--05-13	68	75	143	10-15-93
KING SALMON 3/	75	59	134	12-01-90
KLAWOCK	75	36	111	07-01-91
KODIAK	71	61	132	01-01-92
KOTZEBUE	133	87	220	05-01-93
KUPARUK OILFIELD	75	52	127	12-01-90
METLAKATLA	79	44	123	07-01-91
MURPHY DOME				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
NELSON LAGOON	102	39	141	06-01-91
NOATAK	133	87	220	05-01-93
NOME	71	58	129	01-01-93
NOORVIK	133	87	220	05-01-93
PETERSBURG	72	64	136	05-01-92
POINT HOPE	99	61	160	12-01-90
POINT LAY 6/	106	73	179	12-01-90
PRUDHOE BAY-DEADHORSE	64	57	121	12-01-90
SAND POINT	75	36	111	07-01-91
SEWARD				
05-01--09-30	107	53	160	05-01-92
10-01--04-30	61	48	109	01-01-92
SHUNGNAK	133	87	220	05-01-93
SITKA-MT. EDGECOMBE	72	69	141	01-01-92
SKAGWAY				
05-14--10-14	90	77	167	06-01-93
10-15--05-13	68	75	143	10-15-93
SPRUCE CAPE	71	61	132	01-01-92
ST. GEORGE	100	39	139	06-01-91
ST. MARY'S	77	59	136	06-01-93
ST. PAUL ISLAND	81	34	115	12-01-90
TANANA	71	58	129	01-01-93
TOK				
04-21--10-31	60	58	118	06-01-93
11-01--04-20	48	57	105	11-01-93

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE
COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND
POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN
EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
UMIAT	\$ 97	\$ 63	\$160	12-01-90
VALDEZ				
05-01--09-01	98	53	151	05-01-93
09-02--04-30	82	70	152	12-01-92
WAINWRIGHT	90	75	165	12-01-90
WALKER LAKE	82	54	136	12-01-90
WRANGELL				
05-14--10-14	90	77	167	06-01-93
10-15--05-13	68	75	143	10-15-93
YAKUTAT	70	40	110	12-01-90
OTHER 3, 4, 6/	63	48	111	01-01-93
AMERICAN SAMOA	85	47	132	12-01-91
GUAM	155	75	230	05-01-93
HAWAII:				
ISLAND OF HAWAII: HILO	73	61	134	06-01-93
ISLAND OF HAWAII: OTHER	80	71	151	06-01-93
ISLAND OF KAUAI				
04-01--11-30	110	75	185	06-01-93
12-01--03-31	122	76	198	12-01-93
ISLAND OF KURE 1/		13	13	12-01-90
ISLAND OF MAUI				
04-01--11-30	79	71	150	06-01-93
12-01--03-31	96	73	169	12-01-93
ISLAND OF OAHU	105	62	167	06-01-93
OTHER	79	62	141	06-01-93
JOHNSTON ATOLL 2/	20	20	40	10-01-92
MIDWAY ISLANDS 1/		13	13	12-01-90
NORTHERN MARIANA ISLANDS:				
ROTA	68	55	123	01-01-93
SAIPAN	100	69	169	01-01-93
TINIAN	50	55	105	01-01-93
OTHER	20	13	33	12-01-90
PUERTO RICO:				
BAYAMON				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
CAROLINA				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
FAJARDO (INCL CEIBA, LUQUILLO AND HUMACAO)	65	52	117	09-01-93

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM	MAXIMUM		EFFECTIVE
	LODGING AMOUNT (A)	M&IE RATE (B)	PER DIEM RATE (C)	
PUERTO RICO: (CONT'D)				
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)				
05-01--12-14	\$ 93	\$ 73	\$166	09-01-93
12-15--04-30	116	76	192	12-15-93
MAYAGUEZ	85	65	150	08-01-92
PONCE	96	75	171	09-01-93
ROOSEVELT ROADS	65	52	117	09-01-93
SABANA SECA				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
OTHER	63	52	115	08-01-92
VIRGIN ISLANDS OF THE U.S.				
06-02--12-19	180	112	292	09-01-93
12-20--06-01	255	120	375	12-20-93
WAKE ISLAND 2/	4	17	21	12-01-90
ALL OTHER LOCALITIES	20	13	33	12-01-90

¹ Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

² Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

³ On any day when US Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of \$19.65 is prescribed to cover meals and incidental expenses at Shemya AFB, Clear AFS, Galena APT and King Salmon APT. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by \$4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

⁴ On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of \$34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by \$10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

⁵ On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of \$25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. Government or contractor quarters.

⁶ The meal rates listed below are prescribed for the following locations in Alaska: Cape Lisburne RRL, Cape Newenham RRL, Cape Romanzof APT, Fort Yukon RRL, Indian Mtn RRL, Sparrevohn RRL, Tatalina RRL, Tin City RRL, Barter Island AFS, Point Barrow AFS, Point Lay AFS and Oliktok AFS. The amount to be added to the cost of government quarters in determining the per diem will be \$3.50 plus the following amount:

	Daily rate
DOD Personnel	\$13
Non-DOD Personnel	30

Dated: September 1, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-21747 Filed 9-7-93; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF EDUCATION

National Education Commission on Time and Learning; Hearing

AGENCY: National Education Commission on Time and Learning, Education.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming public Hearing of the National Education Commission on Time and Learning. This notice also describes the functions of the Commission. Notice of this Hearing is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE, TIME AND LOCATION:

September 22, 1993 from 1 p.m. to 3 p.m., Public Hearing, The University of Maine, Conference & Institute Division, Wells Commons—Main Dining Room, Orono, Maine

September 23, 1993 from 9 a.m. to 4 p.m., Public Hearing

(If Necessary) 4 p.m. to 4:30 p.m., Business Meeting

September 24, 1993 from 8:30 a.m. to 12:45 p.m., Public Hearing, Harvard University—Gutman Library, Cambridge, MA, Telephone: Laura Burns (617) 495-7875

FOR FURTHER INFORMATION CONTACT:

Julia Anna Anderson, Deputy Executive Director, or (202) 653-5063.

SUPPLEMENTARY INFORMATION: The National Education Commission on Time and Learning is established under section 102 of the Education Council Act of 1991 (20 U.S.C. 1221-1). The Commission is established to examine the quality and adequacy of the study and learning time of elementary and secondary students in the United States, including issues regarding the length of the school day and year, how time is being used for academic subjects, the use of incentives, how time is used outside of school, the extent and role of homework, year-round professional opportunities for teachers, the use of school facilities for extended learning programs, if appropriate a model for adopting a longer day or year, suggested changes for state laws and regulations, and an analysis and estimate of the additional costs.

The Hearings of the Commission are open to the public. The proposed agenda for September 22 includes: A site visit to the Piscataquis Community High School/Project 2000 and a discussion focusing on the development and initial strategies to implement Maine's Common Core of Learning. The proposed agenda for September 23 and 24 includes: Discussions with luminaries in American education regarding their views on time use in and out of school and the other mandates as outlined in Public Law 102-62. Records are kept of all Commission proceedings, and are available for public inspection at the Office of the Commission at 1255 22nd Street, NW., Suite 502, Washington, DC 20202-7591 from the hours of 9 a.m. to 5:30 p.m.

Dated: September 1, 1993.

John Hodge Jones,

Chairman, National Education Commission on Time and Learning.

[FR Doc. 93-21793 Filed 9-7-93; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to Durability, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Durability, Inc. under Grant No. DE-FG01-93CE15589. The proposed grant will provide Government funding in the estimated amount of \$99,995 for Durability, Inc. to develop a system to monitor the accumulation of fatigue damage in composite material during mechanical testing. The grant is being awarded to Durability, Inc. on an unsolicited basis, because it is a unique patented technology. Dr. Ahmad Razvan will be the principal investigator. He holds the patent on this technology and has spent twenty-five years in the field developing the technology.

FOR FURTHER INFORMATION CONTACT:

Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: John Windish, PR-322.2, 1000 Independence Avenue, SW, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined that in accordance with 10 CFR 600.14(f) the application submitted by Durability, Inc., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the project represents a unique idea, that would not be eligible for financial assistance under a recent, current, or planned solicitation. The Energy Related Inventions Program (ERIP) has been structured, since its beginning in 1975, to operate without competitive solicitations since Energy Related Inventions may be submitted to the National Institute of Standards and Technology for evaluation and subsequently to The Department of Energy for consideration for funding at any time. The program has never issued and has no plans to issue a competitive solicitation. The proposed technology has a strong possibility of adding to the Nation's Energy Resources by enabling small scale testing where previously only full scale testing was possible.

The anticipated term of the proposed grant is 18 months from the effective date of award.

Scott Sheffield,

Director, Division "B", Office of Placement and Administration.

[FR Doc. 93-21835 Filed 9-7-93; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent to Award Grant to Southeastern Consortium for Minorities in Engineering (SECME)

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criteria set forth at 10 CFR 600.7(b)(2)(i)(B) and (D) to SECME, Atlanta, GA, under Grant Number DE-FG01-93MI10270. The DOE intends to make a noncompetitive financial assistance award to develop an educational and training program for middle and high school students, teachers and school administrators in the District of Columbia public schools. The projects goal is to increase the number of minority students who are academically prepared to enter college and complete studies in engineering, mathematics and science. The period of performance contemplated is for one (1) year October 1, 1993—September 30, 1994. The total estimated cost of this effort is \$160,010 which will be provided by DOE—there is no cost sharing.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rosemarie Marshall, PR-321.1, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The proposed grant will provide funding to SECME, which is a pre-college program designed to increase the number of minority students who are academically prepared to enter and complete studies in engineering, mathematics, and science. SECME is a nonprofit organization organized in 1975 by the engineering deans of six Southeastern universities. SECME is proposing to expand its consortium network by establishing the SECME school systems model in the District of Columbia, with the development of 16 school programs in four schools systems in DC covering the northwest, northeast, southwest and southeast areas. The University of the District of Columbia's College of Engineering will serve as SECME's 33rd

member university and work with SECME school programs throughout the targeted region. The University's role is vital to the success of the program. The University's support to the schools will be through Saturday School Engineering Workshops and school visits from engineering faculty consultants who provide information on additions to school curricula, on-going curriculum enrichment, and university-level preparatory courses.

The program is meritorious because by increasing the pool of minority students who are prepared to enter and complete studies in the scientific technical fields, the competitiveness and prosperity of the American workforce will be significantly enhanced in the years ahead. The project will assist teachers in formulating ways to enrich their instructional programs through the use of curriculum materials and computer applications and help them develop motivational guidance for their students. The DOE knows of no other entity which is conducting or is planning to conduct such an activity.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the application represents a beneficial method to ensure precollege students' success in courses which are prerequisite to technical education and careers. Through this project, students will be better prepared to enroll in and succeed in university-level engineering, mathematics, and science programs.

Jeffrey Rubenstein,
Director, Operations Division "A", Office of Placement and Administration.

[FR Doc. 93-21836 Filed 9-7-93; 8:45 am]
BILLING CODE 8450-01-M

Financial Assistance; Low-Level Radioactive Waste Forum

AGENCY: Department of Energy, Idaho Operations Office.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.7(a)(1) it plans a non-competitive renewal of funding and support under Grant DE-FG07-90ID13039 to the State of Washington (Washington) for technical assistance to the Low-Level Radioactive Waste Forum (Forum). The technical assistance proposed is the result of an unsolicited request from Washington for continued support of the Forum in maintaining an independent self-directed organization to promote an effective and efficient national system for the management and

disposal of commercially generated low-level radioactive waste.

FOR FURTHER INFORMATION CONTACT:
Dallas L. Hoffer, Contract Specialist, (208) 526-0014; U.S. Department of Energy, 785 DOE Place, MS 1221, Idaho Falls, ID 83401-1562.

SUPPLEMENTARY INFORMATION: The objective of the grant is (1) to provide technical assistance to the Low-Level Radioactive Waste Forum for the continuing operation of a self-directed organization through which states and compact commission representatives can promote an effective and efficient national system for the management and disposal of commercially generated low-level radioactive waste; (2) to satisfy a 1990 Congressional recommendation that the Department of Energy assist states and compacts in forming an independent self-directed organization, and provide funding until states and compacts can develop a means for independent funding; and (3) to allow the state of Washington to oversee expenditures of grant funds needed for such technical assistance and coordination of Forum activities. The grant award will be for three years with an estimated total cost of \$1,900,000. No cost-sharing is included in this grant. Statutory authority for this award can be found in Section 7(a)(1) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99-240). In the law, Congress directed DOE to provide continuing technical assistance to states and compact commissions.

PROCUREMENT REQUEST NUMBER: 07-94ID13039.002.

Dated: August 21, 1993.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 93-21837 Filed 9-7-93; 8:45 am]

BILLING CODE 8450-01-M

Federal Energy Regulatory Commission

[Docket No. QF93-148-000]

Dixie Valley, Ltd., L.P.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 1, 1993.

On August 18, 1993, Dixie Valley, Ltd., L.P., of 1114 Avenue of the Americas, New York, New York 10036-7790, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to Section 292.207 (b) of the Commission's Regulations. No

determination has been made that the submittal constitutes a complete filing.

According to the applicant, the 22 megawatt small power production facility will be located at Dixie Valley, Nevada, in township 24 North, Range 36 East. The facility will use double flash cycle technology to generate electrical power from geothermal fluids. The primary energy source is a liquid-dominated geothermal resource heated to approximately 450° Fahrenheit.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 835 North Capitol Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the *Federal Register* and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21762 Filed 9-7-93; 8:45 am]
BILLING CODE 8717-01-M

[P-2643-001 Bend Hydro Project]

PaciCorp Electric Operations; Availability of Draft Environmental Assessment

September 1, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR, part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for subsequent minor license for the existing Bend Hydroelectric Project, located on the Deschutes River, in the city of Bend, Deschutes County, Oregon, and has prepared a draft environmental assessment (DEA) for the relicense proposal. In the DEA, the Commission staff analyzes the potential environmental impacts of the project and concludes that either approval of the project, with appropriate environmental measures, or project retirement, would not constitute a major

federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2643-001 to all comments. For further information, please contact Joe Davis, DEA Coordinator, at (202) 219-2865.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21761 Filed 9-7-93; 8:45 am]
BILLING CODE 6717-01-M

on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21763 Filed 9-7-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP93-678-000]

Black Marlin Pipeline Co.; Application

September 1, 1993.

Take notice that on August 24, 1993, Black Marlin Pipeline Company (Black Marlin), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP93-678-000 a request under section 7(b) of the Commission's Regulations under the Natural Gas Act for a certificate permitting and approving abandonment of Rate Schedule T-4 included in Black Marlin's FERC Gas Tariff, First Revised Volume No. 1, Original Sheet Nos. 96 through 99, and the underlying service agreements originally authorized to Cities Service Oil and Gas Corporation and Shell Offshore and/or Shell Gas Trading Company, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 22, 1993, 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

[Docket No. RP93-126-003]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 1, 1993.

Take notice that on August 27, 1993, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet:

Sub Original Sheet No. 94

The proposed effective date of Sheet No. 94 is July 1, 1993.

Algonquin states that the purpose of this filing is to reflect a true-up of the Account No. 191 and Account No. 186 costs in compliance with ordering paragraph (B) of the Commission's June 30, 1993 order in this proceeding. Algonquin requests that the Commission waive § 154.22 of the Commission's regulations to the extent necessary in order to permit this application to take effect as requested.

Algonquin states that copies of this tariff filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 9, 1993. 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

[Docket No. CP93-681-000]

Arkla Energy Resources Co., Request Under Blanket Authorization

September 1, 1993.

Take notice that on August 26, 1993, Arkla Energy Resources Company (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP93-681-000, a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate certain facilities in Louisiana under the blanket certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

AER states that it proposes to upgrade one existing meter station for increased deliveries to Arkansas Louisiana Gas Company's (ALG) new rural extension to serve customers in Union Parish, Louisiana. The volume of gas that will be delivered through this tap is approximately 54,000 Mcf annually and 325 Mcf on a peak day. The facilities will be constructed at an estimated cost of \$29,600.00, and ALG will reimburse AER for all construction costs.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21754 Filed 9-7-93; 8:45 am]
BILLING CODE 6717-01-M

unnecessary for Black Marlin to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21753 Filed 9-7-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER93-773-000]

Cambridge Electric Light Co.; Notice of Filing

September 1, 1993.

Take notice that on August 13, 1993, Cambridge Electric Light Company tendered for filing an amendment to its original filing filed in this docket on July 7, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 10, 1993. 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.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21757 Filed 9-7-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM93-7-22-000]

CNG Transmission Corp., Proposed Changes In FERC Gas Tariff

September 1, 1993.

Take notice that on August 27, 1993, CNG Transmission Corporation (CNG), pursuant to section 4 of the Natural Gas Act, Part 154 of the Commission's Regulations, and section 12 of the General Terms and Conditions of CNG's tariff, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eleventh Revised Sheet No. 44, with proposed effective date of September 29, 1993.

CNG states that the purpose of this filing is to flow through to CNG's customers changes in take-or-pay costs allocated to CNG by Tennessee Gas Pipeline Company (Tennessee). On May 28, 1993, Tennessee filed tariff sheets in Docket No. RP93-132-000, in part to recover fifty percent of an additional

\$3.27 million in take-or-pay settlement costs, including interest. By order issued June 30, 1993, as clarified by order dated August 11, 1993, the Commission approved Tennessee's tariff sheets, subject to refund and conditions, effective July 1, 1993.

CNG states that copies of this filing have been mailed to CNG's customers and interested state commissions. Also, copies of this filing are available during regular business hours at CNG's main offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene 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 September 9, 1993. 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. 93-21765 Filed 9-7-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP93-689-000]

Colorado Interstate Gas Co.; Request Under Blanket Authorization

September 1, 1993.

Take notice that on August 30, 1993, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP93-689-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate delivery point facilities under CIG's blanket certificate issued in Docket No. CP83-21-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG proposes to install taps, valves and measurement facilities for the receipt and delivery of natural gas on CIG's line in Beaver County, Oklahoma. It is explained that the new facilities would be used for a processing plant to be owned jointly by Continental Natural Gas, Inc., and Interstate Resource Management Company. It is stated that

the facilities would have a capacity of 50,000 Mcf per day and would be used for processing volumes of gas transported under CIG's blanket certificate in Docket No. CP86-589-000. It is asserted that the deliveries would have no impact on CIG's peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21755 Filed 9-7-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA94-1-23-000, TM94-2-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 1, 1993.

Take notice that on August 30, 1993 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective November 1, 1993.

Eastern Shore states the above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and sections 21, 23 and 24 of the General Terms and Conditions of Eastern Shore's FERC Gas Tariff to reflect changes in Eastern Shore's jurisdictional rates.

Eastern Shore states the subject filing is its annual PGA filing as required by section 21 of its tariff. Such filing consists of the calculation of current adjustments for the Demand and Commodity purchased gas component of Eastern Shore's sales rates in addition to the calculation of new annual Demand and Commodity surcharges to amortize the Account No. 191—Unrecovered Purchased Gas Cost balances as of June 30, 1993.

Eastern Shore further states that pursuant to Section 23 of its FERC Gas

Tariff it has also calculated current adjustments for the Demand and Commodity transportation cost component of its sales rates.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and § 385.214). All such motions or protests should be filed on or before September 17, 1993. 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.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21764 Filed 9-7-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM94-1-113-000]

Gasdel Pipeline System, Inc.; Change in Annual Charge Adjustment

September 1, 1993.

Take notice that on August 26, 1993, Gasdel Pipeline System, Inc. (Gasdel) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A, the following tariff sheet, with a proposed effective date of October 1, 1993:

First Revised Sheet No. 5.

Gasdel states that the purpose of said filing is to revise its Annual Charge Adjustment surcharge in order to recover the Commission's annual charges for the 1993 fiscal year. Gasdel has requested that the Commission accept its tariff sheet to become effective on October 1, 1993.

Gasdel states that copies of the filing have been mailed to all jurisdictional customers.

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 Procedures (18 CFR 385.211 and

385.214). Such motions or protests should be filed on or before September 9, 1993. 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 proceedings. 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. 93-21770 Filed 9-7-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ES93-47-000]

Gulf States Utilities Co.; Application

September 1, 1993.

Take notice that on August 26, 1993, Gulf States Utilities Company (Gulf States) filed an application under section 204 of the Federal Power Act requesting authorization to issue not more than 1,500,000 shares of new preferred stock, \$100 par value or 6,000,000 shares of new preference stock, without par value or a combination thereof, in one or more series over a two-year period. Also, Gulf States requests exemption from the Commission's competitive bidding regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 24, 1993. Protests will be considered by the Commission 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 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. 93-21760 Filed 9-7-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EG93-70-000]

Haralson Generating Co., L.P.; Application for Commission Determination of Exempt Wholesale Generator Status

September 1, 1993.

On August 25, 1993, Haralson Generating Company, L.P. ("Haralson"), a Delaware limited partnership with its principal place of business at 7475 Wisconsin Avenue, Bethesda, Maryland, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Haralson intends to own a natural gas-fired electric generating facility with a maximum net power production capacity of between approximately 305 MW and 315 MW. All of the facility's electric power net of the facility's operating electric power will be purchased at wholesale by one or more public utilities.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 20, 1993 and must be served on Haralson. 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.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21771 Filed 9-7-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP93-672-000]

Natural Gas Pipeline Company of America; Application

September 1, 1993.

Take notice that on August 18, 1993, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP93-672-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for permission authorizing the abandonment of facilities constructed in the 1930's and 1960's, and partial replacement of these facilities, all as more fully set forth in

the request which is on file with the Commission and open to public inspection.

Natural states that the proposed abandonment and construction project is the next phase of Natural's ongoing Amarillo Upgrade Program, which commenced in 1982. Natural further states that the purpose of the Amarillo Upgrade Program is to increase the reliability of Natural's services and reduce operating costs by eliminating or replacing parts of the system that are obsolete and require high operation and maintenance costs. Natural indicates that since 1982 it has replaced approximately 400 miles of its original 24-inch line constructed in the 1930's with approximately 159 miles of new 36-inch pipeline and 38 miles of new 42-inch line. Natural states, also, that a total of ninety-one compressor engines have been removed and replaced with sixteen more efficient compressor engines.

Specifically, Natural is hereby requesting authority for the abandonment of approximately 490 miles of the original 24" Amarillo No. 1 mainline and one 12,000 HP engine at intermediate Compressor Station 195 (CS 195) located in Washington County, Kansas. Natural is also requesting the issuance of a Certificate of Public Convenience and Necessity authorizing it to construct and operate: (1) approximately 9.41 miles of 30" loop and three separate segments of 36" loop totaling approximately 18.66 miles in Hutchinson County, Texas; Ford County, Kansas; Lincoln County, Kansas; and Otoe County, Nebraska, respectively, at an aggregate estimated cost of \$19,020,000; and, (2) one 14,500 HP compressor engine, by means of retrofitting one existing 12,000 HP engine to 14,500 HP, at Compressor Station 195 located in Washington County, Kansas, at an estimated cost of \$5,925,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 22, 1993, 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing

therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21752 Filed 9-7-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EG93-79-000]

**Nevada Cogeneration Associates #4;
Application for Determination of
Exempt Wholesale Generator Status**

September 1, 1993.

On August 30, 1993, Texaco Nevada Cogeneration Company, located at 10 Universal City Plaza, Universal City, CA 91608, on behalf of Nevada Cogeneration Associates #5 (NCA #5), a partnership to be formed between Texaco Nevada Cogeneration Company and Texaco Black Mountain Inc., filed with the Federal Energy Regulatory Commission an Application for Determination of Status as an Exempt Wholesale Generator pursuant to Part 365 of the Commission's regulations.

NCA #5 is a partnership to be formed between Texaco Nevada Cogeneration Company and Texaco Black Mountain Inc. that will be engaged directly and exclusively in the business of (a) owning and operating a natural gas fired 67MW electric generating facility to be located in the Sunrise Mountain area of Clark County, Nevada, and (b) selling electric power at wholesale. Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 24, 1993 and must be served on the applicant. Any

Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 24, 1993 and must be served on the applicant. 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.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21756 Filed 9-7-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EG93-79-000]

**Nevada Cogeneration Associates #4;
Application for Determination of
Exempt Wholesale Generator Status**

September 1, 1993.

On August 30, 1993, Texaco Clark County Cogeneration Company, located at 10 Universal City Plaza, Universal City, California 91608, on behalf of Nevada Cogeneration Associates #4 (NCA #4), a partnership to be formed between Texaco Clark County Cogeneration Company and Bonneville Nevada Corporation, filed with the Federal Energy Regulatory Commission an Application for Determination of Status as an Exempt Wholesale Generator pursuant to Part 365 of the Commission's regulations.

NCA #4 is a partnership to be formed between Texaco Clark County Cogeneration Company and Bonneville Nevada Corporation that will be engaged directly and exclusively in the business of (a) owning and operating a natural gas fired 56 MW electric generating facility to be located in the Apex area of Clark County, Nevada, and (b) selling electric power at wholesale. Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 24, 1993 and must be served on the applicant. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21759 Filed 9-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-642-000]

Nora Transmission Co.; Application

September 1, 1993.

Take notice that on August 13, 1993, Nora Transmission Company (Nora) 3500 Park Lane, Pittsburgh, Pennsylvania 15275-1102, filed in Docket No. CP93-642-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon transportation services for Equitable Resources Exploration Company (EREX) and Pine Mountain Oil and Gas, Inc. (Pine Mountain), all as more fully set forth in the application on file with the Commission and open to public inspection.

Nora proposes to abandon transportation services for EREX under special Rate Schedules FTS-1, ITS-1 and ITS-2 and for Pine Mountain under special Rate Schedule ITS-3. It is stated that the transportation services were authorized under Commission authorization in Docket No. CP88-28-000, *et al.* It is asserted that Nora would replace these transportation services with firm and interruptible transportation services under Nora's new Rate Schedules FTS and ITS pursuant to Nora's pending Part 284 blanket certificate application filed in Docket No. CP93-568-000. It is further asserted that the replacement services would be at the same level as the existing ones. Nora requests that the authorization requested herein be contingent on prior issuance of the blanket certificate.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 22, 1993, 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing

to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Nora to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21751 Filed 9-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-79-000]

Sabine Pipe Line Co.; Proposed Changes in FERC Gas Tariff

September 1, 1993.

Take notice that on August 30, 1993, Sabine Pipe Line Company (Sabine) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following proposed tariff sheet, to be effective October 1, 1993:

First Revised Sheet No. 20

Sabine states that the Commission has specified the Annual Charge Adjustment (ACA) unit charge of \$.0026/Mcf to be applied to rates in 1994 for recovery of 1993 annual charges. The ACA unit rate of \$.0026/Mcf converts to \$.0025/MMBTU under Sabine's basis for billing.

Sabine states that copies of the filing were served upon Sabine's customers, the State of Louisiana, Department of Natural Resources, Office of Conservation and the Railroad Commission of Texas.

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 of Practice and Procedure (Sections 385.214 and 385.211). All such motions or protests should be filed on or before September 9, 1993. Protests will be considered by the Commission 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 must file a petition to intervene. Copies of this filing are on file with the

DC 20426, in accordance with 18 CFR, §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 9, 1993. 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. 93-21768 Filed 9-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-8-000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

September 1, 1993.

Take notice that on August 30, 1993, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised sheet tariff sheet, with a proposed effective date of October 1, 1993:

Eighth Revised Sheet No. 34A

South Georgia states that the aforesaid tariff sheet implements the Federal Energy Regulatory Commission's (Commission) revised Annual Charge Adjustment (ACA) of .25¢ per MMBtu. This represents an increase of .02¢ per MMBtu in the ACA charge from the current level of .23¢ per MMBtu.

South Georgia states that copies of South Georgia's filing will be served upon all of South Georgia's customers, interested state commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (Sections 385.214 and 385.211). All such motions or protests should be filed on or before September 9, 1993. Protests will be considered by the Commission 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 must file a petition to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,
Secretary.
[FR Doc. 93-21766 Filed 9-7-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM94-1-80-000]

Tarpon Transmission Co.; Change in Annual Charge Adjustment

September 1, 1993.

Take notice that on August 26, 1993, Tarpon Transmission Company (Tarpon) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with a proposed effective date of October 1, 1993:

Eleventh Revised Sheet No. 2A

First Revised Sheet No. 2E

Fourth Revised Sheet No. 86A

Sixth Revised Sheet No. 96A

Tarpon states that the purpose of said filing is to revise its Annual Charge Adjustment surcharge in order to recover the Commission's annual charges for the 1993 fiscal year. Tarpon has requested that the Commission accept its tariff sheets to become effective on October 1, 1993.

Tarpon states that copies of the filing have been mailed to all jurisdictional customers.

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 Procedures (18 CFR 385.211 and 385.214). Such motions or protests should be filed on or before September 9, 1993. 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 proceedings. 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. 93-21769 Filed 9-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG93-78-000]

Texaco Cortez Energy Co.; Application for Determination of Exempt Wholesale Generator Status

September 1, 1993.

On August 30, 1993, Texaco Cortez Energy Company (Applicant), located at 10 Universal City Plaza, Universal City, California 91608, filed with the Federal Energy Regulatory Commission an Application for Determination of Status as an Exempt Wholesale Generator pursuant to Part 365 of the Commission's regulations.

The Applicant is a Delaware Corporation that will be engaged directly and exclusively in the business of (a) owning and operating a natural gas fired 95.5 MW electric generating facility to be located in the Daggett area of San Bernardino County, California, and (b) selling electric power at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 24, 1993 and must be served on the Applicant. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21758 Filed 9-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 1, 1993.

Take notice that on August 27, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets, with a proposed effective date of October 1, 1993:

Fifth Revised Volume No. 1

Second Revised Sheet No. 26

Second Revised Sheet No. 31

Second Revised Sheet No. 36

Second Revised Sheet No. 37
Third Revised Sheet No. 41
Third Revised Sheet No. 42
Second Revised Sheet No. 43
First Revised Sheet No. 46
First Revised Sheet No. 49
Second Revised Sheet No. 50
Second Revised Sheet No. 51
Second Revised Sheet No. 52

Original Volume No. 2

Fifteenth Revised Sheet No. 1J
Fifteenth Revised Sheet No. 1K
Eleventh Revised Sheet No. 1L

Texas Eastern states that the purpose of this filing is to permit the tracking of the ACA unit surcharge authorized by the Commission for fiscal year 1994. The ACA Unit Surcharge authorized by the Commission for fiscal year 1994 is \$0.0026 per Mcf, \$0.0025 per dth converted to Texas Eastern's measurement basis.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all current Rate Schedule FT-1 and IT-1 Shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 9, 1993. 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.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21767 Filed 9-7-93; 8:45 am]

BILLING CODE 6717-01-M

Southeastern Power Administration**Proposed Rate Adjustment, Rate Extension, Public Hearing, and Opportunities for Public Review and Comment**

AGENCY: Southeastern Power Administration (Southeastern), DOE.
ACTION: Notice.

SUMMARY: Southeastern proposed a new Wholesale Power Rate Schedule JW-1-D to replace the existing Rate Schedule JW-1-C. The new rate schedule will be applicable to Southeastern power sold to existing

preference customers in the Florida Power Corporation Service area.

Opportunities will be available for interested persons to review the present rates, the proposed new rate, the supporting studies, and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before October 22, 1993. A public information and public comment forum will be held in Tallahassee, Florida, on October 7, 1993. Persons desiring to speak at the forum must notify Southeastern at least 7 days before the forum is scheduled so that a list of forum participants can be prepared. Others present may speak if time permits. Persons desiring to attend the forum should notify Southeastern at least 7 days before the forum is scheduled. If Southeastern has not been notified by close of business on September 30, 1993, that at least one person intends to be present at the forum, the forum will be automatically canceled with no further notice.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635. The public comment forum will begin at 10 a.m. on October 12, 1993, in the Sheraton Hotel, 101 South Adams Street, Tallahassee, Florida 32101.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Director, Power Marketing, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued July 16, 1993, in Docket No. EF91-3031-000, confirmed and approved Wholesale Power Rate Schedule JW-1-C and JW-2-B applicable to Jim Woodruff Project's power for a period ending September 20, 1995.

Discussion

Existing rate schedules are supported by a January 1991 repayment study and other supporting data contained in FERC Docket ER91-3031-000. A repayment study prepared in August of 1993 shows that the existing rates recover the costs of the project within the repayment period and generate a large surplus. Existing rates require a step rate increase from \$5.40 per kilowatt per month and 16.0 mills per kilowatt hour to \$5.94 per kilowatt per month and 17.6 mills per kilowatt hour

on September 20, 1994. A revised repayment study prepared in August of 1993 shows that Southeastern can forego this rate increase and still meet its repayment requirements. Southeastern is proposing to replace Rate Schedule JW-1-C with JW-1-D to forego this rate increase. The increase is not required because Corps Operation & Maintenance expense has been less than forecast in the January 1991 repayment study and major replacements that were expected to be made have been deferred. The rate increase foregone will reduce revenue for years 1995 through 2007 by \$525,000 each year.

In developing the rate adjustment, Southeastern considered revenue requirements as determined by the August 1993 system Repayment studies. The studies are available for examination at the Samuel Elbert Building, Elberton, Georgia 30635, as is the 1991 repayment study and the proposed rate schedule.

Issued in Elberton, Georgia, August 25, 1993.

John A. McAllister, Jr.,

Administrator.

[FR Doc. 93-21839 Filed 9-7-93; 8:45 am]

BILLING CODE 8450-01-M

Intent To Formulate Revised Power Marketing Policy Georgia-Alabama-South Carolina System of Projects

AGENCY: Southeastern Power Administration, Department of Energy.

ACTION: Notice.

SUMMARY: Pursuant to its Procedure for Public Participation in the Formulation of Marketing Policy published in the Federal Register of July 6, 1978, 43 FR 29186, Southeastern intends to revise its marketing policy for future disposition of power from its Georgia-Alabama-South Carolina System of Projects.

The current power marketing policy published on October 1, 1980, 45 FR 65140, for Southeastern's Georgia-Alabama-South Carolina System is reflected in contracts for the sale of system power which are maintained in Southeastern's headquarter's offices. Proposals and recommendations for consideration in formulating the proposed revised marketing policy are solicited, as are requests for further information or consultation.

DATES: All submissions or requests should be made as soon as possible but not later than October 15, 1993.

ADDRESSES: Five copies of written proposals or recommendations should be submitted to the Administrator, Southeastern Power Administration,

Elberton, Georgia 30635. (706) 283-9911.

SUPPLEMENTARY INFORMATION: A "Final Power Marketing Policy for Georgia-Alabama System of Projects" was developed and published in the Federal Register on October 1, 1980, 45 FR 65140 by Southeastern. Contracts under the policy were negotiated for the area west of the Savannah River effective February 1, 1985, and terminating May 31, 1994. The contracts negotiated for the eastern portion of the area were executed as of January 13, 1986, and terminate September 30, 1995. A new marketing policy is necessary in order to negotiate new contracts to supersede existing contracts when the contracts expire.

The Georgia-Alabama-South Carolina System consists of the Allatoona, Buford, Carters, Water F. George, Hartwell, Robert F. Henry, Millers Ferry, Richard B. Russell, J. Strom Thurmond, and West Point projects. The projects are currently integrated through the four operating companies of the Southern Company with the combined output of the system sold throughout the Southern Company area and in the area served by the South Carolina Public Service Authority, South Carolina Electric & Gas Company, and in the Duke Power Company area within a radius of 150 miles of the Thurmond and Hartwell projects. The policy establishes the marketing area for the system power and deals with the allocation of power among area customers. It involves the handling of energy at pumped storage projects and the utilization of area utility systems for essential purposes such as transmission and support. The policy deals with wholesale rates, resale rates, and energy and economic efficiency measures. The Carters Project has operating pumped storage units, and the Richard B. Russell Project has units designated for pumped storage when they are declared commercially available.

FOR FURTHER INFORMATION CONTACT: Administrator, Southeastern Power Administration, Elberton, Georgia 30635, (706) 283-9911.

Issued in Elberton, Georgia, August 25, 1993.

John A. McAllister,
Administrator.

[FR Doc. 93-21840 Filed 9-7-93; 8:45 am]

BILLING CODE 8450-01-M

**ENVIRONMENTAL PROTECTION
AGENCY**

[FRL-4726-1]

**Open Meeting on September 28-29,
1993: Life Cycle Assessment Review
Panel of the National Advisory Council
for Environmental Policy and
Technology (NACEPT)**

Under Public Law 92-463 (The Federal Advisory Committee Act), EPA gives notice of a meeting of the Life Cycle Assessment (LCA) Review Panel. The LCA Review Panel is a standing subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. The LCA Review Panel is working to develop voluntary guidelines for practitioners of LCA, which is the cradle-to-grave assessment of the environmental and human health impacts of consumer products and industrial processes. The meeting will convene September 28 from 9 am to 5 pm and September 29 from 8 am to 3:30 pm at the Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314.

The LCA Review Panel will examine the following three EPA reports over the two day period:

Public Sources of Data for LCAs

The purpose of this report is to provide LCA practitioners with potentially useful public data sources for preparing LCAs. This report identifies and describes major types of public data sources that exist for potential use in LCAs and, in the case of non-bibliographic sources of data, presents data base profiles which contain a brief assessment of the relevance of the data base to LCA, a description of the information contained in the data base, and data base system information. Other sources of data identified in the report include bibliographic data bases, data base clearinghouses, foreign data bases, and ongoing studies.

Life Cycle Assessment: Guidelines for Assessing Data Quality

LCAs require the acquisition and synthesis of significant amounts of disparate data. While LCA practitioners usually undertake some level of data quality assessment, the rigor with which that evaluation is applied—and the extent to which LCA reports discuss data quality—varies significantly. This report provides LCA practitioners with guidelines for assessing and communicating LCA data quality in a systematic manner.

Life Cycle Impact Assessment Methods

Once a life cycle inventory is developed, the next step in LCA is to conduct a life cycle impact assessment: the assessment of potential environmental and human health impacts associated with a given product or process, based on the energy and raw material inputs and waste outputs compiled in the life cycle inventory phase of LCA. This report discusses a number of different methods at varying levels of complexity that are potentially applicable in life cycle impact assessment. Methods described in this report range from simple inventory data aggregation techniques to site-specific risk assessment.

The September 28-29, 1993 meetings will be open to the public. The September 28 meeting will focus on the LCA data sources and data quality assessment guidelines. The September 29 meeting will focus on the life cycle impact assessment methods report. Written comments will be reviewed by the Panel if received by September 24, 1993. Those interested in attending, sending written comments, or requiring additional information should contact Eugene Lee, OS-301, U.S. EPA, 401 M Street, SW, Washington, DC 20460 (202-260-7564) or Chuck French, MD-13, U.S. EPA, Research Triangle Park, NC 27711 (919-541-0467).

Terry Grogan,
Acting Director, Municipal & Industrial Solid Waste Division.

[FR Doc. 93-21803 Filed 9-7-93; 8:45 am]

BILLING CODE 6560-50-P

[OPP-30352; FRL-4641-5]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. **DATES:** Written comments must be submitted by October 8, 1993.

ADDRESSES: By mail submit comments identified by the document control number [OPP-30352] and the file symbol/registration number to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Attention PM 10, Registration Division (H7505C), Office of Pesticide

Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 10, Rita Kumar (Acting), Rm. 212, CM #2, (703-305-6502).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 7969-RRN. Applicant: BASF Corporation, Agricultural Products, PO Box 13528, Research Triangle Park, NC 27709-3528. Product name: Pyridaben Manufacturing Use Product. Insecticide/Miticide. Active ingredient: Pyridaben 2-*tert*-butyl-5-(4-*tert*-butylbenzylthio)-4-chloropyridazin-3-(2H)-one at 98 percent. Proposed classification/Use: None. A technical product use on non-food greenhouse crops. (PM 10)

2. File Symbol: 7969-RNA. Applicant: BASF Corporation. Product name: BAS 300 75WP. Insecticide/Miticide. Active ingredient: Pyridaben 2-*tert*-butyl-5-(4-*tert*-butylbenzylthio)-4-chloropyridazin-3-(2H)-one at 75 percent. Proposed classification/Use: Restricted. For use to control mites and whiteflies in greenhouses on ornamental plants, flowers, and foliage crops. (PM 10)

3. File Symbol: 62719-EUU. Applicant: DowElanco, 9002 Purdue Road, Indianapolis, IN 46268-1189. Product name: DE-473 Insecticide Concentrate. Insecticide/Termiteicide.

Active ingredient: Hexaflumuron $N\{[(3,5\text{-dichloro-4-(1,1,2,2\text{-tetrafluoroethoxy)phenyl]amino})\text{carbonyl}\}2,6\text{-difluoro benzamide}$ at 97 percent. Proposed classification/Use: None. Manufacturing use only, for formulation into an insecticide, and uses for the termite baiting systems. (PM 10)

4. File Symbol: 62719-EUG.

Applicant: DowElanco Co. Product name: NAF-46. Insecticide/Termiteicide.

Active ingredient: Hexaflumuron $N\{[(3,5\text{-dichloro-4-(1,1,2,2\text{-tetrafluoroethoxy)phenyl]amino})\text{carbonyl}\}2,6\text{-difluoro benzamide}$ at 0.1 percent. Proposed classification/Use: None. Used as an integrated monitoring and baiting system for control of subterranean termites. (PM 10)

Notice of approval or denial of an application to register a pesticide product will be announced in the *Federal Register*. The procedure for requesting data will be given in the *Federal Register* if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703-305-5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: August 18, 1993.

Lawrence E. Culleen,
Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-21408 Filed 9-7-93; 8:45 am]

BILLING CODE 6580-50-F

[OPP-00363; FRL-4642-2]

Pesticide Reregistration Eligibility Document; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of final reregistration eligibility document; opening of public comment period.

SUMMARY: This Notice announces the availability of the final Reregistration

Eligibility Document (RED) for 10,10'-Oxybisphenoxarsine (OBPA) and opens a public comment period. The RED is the Agency's formal regulatory assessment of the health and environmental data base for OBPA and presents the Agency's determination regarding which uses of OBPA are eligible for reregistration.

DATES: Written comments on the OBPA RED must be submitted by November 8, 1993.

ADDRESSES: Three copies of comments identified with the docket number (OPP-00363) should be submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker for questions concerning product-specific data requirements and labeling at (703) 305-5540. Questions on the generic database should be directed to Venus Eagle at (703) 308-8045. To request a copy of the RED or a RED Fact Sheet for OBPA, contact the Public Response and Program Resources Branch in Rm. 1128, CM #2 at the address given above (703) 305-5805.

SUPPLEMENTARY INFORMATION: The Agency has issued a final Reregistration Eligibility Document for OBPA. Under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate most existing pesticides to make sure they meet current scientific and regulatory standards. The Agency has determined that the registered uses do not cause unreasonable adverse effects to people or the environment. EPA has

determined that all products containing OBPA as an active ingredient are eligible for reregistration. All registrants of OBPA have been sent the RED and must respond to the labeling requirements and product specific data requirements (if applicable) within 8 months of receipt.

EPA is issuing the OBPA RED as a final document with a 60-day comment period. The reregistration program is being conducted under Congressionally mandated timeframes, and EPA is mindful of the need to make both timely reregistration decisions and involve the public. Although it does not affect the registrants' response due date, the 60-day public comment period provides an opportunity for public input and a mechanism for initiating any necessary amendments to the RED.

Dated: August 26, 1993.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 93-21718 Filed 9-7-93; 8:45 am]
BILLING CODE 6580-50-F

[FRL-4726-4]

Superfund Program; New Policy on Performance of Risk Assessments During Remedial Investigation/Feasibility Studies (RI/FSs) Conducted by Potentially Responsible Parties (PRPs); Response to Public Comments on EPA's Current and Former Risk Assessment Policies and Response to Public Comments on EPA's Risk Assessment Evaluation Report—Notice of Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of the new risk assessment policy for risk assessments during PRP-lead RI/FSs and responses to public comments.

SUMMARY: This notice is the final of several notices resulting from the settlement of litigation between EPA and the Chemical Manufacturers' Association et al. (CMA), involving EPA's June 21, 1990 risk assessment policy which provided that all risk assessments under CERCLA would henceforth be conducted by EPA rather than by PRPs.

On February 20, 1992, EPA published a notice (57 FR 6616) which requested comments on the 1990 risk assessment policy, announced EPA's intent to conduct an evaluation of the 1990 policy, and requested comments on the methodology for such an evaluation. On March 15, 1993, EPA announced the

availability of its response to public comments on the evaluation methodology and the availability of its Risk Assessment Evaluation Report (58 FR 13757).

This notice announces the availability of EPA's new policy on PRP risk assessments at Superfund sites, which is contained in OSWER Directive No. 9835.15b (September 1, 1993). This notice also announces the availability of EPA's responses to public comments on the merits of the June 21, 1990 and pre-June 21, 1990 policies and to public comments on EPA's Risk Assessment Evaluation Report.

EPA considered the results of its evaluation, public comments on the 1990 policy, results of a 1993 Regional survey, and public comments on the risk assessment evaluation in developing its new risk assessment policy. In summary, the new policy states that it is generally more appropriate for the risk assessment to be conducted by EPA rather than by PRPs. However, EPA may, under certain circumstances, find it appropriate to allow PRPs to conduct the baseline risk assessment portion of the RI/FS. To determine whether this is appropriate in a particular case, the Agency will consider a variety of criteria based on the Agency's confidence in the PRP's ability to generate an accurate and timely risk assessment report.

EPA's responses to public comments are presented in "EPA's Response to Public Comments on the Merits of the Old and New Risk Assessment Policies" (August 31, 1993) and "EPA's Response to Public Comments on the Results of the Risk Assessment Evaluation Report" (August 31, 1993).

FOR FURTHER INFORMATION CONTACT: Matthew Charsky, U.S. Environmental Protection Agency, Office of Waste Programs Enforcement, Guidance and Evaluation Branch (5502-G), 401 M Street, SW., Washington, DC 20460, (703) 603-8931. EPA staff will be able to obtain copies of OSWER Directive 9835.15b, which implements this new policy, and EPA's responses to public comments from the Superfund Document Center by calling (202) 260-3046. Other parties may obtain copies of EPA's responses to public comments by calling the Superfund Document Center and may order Directive 9835.15b from the National Technical Information Service (NTIS) by calling (703) 487-4600.

SUPPLEMENTARY INFORMATION: EPA's new policy supersedes the portion of the August 28, 1990 guidance, "Performance of Risk Assessments in RI/FSs Conducted by PRPs," OSWER

Directive No. 9835.15, that entirely precluded PRPs from conducting the risk assessment activities of the RI/FS. All remaining portions of this Directive and the appropriate portions of the supplemental guidance, OSWER Directive No. 9835.15a (July 2, 1991) will still remain in effect under EPA's new policy.

Dated: September 1, 1993.

Richard J. Guimond,

Assistant Surgeon General, USPHS, Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 93-21804 Filed 9-7-93; 8:45 am]

BILLING CODE 6560-50-P

[OPPTS-59969; FRL-4632-3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the *Federal Register* of May 13, 1983 (48 FR 21722). In the *Federal Register* of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 9 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 93-155, June 17, 1993.

Y 93-156, June 22, 1993.

Y 93-157, 93-158, June 21, 1993.

Y 93-159, 93-160, 93-161, 93-162, June 22, 1993.

Y 93-163, June 28, 1993.

FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., 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 TSCA Public Docket Office, ETG-099 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 93-155

Importer. Elf Atochem North America, Chemical. (S) Ethylene; butyl acrylate; glycidyl methacrylate.

Use/Production. (S) Coatings, vehicle formulation chemical intermediate. Prod. range: Confidential.

Y 93-156

Manufacturer. Confidential. Chemical. (G) Methacrylic copolymer.

Y 93-157

Manufacturer. Confidential. Chemical. (G) Polyol ester. **Use/Production.** (G) Dehydration agent. Prod. range: Confidential.

Y 93-158

Manufacturer. Essex Specialty Products.

Chemical. (G) Hydroxyl functional polycarbomoyl (polyalkylene oxide) oligomer.

Use/Production. (G) Polymer used in sealant manufacture. Prod. range: Confidential.

Y 93-159

Manufacturer. Confidential. Chemical. (G) Medium oil alkyd resin. **Use/Production.** (S) Industrial air-dry and baking finishes. Prod. range: Confidential.

Y 93-160

Manufacturer. Confidential. Chemical. (G) Medium oil alkyd resin. **Use/Production.** (S) Industrial air-dry and baking finishes. Prod. range: Confidential.

Y 93-161

Manufacturer. Confidential. Chemical. (G) Water reducible polyester.

Use/Production. (S) Water reduced baking enamels modified by melamines on epoxys. Prod. range: Confidential.

Y 93-162

Manufacturer. Hitac Adhesives and Coatings, Inc.

Chemical. (G) Siloxane modified polyurethane dispersion in water.

Use/Production. (G) Adhesive tape component, coating additive, water repellent coating on structures. Prod. range: Confidential.

Y 93-163

Manufacturer. Eastman Kodak Company.

Chemical. (G) Condensation product of a urethane dimer and a substituted phenylacrylate ester.

Dated: August 31, 1993.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-21818 Filed 9-7-93; 8:45 am]

BILLING CODE 0580-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Establishment of Review Committee

Pursuant to the Federal Advisory Committee Act, Public Law 92-463 (5 U.S.C. appendix 2), the Administrator, Agency for Health Care Policy and Research (AHCPR), announces the establishment of the following review committee.

Designation: Health Care Policy and Research Special Emphasis Panel, HHS.

Purpose: The purpose of the Panel is to provide peer review of grant applications and contract proposals submitted to the AHCPR that require a unique combination of reviewer expertise, e.g., for complex multidisciplinary projects and new areas of study, or that require standards of review different from those ordinarily applied by standing peer review committees because of project size or that require expedited review.

Function: The Panel shall make recommendations to the Administrator, AHCPR, concerning the scientific and technical merit of health services research grant applications and contract proposals submitted to AHCPR.

Structure: The Panel has fluid membership, with members designated to serve for individual meetings rather than formally appointed for fixed terms of service. Members will be selected on an "as needed" basis in response to specific applications or proposals to be reviewed. Up to approximately 300 members will be designated each year. Members will be selected from outstanding authorities in the various fields of health services research, including, but not limited to, basic biomedical and clinical disciplines, health care technology development and assessment, clinical, social, organizational, and information sciences.

Termination: Notwithstanding section 14(a) of the Federal Advisory Committee Act, the Panel shall continue in existence until otherwise provided by law.

Dated: August 26, 1993.

J. Jarrett Clinton,
Administrator.

[FR Doc. 93-21596 Filed 9-7-93; 8:45 am]
BILLING CODE 4160-00-U

Food and Drug Administration

[Docket No. 93D-0237]

Process Validation Requirements for Drug Products Subject to Pre-Market Approval (for Human and Animal Use); Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guides (CPG's) 7132c.08 and 7125.38 entitled "Process Validation Requirements for Drug Products Subject to Pre-Market Approval." The CPG's provide guidance to FDA district offices concerning the availability of and evaluation of available process validation data during preapproval inspections of manufacturers of bulk pharmaceutical chemicals and dosage form drugs for human and animal use.

ADDRESSES: CPG's 7132c.08 and 7125.38 may be ordered as a single set from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB93-203370 and include payment of \$12.00 (includes \$3.00 shipping and handling charges) for each set of the documents. Payment may be made by check, money order, charge card (American Express, VISA, or Mastercard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703-487-4650. CPG's 7132c.08 and 7125.38 are available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William C. Crabbs, Center for Drug Evaluation and Research (HFD-323), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8089, or Edward J. Ballitch, Center for Veterinary Medicine (HFV-230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20853, 301-295-8726.

SUPPLEMENTARY INFORMATION: FDA is issuing the CPG's 7132c.08 and 7125.38 to provide internal guidance to FDA district offices concerning the availability and evaluation of available process validation data during preapproval inspections of manufacturers of bulk pharmaceutical chemicals and dosage form drugs for human and animal use. Validation of manufacturing processes is a requirement of the current good manufacturing practice regulations for finished pharmaceuticals (21 CFR part 211). Validated manufacturing processes help to ensure the safety, efficacy, and quality of drug products. Validation is based on the documented successful evaluation of multiple full scale batches to provide assurance that the processes will reliably meet predetermined specifications.

The statements made herein are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal FDA guidance.

Dated: August 30, 1993.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 93-21795 Filed 9-7-93; 8:45 am]
BILLING CODE 4160-01-F

[Docket No. 93D-0204]

Silicone Devices Affected by Withdrawal of Dow Corning Silastic Materials; Alternative Review Procedure Guidance; Extension of Comment Period and Filing Deadline

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period and filing deadline.

SUMMARY: The Food and Drug Administration (FDA) is extending to December 5, 1993, the comment period on the notice of availability of the guidance entitled "Guidance for Manufacturers of Silicone Devices Affected by Withdrawal of Dow Corning Silastic Materials" that published in the *Federal Register* of July 6, 1993 (58 FR 36207). The guidance describes the procedures to be followed by manufacturers in determining when to make a submission pursuant to an alternative review process. The deadline for filing the submissions pursuant to the alternative review process is also extended to December 5, 1993. FDA is taking this action in response to a request for an extension of the filing deadline.

DATES: Written comments by December 5, 1993. The deadline for filing submissions is also December 5, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donald E. Marlowe, Center for Devices and Radiological Health (HFZ-150), Food and Drug Administration, 12200 Wilkins Ave., Rockville, MD 20852, 301-443-7003.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of July 6, 1993 (58 FR 36207), FDA issued a notice of availability of a guidance entitled "Guidance for Manufacturers of Silicone Devices Affected by Withdrawal of Dow Corning Silastic Materials." The guidance describes the procedures to be followed by manufacturers in determining when to make a submission pursuant to an alternative review process. Interested persons were given until September 7, 1993, to submit written comments on the established procedures. Affected manufacturers were also given until September 7, 1993, to file the submissions described in the guidance and required for entry to the alternative review process.

FDA received a request for an extension of the comment period for an additional 90 days. The request stated that additional time was needed to enable manufacturers to collect the necessary data and to make arrangements for an alternative silicone supply.

FDA agrees with the request for an extension and is granting a 90-day extension for the preparation of

comments and for the filing of submissions.

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding the proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 1, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-21796 Filed 9-7-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-93-3628; FR-3353-C-02]

HOPE for Homeownership of Multifamily Units (HOPE 2); Notice of Fund Availability for Fiscal Year 1993; Correction

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability; Correction.

SUMMARY: On July 16, 1993 (58 FR 38466), the Department published in the *Federal Register*, a notice that announced the availability of up to

\$102.2 million in funds for applications for implementing grants under the HOPE for Homeownership of Multifamily Units program (HOPE 2). Since the publication of that notice, it has been noted that some of the Field Office addresses and telephone number contain errors. Therefore, in order to avoid further confusion, the purpose of this document is to publish a corrected listing of all Field Office addresses and telephone numbers.

Also, for the convenience of the applicants, the "DATES" section is being republished with this correction notice.

DATES: Applications must be physically received by the Field Office (FO) having jurisdiction over the proposed project on or before 3 p.m. (FO local time) on October 15, 1993. This application deadline is firm as to location, date, and hour. In the interest of fairness to all competing applicants, the Department shall treat as ineligible for consideration any application that is received after the deadline.

FOR FURTHER INFORMATION CONTACT:

Prospective applicants may contact the Resident Initiatives Specialist (RIS) in the appropriate HUD Field Office listed at the end of this document.

SUPPLEMENTARY INFORMATION:

Accordingly, in FR Doc. 93-16782, a Notice of Fund Availability for HOPE for Homeownership of Multifamily Units (HOPE 2); published in the *Federal Register* on July 16, 1993 (58 FR 38466), the Field Office addresses beginning on page 38471, in the first column, are corrected by republishing the list in its entirety, to read as follows:

HUD Field Offices

Alabama	Birmingham Office, Beacon Ridge Tower, 600 Beacon Pkwy. West, suite 300, Birmingham, AL 35209; (205) 290-7617, (TDD) (205) 290-7624.
Alaska	Anchorage Office, 949 East 36th Avenue, suite 401, Anchorage, AK 99508; (907) 271-4170, (TDD) (907) 271-4328.
Arizona	Phoenix Office, 400 N. 5th St., suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379-4434, (TDD) (602) 379-4461.
Arkansas	Little Rock Office, suite 900, 425 West Capitol Ave., Little Rock, AR 72201; (501) 324-5931, (TDD) (501) 324-5405.
California	Los Angeles Office, 1615 W. Olympic Blvd., Los Angeles, CA 90015; (213) 251-7122, (TDD) (213) 251-7038. San Francisco Regional Office, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102; (415) 556-4752, (TDD) (415) 556-8357.
Colorado	Sacramento Office, 777 12th St., suite 200, Sacramento, CA 95871; (916) 551-1351, (TDD) (916) 551-5971.
Connecticut	Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844-4513.
Delaware	Hartford Office, 330 Main street, First Floor, Hartford, CT 06106; (203) 240-4523, (TDD) (203) 240-4522.
District of Columbia	Philadelphia Regional Office, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106-3392; (215) 597-2560, (TDD) (215) 597-5564.
Florida	Washington, DC Office, 820 First St., NE, Washington, DC 20002; (202) 275-9206, (TDD) (202) 275-0967.
Georgia	Jacksonville Office, 325 W. Adams St., Jacksonville, FL 32202; (904) 791-2626, (TDD) (904) 791-1241.
Hawaii	Atlanta Regional Office, Richard B. Russell Fed. Bldg., 75 Spring St., SW, Atlanta, GA 30303; (404) 331-5136, (TDD) (404) 731-2654.
Idaho	Honolulu Office, 7 Waterfront Plaza, suite 500, 500 Ala Moana Blvd., Honolulu, HI 96813-4918; (808) 541-1327 (TDD) (808) 551-1356.
Illinois	Portland Office, 520 SW 6th Ave., Portland, OR 97204 (503) 326-2561.
Indiana	Chicago Regional Office, 77 W. Jackson Blvd., 26th Floor, Chicago, IL 60604-3507; (312) 353-5680.
	Indianapolis Office, 151 N. Delaware St., Indianapolis, IN 46204; (317) 226-7739, (TDD) 1 (800) 743-3333.

Iowa	Des Moines Office, Fed. Bldg., 210 Walnut St., room 239, Des Moines, IA 50309; (515) 284-4512, (TDD) (515) 284-4728.
Kansas	Kansas City Regional Office, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101; (913) 551-5464, (TDD) (913) 551-6972.
Kentucky	Louisville Office, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201; (502) 582-5251, (TDD) (502) 582-5139.
Louisiana	New Orleans Office, Fisk Fed. Bldg., 1661 Canal St., New Orleans, LA 70112; (504) 589-7200.
Maine	Manchester Office, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101; (603) 666-7681, (TDD) (603) 666-7518.
Maryland	Baltimore Office, City Crescent Building, 5th Floor, 105 Howard Street, Baltimore, MD 21201; (410) 962-3047, (TDD) (410) 962-0106.
Massachusetts	Boston Regional Office, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., room 375, Boston, MA 02222; (617) 565-5234, (TDD) (617) 565-5453.
Michigan	Detroit Office, Patrick V. McNamara Fed. Bldg., 477 Michigan Ave., Detroit, MI 48226; (313) 226-7900.
Minnesota	Grand Rapids Office, 2922 Fuller Ave., NE, Grand Rapids, MI 49505; (616) 456-2100.
Mississippi	Minneapolis-St. Paul Office, 220 2nd St., South Minneapolis, MN 55401; (612) 370-3000.
	Jackson Office, Dr. A.H. McCoy Fed. Bldg., 100 W. Capitol St., room 910, Jackson, MS 39269; (601) 965-4702, (TDD) (601) 965-4171.
Missouri:	
(Eastern)	St. Louis Office, 1222, Spruce St., St. Louis, MO 63103; (314) 539-6560, (TDD) (314) 539-6331.
(Western)	Kansas City Regional Office, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101; (913) 236-2162, (TDD) (913) 236-3972.
Montana	Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; 303 (844) 4513.
Nebraska	Omaha Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154; (402) 492-3101, (TDD) (402) 492-3183.
Nevada	San Francisco Regional Office, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102; (415) 556-4752, (TDD) (415) 556-8357.
New Hampshire	Manchester Office, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101; (603) 666-7681, (TDD) (603) 666-7518.
New Jersey	Newark Office, Military Park Bldg., 60 Park Pl., Newark, NJ 07102; (201) 877-1662, (TDD) (201) 877-6649.
New Mexico	Fort Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113; (817) 885-5401, (TDD) (817) 728-5447.
New York:	
(Upstate)	Buffalo Office, Lafayette Ct., 465 Main St., Buffalo, NY 14203; (716) 846-5755, (TDD) (716) 846-5787.
(Downstate)	New York Regional Office, 26 Federal Plaza, New York, NY 10278; (212) 264-6500, (TDD) (212) 264-0927.
North Carolina	Greensboro Office, 415 N. Edgeworth St., Greensboro, NC 27401; (919) 333-5361, (TDD) (919) 333-5518.
North Dakota	Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844-4513.
Ohio	Cincinnati Office, Fed. Office Bldg., room 9002, 550 Main Street, Cincinnati, OH 45202; (513) 684-2884.
	Cleveland Office, One Playhouse Sq., 1375 Euclid Ave., room 420, Cleveland, OH 44114; (216) 522-4058.
Oklahoma	Columbus Office, 200 N. High St., Columbus, OH 43215; (614) 469-5737.
	Oklahoma City Office, Murrah Fed. Bldg., 200 NW 5th St., Oklahoma City, OK 73102; (405) 231-4891, (TDD) (405) 231-4891.
Oregon	Portland Office, 520 SW 6th Ave., Portland, OR 97204; (503) 326-2561.
Pennsylvania:	
(Western)	Pittsburgh Office, 412 Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219; (412) 644-6428, (TDD) (412) 644-5747.
(Eastern)	Philadelphia Regional Office, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106; (215) 597-2560, (TDD) (215) 597-5564.
Puerto Rico	Caribbean Office, 159 Carlos Chardon Ave., San Juan, PR 00918; (809) 766-8121.
Rhode Island	Providence Office, 2 Exchange Terrace, 330 John O. Pastore, Federal Building & U.S. Post Office—Kennedy Plaza, Providence, RI 02903; (401) 528-5351, (TDD) (401) 528-5364.
South Carolina	Columbia Office, Strom Thurmond Fed. Bldg., 1835 Assembly St., Columbia, SC 29201; (803) 765-5592.
South Dakota	Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844-4513.
Tennessee	Knoxville Office, 710 Locust St., Third Floor, Knoxville, TN 37902; (615) 549-9384, (TDD) (615) 549-9372.
Texas	Nashville Office, 251 Cumberland Bend Dr., suite 200, Nashville, TN 37228; (615) 763-5213.
	Fort Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113; (817) 885-5401, (TDD) (817) 728-5447.
	Houston Office, Norfolk Tower, 2211 Norfolk, suite 200, Houston, TX 77098; (713) 653-3274.
	San Antonio Office, Washington Sq., 800 Dolorosa, San Antonio, TX 78207; (512) 229-6800, (TDD) (512) 229-6885.
Utah	Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844-4513.
Vermont	Manchester Office, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101; (603) 666-7681, (TDD) (603) 666-7518.
Virginia	Richmond Office, 3600 Centre, 3600 Broad Street, P.O. Box 90331, Richmond, VA 23220; (804) 278-4507, (TDD) (804) 278-4501.
Washington	Seattle Regional Office, Federal Office Bldg., 908 1st Avenue, suite 200, Seattle, WA 98104; (206) 220-5101, (TDD) 1 (800) 800-5029.
West Virginia	Charleston Office, 405 Capitol St., suite 708, Charleston, WV 25301; (304) 347-7000, (TDD) (304) 347-7044.
Wisconsin	Milwaukee Office, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., Milwaukee, WI 53203; (414) 297-3214.
Wyoming	Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844-4513.

Dated: September 1, 1993.

Myra L. Ransick,

Assistant General Counsel for Regulations.

[FR Doc. 93-21749 Filed 9-7-93; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Policy Development and Research

[Docket No. N-93-3309; FR-3080-N-01]

Metric Policy and Metrification Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Metric Policy and Metrification Program.

SUMMARY: Section 5164 of the Omnibus Trade and Competitiveness Act of 1988 amended section 3 of the Metric Conversion Act of 1975 to designate the metric system of measurement as the preferred measurement system for U.S. trade and commerce, and requires each agency of the Federal Government to establish guidelines and plans to carry out the policy set forth in the law. This notice is issued in compliance with that law, and informs the public of the policies and procedures for use of the metric system of measurement within the Department of Housing and Urban Development.

DATES: Effective Date: November 8, 1993. Comments or suggestions may be submitted in writing on or before November 8, 1993.

ADDRESSES: The purpose of this notice is not to solicit comments regarding the Department's metric policy; however, the Department will consider written comments or suggestions that may facilitate implementation of section 3 of the Metric Conversion Act, as amended by section 5164 of the Omnibus Trade and Competitiveness Act of 1988. Comments or suggestions regarding this notice should be addressed to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. All comments received will be available for public inspection and copying, weekdays, between 7:30 a.m. to 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Edwin Stromberg, Office of Policy Development and Research, room 8134, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1520 (voice) or (202) 708-0770 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, approved August 23, 1988) (OTCA), amended section 3 of the Metric Conversion Act of 1975 (15 U.S.C. 205b) (MCA), to designate the metric system of measurement as the preferred system of weights and measures for United States trade and commerce. The MCA, as amended by the OTCA, requires Federal agencies to use the metric system in procurement, grants, and other business-related activities by a date certain and, to the extent economically feasible, by the end of Federal Fiscal Year 1992. The MCA also requires Federal agencies to establish guidelines to implement the metric system of measurement.

The purpose of this notice is to inform the public of the Department's intent to use the metric system of measurement in its procurement, grants and other business activities. As noted earlier in this preamble, although the purpose of this document is not to solicit comments regarding the Department's metric policy and program, the Department will consider comments and suggestions that may facilitate implementation of section 3 of the MCA with respect to HUD's programs and activities.

Other Matters

Impact on the Economy

This notice is exempt from the requirements of Executive Order 12291 because it relates to agency organization and management under section 1(a)(3) of the Order.

Impact on Small Entities

This notice is exempt from the analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 605(b)) because notice and opportunity for comment are not required for these policy statements by section 553 of the Administrative Procedure Act or any other law.

Environmental Impact

An environmental finding under the National Environmental Policy Act of 1969 (42 U.S.C. 4332) is not necessary because this policy, which concerns internal administrative procedures, is categorically excluded under HUD regulations at 24 CFR 50.20(k).

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice do not have federalism

implications and, thus, are not subject to review under the Order. No programmatic or policy changes result from issuance of this notice which would affect existing relationships between the Federal government and State and local governments.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have a potential significant impact on family formation, maintenance and general well-being, thus, is not subject to review under the Order. No programmatic or policy changes result from issuance of this notice which would affect family formation, maintenance, and general well-being.

Accordingly, the Department's Metric Policy and Metrification Program are as follows:

A. Purpose

This Notice establishes policies and procedures for the use of the Metric System of Measurement in all program, procurement, and assistance (i.e., grant and cooperative agreement) activities of the Department of Housing and Urban Development (the Department of HUD), except where such use will significantly affect program operations or the activities of the HUD program participants in an adverse manner.

B. Applicability

This Notice applies to all programs and program offices of HUD.

C. Definition

The "Metric System of Measurement" is defined as the International System of Units (or SI, from the French "Le Systeme International d'Unites"), as established by the General Conference on Weights and Measures in 1960. Metric units used within the Department of Housing and Urban Development shall be as described in Federal Standard 376A, "Preferred Metric Units for General Use by the Federal Government," 1985. In this Notice, the terms metric, metric system, and metric units are used interchangeably with the term SI.

D. Policy

1. It is HUD policy to use the metric system in those program, procurement, and assistance activities where its use is cost-effective, and is in accordance with current practices in the industries and State and local governmental operations which are involved with programs of the Department.

2. The Department's procurement activities will use metric system standards to the extent that these are established in the Federal Acquisition Regulation.

3. The Departmental offices awarding assistance agreements will use metric system standards to the extent that these have been established by the Office of Management and Budget (OMB) in its applicable circulars governing grants management.

4. Recognizing that the home building industry currently utilizes the customary system of measurements, HUD expects to develop or identify appropriate standards and reference materials which can be adopted over time to provide the basis for the use of metric system of measurements in home building and other HUD-associated construction.

5. HUD expects to work with the model code organizations, both directly and through the Legislation and Regulations Subcommittee of the Interagency Metrication Operating Committee, to assure that appropriate metric standards are developed and adopted in the Nation's building codes.

E. Responsibilities

1. Metric Policy Committee

A Metric Policy Committee, chaired by the Assistant Secretary for Policy Development and Research, shall be established to review and direct overall Department metric activities, including the formulation of a Metric Transition Plan for the Department, which shall incorporate the requirements of the Metric Conversion Act. The Metric Policy Committee shall consist of the Assistant Secretaries for Administration, Community Planning and Development, Housing, Policy Development and Research, and Public and Indian Housing, and the General Counsel, or their designees at the level of Deputy Assistant Secretary. The Deputy Assistant Secretary for Research shall serve as the HUD member of the Interagency Council on Metric Policy.

2. Metric Coordinating Committee

A Metric Coordinating Committee shall be established to provide day-to-day coordination and communication on metric issues within the Department. The Metric Coordinating Committee shall consist of one senior career official appointed by each member of the Policy Committee; the Deputy Assistant Secretary for Research shall designate the chair of the Coordinating Committee, who will also serve as the HUD Metric Coordinator and member of

the Interagency Metrication Operating Committee.

3. Metric Work Group

A Metric Work Group may be established in any major component of HUD, at the discretion of the Metric Policy Committee representative from that component, to coordinate metric implementation or training programs within the component. Such Work Groups shall be chaired by the appropriate Metric Coordinating Committee members.

F. Procedures

1. Program Offices shall review their existing Guidelines, Standards, Notices, and other requirements to determine whether metric measurements should be added to or substituted for existing measurement requirements, and develop a plan to make these changes.

2. Program Offices, in developing procurement requests, contract/assistance/interagency agreement specifications, work statements, notices of fund availability (NOFAs), and application kits, shall assess each requirement which involves measurement standards in terms of its applicability for metric system use.

3. HUD contracting officers shall review all procurement requests, contract specifications, grant announcements, and Interagency Agreements for compliance with any Federal Acquisition Regulation measurement system requirements.

4. Each HUD program office is responsible for reviewing the applicability of its assistance programs for metric system implementation, and shall prepare its NOFAs and application kits accordingly, i.e., to the extent required by the appropriate OMB grants management circulars.

5. Existing procurement contracts and assistance agreements which use the customary system need not be converted to metric units. Modification of existing programs to the metric system shall be avoided unless determined by the Metric Policy Committee that such modification is necessary or advantageous to the Government and to the participating governmental or private sector entity.

6. Technical reports, studies, position papers, and other documents shall, where appropriate, provide measurements in both the metric and customary systems. Principal emphasis shall be given to that system primarily used by the constituent group audience for the document. The use of dual measurement systems in such documents shall be reviewed annually by the Metric Policy Committee to

determine whether a change in the policy is appropriate.

7. The Metric Coordinating Committee shall identify and publish conversion information and standards for uniform use throughout the Department, and recommend to the Metric Policy Committee a process for analyzing future actions to determine the measurement system to be used and for analyzing when such conversion would be considered cost-beneficial.

G. Reports

The Metric Coordinating Committee shall develop an annual report of metric activities during the preceding Fiscal Year, to be provided to the Deputy Assistant Secretary for Research by January 15 of the ensuing year. This report shall cover the metric activities by each element of HUD, and shall describe major accomplishments, recommendations, metric standards developed or adopted, and examples of metric use in significant procurement or program activities. This report shall be used as the basis of the annual report included in the Department's annual budget submission, as required by Section 12(a) of the Metric Conversion Act, as amended.

H. Statutory and Regulatory References

1. Metric Conversion Act (15 U.S.C. 205a-205k) as amended by section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, approved August 28, 1988).

2. 15 CFR part 1170—Metric Conversion Policy for Federal Agencies. (The Department of Commerce is the lead agency for metric conversion and has promulgated its guidance on metric conversion for Federal agencies at 15 CFR part 1170.)

3. Federal Standard 376A, "Preferred Metric Units for General Use by the Federal Government," 1985.

Dated: September 1, 1993.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 93-21834 Filed 9-7-93; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-020-03-4370-03: GP3-394]

Temporary Closure of Public Lands;
Harney County, OR

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice.

SUMMARY: The Three Rivers Resource Area Manager announces the temporary closure of selected public lands under his administration. This action is being taken due to increased interest in wild horse gatherings, to prevent disruption of wild horse gathering operations, and to provide for public safety, safety of the wild horses, and for the safety of Bureau of Land Management (BLM) personnel conducting these operations.

EFFECTIVE DATE: The effective dates of the temporary restriction are September 13 to September 17, 1993.

FOR FURTHER INFORMATION CONTACT:

Craig (Cody) Hansen, Three Rivers Resource Area Manager, Burns District, Bureau of Land Management, HC 74-12533 Hwy 20 West, Hines, Oregon 97738, telephone (503) 573-5241.

SUPPLEMENTARY INFORMATION: This closure applies to all individuals, whether on foot, horseback or in vehicles. The public lands and trails affected by this closure are described and located as follows:

Willamette Meridian

T. 30 S., R. 33 E., Section 13.

T. 29 S., R. 36 E., Section 19.

T. 29 S., R. 35 E., Section 13.

Aggregating approximately 1,920 acres.

The above restrictions do not apply to BLM personnel associated with the wild horse gathering operations, and to individuals granted written authorization by the Three Rivers Resource Area Manager. The Manager of the Three Rivers Resource Area will only consider requests for exceptions to this closure that are submitted in writing to him with a statement of reasons for the request. The authority for this closure is 43 CFR 8364.1. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than \$1,000 and/or imprisoned for not more than 12 months.

A map of the closed area is posted in the Burns District Office of the BLM and on the main access roads that lead to the closed areas.

Dated: August 31, 1993.

Craig M. Hansen,

Three Rivers Resource Area Manager.

[FR Doc. 93-21791 Filed 9-7-93; 8:45 am]

BILLING CODE 4310-33-M

[UT-942-03-5700-11; UTU-70128]

Realty Action; Noncompetitive (Direct) Sale of Public Land In Emery County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, UTU-70128, noncompetitive (direct) sale of public land in Emery County, Utah.

SUMMARY: Notice is given that the following described parcel of public land has been examined, and through the development of local land-use planning decisions, based upon public input, resource considerations, regulations, and Bureau policies, the parcel has been found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) using noncompetitive (direct) sale procedures (43 CFR 2711.3-3):

Salt Lake Meridian, Utah

T. 16 S., R. 10 E.,

Section 33, NW 1/4NW 1/4.

The described land aggregates 40.00 acres more or less.

The subject parcel of land has been leased to the Emery County School District since 1983 for the purpose of a school building site, through the provisions of the Recreation and Public Purposes Act (43 U.S.C. 869). The school district has not developed the site as required under the provisions of the lease, however future plans are to construct a school on the property.

The parcel is difficult and uneconomic to manage as part of the public lands, is not needed for any resource programs, and is not suitable for management by the Bureau or any other Federal department or agency. The parcel (UTU-70128) is being offered as a noncompetitive (direct) sale in accordance with 43 CFR 2711.3-3 to the Emery County School District. The land will not be offered for sale until at least sixty (60) days after publication of this notice in the *Federal Register*. The sale will be at no less than the appraised fair market value of \$8,000.

Publication of this notice in the *Federal Register* segregates the public land from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent, or two hundred seventy (270) days from the date of the publication, whichever occurs first.

THE TERMS AND CONDITIONS APPLICABLE TO THE SALE ARE:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The sale of land will be subject to all valid existing rights, reservations,

and privileges of record. Existing rights, reservations, and privileges of record include, but are not limited to:

A right-of-way, Serial No. UTU-54677, to the City of Elmo, its successors or assignees, for a culinary pipeline located in SLM, T. 16 S., R. 10 E., Section 33, SW 1/4NW 1/4NW 1/4, under the authority of the Act of October 21, 1976 (90 Stat. 2776, 43 U.S.C. 1761).

Sale Procedures: The buyer will be required to submit the fair market value of the property on the date of the sale. The land will be offered for sale at the Price River Resource Area Office.

Bidder Qualifications: Bidder must be U.S. citizens 18 years of age or over, a State or State instrumentality authorized to hold property, a corporation authorized to hold property; or a corporation authorized to own real estate in the State of Utah.

Bid Standards: The BLM reserves the right to accept or reject any and all offers or withdraw the land from sale if, in the opinion of the Authorized officer, consummation of the sale would not be fully consistent with section 203(g) of FLPMA or other applicable laws.

Comments: For a period of forty-five (45) days from the date of publication of this notice in the *Federal Register*, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the Utah State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION:

Additional information concerning the lands and the terms and conditions of the sale may be obtained from Mark Mackiewicz, Area Realty Specialist, Price River Resource Area, 900 North 700 East, Price, Utah 84501, (801) 637-4584, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood Drive, P.O. Box 970, Moab, Utah 84532, (801) 259-6111.

Dated: September 1, 1993.

Roger Zortman,
District Manager.

[FR Doc. 93-21831 Filed 9-7-93; 8:45 am]

BILLING CODE 4310-DG-M

National Park Service

General Management Plan, Tumacácori National Historical Park; Availability of Draft General Management Plan/Environmental Impact Statement

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy

Act of 1969 (Pub. L. 91-190 as amended), the National Park Service, Department of the Interior, has prepared a draft environmental impact statement (DEIS) assessing the potential impacts of the proposed General Management Plan for Tumacácori National Historical Park, Santa Cruz County, Arizona.

The draft plan proposes a trail (the mission trail) linking the three sites that comprise the National Historical Park-Tumacácori, Calabazas, and Guevavi. Administrative facilities over known archeological remains at Tumacácori would be removed and relocated elsewhere on the site. Further, visitor facilities and an employee residence would be developed at Calabazas, while Guevavi would be accessed by guided tour and by the mission trail. Boundary changes are also suggested for Tumacácori and Guevavi, along with acquisition of approximately 1/2 acre of non-federal lands within the park. The alternatives under consideration, in addition to the proposal, include minimum requirements and no action alternatives. Under minimum requirements, administrative facilities would be removed and relocated at Tumacácori, and Calabazas and Guevavi would be accessed by guided tour and by the mission trail. Boundary changes would be suggested for Tumacácori. Under the no action alternative, no new visitor or administrative facilities, boundary changes, or trail linkages would be recommended.

SUPPLEMENTARY INFORMATION: A public meeting will be held on Thursday, September 23 from 7 p.m. to 9 p.m. at the Tubac Center for the Arts, Plaza Road, Tubac, AZ. Written comments on the DEIS will be accepted until November 26, 1993 and should be directed to Regional Director, Western Region, National Park Service, 600 Harrison Street, suite 600, San Francisco, California 94107. Requests for additional information and/or copies of the DEIS should be directed to this address or telephone 415/744-3968. Inquiries may also be directed to the Superintendent, Tumacácori National Historical Park at telephone 602/398-2341.

Copies of the DEIS area available at the Tumacácori National Historical Park Visitor Center, Tumacácori, Arizona. Copies are also available for inspection at libraries located in the park's vicinity.

Dated: August 24, 1993.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 93-21794 Filed 9-7-93; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit 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 form under review is summarized below.

DATES: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that the time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:
OPIC Agency Submitting Officer: Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336-8565.

OMB Reviewer: Jeff Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, room 3201, Washington, DC 20503; 202/395-7340.

SUMMARY OF FORM UNDER REVIEW: *Type of Request:* Form renewal.

Title: Investment Mission Application.

Form Number: OPIC 78.

Frequency of Use: Once per investment mission.

Type of Respondents: Business or other institutions.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. Companies wanting to participate in investment missions.

Reporting Hours: 1 hour per application.

Number of Responses: 375 per year.

Federal Cost: \$5,733.75 per year.

Authority for Information Collection: Section 234(d) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Investment Mission Application Form is completed by U.S. companies interested in participating in an OPIC sponsored investment mission. The form provides the necessary information for internal evaluation of a U.S. firm's capability and resources to undertake an overseas project.

Dated: September 1, 1993.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 93-21790 Filed 9-7-93; 8:45 am]

BILLING CODE 3210-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-345]

Certain Anisotropically Etched One Megabit and Greater Drams, Components Thereof, and Products Containing Such Drams; Determination To Grant Application for Interlocutory Review; Disposition Upon Interlocutory Review

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to grant an application for interlocutory appeal of the presiding administrative law judge's (ALJ's) Order No. 9, finding that complainant Micron Semiconductor, Inc. ("Micron") was not entitled to withhold certain documents from discovery based on an assertion of attorney-client privilege. On interlocutory review, the Commission has determined to remand the privilege question to the ALJ with instructions that the claims of Micron with respect to the attorney-client privilege be examined and determined with reference to the standard established in *Knogo Corp. v. United States*, 213 U.S.P.Q. 936 (Ct.Cl. 1980).

FOR FURTHER INFORMATION CONTACT:

James M. Lyons, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202) 205-3094. Copies of the Commission's order, its opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are, or will be, available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the

Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202) 205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810.

SUPPLEMENTARY INFORMATION: On May 17, 1993, the presiding ALJ issued Order No. 9, ruling on claims of privilege for documents withheld by Micron in response to a discovery request. The ALJ found that Micron was not entitled to withhold certain documents based on its assertion of attorney-client privilege because the materials in question consisted of technical information not provided to counsel in connection with the provision of legal services or as a part of a request for a legal opinion.

On June 4, 1993, in response to a motion from Micron, the ALJ granted leave to Micron to file an application for interlocutory review of Order No. 9 pursuant to Commission interim rule 210.70. On June 11, 1993, Micron filed its application for interlocutory review of Order No. 9. On June 29 and 30, 1993, respondent Hyundai Electronics Industries Co., Ltd. and the Commission investigative attorney filed their respective responses to Micron's application.

After considering all written submissions, the Commission determined to accept the application for interlocutory appeal. As a result of its interlocutory review, the Commission has remanded Order No. 9 to the ALJ to reconsider the attorney-client privilege claims made by Micron. On remand, the Commission directed the ALJ to re-evaluate Micron's privilege claims with reference to the standard established in *Knogo Corp. v. United States*, 213 U.S.P.Q. 936 (Ct.Cl. 1980).

This action was taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.70(b) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.70(b) (1992)).

By order of the Commission.

Issued: August 30, 1993.

Donna R. Koehnke,
Secretary.

[FR Doc. 93-21847 Filed 9-7-93; 8:45 am]

BILLING CODE 7020-02-P-M

[Investigation No. 337-TA-345]

Certain Anisotropically Etched One Megabit and Greater DRAMs, Components Thereof, and Products Containing Such DRAMs; Commission Determination Not To Review Initial Determination Granting Joint Motion To Terminate Investigation With Respect to Two Respondents on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) (Order No. 14) in the above-captioned investigation granting a joint motion to terminate the investigation with respect to respondents GoldStar Electron Co., Ltd. and GoldStar Electron America, Inc. on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT:

Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3093. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 14, 1992, based on a complaint alleging violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation into the United States, and the sale within the United States after importation of certain anisotropically etched one megabit and greater DRAMs, components thereof, and products containing such DRAMs, allegedly manufactured abroad by a process covered by claims 1, 2, 5, and 6 of U.S. Letters Patent 4,436,584.

On July 16, 1993, complainant Micron Semiconductor, Inc. and respondents GoldStar Electron Co., Ltd. and GoldStar Electron America, Inc. (the "GoldStar respondents") filed a joint motion to terminate the investigation with prejudice with respect to the GoldStar respondents on the basis of a settlement and license agreement. On July 27, 1993, complainant and the GoldStar respondents filed a letter clarifying certain matters in connection with the agreement. On July 30, 1993, the Commission investigative attorney filed a response in support of the joint motion.

On August 3, 1993, the presiding ALJ granted the motion, issuing an ID terminating the investigation as to the GoldStar respondents. No petitions for review or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53 (19 CFR 210.53, as amended).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000.

By order of the Commission.

Issued: August 30, 1993.

Donna R. Koehnke,
Secretary.

[FR Doc. 93-21848 Filed 9-7-93; 8:45 am]
BILLING CODE 7020-02-P-M

[Investigation No. 337-TA-334]

Certain Condensers, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles; Commission Decision To Deny Application for Interlocutory Review of Administrative Protective Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny an application filed by the Office of Unfair Import Investigations ("OUII") for interlocutory review of the administrative protective order ("APO") issued in the above-captioned investigation on February 10, 1992.

ADDRESSES: Copies of the application, the Commission's Order, and all other nonconfidential documents filed in this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202-205-2000.

FOR FURTHER INFORMATION CONTACT: P. N. Smith, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3061. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the

Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The APO in this investigation permits outside counsel for the complainant and the respondents to retain the evidentiary record, including materials containing confidential business information ("CBI"), until the expiration of any remedial order issued by the Commission.¹ The APO also allows counsel to retain for an indefinite period documents (including briefs and working papers) containing CBI that were created by the Commission, the presiding administrative law judge ("ALJ"), or counsel for a party.

With leave from the ALJ, OUII applied for interlocutory Commission review of the APO. OUII pointed out that the APO is inconsistent with Commission's longstanding practice of (1) defining "final termination" of an investigation as the exhaustion of the appeals process, and (2) requiring parties to return or destroy all documents containing CBI upon such termination. OUII argued, nevertheless, that there was good cause for not adhering to the customary practice and that the APO should be affirmed.

A special hearing was conducted on December 17, 1992. (See 57 FR 54418, Nov. 18, 1992.) The participants were: (1) Complainant Modine Manufacturing Company; (2) respondents Mitsubishi Motors Corporation and Mitsubishi Motor Sales of America (collectively, "Mitsubishi")²; (3) OUII; and (4) the ITC Trial Lawyers Association, which appeared as an *amicus curiae*.

After considering OUII's application for interlocutory review, all other written submissions, and the testimony at the hearing, the Commission determined, by a 4-2 vote (Commissioners Rohr and Nuzum dissenting), to deny the application and take no action on the APO.

This disposition was taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.70(b)(1) (19 CFR 210.70(b)(1) (1993)).

By order of the Commission.

¹ No remedial order has been issued. The Commission determined that there was no violation of section 337 of the Tariff Act (19 U.S.C. 1337). See 58 FR 36701 (July 8, 1993); 58 FR 40833 (July 30, 1993).

² At the hearing, counsel for Mitsubishi stated that he was appearing on behalf of all respondents in the Condensers investigation. See Transcript of Proceedings (Dec. 17, 1992) at 14.

Issued: September 2, 1993.

Donna R. Koehnke,
Secretary.

[FR Doc. 93-21852 Filed 9-7-93; 8:45 am]
BILLING CODE 7020-02-P

[Investigation No. 337-TA-348]

Certain In-Line Roller Skates With Ventilated Boots and In-Line Roller Skates With Axle Aperture Plugs and Component Parts Thereof; Commission Determination To Review an Initial Determination Granting a Motion To Amend the Notice of Investigation To Allow Discovery on Public Interest and Remedy

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined on its own motion to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation amending the notice of investigation to authorize discovery, motions to compel, and orders compelling information on the public interest issues while the case is before the ALJ.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000.

FOR FURTHER INFORMATION CONTACT: Anjali K. Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-3117. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-205-1810.

SUPPLEMENTARY INFORMATION: On February 18, 1993, Rollerblade, Inc. filed a complaint with the Commission alleging unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The unfair acts alleged in the complaint are the unauthorized importation into the United States, the sale for importation, and the sale within the United States after importation of certain in-line roller skates with ventilated boots, and in-line roller skates with axle aperture plugs and component parts thereof, that allegedly infringe claims 1, 2, 3, 4, 5, 6, 7 or 8 of

U.S. Letters Patent 5,171,033, and/or claim 5 of U.S. Letters Patent 5,048,848. On March 18, 1993, the Commission voted to institute an investigation of the complaint and published notice of its investigation in the *Federal Register* (58 FR 16204 (March 25, 1993)).

On July 23, 1993, respondent Roces SRL filed a motion to amend the notice of investigation to authorize discovery and evidence to be taken relating to the issues of public interest and remedy (Motion No. 348-29). The Commission investigative attorney supported the motion. Complainant Rollerblade filed a response in opposition to the motion to amend the notice of investigation. On July 28, 1993, the ALJ issued an initial determination (ID) amending the notice of investigation. No petitions for review or agency comments have been filed, and no public comments are expected.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.55 (19 CFR 210.55).

By order of the Commission.

Issued: August 31, 1993.

Donna R. Koehnke,
Secretary.

[FR Doc. 93-21849 Filed 9-7-93; 8:45 am]
BILLING CODE 7020-02-P

[Investigation 337-TA-348]

Certain In-Line Roller Skates With Ventilated Boots and In-Line Roller Skates With Axle Aperture Plugs and Component Parts Thereof; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Brookfield Athletic Company, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on August 30, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the *Federal Register*. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT:
Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

Issued: August 27, 1993.
By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 93-21845 Filed 9-7-93; 8:45 am]
BILLING CODE 7020-02-P

[Investigation No. 337-TA-348]

Certain In-Line Roller Skates With Ventilated Boots and In-Line Roller Skates With Axle Aperture Plugs and Component Parts Thereof; Commission Determination To Review and Remand an Initial Determination Granting a Motion for Partial Summary Determination on the Issue of Domestic Industry

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and remand the presiding administrative law judge's (ALJ) initial

determination (ID) in the above-captioned investigation granting complainant Rollerblade, Inc.'s motion for partial summary determination on the issue of domestic industry.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000.

FOR FURTHER INFORMATION CONTACT:
Anjali K. Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3117. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-205-1810.

SUPPLEMENTARY INFORMATION: On February 18, 1993, Rollerblade, Inc. filed a complaint with the Commission alleging unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The unfair acts alleged in the complaint are the unauthorized importation into the United States, the sale for importation, and the sale within the United States after importation of certain in-line roller skates with ventilated boots, and in-line roller skates with axle aperture plugs and component parts thereof, that allegedly infringe claims 1, 2, 3, 4, 5, 6, 7 or 8 of U.S. Letters Patent 5,171,033, and/or claim 5 of U.S. Letters Patent 5,048,848. On March 18, 1993, the Commission voted to institute an investigation of the complaint and published notice of its investigation in the *Federal Register* (58 FR 16204 (March 25, 1993)).

On May 27, 1993, complainant Rollerblade, Inc. filed a motion (Motion No. 348-9) for partial summary determination on the issue of domestic industry. On July 13, 1993, respondents Roces SRL, Exel Marketing Inc., Koflach Sport G.m.b.H., Variflex, Inc., and Yuh Jou Co. Ltd. filed an opposition to complainant's motion. The Commission investigative attorney (IA) supported the motion. On July 30, 1993, the ALJ issued an ID granting Motion No. 348-9. On August 10, 1993, the IA filed a petition for review of the ID on the basis that it was without governing Commission precedent and has significant implications for future investigations. On August 13, 1993, respondents Roces SRL, Exel Marketing Inc. and Variflex Inc. filed a petition for review on the basis that the issues affect

Commission policy and the ID contains erroneous findings of material fact and erroneous legal conclusions. On August 17, 1993, complainant filed a response to the petitions for review.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53(h) (19 CFR 210.53(h)).

Issued: August 31, 1993.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 93-21850 Filed 9-7-93; 8:45 am]
BILLING CODE 7020-02-P

[Investigation No. 337-TA-331]

Certain Microcomputer Memory Controllers, Components Thereof, and Products Containing Same; Commission Decision To Deny Application for Interlocutory Review of Administrative Protective Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny an application filed by the Office of Unfair Import Investigations ("OUII") for interlocutory review of the administrative protective order ("APO") issued in the above-captioned investigation on October 23, 1991.

ADDRESSES: Copies of the application, the Commission's Order, and all other nonconfidential documents filed in this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202-205-2000.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3061. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The APO in this investigation permits outside counsel for each party to retain all confidential materials from the investigation until the expiration of any remedial order issued in the investigation.¹ The APO also allows counsel to retain for an indefinite period

¹ No remedial order was issued. See *infra* n.2.

documents (including briefs and working papers) containing confidential business information ("CBI") that were created by the Commission, the presiding administrative law judge ("ALJ"), or counsel for a party.

With leave from the ALJ, OUII applied for interlocutory Commission review of the APO. OUII pointed out that the APO is inconsistent with Commission's longstanding practice of (1) defining "final termination" of an investigation as the exhaustion of the appeals process, and (2) requiring parties to return or destroy all documents containing CBI upon such termination. OUII argued, nevertheless, that there was good cause for not following the customary practice and that the APO should be affirmed.

A special hearing was conducted on December 17, 1992. (See 57 FR 54418 (Nov. 18, 1992).) OUII and the ITC Trial Lawyers Association (who appeared as an *amicus curiae*) were the only participants in connection with OUII's application for interlocutory review of the APO in the subject investigation. The complainant and the respondents did not appear at the hearing or file written submissions.²

After considering OUII's application for interlocutory review, all other written submissions, and the testimony at the hearing, the Commission determined, by a 4-2 vote (Commissioners Rohr and Nuzum dissenting), to deny the application and take no action on the APO.

This disposition was taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.70(b)(1) (19 CFR 210.70(b)(1) (1993)).

Because the investigation was terminated without a remedial order and there have been no judicial appeals, the Commission Order states that all counsel who have not previously done so must promptly comply with the APO provisions requiring the return or destruction of certain materials containing CBI. The Order also directs them to file written certification of such compliance with the Secretary, within 30 days after service of the Commission Order.

Issued: September 2, 1993.

²On the day of the hearing, the Commission terminated the investigation on the basis of complainant's settlement with two respondents and its withdrawal of the complaint as to the remaining respondent. The notice of termination stated, however, that the Commission was retaining jurisdiction over the APO while it considered the post-termination document retention issues set forth in OUII's petition for interlocutory review. See 57 FR 61097 (Dec. 23, 1992).

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 93-21851 Filed 9-7-93; 8:45 am]
BILLING CODE 7020-02-P

[Investigation 337-TA-341]

Certain Static Random Access Memories, Components Thereof, and Products Containing Same; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: United Microelectronics Corporation and Micro-Comp Industries.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on August 30, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the *Federal Register*. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential

treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

Issued: August 27, 1993.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 93-21846 Filed 9-7-93; 8:45 am]
BILLING CODE 7020-02-P

[Investigation 332-345]

Annual Reports on U.S. Trade Shifts in Selected Commodity Areas

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: The Commission on its own motion has instituted investigation No. 332-345, *Annual Reports on U.S. Trade Shifts in Selected Commodity Areas*, under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) for the purpose of preparing annual trade shifts reports for a period of three years (covering trade in 1993-1995). Each annual report will summarize and provide brief analyses of the major trade developments which occurred in the preceding year, and is expected to be published in July of each year. The reports will also provide summary trade information and basic statistical profiles of nearly 300 industry/commodity groups.

FOR FURTHER INFORMATION CONTACT: Carl Seastrum (202-205-3493), Minerals, Metals, and Miscellaneous Manufactures Division, Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION: The Commission has published such reports on a quarterly, semiannual, or annual basis since 1981. Previously, such reports were not part of an investigative authority numbering series. Copies of the 1992 Trade Shifts report (September 1993) will be available from the Secretary to the Commission in mid-September 1993. Comments from the public concerning how these reports can be made more useful are welcome and should be addressed to the Secretary to the Commission, U.S. International

Trade Commission, 500 E Street SW., Washington, DC 20436.

Issued: August 27, 1993.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 93-21844 Filed 9-7-93; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55; Sub-No. 473X]

CSX Transportation, Inc.; Abandonment Exemption in Lake County, IN

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 0.18 miles of rail line between milepost LQ-25.58 near Airline Junction and milepost LQ-25.76 near Maynard, in Lake County, IN.

Applicant has certified that:

(1) No local traffic has moved over the line for at least 2 years;

(2) There is no overhead traffic on the line;

(3) No formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and

(4) The requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 8, 1993 (unless stayed). Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to

file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking statements under 49 CFR 1152.29 must be filed by September 20, 1993.³ Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 28, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water St., J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void ab initio.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by September 13, 1993. Interested parties may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 27, 1993.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,
Secretary.

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(whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay of the abandonment exemption on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

³ The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 93-58; Exemption Application No. D-9312, et al.]

Grant of Individual Exemptions; Federal Paper Board Salaried Employees' Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the *Federal Register* of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

¹ A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Federal Paper Board Salaried Employees' Pension Plan (the Plan) Located in Montvale, New Jersey

[Prohibited Transaction Exemption 93-58; Application No. D-9312]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The proposed contribution to the Plan of approximately 11,051 acres of growing timber (the Timber) by the Federal Paper Board Company, Inc. (the Employer), the Plan's sponsor and as such a party in interest with respect to the Plan, in partial satisfaction of the Employer's obligation to make certain cash contributions to the Plan by September 15, 1993; and (2) the proposed sale of the Timber by the Plan to the Employer when the Timber is harvested by the Employer at a later date; provided that the following conditions are met:

(a) The Timber is valued at an amount which is no greater than its fair market value at the time of contribution, as established by an independent, qualified appraiser;

(b) The terms and conditions of the contribution are at least as favorable to the Plan as terms and conditions which the Plan could obtain in a purchase of similar timber by the Plan from an unrelated party;

(c) The fair market value of the Timber does not exceed 10% of the Plan's total assets at the time of the contribution and at any time during which the Timber is held as an asset for the Plan's portfolio;

(d) In any sale of the Timber by the Plan to the Employer at a later date, the Plan receives an amount which is no less than the greater of either: (i) The fair market value of such Timber at the time of the transaction as established by an independent, qualified appraiser; or (ii) the fair market value of the Timber at the time of the contribution as established by the independent appraisal which was used for valuing the Timber when the contribution was made by the Employer;

(e) With respect to the contribution of the Timber to the Plan and any sale of the Timber by the Plan to the Employer, the Plan does not pay any commissions

or other expenses with respect to such transactions;

(f) AmSouth Bank, N.A. (AmSouth), as an independent, qualified fiduciary for the Plan, determines that the proposed contribution of the Timber to the Plan is in the best interests of the Plan as an investment for the Plan's portfolio at the time of the transaction, and protective of the Plan and its participants and beneficiaries;

(g) AmSouth determines that upon any sale of the Timber by the Plan to the Employer, the sale would be in the best interests and protective of the Plan and its participants and beneficiaries;

(h) AmSouth monitors the performance of the Timber as an investment for the Plan and takes whatever action is necessary to safeguard the interests of the Plan and its participants and beneficiaries; and

(i) AmSouth monitors the compliance by all parties with the terms and conditions of the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 12, 1993 at 58 FR 37525.

Written Comments and Modifications: The Department received four written comments with respect to the transactions described in the notice of proposed exemption (the Proposal).

The comments were from participants of the Plan who are currently employed by the Employer or an affiliate. The commenters were concerned about the prudence of the Plan's acquisition of the Timber as an investment for the Plan's portfolio. The commenters generally believed that the Timber would be a speculative investment in terms of its potential appreciation in value, would involve excessive cost to manage, and would expose the Plan to unnecessary risk of loss due to damage from fire, disease or other natural causes. The commenters believed that the Plan should consider other investment alternatives which will yield a more secure rate of return. In this regard, the commenters stated that the Plan's investment in the Timber involves too much uncertainty because there is no way to predict future demand for the Timber or whether the Timber will be in good condition at harvest time. In addition, one commenter noted that for the Plan to receive the Timber in lieu of a cash contribution would not be in the Plan's best interest because the Timber would be a less liquid asset than cash or other investments, such as stocks and bonds. Finally, one commenter stated that the notice procedures used for the Proposal did not provide interested

persons adequate time to study the Proposal and comment thereon.

AmSouth responded to the issues raised by the comments as the Plan's independent fiduciary for the proposed transactions.

With respect to the comments regarding the prudence of the Timber as a Plan investment, AmSouth states that the investment of approximately 7% of the Plan's assets in the Timber is an excellent investment which complies with the Plan's investment objectives and will not adversely affect the liquidity needs of the Plan. AmSouth represents that it manages over \$250 million worth of timberland assets in a fiduciary capacity and maintains a natural resources department which manages over 500,000 acres of timber held in investment portfolios. Thus, AmSouth believes that it is well-suited for judging the prudence of the Timber as an investment for the Plan.

With respect to the comments regarding the Timber being a "speculative" Plan investment, AmSouth states that the Timber has excellent potential for value appreciation and can be expected to yield a very favorable rate of return. In addition, AmSouth emphasizes that because the Employer has agreed to purchase the Timber at any time the Plan proposes to sell the Timber at a purchase price equal to the greater of its fair market value at the time of sale or at the time of its contribution to the Plan, the Plan is protected against loss of principal (see Paragraph 3 of the Proposal). AmSouth believes that the combination of expected return and protection of principal renders the Timber a "better than arm's-length" investment for the Plan. Therefore, AmSouth does not agree that the Timber should be characterized as a "speculative" investment.

With respect to the comments regarding the Timber as an "illiquid" investment, AmSouth represents that there should be sufficient need for the Timber in the future for an available market of purchasers to be expected. AmSouth states that the above-described agreement of the Employer to purchase the Timber actually guarantees a willing purchaser, thereby negating any "illiquidity" problem.

With respect to the comments regarding the excessive management expenses for the Timber, AmSouth states that the Employer has agreed to provide forestry management services to the Plan for the Timber under an arrangement whereby the fees charged will only reflect the Employer's direct expenses for such services (see Paragraph 2 of the Proposal). AmSouth

is obligated to ensure that the Plan only repay the Employer for direct expenses which are reasonable in connection with the services provided. AmSouth considers this to be a "better than arm's-length" arrangement for the Plan because if the Plan were to receive a cash contribution from the Employer and use the cash to purchase similar timber on the open market, the Plan may have to retain a third party service provider to perform such management services at a significantly greater cost than under the arrangement with the Employer.

With respect to the comments regarding the Timber investment exposing the Plan to unnecessary risk of loss, AmSouth states that unlike many typical investments in stocks and bonds where the movement of interest rates or the stock market can result in loss of principal, the above-described agreement with the Employer to purchase the Timber at the greater of its fair market value at the time of sale or at the time of contribution protects the Plan against risk of loss. In addition, AmSouth notes that although fire, flood or insect infestation would reduce the value of the Timber, such events would not, except in the most unlikely "worst case" scenario, eliminate the Timber's value because any such affected timber could typically be sold for certain commercial uses. AmSouth states that the Employer specifically selected geographically dispersed tracts of timber in order to limit the likelihood of any one occurrence impacting the remaining non-contiguous tracts.

In summary, AmSouth, as a large institutional fiduciary with significant employee benefit plan investment and timberland expertise, believes that the Timber is an excellent investment for the Plan which is protective of the Plan's interests as a result of the above-discussed agreements with the Employer and the implementation of various safeguards required by the Department as conditions for the proposed exemption. AmSouth represents that it will monitor compliance by the parties with such conditions and will take any action necessary to safeguard the interests of the Plan and its participants and beneficiaries.

With respect to the comment regarding the notice procedures used for the Proposal, the Employer represents that notice of the Proposal with a copy of the Proposal as published in the *Federal Register* on July 12, 1993 was sent by first class mail to all interested persons, including all participants of the Plan, on July 13, 1993 and was received by such persons by the deadline for

notice to interested persons on July 27, 1993. Interested persons were informed that the deadline for submitting comments in writing to the Department was August 26, 1993. An authorized representative of the Employer has provided the Department with a declaration under penalty of perjury attesting to the truth of the information regarding the Employer's notice to interested persons as required by the Department's regulations (see 29 CFR 2570.43). In this regard, the Department notes that the Employer has complied with the Department's exemption procedures regarding notification of interested persons.

Finally, with respect to the conditions of the Proposal, the Department on its own initiative has determined to modify the Proposal by adding an additional condition which requires that for the contribution of the Timber to the Plan and any sale of the Timber by the Plan to the Employer the Plan will not pay any commissions or other expenses with respect to such transactions (see condition (e) above). The Employer has agreed to this condition and AmSouth states that it will enforce the condition along with the other conditions of the Proposal.

Accordingly, after consideration of the entire record, the Department has determined to grant the exemption as modified.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

Prudential Mutual Fund Management, Inc. (PMF) Located in New York, NY

[Prohibited Transaction Exemption 93-59; Exemption Application No. D-9217]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the purchase or redemption of shares by an employee benefit plan, an individual retirement account (the IRA) or a retirement plan for a self-employed individual (the Keogh Plan; collectively, the Plans) in the Target Portfolio Trust (the Trust) established in connection with such Plans' participation in the Target Personal Investment Advisory Service (the Target Program). In addition, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (E) and (F) of the Code, shall

not apply to the provision, by Prudential Securities Incorporated (Prudential Securities), of investment advisory services to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary) which may result in such fiduciary's selection of portfolios of the Trust (the Portfolios) in the Target Program for the investment of Plan assets.

This exemption is subject to the following conditions that are set forth below in Section II.

Section II. General Conditions

(1) The participation of Plans in the Target Program is approved by an Independent Plan Fiduciary. For purposes of this requirement, an employee, officer or director of Prudential Securities and/or its affiliates covered by an IRA not subject to title I of the Act will be considered an Independent Plan Fiduciary with respect to such IRA.

(2) The total fees paid to Prudential Securities and its affiliates constitute no more than reasonable compensation.

(3) No Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(4) The terms of each purchase or redemption of Trust shares remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(5) Prudential Securities provides written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria.

(6) Any recommendation or evaluation made by Prudential Securities to an Independent Plan Fiduciary are implemented only at the express direction of such independent fiduciary.

(7) Prudential Securities provides investment advice in writing to an Independent Plan Fiduciary with respect to all available Portfolios.

(8) Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio is independent of Prudential Securities and its affiliates.

(9) The quarterly investment advisory fee that is paid by a Plan to Prudential Securities for investment advisory services rendered to such Plan is offset by such amount as is necessary to assure that PMF retains no more than 20 basis points from any Portfolio (with the exception of the U.S. Government Money Market Portfolio for which PMF retains an investment management fee of 12.5 basis points) containing investments attributable to the Plan investor.

(10) With respect to its participation in the Target Program prior to purchasing Trust shares,

(a) Each Plan receives the following written or oral disclosures or questionnaires from Prudential Securities or the Trust:

(1) A copy of the prospectus (the Prospectus) for the Trust discussing the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing between Prudential Securities, PMF and its subsidiaries, the compensation paid to such entities and additional information explaining the risks attendant to investing in the Trust.

(2) Upon written or oral request to Prudential Securities, the Independent Plan Fiduciary will be given a Statement of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize, including a description of the risks.

(3) As applicable, an Investor Profile Questionnaire given to the Independent Plan Fiduciary or eligible participant of a Plan providing for participant-directed investments (the section 404(c) Plan).

(4) As applicable, a written analysis of Prudential Securities' asset allocation decision and recommendation of specific Portfolios given to the Independent Plan Fiduciary or the participant in a section 404(c) Plan.

(5) A copy of the investment advisory agreement between Prudential Securities and such Plan relating to participation in the Target Program.

(6) Upon written request to the Trust, a copy of the respective investment advisory agreement between Prudential Securities and the Sub-Advisers.

(7) As applicable, an explanation by a Prudential Securities Financial Advisor (the Financial Advisor) to section 404(c) Plan participants or the Independent Plan Fiduciary of the services offered under the Target Program and the operation and objectives of the Portfolios.

(8) Copies of the proposed exemption and grant notice describing the exemptive relief provided herein.

(b) If accepted as an investor in the Target Program, an Independent Plan Fiduciary of an IRA or Keogh Plan, is required to acknowledge, in writing to Prudential Securities, prior to purchasing Trust shares that such fiduciary has received copies of the documents described in subparagraph 10(a) of this section.

(c) With respect to a section 404(c) Plan, written acknowledgement of the receipt of such documents is provided by the Independent Plan Fiduciary (i.e., the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares, or, in some instances, the Plan participant). Such Independent Plan Fiduciary will be required to represent in writing to PMF that such fiduciary is (1) independent of PMF and its affiliates and (2) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the Target Program.

(d) With respect to a Plan that is covered under title I of the Act, where investment decisions are made by a trustee, investment manager or a named fiduciary, such Independent Plan Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to PMF that such fiduciary is (1) independent of PMF and its affiliates, (2) capable of making an independent decision regarding the investment of Plan assets, and (3) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the Target Program.

(11) Subsequent to its participation in the Target Program, each Plan receives the following written or oral disclosures with respect to its ongoing participation:

(a) Written confirmations of each purchase or redemption transaction by the Plan with respect to a Portfolio.

(b) Telephone quotations from Prudential Securities of such Plan's account balance.

(c) A monthly statement of account from Prudential Securities specifying the net asset value of the Plan's investment in such account to the extent there are transactions by the Plan.

(d) The Trust's semi-annual and annual report which will include financial statements for the Trust and investment management fees paid by each Portfolio.

(e) A written quarterly monitoring report (the Quarterly Account Monitor) containing a record of the performance of the Plan's assets invested in the Target Program, the rates of return received by the Plan with respect to such investments, the Plan's actual portfolio with a breakdown of investments made in each Portfolio, year to date and cumulative realized gains and losses and income received from each Portfolio, a summary of purchase, sale and exchange activity, dividends and interest received or reinvested and market commentary. The

Quarterly Account Monitor will also contain an analysis and an evaluation of a Plan investor's account to assist the Independent Plan Fiduciary or section 404(c) Plan participant in ascertaining whether the investment objectives for a Plan or an individual account have been met and recommending, if required, changes in Portfolio allocations.

(1) In the case of a section 404(c) Plan where the Independent Plan Fiduciary has established an omnibus account in the name of the Plan with Prudential Securities, the Quarterly Account Monitor will be provided to the Independent Plan Fiduciary.

(2) In the case of a section 404(c) Plan where the Independent Plan Fiduciary opens an account for each Plan participant, the Quarterly Account Monitor will be furnished to each participant and will set forth information pertaining to the participant's individual account.

(f) Written disclosures to the Independent Plan Fiduciary, on a quarterly and annual basis, of the (1) Percentage of each Portfolio's brokerage commissions that are paid to Prudential Securities and (2) the average brokerage commission per share paid by each Portfolio to Prudential Securities, as compared to the average brokerage commission per share paid by the Trust to brokers other than Prudential Securities, both expressed as cents per share.

(g) Notification that periodic meetings will be held, upon the request of Plan investors, with Financial Advisors, Independent Plan Fiduciaries or, if applicable, participants of section 404(c) Plans, to discuss the Quarterly Account Monitor or other questions that may arise.

(12) PMF maintains, for a period of six years, the records necessary to enable the persons described in paragraph (13) of this section to determine whether the conditions of this exemption have been met, except that (a) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of PMF and/or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (b) no party in interest other than PMF shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (13) below.

(13)(a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504

of the Act, the records referred to in paragraph (14) of this section are unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(2) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(3) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(4) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraphs (2)–(4) of this paragraph (13) are authorized to examine the trade secrets of PMF or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(1) An "affiliate" of Prudential Securities includes—

(a) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Prudential Securities. (For purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(b) Any officer, director or partner in such person, and

(c) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(2) An "Independent Plan Fiduciary" is a Plan fiduciary which is independent of Prudential Securities and its affiliates and is either:

(a) A Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares of a section 404(c) Plan,

(b) A participant in a Keogh Plan,

(c) An individual covered under a self-directed IRA which invests in Trust shares, or

(d) A trustee, investment manager or named fiduciary responsible for investment decisions in the case of a title I Plan that does not permit individual direction as contemplated by section 404(c) of the Act.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on July 12, 1993 at 58 FR 37514.

EFFECTIVE DATE: This exemption is effective March 15, 1993.

Written Comments

The Department received one written comment with respect to the Notice and no requests for a public hearing. The comment letter was submitted by PMF, Prudential Securities and their affiliates (hereinafter, the Applicants) and it suggested certain clarifications to the General Conditions and the Summary of Facts and Representations of the Notice. Discussed below are the changes suggested by the Applicants and the Department's responses to these amendments.

With respect to the General Conditions of the Notice that are set forth in Section II, the Applicants suggest that the last sentence of paragraph (e) be clarified to read as follows:

The Quarterly Account Monitor will also contain an evaluation of a Plan investor's account to assist the Plan in ascertaining whether its investment objectives have been met and recommending, if required, changes in Portfolio allocations.

However, after considering this comment, the Department has decided that further revisions of Condition 11(e) are warranted to reflect the fact that it is the Independent Plan Fiduciary or section 404(c) Plan participant rather than the Plan who makes determinations about the prudence of continuing a Plan or account investment in the Target Program. Therefore, the Department has modified the last sentence of Condition 11(e) as follows:

The Quarterly Account Monitor will also contain an analysis and an evaluation of a Plan investor's account to assist the Independent Plan Fiduciary or section 404(c) Plan participant in ascertaining whether the investment objectives for a Plan or an individual account have been met and recommending, if required, changes in Portfolio allocations.

The Applicants also suggest that Condition 11(g) of the Notice, which addresses ongoing oral and written disclosures that will be provided by Prudential Securities to Plan investors, be modified to read as follows:

(g) Periodic meetings will be held at the request of Plan investors with Financial Advisors, Independent Plan Fiduciaries or, if applicable, participants of section 404(c) Plans, to discuss the Quarterly Account Monitor or other questions that may arise.

Although generally agreeing with this comment, the Department believes it would be more comprehensible if the words "Notification that" were inserted at the beginning of this clause to emphasize the fact that Prudential

Securities will inform Plan investors of meetings with its Financial Advisors. Therefore, the Department has modified Condition 11(g) as follows:

(g) Notification that periodic meetings will be held, upon the request of Plan investors, with Financial Advisors, Independent Plan Fiduciaries or, if applicable, participants of section 404(c) Plans, to discuss the Quarterly Account Monitor or other questions that may arise.

With respect to modifications to the Summary of Facts and Representations of the Notice, the Applicants suggest that the last sentence of the second paragraph of Representation 8 be revised to reflect the fact that, in certain circumstances, the quarterly investment allocation fee can be lower than 1.35 percent. In response to this comment, the Department has revised Representation 8 to read as follows:

The quarterly allocation fee of 1.35 percent per annum may be lowered in connection with (a) investments of \$100,000 or more in the Target Program or (b) the fee offset described in Representation 20.

The Applicants also request that the Department revise the first sentence of Footnote 9 in which Prudential Securities states that a Plan administrator, trustee or named fiduciary, as the recordholder of Trust share, will make available the Trust Prospectus to section 404(c) Plan participants. The Applicants explain that Prudential Securities is not in a position to make any statements with respect to actions undertaken by Plan administrators, trustees or named fiduciaries. Therefore, they recommend that the first sentence of Footnote 9 be deleted.

The Department does not concur entirely with the suggested modification. Rather than deleting the first sentence of the footnote, the Department believes the sentence can be clarified to read as follows:

In the case of a section 404(c) Plan, Prudential Securities represents that the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares, has agreed to make the Trust Prospectus available to section 404(c) Plan participants.

With respect to Representation 17 of the Notice, the Applicants state that it is possible that the outside fee can be negotiated to a level below .50 percent. However, the Applicants anticipate that this fee will generally be no lower than .50 percent. Therefore, they suggest that the Department revise the third sentence of Representation 17 to reflect that the fee will generally range from .50 percent to a maximum of 1.35 percent. The Department concurs with this change.

and has revised sentence three of Representation 17 as follows:

The "outside fee," which is computed quarterly, generally ranges on an annual basis from .50 percent up to a maximum of 1.35 percent of the average annual net assets held in a Target Program account invested by the Plans in the Equity and Income Portfolios.

The Applicants note that a Plan may be given the option of being separately invoiced for the outside fee and paying such fee by check or having the outside fee deducted from the Plan's account with Prudential Securities. In the event the Plan elects to be invoiced separately for the outside fee, the Applicants state that the fee is payable 45 days after the end of each calendar quarter or, for additional investments, after such investments aggregate \$10,000. Therefore, the Applicants suggest that relevant portions of Representations 17, 18 and 20 of the Notice be revised as well as Footnote 18.

In response to this change, the Department has revised Representation 17 of the Notice by changing the initial clause of the second paragraph to read "For some Plan investors" instead of "For Plan investors" and adding a new third paragraph which should be inserted at the end of the text of this representation. The new paragraph would read as follows:

Plan investors will be given the option of either being separately invoiced for the outside fee and paying such fee by check or having the outside fee deducted from their Prudential Securities account. In the event the Plan elects to be invoiced separately for the outside fee, the fee is payable 45 calendar days after the end of the quarter. However, if the Plan elects to have the outside fee deducted from its Plan account with Prudential Securities, such outside fee would be payable within 6 business days of the trade date for an initial investment or within 6 business days of the current calendar quarter.

The Department also wishes to clarify that the term "applicable fee" referred to in the initial sentence of Representation 18 means the "outside fee" which will be paid after a Plan's additional investments in the Trust total \$10,000 or more. Therefore, the Department has revised this sentence by placing the term outside fee in parentheticals. The revised sentence reads as follows:

Each time that additional funds aggregating \$10,000 or more are invested in the Portfolios during any one quarter, the applicable fee (i.e., the outside fee), pro-rated for the number of calendar days then remaining in the quarter and covering the amount of such additional funds, shall be charged and be payable 6 business days later.

To reflect the dual billing procedure that Prudential Securities has established for Plans investing in the Trust, the Department has revised paragraph 5 of the hypothetical example contained in Representation 20 of the Notice. The amended paragraph now reads as follows:

The account of the Plan investor (as with other investors) would be debited on or about April 8, 1993 (i.e., the sixth business day of the calendar quarter) for the amount of the net quarterly outside fee (pursuant to the authorization contained in the Target Program investment advisory agreement, and as described in the Target Program description attached to the cover of the Trust's Prospectus. However, if the Plan investor is separately invoiced by Prudential Securities, the outside fee would be payable 45 calendar days after the end of the calendar quarter.

The Department has also amended Footnote 18 by adding new language to that contained in the parenthetical so as to reflect the two payment schedules for the outside fee:

* * * i.e., on or about the sixth business day of the first month of the calendar quarter or within 45 calendar days after the end of the calendar quarter.

Finally, with respect to the example contained in Representation 20, the Applicants point out that in Clause (1) of the first paragraph of the example (id at 37520) inadvertently includes the word "not" prior to the word "retain." The Department concurs with this change and has deleted the word "not" so that Clause (1) will read as follows:

* * * (1) U.S. Government Money Market Portfolio in which the Plan made a \$50 investment and from which PMF would retain, after payment of the subadvisory fee to the Sub-Adviser, an inside fee of .125 percent;

Upon a review of the entire record, including the written comment received, the Department has determined to grant the exemption subject to the modifications described above.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Peoples Heritage Financial Group, Inc. Thrift Incentive Plan (the Thrift Plan); and Peoples Heritage Financial Group, Inc. Profit Sharing and Employee Stock Ownership Plan (the ESOP; Together, the Plans) Located in Portland, ME

[Prohibited Transaction Exemption 93-60; Exemption Application Nos. D-9242 and D-9243]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) The past receipt of certain stock rights (the Rights) by the Plans, which are sponsored by Peoples Heritage Financial Group, Inc. (Peoples) and its affiliates, pursuant to a stock rights offering (the Offering) by Peoples to shareholders of record of Peoples common stock (the Stock) as of December 3, 1992; (2) the holding of the Rights by the Plans during the Offering Period; and (3) the disposition or exercise of the Rights by the Plans. Provided:

(a) The Plans' acquisition and holding of the Rights resulted from an independent act of Peoples as a corporate entity, and all holders of the Stock were treated in a like manner, including the Plans;

(b) With respect to the Thrift Plan, the Rights were acquired, held and controlled by individual Plan participant accounts pursuant to plan provisions for individually directed investment of such accounts; and

(c) With respect to the ESOP, the authority for all decisions regarding the acquisition, holding and control of the Rights was exercised by an independent fiduciary which made determinations as to whether and how the ESOP should exercise or sell the Rights acquired through the Offering.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 12, 1993 at 58 FR 37522.

EFFECTIVE DATE: This exemption is effective December 3, 1992.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

The Penn Central Corporation Master Trust (the PCC Trust) Located in New York NY; and The General Cable Corporation Master Trust (the GCC Trust) Located in Cincinnati, OH

[Prohibited Transaction Exemption 93-61; Exemption Application Nos. D-8835 through D-8842]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A)

through (E) of the Code, shall not apply to: (1) The continued holding of shares of common stock (the PCC Stock) of The Penn Central Corporation (PCC) by the PCC Trust on behalf of plans (the PCC Plans) sponsored by PCC and its affiliates; (2) the acquisition, holding and exercise by the PCC Plans of an irrevocable put option (the PCC Put Option) which permits the PCC Plans to sell the PCC Stock to PCC (a) at a price per share equal to the then current fair market value of the PCC Stock or, if greater, \$23.79 and, (b) for shares of PCC Stock acquired after October 1, 1991, at a price per share equal to the then current fair market value of the PCC Stock, or if greater, the acquisition price of such shares; (3) the continued holding of shares of common stock (the GCC Stock) of General Cable Corporation (GCC) by the GCC Trust on behalf of plans (the GCC Plans) sponsored by GCC and its affiliates; (4) the acquisition, holding and exercise by the GCC Plans of an irrevocable Put Option (the GCC Put Option) which permits the GCC Plans to sell the GCC Stock to GCC (a) at a price per share equal to the then current fair market value per share of GCC Stock, or, if greater, \$6.34 and, (b) for shares of GCC Stock acquired after July 1, 1992, at a price per share equal to its then current fair market value, or, if greater, the acquisition price of such shares; and (5) the possible future acquisition by the PCC Plans of additional PCC Stock, and by the GCC Plans of additional GCC Stock, provided the following conditions are satisfied: (a) At the time of acquisition by the PCC Plans, the PCC Stock and any other qualifying employer securities (QES) as defined in section 407(e) of the Act will represent no more than 10% of the assets of any of the PCC Plans; (b) at the time of acquisition by the GCC Plans, the GCC Stock and any other QES as defined in section 407(e) of the Act will represent no more than 10% of the assets of any of the GCC Plans; (c) the independent fiduciary of the PCC Plans and the GCC Plans (together, the Plans) will monitor the holding of the PCC and GCC Stock by the respective Plans and take whatever action is necessary to protect the Plans' rights, including, but not limited to, the exercising of the Put Options if the independent fiduciary, in its sole discretion, determines that such exercise is appropriate; (d) no further acquisitions of PCC Stock will be made by the PCC Plans, and no further acquisitions of GCC Stock will be made by the GCC Plans, unless such acquisitions are first approved by the Plans' independent fiduciary, who must

make a determination that such acquisitions are appropriate and in the best interests of the respective Plans; (e) the Plans will pay no more than current fair market value with respect to all further acquisitions of PCC and GCC Stock; and (f) a bond, letter of credit, or escrow agreement, as described herein, is maintained for (1) The PCC Plans as long as the PCC Plans continue to hold any shares of PCC Stock, and (2) the GCC Plans as long as the GCC Plans continue to hold any shares of GCC Stock.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 12, 1993 at 58 FR 28044.

EFFECTIVE DATE: This exemption is effective December 17, 1991.

NOTICE TO INTERESTED PERSONS: The applicants represent that they were unable to comply with the notice to interested persons requirement within the time frame stated in the exemption application. However, the applicants represent that all interested persons were notified, in the manner agreed upon between the applicants and the Department, by June 25, 1993. All interested persons were informed that they had 30 days from the receipt of notification in which to file comments or requests for a public hearing with the Department. The comment period ended on July 25, 1993.

WRITTEN COMMENTS: The Department received seven comments and no hearing requests with respect to the proposed exemption. The commentators all expressed concern that the proposed exemption would not be in the best interest of the Plans and their participants. The applicants responded to this comment by citing the safeguards that are in place for the subject transactions. As a condition of the exemption, PCC must guarantee that if the PCC Stock is sold, the price cannot be less than it was in 1991 when American Financial Corporation first became a 50% owner of PCC Stock. A similar guarantee is in place for the GCC Stock. This legally binding commitment is enforceable by an independent bank and must be secured by a letter of credit, bond or escrow account. This guarantees that the Plans will receive a minimum price in the event the PCC or GCC Stock is sold. Such a right is virtually unobtainable for other equity investments available to the Trusts.

Another commentator raised the question of why the exemption had been proposed to permit the continued holding by the PCC Plans of PCC Stock

when PCC had been losing money. The applicants responded that PCC's audited financial records show that its net income from continuing operations (before income taxes and without the cumulative effect of an accounting change relating to income taxes) was \$103 million for 1992, \$99.1 million for 1991, and \$114.6 million for 1990. The applicants further point out that the PCC Stock has proved to be an excellent investment for the PCC Plans as it has increased in value from about \$23 per share in 1991 to \$35 per share as of July 28, 1993. Absent the proposed exemption, this investment would have been unavailable to the Plans.

The Department has considered the entire record, including the comments received and the applicants' response to the comments, and has determined to grant the exemption as it was proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

New Emory University Health Plan (the Emory Plan) and The Emory Clinic Health Plan (the Clinic Plan; Together, the Plans) Located in Atlanta, GA

[Prohibited Transaction Exemption 93-62; Exemption Application Nos. D-9098 and D-9099]

Exemption

Section I. Covered Transactions

The restrictions of section 406 (b)(1) and (b)(2) of the Act shall not apply to: (1) The selection by the Plans of health care service providers affiliated with Emory University (Emory) and the Emory Clinic (the Clinic) who are participating in a preferred provider network of physicians, hospitals and other health care providers (the Network), which may provide services to the Plans; (2) and the direct or indirect payment of fees charged by physicians, hospitals and other health care providers affiliated with Emory and the Clinic, who are parties in interest with respect to the Plans,¹ in connection with health care services rendered to participants and beneficiaries of the Plans, provided the conditions set forth in Section II below are satisfied.

Section II. Conditions

A. At least 50% of the physicians and 50% of the hospitals included in the

¹ The Department believes that any relief from section 406(a) of the Act that may be necessary in connection with this transaction is provided by the statutory exemption for the provision of services to a plan by a party in interest contained in section 408(b)(2) of the Act, and it is inappropriate to provide any relief herein from section 406(a) beyond that provided by the statutory exemption.

Network are not affiliated with Emory or the Clinic;

B. All fees charged by health care providers within the Network, whether or not they are affiliated with Emory and/or the Clinic, have been negotiated on behalf of the Plans by their independent fiduciary;

C. The Plans' independent fiduciary selects the health care providers who participate in the Network;

D. Emory and the Clinic will engage a qualified, independent organization to conduct a thorough audit of the processing of benefit claims by The Prudential Insurance Company of America (Prudential) at the close of the first year of operation of the managed care arrangement described herein, and at least every two years thereafter (if Prudential continues to perform the claims processing function);

E. All dealings between the Plans and the health care providers affiliated with Emory and/or the Clinic included within the Network are on a basis no less favorable to the Plans than such dealings with unaffiliated health care providers who are included within the Network; and

F. Participants and beneficiaries of the Plans are permitted to select any health care provider that they desire, whether that provider participates in the Network or not, and regardless of whether the provider is affiliated with Emory and/or the Clinic.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 9, 1993 at 58 FR 32369.

EFFECTIVE DATE: This exemption is effective January 1, 1993.

WRITTEN COMMENTS AND HEARING REQUESTS:

The Department received one written comment and no hearing requests with respect to the proposed exemption. The comment letter, which was submitted on behalf of several Emory Plan participants who live and work outside the immediate Atlanta area, raised two objections to the proposed exemption.

The commentator objected to the representation that "Coinsurance and deductibles for out-of-Network health care will be roughly comparable to those applicable under the Prior Plans." The commentator remarked that going from 80% coinsurance to 70% coinsurance, and having deductibles raised from 200-300% (depending on the number of dependents), is not "roughly comparable". The commentator also stated that the participants in question, since they live in Oxford, Georgia, a

small town 40 miles from Atlanta, are limited in choice for pharmaceutical services by the Emory Plan to Eckerd Pharmacies, although many of these participants would prefer the services of a different local pharmacy.

The applicant responded to the two points raised by the commentator. The applicant stated while the comment correctly pointed out the reduction in coinsurance payments and increase in deductibles for out-of-Network health care, benefits have been expanded to include preventive care, including routine physical examinations, well baby care, routine mammograms and vision and hearing care, whether performed by EmoryCare Network or out-of-Network providers. Under the Prior Plans, these items were not covered at all. Moreover, monthly health insurance premiums payable by participants through payroll deductions have decreased. Taking all this into account, the applicant reiterated its belief that out-of-Network benefits under the Plans are indeed roughly comparable to benefits provided under the Prior Plans.

With regard to prescription drugs, the applicant acknowledged that the only pharmacy in the Oxford area that is a Network member is an Eckerd Pharmacy. The applicant stated that this is because Prudential, the Plans' independent fiduciary, has entered into contractual arrangements with Eckerd under which Eckerd provides drugs to EmoryCare participants at discount rates. Under these contractual arrangements, Eckerd is entitled to exclusivity within the Network. The Oxford participants have discussed with Prudential their desire to include another Oxford area pharmacy in the Network, but Prudential has determined that it is more beneficial to the Plans to retain the single exclusive agreement with Eckerd rather than to negotiate several agreements with individual Atlanta-area drug stores.

In summary, the applicant responded by stating that the comment raised concerns about the benefit structure of the Plans, rather than the essence of the proposed exemption, namely the inclusion in the Network of health care providers affiliated with Emory and the Clinic. The applicant believes that the benefits under the Plans are significantly better than those under the Prior Plans from the perspective of the vast majority of Plan participants, and Emory has gone to great lengths in attempting to accommodate the needs of the Oxford-area participants as well.

The Department has considered the entire record, including the comment submitted and the applicant's response

to the comment, and has determined to grant the exemption as it was proposed. **FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of September, 1993.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.*

[FR Doc. 93-21820 Filed 9-7-93; 8:45 am]

BILLING CODE 4510-20-P

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) notice is

hereby given of a public meeting to be held in Baltimore, Maryland, on Thursday and Friday, September 23 and 24, 1993, at the Vista International Hotel, 1400 M Street, NW., Washington, DC, in Ballroom A, located on the Ballroom Level.

DATES: Thursday September 23, 1993, 9 a.m.-5 p.m.

Friday September 24, 1993, 9 a.m.-12 p.m.

STATUS: The meeting is to be open to the public.

MATTERS TO BE DISCUSSED: The purpose of this public meeting is to enable the Commission members to discuss progress on the research agenda, future research, and budget and administrative matters.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., suite 300, Washington, DC 20005, (202) 724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to title IV-F of the Job Training Partnership Act (Pub. L. 97-300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues.

The meeting will be open to the public. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made.

Anyone wishing to submit comments prior to the meeting, should do so by C.O.B. September 20, and they will be included in the record. Minutes of the meeting will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., suite 300, Washington, DC 20005.

Signed at Washington, DC, this 1st day of September 1993.

Barbara C. McQuown,
Director, National Commission for Employment Policy.

[FR Doc. 93-21853 Filed 9-7-93; 8:45 am]
BILLING CODE 4510-23-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts In Education Advisory Council; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Advisory Council on Arts Education (Ad Hoc Steering Group) will be held on September 20, 1993, from 10 a.m. to 5

p.m., in room M07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC.

This meeting will be open to the public on a space available basis to discuss draft planning objectives and possible strategies for arts education within the Endowment.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: September 1, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-21775 Filed 9-7-93; 8:45 am]

BILLING CODE 7537-01-M

Challenge and Advancement Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Theater Challenge Section) to the National Council on the Arts will be held on September 23-24, 1993, from 9:30 a.m. to 5:30 p.m., on September 23, 1993 and from 9:30 a.m. to 3 p.m. on September 24, 1993. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:30 a.m. to 10 a.m. on September 23, 1993 and from 2:30 p.m. to 3 p.m. on September 24, 1993 for introductions and a discussion of guidelines and policy.

The remaining portions of this meeting from 10 a.m. to 5:30 p.m. on September 23, 1993 from 9:30 a.m. to 3 p.m. on September 24, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the

Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682-5439.

Dated: September 1, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-21776 Filed 9-7-93; 8:45 am]

BILLING CODE 7537-01-M

Challenge and Advancement Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Presenting and Commissioning Challenge Section) to the National Council on the Arts will be held on September 28, 1993 from 9 a.m. to 5:30 p.m. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting will be open to the public from 9 a.m. to 10 a.m. for introductions.

The remaining portion of this meeting from 10 a.m. to 5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the

determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682-5439.

Dated: September 1, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-21778 Filed 9-7-93; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that meeting of the Dance Advisory Panel (Overview Section) to the National Council on the Arts will be held on September 22, 1993 from 9 a.m. to 6 p.m. This meeting will be held in room M-07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

This meeting will be open to the public on a space available basis. Topics of discussion will include the activities of the Dance Program and issues facing the Dance field.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW, Washington, DC 20506, 202/682-5532, TTY 202/682-

5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: September 1, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-21777 Filed 9-7-93; 8:45 am]

BILLING CODE 7537-01-M

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of title 5, United States Code.

1. Date: September 16, 1993.

Time: 8:30 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for Library and Archival Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after January 1, 1994.

2. Date: September 17, 1993.

Time: 8:30 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for Library and Archival Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after January 1, 1994.

3. Date: September 20, 1993.

Time: 8:30 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for Library and Archival Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after January 1, 1994.

4. Date: September 24, 1993.

Time: 8:30 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for Library and Archival Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after January 1, 1994.

5. Date: September 27, 1993.

Time: 9 a.m. to 5 p.m.

Room: 526.

Program: This meeting will exchange views on ways by which the Public Humanities Projects Program can more fully meet the mission of the Division of Public Programs—to engage all Americans in the study of human history and culture through the humanities. Interested members of the public are welcome to attend.

Thomas Kingston,

Advisory Committee Management Officer (Alternate).

[FR Doc. 93-21779 Filed 9-7-93; 8:45 am]

BILLING CODE 7536-01-M

International Exhibitions Federal Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions will be held on September 23, 1993 from 9 a.m. to 5:30 p.m. This meeting will be held in room 820, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m. to 9:30 p.m. for introductions.

The remaining portion of this meeting from 9:30 a.m. to 5:30 p.m. is for the purpose of Panel review, discussion, elevation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given

in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW, Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: September 1, 1993.

Yvonne M. Sabine,
Director, Office of Panel Operations, National Endowment for the Arts.
[FR Doc. 93-21774 Filed 9-7-93; 8:45 am]
BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Division of Computer and Computation Research; Special Emphasis Panel, Notice of Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Division of Computer & Computation Research.
Date: September 30, 1993.

Time: 8:30 a.m.-5 p.m.
Place: 1110 Vermont Avenue, 15th St., NW, Washington, DC.
Type of Meeting: Closed.
Agenda: Review and evaluate Small Business Innovative proposals.
Contact: Dr. Bruce H. Barnes, Acting Division Director, Computer and Computation Research, National Science Foundation, Rm. 304, Washington, DC 20550 (202) 357-9747.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 93-21841 Filed 9-7-93; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

NRC Workshop Digital Systems Reliability and Nuclear Safety

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Digital Systems Reliability and Nuclear Safety Workshop final agenda; open to public.

SUMMARY: FRN 58 FR 37034 No. 130 07/09/93 contained preliminary notice and agenda for a workshop on September 13-14, 1993. This notice provides the final agenda for this workshop. The purpose of the workshop is to (1) provide feedback to the NRC from outside experts regarding proposed safety issues and proposed regulatory positions and research associated with the application of digital systems in nuclear power plants; and (2) to continue the in-depth exposure of the NRC staff to digital systems design issues related to nuclear safety by discussions with experts in the state of the art and practice of digital systems. The National Institute of Standards and Technology (NIST) is assisting the Nuclear Regulatory Commission (NRC) in hosting this workshop.

DATES: September 13-14, 1993, from 8:30 a.m. to 6 p.m. each day.

ADDRESSES: Holiday Inn Crowne Plaza, Rockville, Maryland.

PARTICIPATION: Nuclear Regulatory Commission Staff, Nuclear Industry Professionals, Digital Software Professionals, and others.

AGENDA: September 13, 1993.

8:00 Registration
Opening Session
Chair: Mr. Leo Beltracchi, USNRC
8:30 Welcome
Commissioner Kenneth C. Rogers
U.S. Nuclear Regulatory Commission
8:45 Welcome and Opening Statement
Mr. Eric Beckjord, Director
Office of Nuclear Regulatory Research
U.S. Nuclear Regulatory Commission
9:00 Welcome and ACRS Perspective

Dr. J. Ernest Wilkins, Chairman
Advisory Committee on Reactor Safeguards
U.S. Nuclear Regulatory Commission
Issue Session: Perspective for Nuclear Power Plants
Chair: Mr. Joel Kramer, USNRC
9:15 Presentation on NRC Regulatory Positions and Guidelines
Mr. William Russell
Associate Director for Inspection and Technical Assessment
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
9:45 NRC Research Activities
Mr. Leo Beltracchi
Senior Project Manager
Office of Nuclear Regulatory Research
U.S. Nuclear Regulatory Commission
10:15 Industry Perspective
Mr. Richard Blauw
Commonwealth Edison Company
10:45 Break
11:00 Experiences from Application of Digital Systems in a NPP
Mr. Paul Joannou
Ontario Hydro
Technical Session: Digital Safety Systems for Nuclear Power Plants
Chair: Mr. Joseph Joyce, USNRC
11:30 Hardware Aspects for Safety-Critical Systems
Mr. Al Sudduth
Duke Power Company
11:50 Software Aspects for Safety-Critical Systems
Dr. John Cherniavsky
National Science Foundation
12:10 Human Aspects for Safety-Critical Systems
Dr. Lewis Haines
Nuclear Industry Independent Consultant
12:30 Questions and Discussion
1:00 Lunch
Technical Session: Software Engineering for High Integrity Systems
Chair: Ms. Dolores Wallace, NIST
2:30 System and Software Hazard Analysis for Nuclear Applications
Dr. Nancy Leveson
University of Washington
2:55 Formal Methods for Requirements and Specifications
Dr. John McHugh
Portland State University
3:20 Software Test Cases Derived from Formal Requirements
Mr. Robert Poston
Interactive Development Environments
3:45 Break
4:00 Object Oriented Design for Safety-Critical Systems
Dr. Barbara Cuthill
National Institute of Standards and Technology
4:25 Questions and Discussions on Technical Session
September 14, 1993
8:00 Registration
Technical Session: Methods for Reducing Risks in Software Systems
Chair: Dr. John Rushby, SRI International
8:30 Automated Tools for Safety-Critical Software
Ms. Anne-Marie Lapassant

Commissariate a L'Energie Atomique
8:55 Risks of Safety-Critical Software
Dr. Winston Royce
TRW, Incorporated
9:20 Software Metrics for Safety-Critical Applications
Mr. Kyle Rone
IBM Houston, Texas
9:45 Software Reliability for Safety-Critical Applications
Dr. William Everett and Mr. John Musa
AT&T Bell Laboratories
10:10 Questions and Discussion
10:35 Break
10:50 Software Configuration Management for Safety-Critical Applications
Mr. Ron Berlack
Configuration Management International
11:15 How Much Software Verification and Validation is Adequate for Nuclear Safety?
Mr. Roger Fujii
Logicon, Incorporated
11:40 Software Verification and Validation for New Technology in Nuclear Settings
Dr. Lance Miller
Science Applications International Corporation
12:05 Certification of Software for Reuse into Safety-Critical Applications
Ms. Charlotte Schepers
Research Triangle Institute
12:30 Questions and Discussions
1:00 Lunch
2:30 Panel: Application of Workshop to NRC activities Moderators:
Mr. Franklin D. Coffman, Jr.
Office of Nuclear Regulatory Research
Mr. John Gallagher
Office of Nuclear Reactor Regulation
Panel Members:
Dr. John McHugh
Portland State University
Dr. Joseph Naser
Electric Power Research Institute
Dr. Winston Royce
TRW Incorporated
Dr. John Rushby
SRI International
Panel Issues:
—Are the proper issues being addressed?
—What other issues need to be addressed?
—Are proposed NRC regulatory positions complete and correct?
—What are the considerations for further research?
4:30 Questions and Discussion
5:00 Prepared Statements
5:30 NRC Closing Remarks
Mr. Franklin D. Coffman, Jr., Chief, Human Factors Branch, Office of Nuclear Regulatory Research.
Dr. Cecil Thomas, Deputy Director, Division of Reactor Controls and Human Factors, Office of Nuclear Reactor Regulation.

SUPPLEMENTARY INFORMATION: The following documents relevant to the workshop are now in the NRC Public Document Room; located at 2120 L Street, NW., (Lower Level), Washington, DC:

1. Draft, "Operating Reactors Digital Retrofits, Digital Systems Review Procedures," Version 1

2. Draft, "Branch Technical Position (HICB), Digital Instrumentation and Control Systems in Advanced Plants."

Two additional documents relevant to the workshop which participants may wish to review are:

1. International Electrotechnical Commission Standard 880, "Software for Computers in the Safety Systems of Nuclear Power Plants," 1986.
2. P-7-4.3.2, Draft 8, American National Standard, "Standard Criteria for Digital Computers in Safety Systems of Nuclear Power Generating Station."

TECHNICAL CONTACTS:

Leo Beltracchi, USNRC, Telephone: 301/492-3549, Email: 1xb@nrc.gov
Dolores Wallace, NIST, Telephone 301/975-3340, Email: wallace@swe.ncsl.nist.gov
Dated: August 31, 1993.
For the U.S. Nuclear Regulatory Commission.

Brian W. Sheron,
Director, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 93-21824 Filed 9-7-93; 8:45 am]

BILLING CODE 7590-01-M

Whistleblower Protection; Announcement of Public Meetings

AGENCY: Nuclear Regulatory Commission.

ACTION: Announcement of public meetings.

SUMMARY: The Nuclear Regulatory Commission (NRC) intends to hold public meetings at four locations to discuss current whistleblower protection activities. The NRC invites participation in these meetings by any interested persons, including individuals who have made safety allegations, other NRC licensee employees, licensee and contractor representatives, and the public. This action is intended to assist the NRC in evaluating current whistleblower protection activities and in recommending improvements in the regulatory process.

MEETING PARTICULARS: The meetings will be held at the following locations, dates, and times:

1. Matagorda Hotel, 407 7th St., Bay City, Texas: September 20, 1993, 6 p.m.-9 p.m., and September 21, 1993, 9 a.m.-12 noon;
2. Embassy Suites, 3210 NW Grand Avenue, Phoenix, Arizona: September 28, 1993, 6 p.m.-9 p.m., and September 29, 1993, 9 a.m.-12 noon;
3. Radisson Hotel, 35 Governor Winthrop Blvd., New London, Connecticut: October 7, 1993, 6 p.m.-9 p.m., and October 8, 1993, 9 a.m.-12 noon; and

4. Cleveland State Community College, Student Center, Foundation Room, Adkisson Drive, Cleveland, Tennessee: October 13, 1993, 6 p.m.-9 p.m., and October 14, 1993, 9 a.m.-12 noon.

FOR FURTHER INFORMATION CONTACT:
Laban Coblenz, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504-3553.

SUPPLEMENTARY INFORMATION: On July 6, 1993, the NRC Executive Director for Operations established a Review Team for reassessment of the NRC program for protecting whistleblowers against retaliation. The Review Team is to determine whether the Commission has taken sufficient steps within its authority to create an atmosphere, within the regulated community, in which individuals with safety concerns feel free to engage in protected activities without fear of retaliation. By *Federal Register* Notice, 58 FR 41108, published August 2, 1993, the Review Team requested public comment on whistleblower protection issues, and provided a list of questions to aid in focusing discussion on these issues. The public meetings will serve as an additional forum in which interested individuals may express their views on the whistleblower protection process.

The meeting locations were chosen for their proximity to several nuclear facilities from which the NRC has received a number of whistleblower complaints in the past. One morning and one evening meeting will be held in each location, to permit participation by interested individuals regardless of their work schedules. Several NRC licensees have been specifically requested to make short presentations at the morning meetings. The Review Team welcomes participation in either the morning or evening sessions by other reactor and materials licensees, their employees, and other concerned individuals.

Individuals who wish to participate in these meetings are not required to give advance notice of attendance. However, in order to make the meetings more efficient, individuals are encouraged to prepare their comments in advance. A sign-in sheet will be provided at each meeting (both morning and evening sessions) for those who wish to make a presentation. The amount of time available for individual comments will be a function of the number of interested participants at a given meeting.

Each meeting will be attended by some or all members of the NRC Review Team. The Review Team does not intend to offer NRC positions on specific cases; rather, it seeks to invite comments that will increase the NRC's understanding of what past or future

approaches have been or will be effective in fostering work environments in which individuals can raise safety concerns without fear of retaliation.

In accordance with its charter, the Review Team is considering:

- (a) Whether the NRC has taken sufficient action through regulations, policy statements, and inspections to ensure that NRC licensees encourage employees and contractors to raise safety concerns without fear of reprisal;
- (b) Whether the current NRC process for handling allegations is appropriate from the perspective of allegers' feeling free to bring safety concerns to the NRC;
- (c) Where discrimination may have occurred—
 - (1) Whether there are NRC actions that can assist in a speedier resolution of issues within the DOL process;
 - (2) Whether NRC should be more proactive in conducting investigations while DOL proceedings are pending;
 - (3) Whether the NRC takes sufficient followup action to determine if the licensee's actions have successfully removed any chilling effect resulting from the discrimination;
 - (4) Whether the NRC can and should use civil penalties and orders more vigorously, to emphasize the need for licensees to actively encourage employees to raise safety concerns without fear of discrimination; and
 - (5) Whether the NRC can and should use orders and demands for information more vigorously, where individuals are found to have caused discrimination; and
- (d) Whether the NRC is sufficiently proactive in cases where employees raise safety concerns to the NRC and express fear that they may be subject to retaliation for raising those concerns.

In addition to these specific issues, interested individuals are invited to provide any other views on: (1) NRC activities that would prevent discrimination from occurring and, where it does occur, that would remove any related chilling effect; and (2) whether NRC actions have provided the desired deterrent effect and achieved their remedial purposes.

Dated at Rockville, Maryland, this 31st day of August 1993.

For the Nuclear Regulatory Commission.

Joseph Gray,

Deputy Director, Office of Enforcement.

[FR Doc. 93-21823 Filed 9-7-93; 8:45 am]

BILLING CODE 7590-01-P

**Memorandum of Understanding
Between the U.S. Nuclear Regulatory
Commission and the U.S. Department
of Health and Human Services, Food
and Drug Administration**

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission and the U.S. Department of Health and Human Services, Food and Drug Administration.

SUMMARY: The U.S. Nuclear Regulatory Commission and the U.S. Department of Health and Human Services, Food and Drug Administration (FDA) signed a Memorandum of Understanding (MOU) on August 26, 1993 which describes the roles of the FDA and NRC, and the coordination between the two agencies. The text of the MOU is set forth below.

FOR FURTHER INFORMATION CONTACT:
Larry W. Camper, Office of Nuclear Material Safety and Safeguards, MS 6-H-3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-504-3417.

Dated: September 1, 1993.

John E. Glenn,
Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

**Memorandum of Understanding
Between the U.S. Nuclear Regulatory
Commission and the U.S. Department of
Health and Human Services, Food and
Drug Administration**

The Nuclear Regulatory Commission (NRC) and the Food and Drug Administration (FDA), Department of Health and Human Services (DHHS) have regulatory responsibilities concerning medical devices, drugs, and biological products utilizing byproduct, source, or special nuclear material. The organizations in FDA that are principally responsible for regulating these products are the Center for Devices and Radiological Health (CDRH), the Center for Drug Evaluation and Research (CDER), and the Center for Biologics Evaluation and Research (CBER). The organizations in NRC that are principally responsible for regulating these products are the Office of Nuclear Materials Safety and Safeguards (NMSS), the Office of Nuclear Reactor Regulation (NRR), and the Office of the State Programs (OSP). For their respective authorities, the agencies hereby agree as follows:

I. Purpose and Scope

A. The purpose of this Memorandum of Understanding (MOU) is to coordinate existing NRC and FDA regulatory programs for medical devices, drugs, and biological products utilizing byproduct, source, or special nuclear material. These regulatory programs include activities for evaluating and authorizing the manufacture, sale, distribution,

licensing, and labeled intended use of such products.

B. This MOU covers only those medical devices (including utilization facilities used for medical therapy), drugs and biological products utilizing byproduct, source, or special nuclear material regulated under the Atomic Energy Act of 1954, as amended. The terms "drug" and "device" are defined in the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 321 (g) and (h)), and "biologic" is used in the Public Health Service Act (42 U.S.C. 262). A biological product is either a drug or a device and is described in Part II, FDA, of this MOU. The terms "byproduct material," "source material," and "special nuclear material" are defined in Section 11 (e), (z), and (aa) of the Atomic Energy Act of 1954, as amended, and described in Part II, NRC, of this MOU.

Medical devices affected by this MOU include, but are not limited to: in vitro diagnostic kits (radioimmunoassay); utilization facilities licensed to perform medical therapy; and teletherapy and brachytherapy sources, systems, and accessory devices. Biologics affected by this MOU include, but are not limited to: licensed in vitro diagnostic kits (radioimmunoassay), and certain radiolabeled biologics for in-vivo use. Drugs affected by this MOU include all those that contain byproduct, source, or special nuclear material.

II. Authority and Regulatory Program

A. FDA

FDA is responsible for assuring the safety, effectiveness, and proper labeling of medical products, i.e., drugs, devices, and biologics.

1. FDA/CDRH

The principal statute under which FDA/CDRH regulates devices is the Federal Food, Drug, and Cosmetic Act, as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990 and the Medical Devices Act of 1992.

Section 201(h) of the Federal Food, Drug, and Cosmetic Act, as amended, defines "device" as follows:

"The term 'device' * * * means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is—

(1) Recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them,

(2) Intended for use in the diagnosis of disease or other conditions, or in the

cure, mitigation, treatment, or prevention of disease, in man or other animals, or

(3) Intended to affect the structure or any function of the body of man or other animals, and

which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes."

FDA/CDRH programs intended to ensure the safety and effectiveness of devices include, but are not limited to, the following:

(1) Review of investigational device exemptions (IDE), premarket notification (510(k)), premarket approval (PMA);

(2) Review of voluntary and mandatory medical device reports; and

(3) Enforcement activities such as routine and directed inspections, product removals, recalls, warning letters, and case actions such as seizure, injunction, prosecution, and civil penalties.

2. FDA/CDER

The principal statute under which FDA/CDER regulates drugs for human use is the Federal Food, Drug, and Cosmetic Act, as amended.

Section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act, as amended, defines "drug" as follows:

The term "drug" means (A) articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any articles specified in class (A), (B), or (C).

FDA/CDER functions intended to ensure the effectiveness, safety, and quality of drugs for human use include, but are not limited to, the following:

(1) Review of clinical and bioavailability studies, manufacturing processes, and testing methods;

(2) Review of voluntary and mandatory adverse reaction reports and drug product defect reports;

(3) Enforcement activities such as routine and directed inspections, product removals, recalls, warning letters, and case actions such as seizure, injunction, prosecution, and civil penalties.

3. FDA/CBER

The principle statute under which FDA/CBER regulates biological products is the Public Health Service Act.

However, all biological products have also been defined as either drugs or devices under the Federal Food, Drug, and Cosmetic Act, as amended.

As provided in Section 351(a) of the Public Health Service Act, 21 CFR 600.3(h) defines biological products as follows:

"* * * any virus, therapeutic serum, toxin, or antitoxin, or analogous product applicable to the prevention, treatment or cure of diseases or injuries of man * * *"

FDA/CBER functions intended to ensure the effectiveness, safety, and quality of biological products for human use include, but are not limited to, the following:

(1) Review of clinical and bioavailability studies, manufacturing processes, and testing methods;

(2) Review of voluntary and mandatory adverse reaction reports and biological products defect reports;

(3) Enforcement activities such as routine and directed inspections, product removals, recalls, warning letters, and case actions such as seizure, injunction, prosecution, and civil penalties.

B. NRC

NRC is responsible for licensing and regulating nuclear facilities and material and for conducting research in support of the licensing and regulatory process, as mandated by the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and in accordance with the National Environmental Policy Act of 1969, as amended, and other applicable statutes. NRC responsibilities include protecting public health and safety, protecting the environment, and safeguarding materials in the interest of national security.

1. NRC/NMSS

NMSS's responsibilities for the medical use of byproduct, source, or special nuclear material include, but are not limited to:

(1) Licensing and inspection of medical, industrial, academic and commercial uses of byproduct, source, or special nuclear material;

(2) Development and implementation of NRC policy for the regulation of activities involving safety, quality, approval, and inspection and enforcement regarding the use and handling of byproduct, source, or special nuclear material;

(3) Reviewing of sealed sources or devices to provide reasonable assurances that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property; and

(4) Monitoring and investigation, as necessary, of misadministrations as defined in 10 CFR 35.2, which occur during the intentional internal or external administration of byproduct, source, or special nuclear material, or radiation therefrom, to human beings in the practice of medicine.

2. NRC/OSP

OSP's responsibilities for the medical use of byproduct, source, or special nuclear material include, but are not limited to:

(1) Negotiation of Agreements with States under section 274 of the atomic Energy Act of 1954, as amended;

(2) Evaluation of the program of a new Agreement State to determine if it is adequate to protect the public health and safety, and if it is compatible with the NRC program;

(3) Periodic evaluation of the Agreement State programs to determine continued adequacy and compatibility; and

(4) Training of, and consultation with, Agreement States on radiological public health and safety issues.

3. NRC/NRR

NRR's responsibilities for the medical use of utilization facilities, include, but are not limited to:

(1) Licensing and inspection of utilization facilities for medical therapy, pursuant to 10 CFR 50.21 and 10 CFR 50.41; and

(2) Development and implementation of NRC policy for the regulation of activities involving safety, quality, approval, and inspection and enforcement regarding the use of utilization facilities for medical therapy.

4. Agreement States

Under section 274 of the Atomic Energy Act of 1954, as amended, the Commission is authorized to discontinue its regulatory authority for certain radioactive materials if a State has a program that is adequate to protect the public health and safety and compatible with NRC's program. The transfer of this regulatory authority is executed through an Agreement between the Chairman of NRC and the Governor of a State. Agreement States use their own authority to regulate these materials.

III. Elements of Coordination

A. Notification of Product Complaints, Misadministrations, or Emergency Situations

Both agencies agree to promptly inform each other whenever they receive a report or otherwise become aware of a potential public health problem such as a malfunction, failure, reportable event, or a misadministration involving products of mutual regulatory concern. Each agency will assign one or more contact persons in order to ensure that such information is promptly exchanged and that appropriate FDA and/or NRC actions are initiated on the basis of any necessary compliance or follow-up objectives. Each organization will promptly notify the other when there is a change in an assigned contact person.

B. Coordination of Investigations

Upon request, FDA and NRC will assist each other, to the fullest extent possible, in the investigation of incidents or complaints involving products of mutual regulatory concern. For the purposes of this MOU, investigations will be considered to include inspections in response to incidents or events, as well as, formal investigations initiated in accordance with each agency's internal procedures. (Agreement States will be involved as appropriate to the specific situation.) During the term of this agreement, joint inspections or observer invitations can be requested or extended by either agency, when deemed necessary, to ensure that information obtained from an investigation is collected, shared and acted upon in a timely and coordinated manner. Both agencies will make every reasonable effort to accommodate joint inspection or observer requests depending upon availability of personnel and current FDA or NRC priorities. Each agency will assign one or more persons to assure that investigations are coordinated in a manner that maximizes regulatory efficiency and minimizes duplication of effort. Each agency will promptly notify the other when there is a change in an assigned contact person.

1. Investigation Information Exchange

Both agencies agree to an exchange of information with respect to investigations. The purpose of these exchanges is to provide expert technical assistance to either agency and to assist either agency by reducing or eliminating any duplication of effort. The sharing of information between FDA and NRC (and Agreement States as appropriate) will be exercised to the extent authorized by

law, and by NRC and FDA directives, statutes, and regulations, and will be consistent with the respective agency's mission.

Both agencies recognize the need to protect from public disclosure, data and information that are exchanged between the agencies and that fall within the definition of trade secret, or confidential commercial or financial information. Both agencies agree to exchange proprietary information in accordance with applicable regulations. If FDA provides NRC with trade secret information, there shall be an additional written agreement in the form of an exchange of letters between the appropriate liaison officers in accordance with 21 CFR 20.90. If a request calls for a disclosure determination regarding proprietary information such as a Freedom of Information Act request, response to a Congressional inquiry, or in cases where either agency must comply with various regulatory or public information responsibilities, for any such information obtained from the other agency, that agency will be notified of the request. The notified agency will be responsible for making any needed contact with the submitter of the protected information and accept the responsibility for evaluating the submitter's comments prior to rendering the disclosure determination.

To reserve the right of maximum control over actual disclosure of its own records, each agency shall retain legal authority and the commensurate responsibility over disclosure of those documents provided to the other agency.

Upon request, FDA and NRC will:

- (a) provide copies of Establishment or User Site Inspection Reports;
- (b) provide copies of all analytical data and correspondence of significance related to investigations or activities associated with an area of mutual regulatory concern;
- (c) provide copies of official legal or compliance actions taken against firms or licensees of mutual interest; and
- (d) participate in meetings with regulated industry covering issues of mutual regulatory concern.

2. NRC Licensee and Agreement State Notifications

Upon request, NRC will promptly notify NRC licensees and Agreement State Program Directors of any public health issues or other important user communications initiated by FDA as the result of joint investigations or other activities involving products of mutual regulatory concern.

C. Product Premarketing and Prelicensing Information Exchange

To the extent practicable the two agencies will share information concerning new technology or methods under development or review, including devices, drugs, or biologics, for which regulations have not yet been developed, or is related to the mission of the other agency. Both agencies agree to exchange proprietary information in accordance with applicable regulations. If FDA provides NRC with trade secret information, there shall be an additional written agreement in the form of an exchange of letters between the appropriate liaison officers in accordance with 21 CFR 20.90.

This information may include, but is not limited to:

- (i) design, chemical and physical form of the material or the device;
- (ii) manufacture/preparation;
- (iii) prototype testing;
- (iv) quality assurance and control;
- (v) labeling per regulatory requirements;
- (vi) intended use;
- (vii) safety analysis;
- (viii) installation;
- (ix) servicing;
- (x) leak testing;
- (xi) operating instructions; and
- (xii) emergency/safety instructions.

D. Sharing of Other Information

FDA and NRC will offer each other the opportunity to comment on special notifications to manufacturers, operators, licensees, or patients. FDA and NRC will also offer each other the opportunity to comment on regulations, regulatory guides or other communications that refer to activities, policies, or regulations of the other agency. If practicable, the documents will be provided prior to issuance.

Either agency may request additional information when deemed necessary to complete its mission.

E. Advisory Committees

NRC and FDA will make the other agency aware of and, to the extent possible, allow participation by a representative from the other agency in any Advisory Committee which advises on issues related to this MOU.

IV. Name and Address of Participating Agencies

Food and Drug Administrator, 5600 Fishers Lane, Rockville, MD 20857; and the Nuclear Regulatory Commission, Washington, D.C. 20555

V. Liaison Officers

Each liaison officer will establish and maintain a call list of responsible

persons within his or her organization. These call lists will designate specific persons for day-to-day contact on matters related to this MOU. These lists with current work and home phone numbers will be exchanged among the liaison officers. The lists will be updated every six months or whenever a liaison officer's or day-to-day contact person's phone number changes.

Liaison officers are as follow:

A. For the Food and Drug Administration

1. Center for Devices and Radiological Health, Director, Office of Compliance and Surveillance, (currently: Mr. Ronald M. Johnson), 1390 Picard Drive, Rockville, MD 20850, Telephone: 301-594-2100.
2. Center for Drug Evaluation and Research, Director, Office of Compliance, (currently: Charma A. Konnor), 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301-594-0054.
3. Center for Biologic Evaluation and Research, Deputy Director, Office of Compliance, (currently: P. Michael Dubinsky), 1401 Rockville Pike, Rockville, MD 20850, Telephone: 301-594-2066.

B. For the Nuclear Regulatory Commission

Director, Office of Nuclear Material Safety and Safeguards, (currently: Robert M. Bernero), OWMN MS-8E-6, 11555 Rockville Pike, Rockville, MD 20852, Telephone: 301-504-3352.

VI. Annual Inter-Agency Meeting

The liaison officers shall meet at least annually to evaluate the activities related to this MOU and make recommendations to agency heads on its effectiveness. FDA and NRC will host the meeting on alternating years.

VII. Other Laws and Matters

Nothing in this Memorandum of Understanding shall be deemed to restrict, modify, or otherwise limit the application or enforcement of any laws of the United States with respect to matters specified herein, nor shall anything in the Memorandum be construed as modifying the existing authority of either agency.

VIII. Effective Date, Modification and Termination of MOU

This MOU will take effect when it has been signed by the authorized representatives of FDA and NRC. It may be modified by mutual written consent or terminated by either agency upon a sixty (60) day advance written notice to the other agency. The agencies agree to

evaluate the agreement every three (3) years, at which time either agency would have the option of renewing, modifying or canceling the MOU.

Approved and accepted for the Nuclear Regulatory Commission.

Ivan Selin,
Chairman, USNRC.

Dated: August 26, 1993.

Approved and accepted for the Food and Drug Administration.

David A. Kessler,
Commission of Food and Drugs.

Dated: August 26, 1993.

[FR Doc. 93-21825 Filed 9-7-93; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co., et al.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-66 issued to Duquesne Light Company (the licensee) for operation of the Beaver Valley Power Station, Unit 1 located in Shippingport, Pennsylvania.

The original proposed amendment, dated November 2, 1992, would modify the Appendix A Technical Specifications (TSs) to allow for increasing the number of spent fuel assemblies that may be stored in the spent fuel pool. A proposed determination of no significant hazards was published in the Federal Register (58 FR 7161) on February 4, 1993. However, changes to the proposed amendment were made in supplements dated February 23 and June 28, 1993. This notice addresses the changes proposed in the supplements.

Three other supplements to the amendment have been submitted. These supplements, dated July 9, August 16, and August 18, 1993, provided clarifying information only and did not change the amendment request. Therefore, an evaluation of no significant hazards for those supplements was not made.

The original proposal would have allowed a separate calculation to establish the admissibility of storing low burnup fuel in Region 2 peripheral cells on a case-by-case basis. However, in the two supplements proposing changes, the licensee has proposed to divide the spent fuel pool into three regions instead of two. The third region would

consist of certain peripheral cells of former Region 2 requiring a separate qualification for fuel storage. A table of qualifications (Table 3.9-2) has been added to the TS instead of performing a case-by-case criticality calculation at a later time. The table specifies fuel burnup and initial U235 enrichment which qualifies for storage in Region 3. The licensee has also proposed clarifications in the TS Bases to reflect the third storage region, and to clarify the uncertainty in Boron concentration in the pool.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The licensee's analysis are provided below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

This proposed change revises portions of our original submittal dated November 2, 1992 based on the NRC recommended changes issued by letter dated January 25, 1993. The NRC stated that they did not agree with our proposed changes to Specification 3.9.14.c, Surveillance Requirement 4.9.14.1 and Bases 3/4.9.14 that would have allowed a separate calculation to establish the admissibility of storing low burnup fuel in a Region 2 peripheral cell on a case-by-case basis. The NRC feels these calculations should be done now to develop a separate initial enrichment versus burnup table that would be included in the technical specifications for the peripheral cells.

The vendor has performed the required calculations and developed enrichment versus burnup data for a new Table 3.9-2 that provides the limitations necessary for storing fuel in the Region 2 peripheral cells, to be called Region 3. The results of the calculations performed with the KENO-5a code for Region 3, using a conservative 30 centimeter water reflector, show that those cells can safely accommodate fuel with an initial enrichment of 5.0 w/o which have a burnup of 25,000 MWD/MTU. The KENO-5a

calculations were made with the Region 3 cells containing fuel enriched to 2.348 w/o (equivalent to 5.0 w/o enriched fuel with a burnup of 25,000 MWD/MTU) and the remainder of the rack filled with the maximum permissible enrichment for Region 2 fuel (1.694 w/o enriched, which is equivalent to 5.0 w/o enriched fuel with a burnup of 40,000 MWD/MTU). For this condition, the calculated reactivity was 0.9119 ± 0.0010 (with a 95%/95% probability/confidence level, bias corrected), and with uncertainties and the temperature correction to 4°C added, the maximum K_{eff} is 0.946. Therefore, as a result of the neutron leakage from fuel in the Region 3 cells, these cells can safely accommodate fuel with an initial enrichment of 5.0 which have a burnup of 25,000 MWD/MTU. The KENO-5a code was the principal method of analysis along the periphery of the storage racks, assuming a 30 cm water reflector. The CASMO-3 code (with the restart option) was used to define the equivalent enrichment for fuel with an initial enrichment of 5 w/o burned to 25,000 MWD/MTU evaluated in the storage rack cell configuration at a reference temperature of 4°C. Once the reactivity for 5.0 w/o enriched fuel at 25,000 MWD/MTU has been established, CASMO burnup and restart calculations at other enrichments were made and interpolated for the same reactivity. This data is tabulated in Table 3.9-2 and defines the acceptable initial enrichment versus burnup limits for storing fuel in the Region 2 peripheral cells. The maximum effective multiplication factor for fuel corresponding to the limits defined in Table 3.9-2 is less than the reference multiplication factor of 0.946 including uncertainties and allowances. Fuel assemblies that satisfy the criteria provided in Table 3.9-2 may be safely stored in the Region 3 cells with assurance that the effective multiplication factor will be maintained within the regulatory limit of 0.95. Therefore, this proposed revision is safe and will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The NRC also recommended that we reword Bases 3/4.9.14 concerning our proposed change describing the spent fuel pool boron concentration uncertainty. The proposed change stated that the 1050 ppm boron concentration includes a 650 ppm uncertainty whereas it is actually composed of 400 ppm for the accident analysis, 50 ppm for uncertainty and 600 ppm for margin. As a result, this portion of the Bases has been revised to clarify the uncertainty discussion. This revision provides an editorial clarification which does not change the intent of the Bases discussion, therefore, this revision will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The NRC further recommended that we also reword Bases 3/4.9.14 by changing the position in the sentence where "of 5.0 w/o" is added. Moving "of 5.0 w/o" to follow "nominal region average enrichment" is an editorial change and is consistent with the intent of the sentence, therefore, this revision will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Additional changes also consolidate the first two paragraphs on page B 3/4 9-4 and modify the last two paragraphs to incorporate a description of Region 3 including the linear equation for qualification of fuel for storage in this region. Applicable calculations were performed using the same methodology used in the high density rack design to ensure no criticality concerns exist for fuel storage in Region 3. Therefore, this proposed revision is safe and will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed revisions do not affect the other portions of the original change request. Table 3.9-2 was developed to provide an alternate means of qualifying fuel assemblies for storage in the Region 3 cells. The methodology used to develop Table 3.9-2 was similar to that used for Table 3.9-1 and previously derived for a number of comparable plants. Table 3.9-1 and 3.9-2 ensure the required guidance and limitations are available to provide for the safe storage of fuel in both Region 2 and Region 3 of the spent fuel pool. These revisions are based on NRC review of our original submittal and will improve the technical specification requirements in accordance with NRC policy while maintaining the intent of the changes. Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Incorporating Table 3.9-2 provides an alternate means of qualifying fuel assemblies for storage in Region 2 peripheral cells. The maximum effective multiplication factor for these cells is maintained less than the reference effective multiplication factor including uncertainties and allowances. This change does not affect the margin of safety since these changes adequately control storage of fuel assemblies in the spent fuel pool and do not affect any other system or component that might degrade the safety of the plant. The editorial changes to the Bases are in accordance with the NRC recommendations and are provided to improve the clarity of the Bases discussion. Therefore, the changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on our review of the licensee's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the *Federal Register* a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this *Federal Register* notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 8, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board,

designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such

a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Dr. Walter R. Butler: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this *Federal Register* notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and at the local public document room located at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001, and to Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions,

supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)-(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, proceeded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41670, October 15, 1985) to 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for a hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the

hybrid hearing procedures. In essence, these procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in adjudicatory hearing. If no party to the proceedings requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G, apply.

For further details with respect to this action, see the application for amendment dated November 2, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 1st day of September 1993.

For the Nuclear Regulatory Commission.
Gordon E. Edison,

Senior Project Manager, Project Directorate I-3, Division of Nuclear Reactor Projects—I/II, Office of Nuclear Reactor Regulation.
[FR Doc. 93-21826 Filed 9-7-93; 8:45 am]

BILLING CODE 7500-01-M

[Docket No. 50-312-DCOM
(Decommissioning Plan) ASLBP No. 92-663-02-DCOM]

In the Matter of Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station, Facility Operating License No. DRP-54).

Before Administrative Judges:

Charles Bechhoefer, Chairman
Dr. Richard F. Cole
Thomas D. Murphy
August 31, 1993.

Prehearing Conference

This proceeding concerns the proposed decommissioning of the Rancho Seco Nuclear Generating Station, located in Sacramento County, California. Notice is hereby given that a prehearing conference is scheduled for Tuesday, September 21, 1993, beginning at 9:30 a.m., in the Commission's Public Hearing Room, 5th floor, 4350 East West Highway, Bethesda, Maryland. The conference will continue, to the extent necessary, on Wednesday, September 22, 1993, beginning at 9 a.m., at the same location.

At this conference, the Atomic Safety and Licensing Board will consider contentions filed by the Environmental and Resources Conservation Organization (ECO) in response to the Commission's Order in CLI-93-3, 37 NRC 135 (March 3, 1993), as explained in CLI-93-12, 37 NRC _____ (May 26,

1993), denying the Licensee's motion to reconsider CLI-93-3. The contentions are those filed by ECO on March 22, 1993 (decommissioning fund plan), April 1, 1993 (loss of offsite power) and July 12, 1993 (environmental assessment and safety evaluation). The Licensing Board will also consider schedules for additional activities in this proceeding.

Among other matters, the Board requests the parties to address whether or not the Commission's orders in CLI-93-03 and CLI-93-12 admitted, without qualification, a contention on loss of offsite power (LOOP). See, e.g., CLI-93-3, 37 NRC at 146; CLI-93-12, 37 NRC at _____ (slip op., at 3, 4, 5-7). If so, are we authorized to reject all aspects of the LOOP contention, as sought by the Licensee and NRC Staff, respectively, or must we admit at least a portion of that contention, subject to resolution either after an evidentiary hearing or, as appropriate, through summary disposition procedures (10 CFR 2.749)?

For the Atomic Safety and Licensing Board.

Bethesda, Maryland, August 31, 1993.

Charles Bechhoefer,
Chairman, Administrative Judge.

[FR Doc. 93-21827 Filed 9-7-93; 8:45 am]

BILLING CODE 7500-01-M

copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 93-21842 Filed 9-7-93; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-32825; File No. SR-MSRB-93-9]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to an Extension of the CDI Pilot System Through April 6, 1995

September 1, 1993.

On August 17, 1993, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-93-9), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested people. The Board has requested accelerated approval of the proposed rule change in order to permit the Pilot system to continue to operate without interruption.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change to request an 18-month extension, through April 6, 1995, of its Continuing Disclosure Information ("CDI") Pilot system.¹

¹ The CDI Pilot system was approved in Securities Exchange Act Release No. 30556 (April 6, 1992), 57 FR 12534. A full description of the system is contained in that approval order.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On April 6, 1992, the Commission approved the CDI Pilot system for an 18-month period.² The Pilot system began operating on January 23, 1993, and functions as part of the Board's Municipal Securities Information Library™ (MSIL™) system.³ The Pilot system accepts and disseminates voluntary submissions of official disclosure notices relating to outstanding issues of municipal securities, i.e., continuing disclosure information. During its first phase of operation, the system accepted disclosure notices only from trustees. On May 17, 1993, the Pilot system also began accepting disclosure notices from issuers.⁴

Currently, the system accepts only short submissions (one to three pages in length, or the equivalent in electronic form) by mail, facsimile, and electronically by computer modem, using specific Pilot system submission procedures. The system uses two methods of dissemination to subscribers: (1) CDI that has been submitted to the system by mail or

facsimile is disseminated by facsimile transmission; and (2) CDI that has been submitted to the system electronically by computer modem is disseminated electronically. In addition, after the Board processes and transmits the disclosure notices to subscribers, it makes these documents available at its Public Access Facility ("PAF") in Alexandria, Virginia where any interested person may review the documents, free of charge, and copy the documents at \$.20 per page (plus sales tax).

As the Commission noted in its order approving the CDI Pilot system:

Currently, a number of municipal securities issuers are experiencing financial difficulties. In such an environment, disclosure mechanisms become especially important to investors and potential investors in these securities. . . . [G]reater availability of CDI will reduce the risk of sales practice fraud and manipulation in the municipal market by making investors more informed and better able to detect such practices.⁵

During the proposed extension of the Pilot period, the Board is hopeful that more issuers and trustees will recognize the overall benefit to the market in voluntarily providing continuing disclosure information via the CDI pilot system. In order to facilitate such information dissemination, the Board, working in conjunction with industry groups, will continue to explore the feasibility of accepting and disseminating longer documents through the CDI Pilot system.

(b) The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Securities Exchange Act of 1934 ("Act"), which provides that the Board's rules shall: be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSIL system is designed to increase the integrity and efficiency of the municipal securities market by, among other things, helping to ensure that the price charged for an issue in the secondary market reflects all available official information about that issue. The Board will continue to operate the output side of the CDI Pilot system to ensure that the information is available to any party who wishes to subscribe to

the service. As with all MSIL system services, this service is available, on equal terms, to any party requesting the service.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board has requested that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing in the *Federal Register*. The Board believes that accelerated approval would permit the Pilot system to continue to operate without interruption. The Board further believes that the CDI Pilot system will increase the integrity and efficiency of the municipal securities market by helping to ensure that the price charged for an issue in the secondary market reflects all available official information about that issue.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board, and, in particular, the requirements of section 15B and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing in the *Federal Register*, in that accelerated approval is appropriate to provide for uninterrupted operation of the CDI Pilot system.

IV. Solicitation of Comments

Interested people are invited to submit written data, views, and arguments concerning the foregoing. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

² Securities Exchange Act Release No. 30556. A complete description of the CDI Pilot system is contained in File No. SR-MSRB-90-4, Amendment No. 1.

³ The MUNICIPAL SECURITIES INFORMATION LIBRARY system and the MSIL system are trademarks of the Board. The MSIL system, which was approved in Securities Exchange Act Release No. 29298 (June 13, 1991), 56 FR 28194, is a central facility through which information about municipal securities is collected, stored and disseminated.

⁴ At the end of each phase of the Pilot, the Board was required to evaluate and address any technical, policy and cost issues which arose during that phase, prior to committing the Pilot system to greater capacity. The first such report was provided to the Commission on May 17, 1993. In addition, the Board will report to the Commission at the end of the pilot period, and any changes or requests for permanent approval will be filed under SEC Rule 19b-4. See File No. SR-MSRB-90-4 Amendment No. 1 (Oct. 7, 1991), and Securities Exchange Act Release No. 30556 (April 6, 1992).

⁵ Securities Exchange Act Release No. 30556 at 25-28 (April 6, 1992).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-93-9 and should be submitted by [insert date 21 days from the date of publication].

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁶ that the proposed rule change be, and hereby is, approved for an 18-month period ending on April 6, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 U.S.C. 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-21781 Filed 9-7-93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Application for Unlisted Trading Privileges In Two Over-The-Counter Issues and To Withdraw Unlisted Privileges In Two Over-the-Counter Issues

September 1, 1993.

On August 23, 1993, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to Section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7-11212	CALL	Nextel Communications Class A Common Stock \$0.01 par value.
7-11213	VLSI	VLSI Technology, Inc. Common Stock \$0.01 par value.

The above-referenced issues are being applied for as replacements for the following securities, which form a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issues:

File No.	Symbol	Issuer
7-11214	MTCEF	MTC Electronic Technologies Co. LTD. Common Stock No par value.
7-11215	MCAWA	McCaw Cellular Communications Inc. Class A Common Stock. \$0.01 par value.

Replacement issues are being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before September 22, 1993, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-21780 Filed 9-7-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-19668; 811-7928]

The Franklin Corporation SBIC; Notice of Application

September 1, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Franklin Corporation SBIC.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the Act.

FILING DATE: The application was filed on July 29, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 767 Fifth Avenue, New York, NY 10153.

FOR FURTHER INFORMATION CONTACT: Fran M. Pollack-Matz, Senior Attorney, at (202) 504-2801, or Robert A. Robertson, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Delaware corporation organized on March 31, 1987 as a wholly-owned subsidiary of The Franklin Holding Corporation (Delaware) ("Franklin Holding"). Franklin Holding is a non-diversified, closed-end investment company registered under the Act.

2. Applicant was incorporated under the name The Franklin Corporation (Delaware), but its name was changed following a merger on October 1, 1987 with The Franklin Corporation, a New York corporation ("Franklin New York"). Franklin New York was registered under the Act as a diversified, closed-end investment company and licensed as a small business investment company under the Small Business Investment Act. Pursuant to the merger, each outstanding share of Franklin New York's common stock was exchanged for one share of Franklin Holding's common stock, and applicant succeeded to all of the business and operations of

Franklin New York, including its registration as an investment company.

3. On October 28, 1992, applicant's board of directors approved a proposal to distribute substantially all of its assets to its sole stockholder, Franklin Holding, in complete liquidation of applicant, and to dissolve applicant as a Delaware corporation. Franklin Holding approved the proposal to liquidate and dissolve applicant on October 28, 1992.

4. All of applicant's portfolio assets were transferred at net asset value to Franklin Holding. Applicant transferred its cash to Franklin Holding on November 1, 1992 and all of its other assets and liabilities by journal entry to Franklin Holding effective November 1, 1992.

5. As of October 28, 1992, there were 100 outstanding shares of applicant's common stock, its only authorized class of securities. The aggregate net asset value as of September 30, 1992 was \$3,523,147 or \$3,523 per share, and, as of June 30, 1993, the net asset value was \$0.

6. Applicant's expenses in connection with the liquidation were approximately \$977, including \$750 for legal services, \$162 in filing fees, and \$65 for publishing expenses.

7. As of the date of filing of the application, applicant had no securityholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities and has completed the winding-up of its affairs.

8. Applicant has filed a certificate of dissolution pursuant to the General Corporation Law of the State of Delaware.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-21782 Filed 9-7-93; 8:45 am]

BILLING CODE 9010-01-M

[Release No. IC-19669; 811-5587]

Tyler Cabot Mortgage Securities Fund, Inc.; Notice of Application

September 1, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Tyler Cabot Mortgage Securities Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the Act.

FILING DATE: The application was filed on June 3, 1993, and amended on August 12, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 2001 Bryan Tower, Suite 3300, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Fran M. Pollack-Matz, Senior Attorney, at (202) 504-2801, or Robert A. Robertson, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company that was organized as a corporation under the laws of Maryland. On August 16, 1988, applicant filed a notification of registration on Form N-8A and a registration statement on Form N-2. The registration statement became effective on November 23, 1988, and applicant's initial public offering commenced on December 1, 1988.

2. On July 8, 1992, applicant's board of directors, upon the recommendation of the special committee of independent directors, approved the merger of applicant with and into Capstead Mortgage Corporation ("Capstead") pursuant to an agreement and plan of merger (the "Merger Agreement"). Under the Merger Agreement, Capstead, a real estate investment trust, is the surviving entity.

3. Tyler Cabot Advisers, formerly Lomas Securities Advisers, Inc., is the

investment adviser to applicant.

Capstead Advisers is the investment adviser to Capstead. Both Tyler Cabot Advisers and Capstead Advisers are wholly-owned subsidiaries of Lomas USA, which is a wholly-owned subsidiary of Lomas Financial Corporation. As a result, applicant filed an exemptive application (File No. 812-7984) on July 10, 1992 and amendments thereto on September 22, 1992, October 14, 1992 and October 26, 1992, requesting an order under section 17(b) of the Act that would grant an exemption from section 17(a) thereof.¹ A notice of the filing of the application was issued on November 2, 1992 (Investment Company Act Release No. 19072), and an order was issued on December 1, 1992 (Investment Company Act Release No. 19134).

4. On or about November 2, 1992, the notice of proxy was mailed to all of applicant's and Capstead's stockholders as of the record date of October 26, 1992. Applicant's stockholders approved the merger at a special meeting on December 1, 1992.

5. Pursuant to the Merger Agreement and the Articles of Merger, on December 2, 1992 (the "Merger Date"), applicant transferred all of its portfolio securities, other assets, and liabilities to Capstead. Each share of applicant's common stock has been converted into the right to receive one share of Capstead's series B preferred stock, which has a liquidation preference of \$11.38 per share and is convertible, at the option of the holder into .3196 shares of Capstead common stock. On December 23, 1992, stockholders of applicant as of the record date of December 4, 1992, received a final dividend of 3½ cents per share of applicant's common stock.

6. On the Merger Date, applicant had 29,429,815 shares outstanding, having an aggregate net asset value of \$320,490,685.30 and a per share net asset value of \$10.89. As of the date of the filing of this application, all of the stockholders of applicant have received the requisite notification in connection with the surrender of their certificates representing the series B preferred stock. Although most of applicant's stockholders have submitted the requisite transmittal letters to the exchange agent, holders of 79,051 shares of applicant's common stock (amounting to .2648% of applicant's common stock on the Merger Date) have

¹ Applicant and Capstead could not rely on rule 17a-8 under the Act, an exemption from section 17(a), because the rule only applies to mergers of certain affiliated registered investment companies. Capstead claims an exclusion from the definition of investment company under sections 3(c)(5)(C) and 3(c)(6) of the Act.

not exchanged their certificates representing applicant's common stock. These certificates now represent only the right to receive the series B preferred stock and any cash in lieu of fractional shares (the "Merger Consideration").

Any portion of the Merger

Consideration that remains unclaimed by holders of these certificates six months after the Merger Date will be returned to Capstead. Any certificate holder who has not exchanged a certificate for the Merger Consideration before the consideration is returned to Capstead, shall look only to Capstead for payment thereof.

7. Total expenses incurred in connection with the merger totalled \$5,472,979. Applicant paid approximately \$2,825,535 and Capstead paid the balance. Capstead will bear any expenses incurred in connection with the deregistration and dissolution of applicant.

8. As of the date of the application, applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

9. On December 2, 1992, the Articles of Merger between the applicant and Capstead were filed with the State Department of Assessments and Taxation of the State of Maryland.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-21843 Filed 9-7-93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Participation in the Intelligent Vehicle-Highway Systems (IVHS) Field Operational Test Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for participation.

SUMMARY: The U.S. Department of Transportation (DOT) seeks offers from the public and private sectors to form partnerships to conduct operational tests in support of the national Intelligent Vehicle-Highway Systems (IVHS) program. This notice solicits offers to participate in operational tests that concentrate on evaluating the benefits of the following IVHS user service areas:

1. Emergency Notification and Personal Security,
2. Automated Roadside Safety Inspections and Commercial Vehicle Administrative Processes,
3. Travel Demand Management,
4. En-route Driver Advisory and Traveler Services Information, and
5. Personalized Public Transit and Public Travel Security.

Each of these user service areas is discussed below under the section titled "Proposed Operational Tests." National laboratories are encouraged to participate or collaborate with others in offers for user service areas that may use their available technologies for new applications in transportation. Such areas could include emergency notification and personal security (driver and personal security), travel demand management (air emissions detection), and others.

The selection criteria contained in this notice will be used to assess an operational test's potential for contributing to the advancement of the national IVHS program, evaluate the proposed technical and management approaches for the test, and determine the appropriateness of the proposed Federal role in the project. The selection criteria set forth in today's notice supersede the criteria presented in the previous operational test notices dated May 8, 1992 (57 FR 19959), and July 20, 1992 (57 FR 32047).

DATES: Operational test offers must be received on or before January 6, 1994.

ADDRESSES: Offers to participate in the IVHS operational test program should be submitted directly to the Federal Highway Administration, Office of Traffic Management and IVHS, Operational Test Division, (HTV-20), 400 Seventh St. SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. George Schoene, FHWA Office of Traffic Management and IVHS, IVHS Operational Test Division, HTV-20, (202) 366-6726; Mr. August Burgett, NHTSA Office of Crash Avoidance Research, NRD-50, (202) 366-5672; Mr. Denis Symes, FTA Office of Technical Assistance and Safety, TTS-30, (202) 366-0232; or Ms. Julie Dingle, FHWA Office of the Chief Counsel, HCC-32, (202) 366-0780, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Intelligent Vehicle-Highway Systems (IVHS) program assembles a range of advanced technologies and system concepts that, when used in combination, can improve mobility and transportation productivity, enhance safety, maximize the use of existing

transportation facilities, conserve energy resources, and reduce adverse environmental effects. The "Department of Transportation's IVHS Strategic Plan" (Department of Transportation Publication No. FHWA-SA-93-009) describes DOT's program delivery of research and development, operational testing, deployment, and long-term IVHS development under the Automated Highway System program.

Operational tests serve as the transition between research and development (R&D) and full scale deployment of IVHS technologies. An operational test integrates existing technology, R&D products, institutional, and perhaps regulatory arrangements to test one, and usually more, new technological, institutional or financial elements in a real world test. The tests permit an evaluation of how well newly developed IVHS technologies work under real operating conditions and assess the benefits and public support for the product or system. Operational tests are conducted in a "real world" operational highway environment under "live" transportation conditions. This distinguishes operational tests from research projects or other kinds of testing, for example simulation testing, test tracks, or tests on facilities that are temporarily closed to the public.

IVHS operational tests are conducted as cooperative ventures between the Department of Transportation and a variety of public and private partners, including State and local governments, private companies, and universities. Potential private sector partners in IVHS operational tests are encouraged, when appropriate, to work with appropriate State and local transportation agencies or other public sector organizations in the preparation of proposed cooperative ventures. An IVHS operational test will typically involve a carefully crafted partnership that is negotiated among Federal, State, local, private, and other institutions. Funding for the technical and administrative responsibilities is shared among the partners in the operational test.

The "Department of Transportation's IVHS Strategic Plan" summarizes the roles of each participant in the National IVHS Program and operational tests. The general Federal role is to act as a leader and a catalyst, and to ensure adequate emphasis on public benefits. The Department of Transportation also guides the design and conduct of the project evaluation to ensure that the project is independently evaluated on a national program scale. The participating DOT administrations, the FHWA, the National Highway Traffic Safety Administration (NHTSA), the

Federal Transit Administration (FTA), and the Research and Special Programs Administration (RSPA) are involved in IVHS and their specific IVHS program needs will tailor the particular arrangements of the operational tests.

The Department of Transportation is also developing a National IVHS Program Plan which will build on and expand the "Department of Transportation's IVHS Strategic Plan," providing the detailed "road map" required to both plan and track progress toward deploying systems and technologies that support user services of the IVHS program.

The Program Plan will include estimated milestones for each user service which will form the basis for selecting an area for operational tests.

The Program Plan will consist of the following IVHS User Services.

1. Pre-Trip Travel Information (transit, driver, and ridesharing).
2. En-route Driver Advisory.
 - (a) Driver Information.
 - (b) In-Vehicle Signing.
3. En-route Transit Advisory.
4. Traveler Services Information (e.g., Yellow Pages).

5. Route Guidance (includes general service plus commercial vehicle and HAZMAT-specific guidance; does not include emergency vehicle-specific guidance).

6. Ride Matching and Reservation (e.g., car and vanpool, HOV control).

7. Incident Management (excludes Emergency Vehicle Management service).

8. Travel Demand Management (e.g., regulatory, mode change, parking control, emissions detection).

9. Traffic Control (includes transit priority and HOV priority).

10. Electronic Payment Services (e.g., parking, transit fares, toll collection, congestion, highway pricing).

11. Commercial Vehicle Pre-clearance (includes roadside access to carrier, vehicle, and driver records).

12. Automated Roadside Safety Inspections (automated inspection facilities).

13. Commercial Vehicle Administrative Processes.

(a) Electronic Purchase of Credentials.

(b) Automated Mileage and Fuel Reporting and Auditing.

(c) International Border Preclearance.

14. On-Board Safety Monitoring (includes driver, vehicle, and cargo).

15. Commercial Fleet Management (includes motor carrier and intermodal terminal operations).

16. Public Transportation Management.

(a) Operation of Vehicles and Facilities.

(b) Planning and Scheduling Services.

(c) Personnel Management

17. Personalized Public Transportation (e.g., para-transit, route deviations).

18. Emergency Notification and Personal Security.

(a) Driver and Personal Security.

(b) Automated Collision Notification.

(c) HAZMAT Incident Notification.

19. Public Travel Security.

20. Emergency Vehicle Management.

(a) Fleet Management.

(b) Route Guidance.

(c) Signal Priority.

21. Longitudinal Collision Avoidance.

(a) Rear-end Crash Warning and Control.

(b) Autonomous Intelligent Cruise Control.

(c) Cooperative Intelligent Cruise Control.

(d) Head-on Crash Warning and Control.

(e) Passing Warning (on two-lane roads).

(f) Backing Crash Warning.

22. Lateral Collision Avoidance.

(a) Lane Change and Blind Spot Crash Warning and Control.

(b) Lane Keeping Warning and Control.

23. Intersection Crash Warning and Control.

24. Vision Enhancement for Crash Avoidance (inclement weather and at night).

25. Impairment Alert.

(a) Impaired Driver Warning and Control Override.

(b) Vehicle Condition Warning.

(c) In-vehicle Infrastructure Condition Warning (infrastructure-based warning in En-route Travel Advisory service).

(d) Integrated Warning Systems.

26. Pre-crash Restraint Deployment.

27. Fully Automated Vehicle Operation (AHS).

Several notices may be issued during the year to solicit specific operational tests based on milestones established for each user service, as will be outlined in the National IVHS Program Plan, when completed.

This notice of solicitation centers on the following user service areas.

Emergency Notification and Personal Security (driver and personal security), No. 18.

Automated Roadside Safety Inspections (automated inspection facilities), No. 12.

Commercial Vehicle Administrative Processes, No. 13.

Travel Demand Management (emissions detection), No. 8.

En Route Driver Advisory, No. 2.

Personalized Public Transit (route deviations), No. 17.

Public Travel Security, No. 19.

Proposed Operational Tests

Operational tests are needed to advance the national IVHS program in the following user service areas.

1. Emergency Notification and Personal Security (Driver and Personal Security)

An operational test is needed to evaluate the benefits of driver and personal security systems that allow travelers to notify traveler assistance centers of the need for assistance. A two-way communications capability may also be included to allow the assistance provider to respond to the traveler, acknowledging the assistance request and informing the traveler that help is on the way. This IVHS user service area is intended to speed the detection of and response to non-injury incidents on the highway.

This solicitation seeks offers for testing and evaluating various low-cost system approaches for providing these capabilities. Key aspects of such systems would include the ability to locate the requestor. For example, this may be either through systems that enable the requestor to send the requestor's location with the call for help, or by use of a beacon that permits the assistance provider to determine location through triangulation or to pinpoint the location of the beacon. Provisions must be made for the easy operation of the device by a conscious and uninjured traveler. In addition, protection against either malicious or accidental use of the system must be addressed.

The system should also support the capability to transmit the nature of the request for help, e.g., disabled vehicle, flat tire or out of gas. This would permit the assistance coordinator to ensure that the proper level of response is made for each request. The system should also support "third party" assistance requests, so another motorist can call in the incident. In this case, the caller may be a motorist who is either stopped or just passing by the disabled vehicle, without having specific knowledge of the problems of the disabled vehicle. Operating procedures must be developed to ensure various situations can be responded to without expending excessive resources, due to these types of unknowns.

The response coordinator may be either a public or private sector entity. Based on the nature of the assistance request, the coordinator would inform the appropriate response organization and would subsequently confirm the fact that help is on the way to the requestor.

This test is intended to validate that a response network can be developed to meet the stated objectives of the solicitation and to further evaluate whether the approach is successful in rapidly responding to the calls for help, thereby providing timely support for the stranded motorist.

The evaluation plan should address how the safety impact of the in-vehicle units will be evaluated, the data that will be collected, the measures of effectiveness, and the analysis techniques that will be used to improve traveler safety and reduce related levels of congestion.

2. Automated Roadside Safety Inspections and Commercial Vehicle Administrative Processes

Operational tests are needed to evaluate commercial vehicle operations in the following user service areas. While an offer that responds to combinations of these areas is allowable, we anticipate that separate offers will be made for each area.

(a) Automated Commercial Vehicle Safety Inspection Facilities

An operational test in this area would evaluate the speed and accuracy of advanced systems which assist the safety inspector in conducting a vehicle safety inspection. The current process of conducting safety inspections of commercial vehicles is time consuming and inefficient for both carriers and inspectors. Some portions of the inspection rely on visual inspection of complex systems, which can produce inconsistent results. Technologies are being conceived, developed, and marketed to improve the inspection process through automation and other electronic means. Automated inspection facilities, both fixed and mobile, would combine a number of these technologies and would serve as a test bed for determining how effective these various concepts are both in terms of accurately identifying potential problems and improving the overall efficiency of the inspection process. The system should be in accordance with current acceptable standards being used for inspection of commercial vehicles.

(b) Out-of-Service Verification

An operational test in this area will evaluate the safety benefits of advanced systems which improve the monitoring of vehicles and drivers that have been placed out-of-service. Once a vehicle or driver has been placed out-of-service, it is important to ensure the violations are corrected before they return to the highway. Monitoring these violators is difficult for inspectors because there

usually is no way to physically impound the vehicle. During the day, inspectors are unable to stay with the vehicle because of other duties to perform. At night, inspection facilities are closed and most do not have gates to lock up the vehicle. Out-of-service verification could be approached in different ways, and this solicitation seeks offers that would evaluate various methods and technologies. One concept would include technologies that would monitor vehicles within the inspection facility and either notify the inspector if the driver and vehicle attempted to leave or prevent the driver and vehicle from leaving before the violation was corrected. Another concept would use technologies to detect a vehicle that had been placed out-of-service but was continuing to operate. This method would provide information about the vehicle or driver infraction, either through on-board information or on a shared database, so that inspection officers at the next location or in the traffic stream could verify that the violation had been rectified. If this second concept is pursued, it may require multiple monitoring capabilities, both fixed and mobile, either in a single state or through a multi-state effort.

(c) One-Stop Electronic Purchase of Credentials

Operational tests in this area would evaluate improvements in productivity by streamlining the process for carriers to purchase motor carrier credentials. They would also evaluate methods for state agencies to make the handling of credential purchasing more cost effective. The current process for purchasing motor carrier credentials requires several trips to various agencies in each State to obtain the proper credentials. This process is very cumbersome for motor carriers. The major focus of one-stop electronic purchase of credentials is to make it possible for a motor carrier to apply for, pay for, and receive all of the necessary credentials or permits electronically from either the base State or the necessary individual States. The envisioned system would allow an applicant to apply for and obtain annual or temporary credentials through a computer hook-up to the necessary State(s). User software would provide detailed instructions for individual credential or permit forms. The ability to obtain multiple credentials or permits in one single transaction would be essential. The State(s) must have the ability to ensure accuracy and calculate charges. Payment for the credentials could be implemented through

electronic fund transfer. Multi-state tests are preferred. These would most likely expand the commercial vehicle institutional studies now being undertaken by most States. However, a test by an individual State will be considered (provided the system design is compatible with a multi-state operation).

3. Travel Demand Management (Emissions Detection)

An operational test is needed to evaluate improvements in air quality by measuring emissions of moving vehicles. From a broad air quality improvement perspective, specific vehicles that emit large quantities of carbon monoxide, oxides of nitrogen, and volatile organic compounds need to be identified. Preliminary assessments indicate that a relatively small percentage of passenger vehicles contributes disproportionately to noxious emissions (i.e., as few as 10 percent of cars may contribute as much as 50 to 60 percent of pollutants). Other recent studies indicate that trucks, including delivery vehicles, also contribute disproportionately to overall emissions levels. With proper instrumentation, high emitters can be identified and corrective action taken.

There may be a number of strategies for minimizing the emissions of these high emitting vehicles. One is to elicit remedial actions by vehicle operators and owners. A variety of informational and remedial options may exist, once vehicle operators and owners are alerted to the high pollutant levels produced by their vehicles. Immediate feedback could be provided by using variable message "emissions violations" signs. Informational mailings may also be sent to owners of extremely high polluting vehicles. Incentives, such as "free" or subsidized tune-ups, may be made available to the owners of these vehicles. In jurisdictions which have a legal basis for citing owners of polluting vehicles, more stringent measures might be considered. Most strategies will require the efforts of private and public sector organizations. The evaluation should document the cost of remedial action and its effect on the emissions of the vehicle.

A second strategy would be to modify traffic control strategies to minimize emissions at freeway ramps, signalized intersections, and other locations of concern. For example, where ramp merging controls have been instituted, the roadway configuration may allow a direct sampling of vehicle tailpipe emissions. This emissions data would allow operating authorities to fine-tune ramp metering controls so that

emissions hot spots (carbon monoxide concentrations) on ramps can be avoided or minimized. Emission monitoring could be integrated with ramp metering operations by changing both vehicle release tactics on entrance ramps and inducing vehicle movement on the freeway mainline (e.g., using overhead speed signing). The integration of mainline upstream surveillance may also be incorporated in control strategies for individual and coordinated metering.

The offer should address instrumentation to be installed, including equipment to be used to quantify emissions. It should also specify both the particular emissions to be measured and the means for estimating their local and area-wide diffusion.

4. En-Route Driver Advisory and Traveler Services Information

Operational tests are needed to evaluate the benefits of en-route driver advisory and traveler services information using FM Subcarrier wide area communications systems and applications of FHWA's 220 MHz Frequency pairs. The benefits may include reduction in congestion and improvements in safety and traveler performance. Such a system would (1) disseminate a variety of traveler information and traffic (link time) data, including en-route driver and transit advisories (e.g., road conditions and incidents), and traveler services information (e.g., special events, parking availability), (2) receive this information through in-vehicle or portable communications devices, and (3) decode and display this information to the traveler in the form of text or voice messages.

The Department of Transportation is interested in evaluating the FM Subcarrier as communications medium and application of the FHWA's 220 MHz frequency pairs for these purposes. These communication technologies can be evaluated in conjunction with each other on a single operational test or independently. The evaluations should include, in addition to the FM Subcarrier and 220 MHz receiving and display technology, user's interface aspects of the proposed systems.

The FHWA has funded limited prototypes and tests of an "FM Subcarrier Traffic Information Channel" receiver with generally very favorable results, and proposed operational tests could utilize this technology. The proposed communications channel should provide a relatively high information transmission rate (8000 bps, useful data with error rates of less than

1 in 10,000) of communications for areas within 30-40 miles of the transmitting station. Offers for testing of AM Subcarrier systems will be considered.

The FHWA has developed guidelines for the use of the 220 MHz frequencies in support of IVHS operational tests and is currently examining the operational concepts for providing a nation-wide mobile IVHS communication capability. It is anticipated that the frequency pairs will be utilized to implement a coordinated national communications capability serving the motoring public, through the provision of traffic-related information. Two-way communications services such as requesting of roadside assistance and the reporting of traffic (link time) information to an area Traffic Management Center could be supported by the envisioned communications system. Areas of interest include the use of a nation-wide "Hailing" frequency (or frequencies) that would inform the motorist of the set of available user services in the coverage area and would identify the specific radio channels/frequencies allocated to support these services in the specific areas. If an area or regions had an FM subcarrier traffic channel, the frequency for receiving this service would also be identified.

Tests of both urban and rural applications of this capability are solicited. Test areas may be metropolitan areas, resort areas, tourist attractions, or regions having unique travel-related problems, including severe weather and rough terrain. The proposed test area(s) should already have a traffic information collection infrastructure in place as it is not the intent of the Department of Transportation to fund any substantial infrastructure enhancements to support this test. The transmitted data should be a mixture of live traffic information as well as pre-defined test messages to help evaluate the communications channel performance. It is intended that an evaluation would be performed in two phases to permit the technical evaluation of the communications channel and test of user devices independently before performing the complete test of the traveler information system.

Test areas and candidate transmission stations should be identified to provide a range of different station operating characteristics, (e.g., power, format, antenna height, processing, the presence of other subcarriers). Suggested coverage would include major portions of metropolitan areas (including areas in which "urban canyon" multi-path transmission effects are experienced) as well as the highway networks

surrounding major tourist areas, such as Yellowstone Park, WY, Branson, MO, or Williamsburg, VA. The mixture of transmitted information types would be different for metropolitan areas than for tourist attractions in rural or small urban areas. The ability of this communications channel to serve either type of area must be evaluated by the proposed tests.

The proposed operational test should support the evaluation of how well a range of devices receive, decode, and display this information to travelers. These devices could include: (1) Portable communications devices with simple displays or voice output, (2) notebook computers with communications modems and special software for decoding the received data, and (3) in-vehicle navigation devices with associated communications equipment, GPS receivers, and graphics display. One of the key issues to be examined by this test will be the ability of a common traveler information channel to support terminal devices of significantly different capability levels. Issues such as information coding and decoding and display methods must be evaluated to determine the viability of this approach to traveler information dissemination. It is anticipated that the more sophisticated devices will provide selection of information based upon the traveler location (geo-filtering) and specified destination or upon other preferences. In the low-end systems, user selectivity will be very limited and the system may only be an analog voice version. The evaluation should help determine the potential utility of the low-end devices and also identify a minimum set of capabilities that make the devices viable from the traveler's viewpoint.

5. Personalized Public Transit and Public Travel Security

Operational tests are needed to evaluate advanced public transit systems in the following user service areas.

(a) Personalized Public Transit

An operational test in this area would evaluate the effectiveness of systems to increase transit ridership on flexibly routed transit vehicles. The system strategies would involve fixed route transit operations that permit short off-route deviation in less densely populated areas to pick up or discharge passengers. For example, a prospective passenger may request information on travel alternatives. One alternative is fixed route bus service. The passenger can be told to walk to the bus stop to meet the bus, or, if there is enough

flexibility in the bus' schedule, the bus can be detoured a few blocks off its route to pick up the passenger at his home. It is conceivable that this service could be offered as a premium service for an additional fee ("Value Added Service").

(b) Public Travel Security

An operational test in this area would evaluate the effectiveness of providing public travel security throughout the regional transportation network to improve safety and security aboard transit vehicles. This includes security at transit boarding points (e.g., bus stops), on the vehicle, and in parking lots. The fear of crime is one major deterrent to additional transit use; the public's perception of crime and its fear of becoming a victim must be overcome for transit use to grow.

Evaluation

Evaluation is an integral part of each operational test and critical to the success of the National IVHS Program. In all tests, an independent and comprehensive test evaluation must be undertaken. The evaluation guidelines, that shall apply to all operational tests funded in whole or part with Federal IVHS funds, are as follows.

1. Individual operational tests will be structured within and have objectives which are consistent with the Department of Transportation's Program Plan for IVHS. This will guide the development of the evaluation goals of each operational test.

2. The Department of Transportation will perform the role of evaluation coordinator for all operational tests. As evaluation coordinator, the Department of Transportation or its agent will work with the other partners in establishing individual test objectives, including the national, as well as local, goals and objectives that must be addressed during the evaluation; in developing the overall evaluation plan and the detailed experimental design; and in conducting the actual evaluation.

3. The Department of Transportation will conduct the evaluation or require that it be conducted by an independent party who is not a member of the partnership that is responsible for the operational test. The Department of Transportation reserves the right to conduct any additional evaluation deemed necessary to satisfy the national objectives of the IVHS Program. Where the evaluation is conducted by a party retained by the non-Federal partners, the Department of Transportation shall retain approval authority to ensure the evaluation is acceptable and unbiased.

4. The IVHS Partnership Agreement or other documents used to establish the operational test and funding arrangements between the Department of Transportation and the other partners will include language to require that an evaluation plan be prepared in the early phases of the operational test. There will also be language in all the agreements that incorporates the provisions of these guidelines.

5. The operational test funding plan shall separately account for the evaluation phase. Funds identified for the test evaluation shall not be spent for other portions of the operational tests. The Department of Transportation shall negotiate with the other partners during the initial operational test definition to ensure an adequate estimate of the funding necessary to meet the national evaluation objectives.

6. Funding to proceed with detailed systems design and implementation for the operational test shall not normally be provided until an evaluation plan has been approved by the Department of Transportation. Subsequent approval stages will be specified in the IVHS Partnership Agreement to ensure adequate development of the test and its evaluation. Funding for each test may be provided incrementally to allow for the adequate completion of each of the defined milestones.

7. Nothing in these guidelines shall preclude the non-Federal partners from conducting additional evaluations for their specific needs. The non-Federal partners are expected to be involved in specific phases of the evaluation. At a minimum, the non-Federal partners are expected to be part of the process to develop the goals and objectives of the test and the overall evaluation plan. These partners will also be involved in much of the technical, legal, and institutional data collection, archiving, and reporting.

8. The Department of Transportation reserves the right to require that additional data be collected and made available to allow the Department of Transportation to make comparative analyses with similar functions or features associated with other national operational tests.

Funding

By statute (Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240 Section 6058, 105 Stat. 1914, 2194), the maximum share of an operational test funded from Federal funds, including IVHS funds, cannot exceed 80 percent. The remaining 20 percent must be from non-federally derived funding sources and must consist of either cash, substantial

equipment contributions which are wholly utilized as an integral part of the project, or personnel services dedicated full-time to operational test purposes for a substantial period, as long as these staff are not otherwise supported with Federal funds. The non-federally derived funding may come from State, local government, or private sector partners. In an IVHS partnership, as with other Department of Transportation cost-share contracts, it is inappropriate for a fee or profit to be included in the proposed budget. This prohibition on the inclusion of a fee or profit applies to all partners to the proposed operational test. A partner is an entity that participates directly in the preparation of the operational test offer and plays a substantial role in defining the scope of the operational test, technologies included, and financial participation. This does not prohibit appropriate fee or profit payments to vendors or others which may provide goods or services to the partnership. For example, equipment vendors, software providers, and entities retained for comprehensive operational test evaluation purposes would not be subject to this prohibition.

The Department of Transportation, the Comptroller General of the U.S., and, if appropriate, the States have the right to access all documents pertaining to the use of Federal IVHS funds and non-Federal contributions. Non-federal partners must submit sufficient documentation during final negotiations and on a regular basis during the life of the operational test to substantiate these costs. This includes items such as direct labor, fringe benefits, material costs, consultant costs, subcontractor costs, and travel costs.

In order to maximize available Federal IVHS dollars and be consistent with agency policy, prospective partners are encouraged to increase their share to 50 percent. Additional funds provided over the required 20 percent minimum may come from a variety of funding sources and may include the value of federally-supported projects directly associated with the IVHS operational test.

Operational Test Offer Preparation

An offer to participate in the operational test program should contain sufficient information to enable an evaluation of the offer based on the selection criteria below. Additionally, the offer should contain details regarding the operational test schedule and budget. The schedule should show major milestone events including evaluation phases. The budget should

show both public and private funding contributions (see table below).

Activities	FY 1994 amount		Total amount		Description of contribution	
	Federal IVHS funds	Matching funds	Federal IVHS funds	Matching funds	Public	Private
Design.						
Development.						
Implementation.						
Operation/Maintenance.						
Evaluation.						
Project Management.						
Total.						

In addition, the budget should include the following.

1. Detailed costs for the major operational test components such as operational test management, hardware and software design, technical development and integration of project elements, installation and start up, operation and maintenance for the duration of the evaluation, data collection, analysis and evaluation, and reporting.

2. Summarized costs which show the value of the resources needed for fiscal year (FY) 1994 as well as future years under the following three categories: Federal IVHS funds, other public funds, and private funds.

The offer shall not exceed 50 pages in length including title, index, tables, maps, appendices, abstracts, and other supporting materials. A page is defined as one side of an 8½ by 11 inch paper, with a type font no smaller than 12 point. Offers greater than 50 pages will not be accepted. Ten copies plus an unbound reproducible copy of the offer shall be submitted. The cover sheet or front page of the offer should include the name, address, and phone number of an individual to whom correspondence and questions about the offer may be directed.

Review Process

A formal review process has been established to evaluate responses to this notice soliciting participation in the IVHS operational test program. The Office of Traffic Management and IVHS, IVHS Operational Test Division, of the FHWA is responsible for coordinating the formal review and selection with representatives from the FHWA, FTA, NHTSA, and the Office of the Secretary of Transportation of the U.S. Department of Transportation.

Representatives from the Department of Transportation modal administrations with expertise in key technological or program areas will serve on a technical review team(s). The technical review

team(s) will perform a detailed review of the offer based on requirements of this solicitation and the selection criteria below.

Selection Criteria

1. Relationship to National Program

The Operational Test offer of participation shall:

(a) Directly support the national goals and milestones of the user service areas described in this solicitation;

(b) Advance the development and eventual implementation of the proposed technology or system.

Demonstrate that there is an acceptable basis for believing that the technologies being tested will ultimately be successfully deployed or implemented;

(c) Have meaningful, distinguishable features involving technical, institutional, market, or other important characteristics which have not been addressed in operational tests to date. Operational tests should not replicate past or current tests unless such replication provides a significant contribution to advancing the IVHS program;

(d) Fit within a logical evolution of the IVHS program and supporting technology; and

(e) Provide an approach that is technically feasible and responsive to the requirements of the user service area.

2. Evaluation

In concert with the evaluation guidelines stated earlier, the Operational Test offer of participation shall:

(a) Identify initial evaluation goals and objectives at the national and local level. These goals and objectives should reflect those activities required to move toward the national goals and milestones outlined in the "Department of Transportation's IVHS Strategic Plan." The evaluation goals and objectives should address, as a

minimum, institutional issues, user acceptance, system benefits, costs, performance of the system, and impacts on the transportation system, including air quality;

(b) Provide a general evaluation work plan that outlines the scope and method of evaluation of each goal and objective and an assessment of the opportunity to collect the necessary data that can answer questions of both local and national significance;

(c) Provide for selection of an independent evaluator to ensure an unbiased evaluation of the operational test. The evaluator's responsibilities should be identified and the evaluator should be brought into the process just before or, at the latest, during the development of the detailed evaluation work plan; and

(d) Provide estimated overall costs for conducting the evaluation. The costs of data collection and evaluation should be identified as separate items.

3. Project Management and Proposed Partnership

The Operational Test offer of participation shall:

(a) Provide an overall level of confidence that the test will be successfully completed by:

(1) Demonstrating an acceptable level of commitment, management capability, and business reliability of the partners.

(2) Demonstrating that there is a commitment by all partners to a national technology sharing effort and a willingness to dedicate the time and effort required to share the technical and institutional results of the test with others.

(3) Clearly defining the roles and responsibilities of the principal partners and staff and demonstrating that they have the ability to perform their assigned responsibilities. For large or complex tests, an experienced systems manager to support the project is desirable;

(b) Provide sufficient background to validate the accuracy of the cost and schedule estimates for the operational test;

(c) Minimize any potential negative effects of the test and demonstrate an awareness of and approach for dealing with complicating technical or institutional factors which might adversely affect the test. Innovative or technically challenging ways for dealing with these factors will be of particular interest;

(d) Identify the proposed agreements for sharing of technology developed under this operational test; and

(e) Identify long range plans for full scale deployment of the technologies when the operational test has been successfully completed.

4. Suitability of the Test Site, Vehicle Fleet, and Infrastructure

The Operational Test offer of participation shall:

(a) Demonstrate that the operational test is part of a continuing, ongoing transportation management program or that there is a good opportunity for components of the operational test to evolve into operational systems after the testing is completed;

(b) Demonstrate that the size and characteristics of the test and site are adequate for meaningful evaluation of the proposed system or technology and that the test and site have the operational or environmental characteristics to challenge the performance, reliability, and durability of the product or prototype being evaluated;

(c) Ensure that local public transportation services are in place to provide a valid market test of the operational test technology and that the local public transportation providers are interested in the adoption of new technologies;

(d) Provide the opportunity to evaluate the safety and air quality benefits of systems or operations where such issues are important considerations; and

(e) Ensure adequate records to support the project evaluation with regard to operation, reliability, costs, institutional issues, and maintenance of the device or system being tested.

5. Non-Federal Partners' Role

The Operational Test offer of participation shall:

(a) Clearly state who will be the principal staff dedicated to the operational test by partner and indicate the amount of time each staff member is expected to devote to the test; and

(b) Ensure non-Federal contributions shown are allowable costs according to the cost principles in OMB circulars A-21, A-87 or A-122 or 48 CFR part 31, as applicable to the organization incurring the costs. Cost share arrangements should show enough detail to determine whether the resources being committed to the potential project are sufficient to ensure successful completion. Letters from all participants committing themselves to the project and specifically stating their financial commitment should be included with the offer.

6. Federal Role

The Operational Test offer of participation shall:

(a) Demonstrate that the Federal government role in the operational test is consistent with the Department's statutory role and responsibilities;

(b) Provide for Federal participation in the design and conduct of the project evaluation to ensure that the project is independently evaluated on a national program scale;

(c) Show that the proposed Federal IVHS contribution to the operational test is consistent with the agency's IVHS

operational test funding policy and appropriate to the type and scope of the test;

(d) Demonstrate that Federal IVHS funds are not being used when regular Federal-aid, State, or private funds can and should be used or where the primary benefit of the operational test is in areas of private sector responsibility; and

(e) Demonstrate that Federal participation in the proposed test is an appropriate use of the Federal government's resources.

Negotiation and Approval Process

Final approval and announcement of the selected offers are expected to take at least three months from the date the offers are received. For those offers selected, the lead Department of Transportation agency will begin negotiations with the project partners to reach mutually agreeable terms for an IVHS operational test, including financial and technical issues. The negotiations will result in a funding agreement that documents project tasks, roles of partners, a budget, and a schedule for project execution and evaluation.

It should be noted that negotiations among the parties leading to development of the final agreement may be extensive and lengthy. Based on previous experiences, execution of the agreement may occur six to nine months after announcement of selected offers. Only upon successful completion of these negotiations would a partnership be formed.

Authority: Secs. 6051 through 6059, Pub. L. 102-240, 105 Stat. 1914, 2189-2195; 23 U.S.C. 315; 49 CFR 1.48.

Issued on: August 30, 1993.

Rodney E. Slater,
Federal Highway Administrator.

[FR Doc. 93-21833 Filed 9-7-93; 8:45 am]

BILLING CODE 4910-22-P

Sunshine Act Meetings

Federal Register

Vol. 58, No. 172

Wednesday, September 8, 1993

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).

UNITED STATES COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, September 17, 1993, 9 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., room 520, Washington, DC 20425.

STATUS: Open to the Public.

September 17, 1993

Agenda

- I. Approval of Agenda
- II. Approval of Minutes of July 23, 1993 Meeting
- III. Announcements
- IV. Followup to Previous Meeting Draft Letters to:
 - * The President re Chinese Immigrants
 - * Secretary Aspin re Bruce Yamashita
 - * Attorney General Reno re Crown Heights, New York
- V. Approval of Proposed Hearing Dates for New York City—March 1, 1994
- VI. Appointments to the California, Massachusetts, Nebraska, New Hampshire, North Dakota (interim), and Virginia (interim) Advisory Committees
- VII. Government, Industry, and the People . . . The Battle for Environmental Justice
- VIII. Equal Opportunity in Professional and Collegiate Sports
- IX. Discussion of USCCR Draft Reauthorization Bill
- X. Staff Director's Report
- XI. Future Agenda Items

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376-8105 (TDD 202-376-8116) at least five (5) working days before the scheduled date of the hearing.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376-8312.

Dated September 2, 1993.

Emma Monroig,
Solicitor.

[FR Doc. 93-21939 Filed 9-3-93; 10:16 am]
BILLING CODE 6335-01-M

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 93-21962 Filed 9-3-93; 11:27 am]

BILLING CODE 6351-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, September 13, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22056 Filed 9-3-93; 3:26 pm]

BILLING CODE 6210-01-P

COMMODITY FUTURES TRADING COMMISSION

TIME AND PLACE: 10 a.m., Tuesday,

September 28, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Reviews.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 93-21962 Filed 9-3-93; 11:27 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND PLACE: 11 a.m., Tuesday,

September 28, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Reviews.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 93-21962 Filed 9-3-93; 11:27 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND PLACE: 10 a.m. September 15,

1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 6, 13, 20, and 27, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 6

Thursday, September 9

2:00 p.m.

Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301-492-4516)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 10

9:00 a.m.

Briefing on Proposal to Realign NRC Regions IV and V (Public Meeting)
(Contact: James Turdici, 301-504-1728)
10:30 a.m.

Briefing by Advanced Reactor Corporation (Public Meeting)
2:00 p.m.

Briefing on Management Plan for Regulating Medical Use of Byproduct Material (Public Meeting)
(Contact: Carl Paperiello, 301-504-2859)

Week of September 13—Tentative

Thursday, September 16

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 17

1:30 p.m.
Briefing on Status of Form and Content for Design Certification Rule (Public Meeting)
(Contact: Dennis Crutchfield, 301-504-1199)

Week of September 20—Tentative

Monday, September 20

10:00 a.m.
Briefing on Results of 2.206 Workshop (Public Meeting)
(Contact: Chip Cameron, 301-504-1642)

1:30 p.m.
Briefing on Status of AP600 and SBWR Thermal/Hydraulic Testing (Public Meeting)
(Contact: Brian Sheron, 301-492-3500)

3:00 p.m.
Briefing on NRC Reactor Inspection Program Assessment and Planned Improvements (Public Meeting)
(Contact: Anthony Gody, Sr., 301-492-1257)

Tuesday, September 21

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 27—Tentative

Thursday, September 30

2:00 p.m.
Briefing on Requirements for Storage and Transportation Casks (Public Meeting)
(Contact: Guy Arlotto, 301-504-3326)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION:

By a vote of 4-0 on August 26, the Commission determined pursuant to U.S.C.

552b(e) and § 9.107(a) of the Commission's rules that "Briefing on Results of Agreement State Compatibility Workshop" (Public Meeting) be held on August 30, and on less than one week's notice to the public.

By a vote of 4-0 on August 26, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Briefing on NRC Research on Aging" (Public Meeting) be held on August 30, and on less than one week's notice to the public.

By a vote of 4-0 on August 30, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Management-Organization and Internal Personnel Matters" (Closed—Ex. 2 and 6) be held on August 30, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION:
William Hill, (301) 504-1661.

Dated: September 2, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93-21941 Filed 9-3-93; 11:02 am]

BILLING CODE 7590-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote To Close Meeting

At its meeting on August 30, 1993, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for October 4, 1993, in Washington, DC. The members will consider the August 25, 1993, Postal Rate Commission Opinion and Recommended Decision in Docket No. MC93-1, Bulk Small Parcel Service, 1992.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Mackie, Nevin, Pace, Setrakian and

Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of Title 5, United States Code; section 410(c)(4) of Title 39 United States Code; and section 7.3(c) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,
Secretary.

[FR Doc. 93-21998 Filed 9-3-93; 12:56 pm]
BILLING CODE 7710-12-M

Corrections

Federal Register

Vol. 58, No. 172

Wednesday, September 8, 1993

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.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4697-9]

Arkansas; Adequacy Determination of State Municipal Solid Waste Permit Program

Correction

In notice document 93-20598 beginning on page 44819 in the issue of Wednesday, August 25, 1993, make the following correction:

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
REGION VII				
HUD Field Office—Des Moines: Johnson County, IA	79,800	89,850	109,200	126,000
REGION VIII				
HUD Regional Office—Denver: Routt County, CO	137,750	155,150	188,500	217,500
LaPlata County, CO	91,650	103,250	126,450	144,750
Eagle County, CO	151,725	194,100	234,600	291,600
HUD Field Office—Fargo: Burleigh County, ND	74,100	83,450	101,400	117,000

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-2300-02; GP3-294; OR-44990]

Order Providing for Opening of Lands; Oregon

Correction

In notice document 93-17388 appearing on page 39224, in the issue of

Wednesday, August 25, 1993, make the following corrections:

1. On page 44761, in the table, in the first column, insert the heading "REGION I" in the line above "HUD Regional Office—Boston:".

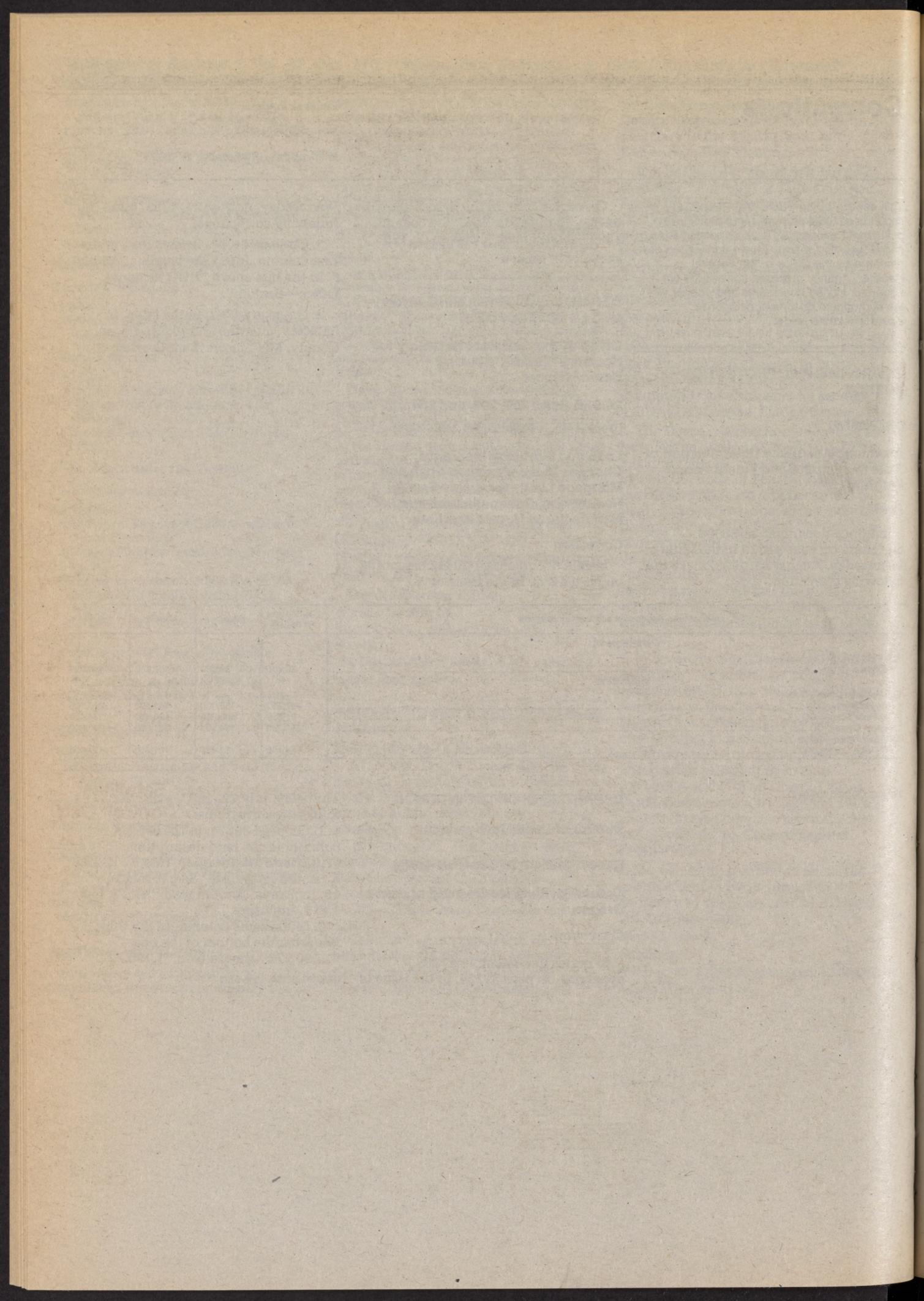
2. On page 44762, in the table, in REGION V, after the entry "Sherburne County, MN" insert the following:

Thursday, July 22, 1993, make the following corrections:

1. On page 39224, in the second column, in the land description, Willamette Meridian, in T.35 S., R. 25 E., in the sixth line, "Sec. 3, lots 1 to 15, inclusive" should read "Sec. 3, lots 1 to 5, inclusive."

2. In the same column, in the third line from the bottom of the page, "1,190.172" should read "1,190.72".

BILLING CODE 1505-01-D



Wednesday
September 8, 1993



Part II

Department of Commerce **Bureau of Export Administration** **15 CFR Part 799**

**Commercial Communications Satellites;
Revisions to the Commerce Control List;
Final Rule**

DEPARTMENT OF COMMERCE**Bureau of Export Administration****15 CFR Part 799**

[Docket No. 930813-3213]

Commercial Communication Satellites; Revisions to the Commerce Control List**AGENCY:** Bureau of Export Administration, Commerce**ACTION:** Final rule.

SUMMARY: This rule amends the Commerce Control List (CCL) of the Export Administration Regulations by revising ECCN 9A04 to include controls on components, parts, accessories, attachments, and equipment associated with commercial communication satellites also controlled under that entry. Previously Commerce controlled only commercial communication satellites under ECCN 9A04. Passive remote sensing ground stations and specially designed components, parts, accessories, attachments, and associated equipment that do not meet the parameters described in Category XV on the U.S. Munitions List (USML) are now controlled under Category 5 of the CCL. Radiation hardened microelectronic circuits that do not meet the parameters of Category XV of the USML are now controlled by Category 3 of the CCL.

This transfer of jurisdiction implements part of the Presidential directive of November 16, 1990, which mandated the removal from the USML of all items contained in the COCOM dual-use list (the International Industrial List) unless significant U.S. national security interests would be jeopardized. This rule makes the USML and the Commerce Control List more consistent with the Industrial List maintained by COCOM.

EFFECTIVE DATE: This rule is effective September 8, 1993.

FOR FURTHER INFORMATION CONTACT: Jerry Beiter, Office of Technology and Policy Analysis, Bureau of Export Administration. Telephone: (202) 482-1642.

SUPPLEMENTARY INFORMATION:**Background**

On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation, and directed various other export control measures including the removal from the USML of all items contained on the COCOM dual-use list unless significant U.S. national security interests would be jeopardized. To

implement this part of the directive, a space technical working group was established. The group consists of representatives from the Departments of State, Commerce and Defense, as well as other U.S. government agencies. The result of the working group's recommendation was a final rule published on October 23, 1992, in the **Federal Register** by the Bureau of Politico-Military Affairs, Department of State (57 FR 48315). That rule removed certain commercial communication satellites from the International Traffic in Arms Regulations (ITAR) to the jurisdiction of the Department of Commerce, contingent upon publication of a Commerce rule establishing national security controls on commercial communication satellites. Commerce published that rule on October 23, 1992, adding these satellites to the Commerce Control List. At that time, all detailed design, development, manufacturing and production technical data, and all specially designed or modified components, parts, accessories, attachments, and associated equipment for satellites, including those covered by the CCL, remained controlled under subparagraph (d)(2) of Category XV on the USML.

On December 28, 1992, the Bureau of Politico-Military Affairs, Department of State published a rule in the **Federal Register** (57 FR 61589) that proposed to remove components, parts, accessories, attachments, and equipment associated with commercial communication satellites and passive remote sensing satellite ground stations from the USML to the CCL. Only those components that are specifically designed or modified for satellites or other equipment controlled by Category XV of the USML will continue to be controlled under this Category. All other components of satellites not specifically designed for satellites controlled in Category XV will be controlled under the CCL.

A final rule is being published in the **Federal Register** by the Bureau of Politico-Military Affairs, Department of State simultaneously with this rule. That rule implements the changes first proposed in the December 28, 1992 **Federal Register** Notice, contingent upon publication of a Commerce rule establishing national security controls on components for commercial communication satellites.

All detailed design, development, manufacturing and production technical data still remains controlled under Category XV of the USML. However, Commerce does control other technical data, such as that level of technical data (including marketing data) necessary and reasonable for a purchaser to have

assurance that a U.S.-built item controlled under ECCN 9A04 intended to operate in space has been designed, manufactured, and tested in conformance with specified contract requirements (e.g., operational performance, reliability, lifetime, product quality, delivery expectations). Commerce also controls technical data necessary to launch, operate and maintain satellites controlled by ECCN 9A04 and associated ground equipment.

This final rule also removes certain ground control stations and radiation hardened microelectronic circuits from the USML. This does not include technical data for launch vehicle/satellite compatibility, integration, or processing. Passive remote sensing ground stations and specially designed components, parts, accessories, attachments, and associated equipment that do not meet the parameters described in Category XV on the USML are now on the CCL under Category 5. Radiation hardened microelectronic circuits that do not meet the parameters of Category XV of the USML, and specially designed components, parts, accessories, attachments, and associated equipment therefore, are on the CCL under Category 3.

This rule amends the CCL by revising ECCN 9A04 to include controls on components, parts, accessories, attachments, and equipment specially designed for commercial communication satellites also controlled under that entry.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.
2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005, 0694-0007, and 0694-0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 603(b)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public

participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

1. The authority citation for 15 CFR part 799 continues to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93-153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94-163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94-258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95-372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103-10, 107 Stat. 40); sec. 125, Pub. L. 99-64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

2. Supplement No. 1 to § 799.1, Category 9, is amended by revising ECCN 9A04A to read as follows:

9A04A "Spacecraft" (not including their payloads) and specially designed components therefor.

Note 1: (For the control status of products contained in "spacecraft" payloads, see the appropriate category.)

Note 2: For items other than those specified in this ECCN, exporters requesting a validated license from the Department of Commerce must provide a statement from the Department of State, Office of Defense Trade Controls, verifying that the item intended for export is under the licensing jurisdiction of the Department of Commerce.

Requirements

Validated License Required: QSTVVWYZ.

Unit: Equipment in number; parts and accessories in \$ Value.

Reason for Control: NS.

GLV: \$0.

GCT: No.

GFW: No.

List of Items Controlled

a. Commercial Communication Satellites, except those with the following characteristics:

a.1. Anti-jam capability: Antennas and/or antenna systems with the ability to respond to incoming interference by adaptively reducing antenna gain in the direction of the interference;

a.2. Antennas:

a.2.a. With aperture (overall dimension of the radiating portion(s) of the antenna) greater than 30 feet; or

a.2.b. With sidelobes less than or equal to -35db; or

a.2.c. Designed, modified or configured to provide coverage area on the surface of the earth less than 200 nm in diameter, where "coverage area" is defined as that area on the surface of the earth that is illuminated by the main beam width of the antenna (which is the angular distance between half power points of the beam);

a.3. Designed, modified or configured for intersatellite data relay links that do not involve a ground relay terminal ("cross-links");

a.4. Spaceborne baseband processing equipment that uses any technique other than frequency translation which can be

changed on a channel by channel basis among previously assigned fixed frequencies several times a day;

a.5. Employing any of the cryptographic items controlled under Category XIII (b) of the U.S. Munitions List;

a.6. Employing radiation-hardened devices controlled elsewhere in § 121.1 of the ITAR that are not "embedded" in the satellite in such a way as to deny physical access. (Here "embedded" means that the device cannot feasibly either be removed from the satellite or used for other purposes);

a.7. Having propulsion systems that permit acceleration of the satellite on-orbit (i.e., after mission orbit injection) at rates greater than 0.1 g;

a.8. Having attitude control and determination systems designed to provide spacecraft pointing determination and control better than 0.02 degrees per axis; or

a.9. Having orbit transfer engines ("kick motors") that remain permanently with the spacecraft and are capable of being restarted after achievement of mission orbit and providing acceleration greater than 1 g. (Orbit transfer engines that are not designed, built, and shipped as an integral part of the satellite are controlled under Category IV of the USML.)

b. [Reserved]

Note 1: Transferring registration or operational control to any foreign person of any satellite controlled by this entry must be authorized by an individual validated license. This requirement applies whether the satellite is physically located in the United States or abroad.

Note 2: All communication satellites identified in paragraphs a.1. through a.9. of this ECCN, and specially designed components, parts, accessories, attachments, associated equipment, and ground support equipment therefore, require a license from the Department of State, Office of Defense Trade Controls (see Category XV of the USML).

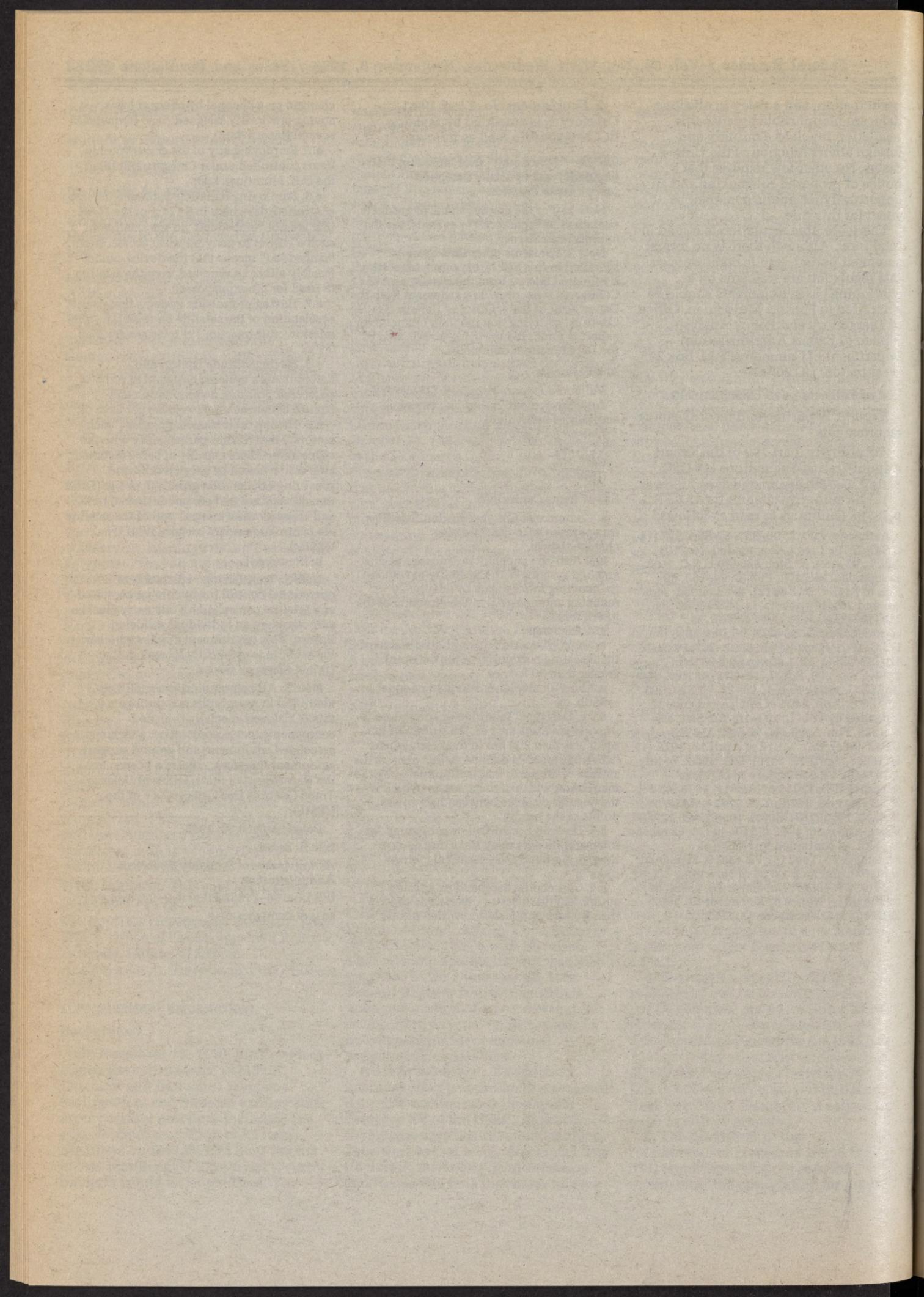
Dated: August 30, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93-21632 Filed 9-7-93; 8:45 am]

BILLING CODE 3510-DT-P



Wednesday
September 8, 1993



Part III

Department of Energy

Office of Energy Efficiency and
Renewable Energy

10 CFR Part 430

Energy Conservation Program for
Consumer Products: Advance Notice of
Proposed Rulemaking Regarding
Conservation Standards for Three Types
of Consumer Products; Proposed Rule

DEPARTMENT OF ENERGY**Office of Energy Efficiency and Renewable Energy****10 CFR Part 430**

[Docket No. EE-RM-93-801]

Energy Conservation Program for Consumer Products: Advance Notice of Proposed Rulemaking Regarding Energy Conservation Standards for Three Types of Consumer Products**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.**ACTION:** Advance notice of proposed rulemaking.

SUMMARY: The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, and the National Appliance Energy Conservation Amendments of 1988, prescribes energy conservation standards for certain major household appliances and requires the Department of Energy (DOE) to administer an energy conservation program for these products. Among other things, the Energy Policy and Conservation Act, as amended, requires DOE to consider amending the energy conservation standards for central air conditioners and central air conditioning heat pumps; furnaces; and refrigerators, refrigerator-freezers, and freezers. By means of this rulemaking proceeding, DOE announces its intention to meet its statutory responsibilities. Additionally, the requirements of the Energy Policy and Conservation Act, as amended, have been reflected in the National Energy Strategy that supports improving the efficiency of residential appliances by using existing authority to update residential appliance efficiency standards to keep pace with new technology.

The purposes of this Advance Notice of Proposed Rulemaking are to: (1) Present for comment the product classes that DOE is planning to analyze; (2) present a detailed discussion of the analytical methodology and analytical models that DOE expects to use in performing analyses in connection with the proposed rule; and (3) facilitate the gathering of information and comments prior to publishing a subsequent notice of proposed rulemaking.

DATES: Written comments in response to this Advance Notice of Proposed Rulemaking must be received by DOE by December 7, 1993.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, on November 16 and 17, 1993. Requests to speak at the hearing must be received by the Department no later than 4 p.m., November 4, 1993. Copies of statements to be given at the public hearing must be received by the Department no later than 4 p.m., November 10, 1993.

The length of each presentation is limited to 20 minutes.

ADDRESSES: Written comments, oral statements, requests to speak at the hearing, and requests for speaker lists are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Hearings and Dockets, "Energy Efficiency Standards for Consumer Products" (Docket No. EE-RM-93-801), room 6B-025, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-0561.

The hearing will begin at 9:30 a.m., on November 16 and 17, 1993, and will be held at the U.S. Department of Energy, Forrestal Building, room 1E-245, 1000 Independence Avenue SW., Washington, DC.

Copies of the transcript of the public hearing and public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, room 1E-190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6020 between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding, see section IV, "Public Comment Procedures," of this notice.

FOR FURTHER INFORMATION CONTACT:

Carl Adams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE-43, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-41, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-9507.

U.S. Department of Energy, EE-90, Docket No. EE-RM-93-801, Forrestal Building, room 6B-025, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-0561.

SUPPLEMENTARY INFORMATION:**I. Introduction**

- a. Authority
- b. Background

II. Methodology**III. Models, Data, and Assumptions**

- a. Engineering Performance Models and Costing Analysis
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 - 6. Turnover of appliance stocks
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 - 9. Energy consumption calculations
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 - 11. Other consumer impacts
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c. Manufacturer Impact Models

- 1. Conceptual approach
- 2. Measures of impact
- 3. Lawrence Berkeley Laboratory Manufacturer Impact Model
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d. Utility Impact Model**e. Sensitivity Analyses****IV. Public Comment Procedures**

- a. Participation in Rulemaking
- b. Written Comment Procedures
- c. Public Hearing
- d. Issues for Public Comment

I. Introduction**a. Authority**

Part B of Title III of the Energy Policy and Conservation Act, Public Law 94-163, as amended by the National Energy Conservation Policy Act, Public Law 95-619, the National Appliance Energy Conservation Act, Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988, Public Law 100-357,¹ created the Energy Conservation Program for Consumer Products other than Automobiles (Program). The consumer

¹ Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, and the National Appliance Energy Conservation Amendments of 1988, is referred to in this Advanced Notice of Proposed Rulemaking as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 et seq. Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act only, is referred to as the National Energy Conservation Policy Act.

products subject to the Program (often referred to hereafter as "covered products") are: Refrigerators, refrigerator-freezers, and freezers; dishwashers; clothes washers; clothes dryers; water heaters; central air conditioners and central air-conditioning heat pumps; furnaces; direct heating equipment; television sets; kitchen ranges and ovens; room air conditioners; fluorescent lamp ballasts; and pool heaters; as well as any other consumer products classified by the Secretary of Energy (Secretary) (section 322). To date, the Secretary has not so classified any additional products.

Under the Act, the Program consists essentially of three parts: testing, labeling, and mandatory energy conservation standards. DOE, in consultation with the National Institute of Standards and Technology, is required to amend or establish new test procedures as appropriate for each of the covered products (section 323). The purpose of the test procedures is to provide for test results that reflect the energy efficiency, energy use, or estimated annual operating costs of each of the covered products (section 323(b)(3)).

The Federal Trade Commission is required by the Act to prescribe rules governing the labeling of covered products for which test procedures have been prescribed by DOE (section 324(a)). These rules are to require that each particular model of a covered product bear a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product class (section 324(c)(1)). At the present time, there are Federal Trade Commission rules requiring labels for the following products: room air conditioners, furnaces, clothes washers, dishwashers, water heaters, freezers, refrigerators and refrigerator-freezers, central air conditioners and central air-conditioning heat pumps, and fluorescent lamp ballasts. 44 FR 66475, November 19, 1979; 52 FR 46888, December 10, 1987; and 54 FR 28031, July 5, 1989.

For each of the 12 covered products, the Act prescribes an initial Federal energy conservation standard (section 325(b)-(h)). The Act establishes effective dates for the standards in 1988, 1990, 1992 or 1993, depending on the product, and specifies that the standards are to be reviewed by DOE within three to ten years, also depending on the product (*Ibid.*). After the specified three-to ten-year period, DOE may promulgate new standards for each product; however, the Secretary may not prescribe any amended standard that

increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product (section 325(l)(1)).

With regard to television sets, the Act allows DOE to prescribe an applicable standard (section 325(i)(3)).

Three products (central air conditioners and central air-conditioning heat pumps; furnaces; and refrigerators, refrigerator-freezers and freezers) are the subject of this rulemaking proceeding. For central air conditioners and central air-conditioning heat pumps, the Act directs DOE to review each legislated standard for possible amendment and to issue final rules as follows: for the seasonal energy efficiency ratio, no later than January 1, 1994, for units manufactured after January 1, 1999; and for the heating seasonal performance factor, no later than January 1, 1994, for units manufactured after January 1, 2002. For furnaces, the Act directs DOE to review the previously established standard for small gas furnaces (54 FR 47916, November 17, 1989), the pending standard for mobile home furnaces, and the legislated standards for all other covered furnaces for possible amendment and to issue final rules no later than January 1, 1994, for units manufactured after January 1, 2002. For refrigerators, refrigerator-freezers, and freezers, the Act directs DOE to review the previous final rule, published November 17, 1989, for possible amendment and to issue final rules no later than November 17, 1994, for units manufactured after January 1, 1998.

Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified (section 325(l)(2)(A)).

Section 325(l)(2)(B)(i) provides that before DOE determines whether an energy conservation standard is economically justified, it must first solicit comments on the proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens based, to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that

are likely to result directly from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Act (section 327(a)-(c)). Exceptions to this general rule include the following: (1) State standards prescribed or enacted before January 8, 1987, and applicable to appliances produced before January 3, 1988, may remain in effect until the applicable energy conservation standard begins (section 327(b)(1)); (2) State procurement standards which are more stringent than the applicable Federal standard (section 327(b)(2) and (e)) and certain building code requirements for new construction, if certain criteria are met, are exempt from Federal preemption (sections 327(b)(3) and (f)(1)-(f)(4)); (3) State regulations banning constant burning pilot lights in pool heaters; and (4) State standards for television sets effective on or after January 1, 1992, may remain in effect in the absence of a Federal standard for such products (sections 327(b)(6) and (c)).

The Act directs DOE to publish an Advance Notice of Proposed Rulemaking in advance of DOE consideration of prescribing a new or amended standard.

b. Background

In a previous advance notice on energy conservation standards for nine products (55 FR 39624, 39632, September 28, 1990), the Department stated its position regarding proposed measures of impact on manufacturers. This same position is restated in section IIIc of this notice. However, in comments received after the close of the comment period for the previous notice, the Association of Home Appliance Manufacturers submitted a report by Arthur D. Little, Inc., regarding clothes washers that, among other things, addressed the subject of appropriate

measures of financial impact on manufacturers. The Association of Home Appliance Manufacturers stated that the economic impact of proposed standards on manufacturers should be determined by estimating the cash flows associated with meeting the standards and calculating a value for those cash flows. It further stated that this value could be expressed as a value for the industry based on a specific market rate of return. The Department believes that the cash flow concept could be applicable in evaluating the impact of standards on any appliance, and the cash flow concept will be discussed in this rulemaking. It is primarily for this reason that the Department has decided to conduct a public hearing in conjunction with this Advance Notice. On November 17, 1989, DOE published a final rule that, *inter alia*, established an energy conservation standard of 78 percent annual fuel utilization efficiency for small gas furnaces and amended the legislated standards for refrigerators, refrigerator-freezers, and freezers. (Hereafter this is referred to as the November 1989 Final Rule.)

II. Methodology

This section provides a brief description of the analyses to be used to determine the impacts of the standards. It offers an overview of the analytic methodology and discusses the major components of the analyses: the Engineering Analysis, the Manufacturer Analysis, the Consumer Analysis, and the Utility Analysis.

This section also discusses the interrelationships among the components that ensure consistency throughout the analyses.

The next section, Models, Data and Assumptions, describes the computer models used in the analyses. The models predict the anticipated response of consumers, manufacturers, and utilities to future changes in the economy, including the imposition of energy conservation standards.

Quantitative estimates of the impacts of standards will be calculated from the outputs from the models. The models that will be utilized in the analyses are:

- Engineering Performance Models;
- Consumer Impact Models;
- Manufacturer Impact Models; and
- Utility Impact Model.

The function, data sources, assumptions and validity of the results for each model are discussed below.

The overall impact of appliance conservation standards on energy use, consumers, manufacturers, and other factors will be determined by comparing

projections under the base case² with the projections under the proposed standards. These projections will be made for the base case by use of the analytic models described below. The calculations will then be repeated imposing the proposed standard levels. The net impacts compared to the base case of each standard level under consideration will be calculated.

The differences between the projections of the energy consumption and economic variables in the base and standards cases, respectively, provide one perspective on the likely impacts of the standards. The differences between different standard levels provide another perspective. The Department recognizes that the text of the Act and the relevant legislative history clearly direct the Department to consider the net impacts of proposed standards compared to the base case. The Department also recognizes that the basic statutory direction to set standards is to achieve the "maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified" (section 325(l)(2)(A)). The Department specifically solicits comment on whether the incremental perspective will be useful and valid in the determination as to whether a particular standard level is "economically justified." To evaluate the significance of the total and incremental impacts that are identified, a sensitivity analysis will be performed on the key parameters and assumptions.

The Economic Analysis that will be performed is made up of the following items:

- An Engineering Analysis that establishes the technical feasibility and product attributes, including costs of design options, to improve appliance efficiency.
- A Manufacturer Analysis that provides an estimate of manufacturers' responses to the proposed standards. Their responses are quantified by changes in several financial performance measures.
- A Consumer Analysis that forecasts appliance sales, efficiencies, energy use, consumer expenditures, and the national net benefits and costs and a separate Life Cycle Cost Analysis to evaluate the purchaser's savings in operating expenses relative to increases in purchase price.

- A Utility Analysis that measures the projected impacts of the altered energy-consumption patterns on electric utilities.

Each analysis area will be performed for each of the three products under consideration. The results of the Engineering Analysis will be reviewed by DOE to determine whether standards for each product could yield measurable energy savings. If standards would not yield energy savings, for example, if there is no combination of design options that would result in improved product efficiency, the analysis will be terminated. If energy savings are possible, then a detailed analysis is performed.

There is interaction among the Engineering, Consumer, Utility, and Manufacturer Analyses. The Engineering Analysis examines appliance designs and related attributes such as efficiency and costs. Based on the relationships between the prices and efficiencies of design options, the Consumer Analysis forecasts sales and efficiencies of new and replacement appliances. These data are used as inputs to the Manufacturer Analysis to determine the financial impacts on prototypical firms within the industry. The Consumer Analysis forecasts national aggregate energy savings and consumer expenditures associated with the purchase and operation of the appliances. Consumer expenditures (both purchase and operation) are employed in the Life-Cycle Cost Analysis to determine consumer impacts. Changes in sales, revenues, investments, and marginal costs of utilities are calculated from the energy savings in the Utility Analysis.

Three periods of time are used in the analyses. First, the Engineering Analysis examines the technical feasibility of improving the efficiency of the covered products by analyzing design options available today to improve product efficiency, whether they are commercially available or prototypes. Second, the Manufacturer Analysis is performed for a typical year after the standards are assumed to have been imposed. The typical year selected is the fifth, by that time all major impacts of a standard would have occurred.

Third, the Consumer Analysis examines impacts over a time period at least as long as the average lifetimes of the products.

III. Models, Data, and Assumptions

a. Engineering Performance Models and Costing Analysis

The Engineering Analysis addresses two statutory requirements. The first

² The base case assumes implementation of the conservation standards that were set by the Act for central air conditioners and central air conditioning heat pumps and furnaces and by Department of Energy rulemaking in the case of refrigerators-freezers and small gas furnaces.

requirement is that DOE considers only improvements in energy efficiency that are technologically feasible. The second is that DOE consider any lessening of utility to the consumer due to the imposition of standards. In addition, the Engineering Analysis provides information on efficiencies, energy consumption, manufacturing costs, and maintenance and installation costs for use in the other analyses.

The features of appliances that provide utility to the consumer are reflected in the analysis through the creation of appliance classes. Classes are a subset of appliance types. For example, freezers comprise an appliance type, while upright freezers with manual defrost comprise an appliance class. The Engineering Analysis develops cost and efficiency data for a set of design options within each appliance class. These data are the output of the engineering performance models and costing analysis discussed in subsections 5-9, below.

1. Appliance classes. The first step in the Engineering Analysis is to segregate product types into separate classes to which different energy conservation standards apply. Classes are differentiated by the type of energy use (oil, natural gas, or electricity) or capacity or performance-related features that provide utility to the consumer and affect efficiency. Classes are differentiated in order to ensure that consumer products having different capacities or other performance-related features affecting efficiency and utility remain available to consumers.

For each of the three appliances, the following are the classes that DOE proposes to consider. The Department welcomes comments on the classes proposed.

(i) Central Air Conditioners and Central Air-conditioning Heat Pumps

Ducted split system central air conditioners
Ducted split system central heat pumps
Ductless (multi-zone) split system air conditioners
Ductless (multi-zone) split system heat pumps
Ductless (multi-zone) split system limited temperature range heat pumps
Single package system air conditioners
Single package system heat pumps
Combination space conditioning/water heating appliances

(ii) Furnaces

Non-weatherized gas furnaces
Weatherized gas furnaces
Mobile home gas furnaces
Non-weatherized oil furnaces
Weatherized oil furnaces
Mobile home oil furnaces
Hot water gas boilers
Steam gas boilers

Hot water oil boilers
Steam oil boilers
Combination gas space/water heating appliances
Combination oil space/water heating appliances

(iii) Refrigerators, Refrigerator-freezers, and Freezers

Refrigerators and refrigerator-freezers with manual defrost
Refrigerator-freezers—partial automatic defrost
Refrigerator-freezers—semi-automatic defrost
Refrigerator-freezers—automatic defrost with top-mounted freezer without through-the-door ice service
Refrigerator-freezers—automatic defrost with side-mounted freezer without through-the-door ice service
Refrigerator-freezers—automatic defrost with bottom-mounted freezer without through-the-door ice service
Refrigerator-freezers—automatic defrost with top-mounted freezer with through-the-door ice service
Refrigerator-freezers—automatic defrost with side-mounted freezer with through-the-door ice service
Upright freezers with manual defrost
Upright freezers with automatic defrost
Chest freezers and all other freezers

2. Baseline units. For the purpose of generating a cost/efficiency relationship, the Engineering Analysis needs to define a starting point or baseline. The assumed baseline unit is to represent a typical model within an appliance class sold during the initial year of the analysis, e.g., a unit that marginally complies with the existing standard. Once identified, each baseline unit is characterized by its efficiency-related design options. The Engineering Analysis uses information gathered from trade organizations, manufacturers, and consultants with expertise in specific product types to determine the engineering characteristics of the baseline unit. The Department requests data on specific units and combinations of design options to be considered as a baseline unit. In addition, DOE requests comments on any other factors to be considered in selecting baseline units.

3. Design options. The Engineering Analysis will identify an individual design option or combinations of design options with a potential for improving energy efficiency. Design options that are currently on the market, that are being developed, or that may be on the market by the time standards are effective will be considered. Furthermore, DOE requests comments on whether the existing test procedures are appropriate for measuring product energy use and efficiency and whether the test procedure can evaluate a particular design option's contribution to the product's energy consumption. For example, the current furnace test

procedure, which evaluates the energy efficiency of the combustible fuel only, would not provide credit for design options such as increased fan or motor efficiency since both of these designs improve only the unit's electrical consumption. The Department plans to issue a Notice of Proposed Rulemaking that would propose modifications to the existing furnace test procedures that, in addition to providing for the resolution of past waivers given on the test procedure, will address testing so that the design options listed in this section could be evaluated.

The Department requests comments on both the DOE design options listed below and the applicability of the extant or proposed test procedure. The following is a list of design options that will be examined:

- (I) Central Air Conditioners and Central Air-conditioning Heat Pumps
- (A) Increased Condenser and Evaporator Heat Exchanger Performance including:
 - Increased heat exchanger frontal area
 - Increased tube rows
 - Increased fin density
 - Enhanced fins
 - Grooved tubes
 - Hydrophilic-type film coating on fins
- (B) Decreased Compressor Size
- (C) Increased Combined Fan and Motor Efficiency
- (D) High Efficiency Compressors including Scroll Compressors
- (E) Two-Speed Compressors
- (F) Variable Speed Compressors
- (G) Two-Speed and Variable Speed Fan Motors
- (H) Thermostatic and Electronic Expansion Valves
- (I) New and Mixed Refrigerants
- (J) Demand Defrost Control Systems (heat pumps only)
- (K) Other Refrigeration Cycles, including the Stirling Cycle
- (L) Electrohydrodynamic Enhancement of Heat Exchangers
- (M) For Combination Appliances, Water-Source Defrost
- (ii) Furnaces
 - (A) Improved Heat Exchanger Effectiveness
 - (B) Electronic Ignition
 - (C) Increased Fan Efficiency
 - (D) Increased Motor Efficiency
 - (E) Induced or Forced Draft
 - (F) Infrared Burner
 - (G) Two-Stage Modulation
 - (H) Continuous Modulation
 - (I) Condensing Flue Gases
 - (J) Pulse Combustion
 - (K) Burner Box or Flue Damper
 - (L) Stack Damper
 - (M) Improved or Increased Insulation

- (N) Self-Generation of Electric Power
- (O) Gas Driven Heat Pumps
- (P) Alternatives to Multi-Tap Fan Motor Speed Control for Single-Speed Fans
- (Q) Electrohydrodynamic Enhancement of Heat Exchangers
- (R) Delayed Action Oil Pump Solenoid Valve
- (S) Flue Gas Recirculation
- (T) Direct Vent with Combustion Air Preheat
- (U) Direct Vent without Preheat
- (iii) Refrigerators, Refrigerator-Freezers, and Freezers
 - (A) Increased Cabinet Insulation Thickness
 - (B) Increased Door Insulation Thickness
 - (C) Improved Foam Insulation for Cabinet or Door, e.g., microcell
 - (D) Evacuated Insulation Panels
 - (E) Gas Filled Panels
 - (F) Improved Gaskets
 - (G) Double Door Gaskets
 - (H) Reduced Heat Load for Through-the-Door Features
 - (I) Reduction in Energy Used for Anti-Sweat Heaters
 - (J) Substitution of Condenser Hot Gas for Electric Anti-Sweat Heat
 - (K) Reduction in Energy Used for Auto-Defrost Heater
 - (L) Substitution of Condenser Hot Gas for Electric Auto Defrost Heat
 - (M) Adaptive Defrost Systems
 - (N) Improved Compressor Efficiency
 - (O) Two Compressor System
 - (P) Variable Speed Compressor
 - (Q) Improved Fan Motor Efficiency
 - (R) Improved Fan Efficiency
 - (S) Variable Speed Fans
 - (T) Two Stage Two Evaporator System
 - (U) Hybrid Evaporator
 - (V) Other Refrigeration Cycles
 - Including:
 - Lorenz
 - Stirling
 - Gas Absorption
 - Thermoacoustic
 - (W) Improved Heat Exchangers
 - Including:
 - Increased Area
 - Enhanced Heat Transfer Surfaces
 - High Thermal Mass
 - Integrated Surfaces
 - (X) Alternative Refrigerants
 - (Y) Improved Expansion Valve
 - (Z) Fluid Control Valves
 - (AA) Location of Compressor, Condenser and Evaporator Fan Motor
 - (BB) Use of Natural Convection
 - (CC) Electrohydrodynamic Enhancement of Heat Exchangers
 - (DD) Voltage Control Devices

4. *Maximum technologically feasible designs.* The Act requires that, in considering any new or amended

standards, DOE must consider those that "shall be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified" (section 325(l)(2)(A)). As a first step, the maximum technologically feasible level will be identified. The maximum technologically feasible level is one that can be carried out by the addition of design options, both commercially feasible and prototypical, to the baseline units without affecting the product's utility. The Department believes that the design options comprising the maximum technologically feasible level must have been physically demonstrated in at least a prototype form to be considered maximum technologically feasible.

5. *Performance models.* In the Engineering Analysis, the Department's estimate of the efficiency of various design options and combination of design options will be based on either calculation (e.g., computer simulation models) or experimental data based on the DOE test procedures. The Department requests test data on the efficiency of the various design options and information on possible simulation models for use in this rulemaking. In addition, with respect to refrigerators, refrigerator-freezers, freezers, central air conditioners and central air conditioning heat pumps, the Department requests data on the impact on efficiency of the phaseout of chlorofluorocarbon refrigerants and insulation blowing agents.

6. *Costing analysis.* Manufacturer cost data for baseline units and incremental costs for design improvements are requested. The cost data requested include, for each design option, incremental cost data disaggregated into labor, purchased parts, materials, shipping/packaging, and tooling. Also requested are any additional consumer installation or maintenance costs resulting from the design improvements.

7. *Price-efficiency relationships.* The results of the Engineering Analysis are summarized in the cost-efficiency relationships that show the efficiency, unit energy consumption, and manufacturer cost of each design option and combination of design options for each appliance class. Manufacturer and dealer markups are applied to the manufacturing costs to determine the purchase price of the appliance. The price-efficiency relationships are a fundamental input to the Consumer Analysis.

8. *Data sources.* Shipments data, costs of purchased materials and parts, and engineering and labor cost data will be

based on available information, including information received in comments on this Advance Notice of Proposed Rulemaking and collected from industry sources.

9. *Outputs from the Engineering Analysis.* For each combination of design options considered, the models and data provide:

- Energy efficiency (expressed as the DOE energy factor);³
- Annual energy consumption per unit (based on DOE test procedures);
- Increased material, purchased parts, labor, and investment costs for medium⁴ and large manufacturers by product class;
- The relationship between cost and efficiency level by product class; and
- Other information on product characteristics, such as maintenance and installation costs, lifetimes, and venting configurations.

b. Lawrence Berkeley Laboratory Residential Energy Model

Early energy demand modeling focused on engineering estimates or on the relationship between energy consumption and economic growth. In the 1970s, Oak Ridge National Laboratory developed a model to integrate these two important aspects, the Engineering-Economic Model of Residential Energy Use. That model was brought to Lawrence Berkeley Laboratory in 1979 and adapted to the analysis of Federal appliance efficiency standards. The Oak Ridge National Laboratory Model has been updated by Lawrence Berkeley Laboratory resulting in the Lawrence Berkeley Laboratory Residential Energy Model which is summarized below.

The Lawrence Berkeley Laboratory Residential Energy Model forecasts the appliance purchase choices that households make as well as their subsequent appliance usage behavior and energy consumption. The model uses engineering estimates of the characteristics of particular designs of appliances and calculates the national impacts of a technology-specific policy on the populations of appliances used in the households. Alternative designs, available for purchase, are characterized by price and efficiency. The output from the Lawrence Berkeley Laboratory

³ The energy factor is a measurement of energy efficiency derived from the Department of Energy test procedure for that product.

⁴ As was the case with previous analyses, small manufacturers will not be analyzed separately. No general manufacturing approach could be identified for these firms because of the wide variability in their approach to manufacturing. Therefore, small manufacturers' costs have been assumed to equal those of medium manufacturers. The Department encourages small manufacturers to submit data.

Residential Energy Model provides estimates of national energy savings and consumer economic impacts (including equipment and operating expenses).

Engineering, economic, and demographic data are used in the Lawrence Berkeley Laboratory Residential Energy Model. The engineering data for appliances include the price-efficiency relationships described above. Additional data include information regarding alternative building shell construction measures and costs, unit energy consumption and efficiency of existing appliances, age distribution of existing appliance stock, and retirement functions. Economic data include projected energy prices⁵ and household income, models of energy investment, appliance purchase and usage behavior, including fuel and technology choice for each end use. Demographic data include number of households by type, projected housing starts and demolitions, and initial appliance holdings.

1. Structure of the model. The Lawrence Berkeley Laboratory Residential Energy Model segments annual energy consumption into house types, end uses, and fuel types. The house types are single-family, multifamily, and mobile homes. Calculations are performed separately for existing and new housing construction each year over the period 1980-2030. The end uses are space heating (including room and central), air conditioning (room, central conventional, and heat pump), water heating, refrigeration, cooking, clothes drying, lighting, clothes washing, dishwashing, pool heating, televisions and miscellaneous. Up to four fuels are considered, as appropriate to each end use: Electricity, natural gas, heating oil, and liquid petroleum gas. The model exists in two versions: national (one region) and regional (10 Federal regions). For those appliances whose usage is not likely to differ by geographic location, e.g., refrigerators, refrigerator-freezers and freezers, the national version will be utilized in this analysis. For central air conditioners, central air-conditioning heat pumps and furnaces, DOE will use the regional model (as data allow). The Department requests comments on regional usage on each of the appliances considered in this Advance Notice of Proposed Rulemaking.

⁵ The projections of energy prices will be taken from the most recent Annual Energy Outlook, a publication of the Department's Energy Information Administration.

The model projects five types of activities: Technology/fuel choice; building shell thermal integrity choice; appliance efficiency choice; usage behavior; and turnover of buildings and appliances.

2. Housing stock submodel. This submodel generates data about housing stock projections for the Lawrence Berkeley Laboratory Residential Energy Model. The number of occupied households, by type, is taken from the 1990 Census of Population and Housing. An exogenous projection for housing starts is obtained, and estimates of projected demolition rates by house type are calculated, assuming an exponential function. The housing submodel determines the projected housing stock each year, 1981-2030, by subtracting demolitions from existing stock, then adding starts. The annual demolition rates by house type will be calculated for single-family, multifamily, and mobile homes, respectively.

3. Efficiency choice algorithm. Historical efficiency data are available primarily from trade associations for selected years for each class of appliance through at least 1987. The Federal energy conservation standards for new units of these appliances are expected to be met by the effective date of the standard. After that date, future efficiency improvements are assumed to be a function of designs available (according to the engineering analysis) and of relevant energy prices. The forecasting algorithm is designed to allow annual average efficiency or shipment-weighted efficiency factors to increase if either more efficient designs become available at lower prices or energy prices increase. Conversely, if energy prices decrease, the shipment-weighted efficiency factors may decline, but would have a lower bound at the existing standard level, i.e., the legislated standard for furnaces and central air conditioners and central air-conditioning heat pumps and the 1993 standard prescribed by DOE for refrigerators, refrigerator-freezers, and freezers.

4. Thermal integrity. The projection of the level of investment in thermal integrity measures in new houses is based on a life-cycle cost calculation, analogous to that done for equipment efficiencies.⁶ Estimates of the incremental costs of thermal integrity measures are used in conjunction with current fuel prices and a discount rate.

⁶ The equipment efficiency and thermal integrity decisions are not solved simultaneously, but recursively. For each year analyzed, equipment efficiency is projected and then these results are used to calculate investments in thermal integrity.

Building codes might or might not impact the above projection, but the Department is not proposing to consider them explicitly since the Department does not have sufficient data on the adoption, enforcement, and effectiveness of building codes nationwide. However, since the recently enacted Energy Policy Act of 1992 (Pub. L. 102-486) requires states to consider meeting or exceeding the Council of American Building Officials' Model Energy Code, the Department welcomes comments as to whether the explicit consideration of building codes will lead to a different outcome for this portion of the analysis and, if so, requests data to allow the effects of building codes to be factored into the analysis. Estimates of investments in thermal integrity retrofits of existing houses are projected as a function of income and household energy expenditures.⁷

5. Modeling efficiency standards. The Lawrence Berkeley Laboratory Residential Energy Model projects the average efficiency of new products; for example, furnaces purchased each year in the absence of additional Federal regulations. A distribution of efficiencies is constructed around the average based on efficiency distributions observed in the marketplace. This information includes information from industry sources and published data from the industry trade associations. A new Federal standard level eliminates part of the distribution; therefore, a new distribution is constructed. The new shipment-weighted average efficiency then characterizes the efficiency of new units in that year. The same process is applied to all years after implementation of the standard. The model is then run again for the standards case with the adjusted average efficiencies to calculate any changes in market shares, usage behavior, or investment in building shell thermal improvements that may occur as a result of standards and to calculate the net energy savings.

6. Turnover of appliance stocks. The initial age distribution of appliances in stock is based on industry data about historical annual shipments. The fraction of each product that retires each year is based on the number of years since purchase of the product. For each year's purchase, the model associates an average efficiency, so that when older appliances are retired, they are also

⁷ Based on E. Hirst, R. Gorelitz, and H. Manning, Analysis of Household Retrofit Expenditures, Energy Systems and Policy, Vol. 7, No. 4, pages 303-322 (1983).

recognized as less efficient.⁸ All appliance replacements are included in the retirement function, including those resulting for reasons other than product failure. However, the analysis does not explicitly consider the effect of increased purchase price on the turnover rate. The Department requests data and comments on how to consider this factor.

The number of potential purchasers of an appliance in new homes is equal to the number of new homes constructed each year. The number of potential purchasers of appliances in existing houses is equal to the number of retiring appliances plus (if applicable) a fraction of those households that did not previously own the product.

7. Calculation of market shares. Potential purchasers may purchase any competing technology within an end use or none. For each end use, long-term market share elasticities are estimated with respect to equipment price, operating expense, and income, respectively. The effect of standards is expected to be lower operating expense and increased equipment price. The percentage changes in these quantities are used, together with market share elasticities, to determine changes in market share resulting from standards. The model assumes that higher equipment prices will decrease sales volumes while lower operating expenses will increase them. The net result (predicted market share) depends on the standard level selected with its associated equipment prices and operating expenses.

8. Usage behavior. For some products, e.g., furnaces and central air-conditioning heat pumps, changing the operating expense can result in changes in usage behavior. These changes are modeled based on usage elasticities in operating expense and income. For refrigerators, refrigerator-freezers, and freezers, these elasticities are expected to be at or near zero; usage behavior is not influenced by the expense of operating the appliance. The Department requests comments on this assumption.

9. Energy consumption calculations. The total energy consumption per house for each end use and fuel by house type and vintage (existing or new) is the product of the unit energy consumption (accounting for efficiency and capacity changes) and usage factor, e.g., relative hours of operation for furnaces. The corresponding annual energy

consumption for all households is the annual consumption per household, times the number of households of that type and vintage, times the fraction of those households owning that appliance.

Aggregate energy consumption is obtained by summing intermediate results. For example, national electricity consumption for central air conditioners in a particular year is the sum across house types and house vintages of electricity used by central air conditioners. National residential electricity consumption in that year is the sum of all end uses of electricity consumption in the residential sector.

10. Model outputs. The principal outputs from the Lawrence Berkeley Laboratory Residential Energy Model for each year are:

- Energy consumption by end use and fuel;
- Total residential energy consumption by fuel;
- Per-unit equipment price and operating expense by product;
- Projected annual shipments of residential appliances; and
- Differences in these quantities between a base and a standards case.

These outputs are provided annually (or for selected years) and cumulatively over a period of time, e.g., 1995-2030. Energy savings are provided annually from implementation of standards to the end of the period. Net present value of standards is evaluated for each regulated product and for the end use(s) comprising the regulated and competing products.

Energy savings are calculated as the difference in energy consumption between the base case and standards case. Energy consumption in both the base case and standards case includes building shell improvements, changes in fuel choice, or changes in usage behavior. Therefore, the energy savings capture the net energy savings due to regulation, including the effects induced by shifts in market share or changes in usage behavior.

Net present value, on the other hand, excludes these types of effects.⁹ Net present value is calculated from per-unit

changes in equipment and operating expenses, multiplied by standards case shipments. If the net present value were calculated without normalizing with regard to shipments, erroneous results would be obtained. If standards caused decreased purchases of a product, this would appear as an economic benefit; namely, less money spent on purchasing and using appliances.¹⁰ If standards resulted in increased purchases, this would be incorrectly counted as a cost when it reflects consumers' preference for the post-standards product.

Base case usage is assumed in calculating the net present value since any "rebound effect"¹¹ reflects the consumer's judgment that increased usage is worth more than the direct energy savings associated with keeping usage constant. Therefore, deduction of any foregone energy savings resulting from a possible "rebound effect," prior to calculating the net present value, would result in an underestimate of the true net present value associated with a given efficiency improvement.

11. Other consumer impacts. In determining economic justification, the Act directs the Department to consider a number of different factors. Among these factors are requirements that DOE consider the economic impact of the standard on consumers. In this regard, the Act establishes a rebuttable presumption that a standard is economically justified if the additional product costs attributable to the standard are less than three times the value of the first year energy cost savings. Also, DOE is required to consider changes in the life-cycle costs resulting from the standard.

Taking into consideration these various requirements, the Department calculates:

- The estimated simple payback of additional product costs (based on estimated changes in product purchase prices) by the energy cost savings projected to result from the proposed standard;

⁸ Present value is the discounted total value of energy consumption during the appliances' lifetimes, plus the discounted equipment costs for those appliances that are purchased during those periods at alternative standards levels. The difference between a standards case and a base case is the net present value attributable to amended standards. A positive net present value for an appliance at a given standard level indicates that, if that standard were adopted, consumers of that appliance as a whole would save that much more money in fuel costs, discounted to the present, than they would pay in increased initial price for a more efficient appliance, discounted to the present, compared to the base case.

⁹ Without normalization, the greatest economic benefit would be obtained by a standard level that resulted in no future purchases of the product. Then no money would be spent on purchasing the product or on operating expenses, and the value of the savings would equal the amount of money that would have been spent without the standard. This would clearly be a misrepresentation of the net present value of standards.

¹⁰ The "rebound effect" is the projected energy savings, depending on the appliance, (from an efficiency improvement) that does not occur. This results when purchasers of more energy efficient appliances use them more intensively, thereby saving less energy than the engineering estimates would have indicated. In some instances, the rebound is zero.

- The estimated changes in life-cycle costs to the consumer likely to result from the proposed standard; and
- The net present value of estimated savings to the Nation of the proposed standard.

The calculation of both consumer life-cycle costs and national net present costs/benefits require the use of appropriate discount rates. The discount rate used in such calculations is intended to approximate the time value of money of those who would bear the additional product prices resulting from a proposed standard and who would also, presumably, benefit from the resulting savings in energy expenses. Consequently, the most appropriate discount rate depends on the characteristics of the individual consumers, businesses, or other persons affected by a proposed standard.

In calculating consumer life-cycle costs, the Department has previously used a discount rate that was based on the method of financing available to consumers for the purchase of home appliances and other consumer products. This was one method of estimating consumer discount rates that the Court of Appeals decision in *NRDC v. Herrington*, 768 F.2d 1355 (DC Cir. 1985) indicated might be acceptable, although the Court did not preclude consideration of other reasonable methods. In previous rulemakings, the Department has used this same consumer discount rate in calculating the estimated net present value of proposed standards for the Nation as a whole. However, neither the method previously used by the Department to estimate the consumer discount rate nor the use of this same rate in the calculation of national net present values was entirely satisfactory. Consequently, in the development of the proposed standards for the three product categories covered by this notice, the Department intends to propose alternative methods for deriving and applying discount rates.

One of the reasons for investigating the discount rate previously used by the Department under this program is the long-standing debate between those who believe such a discount rate should reflect the perspective of society as a whole and those who believe the discount rate should try to reflect the perspective of individual consumers. Past commentators seeking a higher discount rate have often emphasized the consumer perspective, while those advocating a lower rate have generally argued in the societal context.

Many of the comments in support of lower discount rates have advocated reducing the discount rate to society

because of the environmental and other externalized benefits of appliance standards. The Department has previously rejected, and continues to reject, adjustments to individual consumer discount rates based on external benefits such as reductions in emissions or oil imports.

The Department recognizes, however, that there are external societal benefits (and possibly costs) that are generated from appliance standards. These are principally the value of reductions in oil imports and the reduction in projected emissions of SO₂, NO_x and CO₂. In previous rulemakings, the Department identified benefits resulting from national energy savings and emissions reductions, but did not attach any monetary value to these benefits because of the considerable uncertainty of such estimates. However, in order more explicitly to consider such externalized benefits (or costs), the Department will attempt in this rulemaking to establish values for these benefits, if a sound analytical basis can be found. The Department believes that any values should be based on the estimated external cost to the Nation of oil imports or the cost of damage caused by the emissions (or reduction control costs). Because of the uncertainties of such values, ranges consisting of high and low estimates of the external costs associated with the use of fossil fuels are likely to be used to gauge the monetary value to the U.S. of reducing the amount of imports or emissions produced by both power plant and in-home combustion sources. For example, the monetary value of reduced emissions resulting from increased appliance efficiency would be determined by multiplying the reductions in emissions (tons) by their associated externalized costs (dollars/ton). However, in the case of SO₂, the Department believes appliance standards are not likely to result in net emission reductions because of the cap on SO₂ emissions established by the Clean Air Act Amendments of 1990 (Pub. L. 101-548). However, even without an actual reduction in SO₂ emissions, there are likely to be economic benefits from the emission credits provided for by the Clean Air Act Amendments of 1990. The Department is soliciting data regarding the value of these emissions or, in the case of SO₂, the economic benefits likely to result from appliance standards.

Even if external environmental and other benefits are quantified, there remain differences in consumer and societal perspectives that may warrant the use of multiple discount rates depending on the type of economic

analysis being performed. A consumer discount rate could be used to calculate life-cycle costs for individual purchasers of residential products. A social discount rate could be used to calculate the total net present value of proposed efficiency standards to the Nation as a whole.

Individuals and the Nation experience different costs, benefits and risks as a consequence of appliance energy efficiency standards. For example, individuals experience the direct costs (and benefits) of increased appliance efficiency such as increased purchase prices for appliances that are purchased through increased credit card debt, reduced savings, reduced personal consumption, or by other means. For the Nation as a whole, however, the effects are more diffuse such as increased investment in appliance manufacturing and reduced investment in other sectors of the economy (such as energy production). There may also be some important differences in the risks experienced by individuals and the Nation. For example, an individual might sell his or her home soon after the purchase of an energy efficient refrigerator and not be able to recover the additional price of the refrigerator through either reduced energy usage or the sale price of the home. However, the Nation would still obtain the remaining benefits of the reduced energy usage through subsequent owners.

As a consequence of these and other concerns, the Department intends to re-examine the method used to derive the consumer discount rate and to propose the use of a different discount rate for the analysis of national net present values. There follows a more detailed discussion of DOE intentions with respect to the derivation and use of discount rates in the economic analyses of proposed efficiency standards.

Consumer Discount Rates

In determining consumer life-cycle costs, it is necessary to develop an appropriate rate for discounting the future costs and benefits associated with standard levels. Broadly speaking, there are two alternative approaches to consumer discount rates: the rates at which consumers borrow to finance appliance purchases and the rates of return consumers require on investments in appliance efficiency. The required return approach has some conceptual advantages over borrowing/financing rates. However, as explained below, the Department has, in past standards analyses used a 7 percent discount rate based on consumer financing rates.

Consumer borrowing rates. The Department acknowledges that the establishment of a discount rate is difficult and imprecise. This rate has attracted considerable comment in the past with many of the comments expressing concern that a 7 percent rate is unjustifiably high, while other comments have stated that a higher discount rate would be appropriate for various analyses.

In the November 1989 Final Rule for refrigerators, refrigerator-freezers, freezers, and small gas furnaces (54 FR 47916, 47921, November 17, 1989), DOE selected a consumer discount rate of 7 percent based on a methodology referenced in the Court of Appeals decision in *NRDC v. Herrington*, 768 F.2d 1355 (DC Cir. 1985). As DOE discussed in the November 1989 Final Rule, the method cited in the Court decision required some modification following the passage of the Tax Reform Act of 1986 (Pub. L. 99-514). The Tax Reform Act phased out the deductibility of interest paid on most consumer loans. Based on the revised methodology, DOE calculated that consumers experienced real borrowing rates that ranged from slightly less than 1 percent to slightly more than 15 percent. As explained in the November 1989 Final Rule, DOE selected 7 percent for the analysis in support of that rulemaking proceeding because it was near the mid-point of the potential consumer finance rates.

In a subsequent advance notice of proposed rulemaking on Energy Conservation Standards for Nine Products (55 FR 39624, 39631, September 28, 1990), the Department again proposed a 7 percent consumer discount rate based on the methodology and data of the November 1989 Final Rule. It was further stated that if the Department could obtain data on the methods that consumers use to purchase appliances, it might consider using a weighted-average, real, after-tax finance rate as the consumer discount rate.

In its comments on that September 1990 advance notice of proposed rulemaking, Whirlpool offered estimates of consumer financing of purchases of its equipment: 40 percent of retail sales are paid in cash; 35 percent use credit cards; 25 percent use retailer loans. These figures excluded new home construction that accounts for approximately 25 percent of Whirlpool's total sales.¹²

While Whirlpool represents only one source of data, the Department has no reason to believe that Whirlpool's customers differ substantially from those of other manufacturers and,

therefore, accepts Whirlpool's estimates as representative.

If the Department were to use the same discount rate methodology for this rulemaking as has been used in past rulemakings for this program, these weightings could be applied to the real, after-tax finance rates that are incurred by consumers as reported in the refrigerator final rule (54 FR 47916, 47923). Those rates were estimated to be just over 3 percent for appliances purchased as part of a new home (whose finance rate is a tax-deductible mortgage interest rate), to slightly under 1 percent for cash purchases, to more than 15 percent for credit card purchases. If these rates are applied to Whirlpool's estimates, the resulting weighted-average, real, after-tax rate incurred by consumers in appliance purchases would be approximately 6 percent.

The Department recognizes, however, that there are problems with basing the estimate of an average consumer discount rate on consumer financing methods. For example, there are weaknesses in the available consumer cost of financing data. The method of purchase data from Whirlpool does not indicate how these purchases actually affected consumer debt, savings, and consumption. A credit card purchase could be paid in full within the customary billing grace period, thereby being exempt from finance charges and, in effect, resembling a cash purchase. On the other hand, a cash purchase may actually be financed, indirectly, by an increase in credit card debt.

Required rates of return. While financing rates may indicate the direct financial cost to consumers of an investment in increased efficiency, they do not reflect other types of investments available to them or varying consumer perceptions of the value of reducing current consumption in favor of longer-term financial gains. For example, what level of cost savings does a consumer need to receive from an investment in an energy efficient refrigerator in order to justify reducing their savings, increasing their debt, or delaying the purchase of other consumer goods?

Considering only the costs of consumer financing does not indicate whether there are other similar investment opportunities available to most consumers that produce higher rates of return. For example, are there home improvements or other investments that could be made by most consumers that would have higher rates of return than an investment in an energy efficient appliance? Also, a consumer discount rate based on consumer financing expenses does not fully account for the risks of individual

consumer investments in improved appliance efficiency. For example, the actual rates of return experienced by individual consumers may vary widely depending on energy prices, appliance usage, and useful life.

Some have argued that implicit discount rates estimated through an examination of actual consumer purchases of appliances and related consumer equipment would be a better basis for the consumer discount rate used under this program. Various studies have indicated that these implicit discount rates range from 3 percent to as high as 100 percent (or more) for certain appliances. However, because implicit discount rates are based on actual consumer purchase behavior, they also reflect the extent to which the numerous potential market failures in energy efficiency investments occur such as inadequate information, conflicting owner/renter incentives, and second party (builder/contractor) purchases. One of the major reasons why Federal appliance efficiency standards were originally established was to overcome these market failures regarding investment in energy efficiency. Consequently, DOE does not believe unadjusted (i.e., not corrected for potential biases) discount rates derived from actual consumer behavior should be used in evaluating the economic impact of proposed standards on consumers.

This conclusion appears to be supported by court rulings affecting the program. In *NRDC v. Herrington*, 768 F.2d 1406 (DC Cir. 1985), the court stated that "the entire point of a mandatory program was to change consumer behavior" and "the fact that consumers demand short payback periods was itself a major cause of the market failure that Congress hoped to correct." The Department believes that the intent of the legislation that established the appliance standards program is to achieve energy savings that are being foregone because of market failures that distort consumer decision-making (and behavior).

However, if information were available on the implicit discount rates revealed by consumer decision-making in the absence of any significant market failure biases, it might provide a better basis for the discount rates to be used in assessing the impacts on consumers of proposed appliance efficiency standards. Another approach might be to examine the rate of return consumers would require from other fixed investments of comparable risk and liquidity. The Department solicits information on the results of any analyses that could support the

¹² Whirlpool, No. 31 at 1-2 and Appendix 1.

derivation of discount rates using either of these approaches.

On the other hand, the nature of the appliance standards program may imply that a household average required rate of return, whether based on actual appliance purchase decisions (in the absence of potential market failure distortions) or on comparable investments, may understate the appropriate rate. Because the Act requires minimum standards, their effect is generally greater on the low-efficiency, low purchase-price end of the market, sometimes eliminating the lowest-priced models. To the extent that low-income households purchase a disproportionate share of these low-efficiency/low-price appliances, they will be disproportionately represented among the affected consumers.

At the same time, limited empirical research¹³ suggests that these households exhibit higher-than-average discount rates (i.e., required rates of return) across all of their time-sensitive decisions including (but not limited to) their appliance purchases. If, indeed, these households are disproportionately affected by standards, their discount rates would need to be given greater weight in determining the effects of alternative standard levels on consumers. The Department seeks comment on this issue.

Based on the information now available, it appears that the average consumer discount rate lies in the range of 4 to 10 percent. The Department will conduct sensitivity analyses using this range but will continue to solicit data and comments that would provide a better basis for the derivation of consumer discount rates.

Societal Benefits and Discount Rate

In identifying a discount rate that is appropriate for use in calculating benefits to the Nation as a whole, consideration must be given to the opportunity costs of devoting more economic resources to the production and purchase of more energy-efficient appliances and fewer national resources to other alternative types of investment. It is not necessary, however, to determine the characteristics of specific classes of consumers or businesses directly impacted by the proposed standard. For these reasons, a broad measure of the average rates of return earned by economic investment throughout the United States is the most useful basis for a social discount rate.

Using this approach, the Office of Management and Budget (OMB) recently completed an analysis of the average annual real rate of return earned on investments made since 1980 in nonfinancial corporations, non-corporate farm and non-farm proprietorships, and owner-occupied housing in the United States. The results of this analysis indicated that since 1980 the annual real rate of return for these categories of investments averaged slightly more than 7 percent, ranging from a low of about 4 percent for owner-occupied housing (which represented about 43 percent of total capital assets in 1991 of about \$15 trillion) to a high of about 9 percent on non-corporate farm and non-farm capital (which represented about 23 percent of the total). Between 1960 and 1980, the average real rate of return on capital was higher, averaging about 8.4 percent in the 1970s and about 11.2 percent in the 1960s. As a result of this analysis, the Office of Management and Budget chose to designate 7 percent as the social discount rate specified in revisions to Office of Management and Budget Circular A-94 issued on November 10, 1992 (57 FR 53519). In that revised circular, the Office of Management and Budget established, *inter alia*, discount rate guidance for benefit-cost analyses of regulatory programs that provide benefits and costs to the general public.

An alternative method for deriving such a social discount rate might be broad measures of the costs of financing capital investments in the United States. One such measure is the Federal Government's cost of borrowing or the interest rate that is payable on long-term Government securities. Another might be the prime interest rate available to major corporate borrowers. In order to derive a real discount rate from either of these measures, the relevant interest rate would be adjusted for inflation.

Using long term Government securities as an example, the nominal rates during June 1991 on Government securities maturing between the years 2000 and 2015 averaged 8.55 percent. Adjusted by long term forecasts of inflation, the rate would be approximately 4 percent. Because the Government borrowing rate most accurately reflects the direct cost to the Government of added investment, the Office of Management and Budget has used this approach as the basis for discount rates used in evaluating Federal investments which directly affect Federal costs (such as energy efficiency investments in Federal facilities). Using the prime interest rate or some combination of rates to reflect

non-Federal financing costs would result in somewhat higher rates.

As indicated above, because the cost of financing additional capital investments does not reflect the full opportunity cost of shifting private investment from one area to another, it is not considered to be a good basis for deriving discount rates. For this reason, DOE now intends to propose the use of a 7 percent social discount rate in national net present value calculations although it will also perform sensitivity analyses at 4 percent and 10 percent. The Department seeks comment on appropriate discount rates for the analysis.

c. Manufacturer Impact Models

1. Conceptual approach. The manufacturer impact analysis estimates the overall impact of new or amended standards on an industry's profitability and scale of operation.

2. Measures of impact. The analysis examines three types of long-run impact: profitability, growth, and competitiveness. Consequently, five measures of impact are reported. They are: shipments, prices, revenues, net incomes, and returns on equity.

Return on equity is the primary measure of profitability although gross margin and return on assets are also reported. Assets and income provide the primary measures of growth, and the impact on competitiveness is analyzed by looking at the relative changes in growth and profitability.

Two short-run impacts are also analyzed. First, the ability of the industry as a whole and of specific segments of the industry to provide the one-time investments required to meet the new standard is examined. Second, if standards result in decreased sales for the particular industry being analyzed, the analysis examines the possibility of price-cutting while the industry is adjusting to a lower sales volume.

3. Lawrence Berkeley Laboratory Manufacturer Impact Model. In order to estimate the impacts of energy efficiency standards, a computer spreadsheet model, the Lawrence Berkeley Laboratory Manufacturer Impact Model, was developed.

The Lawrence Berkeley Laboratory Manufacturer Impact Model models a "typical year" for the industry-both in the base case and in the new standards case. The year chosen for the model is the fifth year after the imposition of standards. A five-year period is thought to be long enough to capture any major impacts from the standard such as profitability changes or firm entry into or exit from the industry.

¹³Train, Kenneth, *Discount Rates in Consumers' Energy-Related Decisions: A Review of the Literature*; Energy, December 1985.

Ideally, a manufacturer analysis should look at the impact of a proposed regulation on every firm that does business in the industry under question. However, because the industries being analyzed have many manufacturers making a particular product, a firm-by-firm analysis is not feasible. In addition, the engineering and financial data for most manufacturing firms are proprietary and are not routinely available for public analysis. Because of these limitations on data and resources, Lawrence Berkeley Laboratory Manufacturer Impact Model models a prototypical firm. In many cases, this firm represents a division of a larger firm. Therefore, a prototypical firm is a hypothetical firm representative of a portion of the industry. Prototypical firms are defined by parameters that are important for determining the impacts of standards and are consistent with data for the portion of the industry they represent. Important parameters used in the model include the cost structure of the firms, profitability ratios, relative costs of complying with the new standard, and marketing strategies.

A change in standards affects the analysis in three distinct ways. Increased levels of standards will require additional investment, will raise production costs, and will affect revenue both through higher prices and, therefore, lower quantities demanded.

The most obvious investment induced by standards is the purchase of new plant and equipment. This cost is first evaluated from engineering data and then averaged by taking into account the life of the investment, the date on which it is made, tax laws, and the appropriate costs of funds. An additional, and sometimes larger, investment takes place as the old inventory is replaced with more expensive new units. The model assumes previous inventory ratios are maintained. A third form of investment tracked by the model is the change in the transactions demand for cash that accompanies a change in revenues.

Increased costs of production are modeled by coupling engineering data on changes in unit costs caused by standards with data from Lawrence Berkeley Laboratory Residential Energy Model on the marketplace demand for the product.

Revenue is affected by both price and shipments. Price is determined by computing the markup over long-term marginal costs and then using the markup to determine an optimal price. Demand is determined by price and operating expense elasticities, coupled with the changes in price and operating expenses resulting from the standards.

The Lawrence Berkeley Laboratory Manufacturer Impact Model produces several outputs used in analyzing the impact of standards on manufacturers. A simplified pro forma income statement is prepared for each prototypical firm. In addition to the income statement, five main variables—shipments, prices, revenues, net incomes, and returns on equity—are reported. The results are presented for the without-standards (or without amended standards) case and the with-standards (or with amended standards) case, and the relative differences between the two are also given.

4. Data sources. The Lawrence Berkeley Laboratory Manufacturer Impact Model needs data that characterize both a particular industry and prototypical firms within that industry. Estimates of data are based on information from five general sources: Lawrence Berkeley Laboratory business consultation groups; the Engineering Analysis; the Consumer Analysis; public financial data; and industry profiles.

d. Utility Impact Model

The utility analysis serves several purposes within the overall assessment of the impact of the proposed standards. It contributes to quantifying the energy savings by determining the reduction in fossil fuels used for electricity generation. The reduction in fossil fuel consumption is also an input to the Environmental Assessment. By calculating utility avoided costs, this area of the analysis provides marginal electricity costs. Finally, it examines the impacts on the electric utility industry in terms of changes in investment, revenue requirements, the need for new generating capacity, and residential load factors.

The utility analysis adopts the standard convention that the value of electricity savings can be broken down into energy (or marginal cost) savings and capacity (or reliability) savings. The energy impact measures the production costs avoided by reduced electrical demands valued at the marginal energy costs of the utility. The capacity impact measures the reliability value of reduced loads during system peak periods, which is, by convention, valued at the cost of a combustion turbine that would have been needed to meet the load. The analysis characterizes these avoided costs per kWh of heating, cooling, and baseload energy saved.¹⁴ These values are used to

calculate societal benefits from reduced electricity consumption.

The Utility Impact Model calculates avoided energy costs based on a disaggregation of the generation fuel mix to the National Electric Reliability Council regions and a simplified load duration curve for each region. First, the model allocates national electricity savings that are forecasted by the Lawrence Berkeley Laboratory Residential Energy Model to National Electric Reliability Council regions in proportion to their current consumption of heating, cooling, and baseload energy. The regional proportions are derived from data on regional appliance saturations, efficiencies, and hours of use. The fraction of the electricity that would have to be generated at the margin from oil and gas is calculated from the total regional oil and gas fraction and the simplified load duration curve. Projected utility natural gas and coal prices, weighted by the oil and gas fraction and the non-oil and gas fraction, respectively are used to calculate utility marginal costs over the forecast period. The marginal costs are adjusted to account for seasonal differences.

The avoided capacity cost calculation in the model is based on conservation load factors for the energy savings attributable to the standards as well as the capacity value of a combustion turbine. A conservation load factor is defined as the average hourly energy savings of a conservation measure divided by its peak load savings. The conservation load factors are a way of characterizing the peak demand savings of a conservation measure. They are used to convert the capacity value of the standards into the per-kWh values described above. The National Electric Reliability Council forecasts of capacity requirements for each region are used to account for regional variations in reserve margin. If the National Electric Reliability Council forecasts an adequate reserve margin in a region for a given year, no reliability value is given to the capacity savings in the region.

The inputs needed for the Utility Impact Model are conservation load factors, state-level utility fuel prices, appliance saturations, efficiencies, and hours of use as well as electricity generation by fuel type and capacity need by National Electric Reliability Council region. The outputs of the analysis are fuel savings, reduction in the need for new generating capacity, and avoided energy and capacity costs

¹⁴ For the purposes of calculating utility avoided costs, electric heating appliances are defined as electric heat pumps and electric resistance heat;

cooling appliances are defined as room and central air conditioners plus heat pumps; and baseload appliances are defined as all other appliances.

for heating, cooling, and baseload appliances per million Btu's of resource energy.

e. Sensitivity Analyses

Sensitivity studies are performed to determine how changes in technical and operational parameters affect key engineering and economic indicators used in evaluation of appliance standards. This makes it possible to place limits on the overall results of the analysis and to gain an understanding of which variables are most important in producing these results. Sensitivity analyses are developed in a series of distinct steps. For each component analysis in the overall analysis, critical input parameters are identified and reasonable ranges of variation determined. The sensitivity of the model to changes in the value of each important parameter is then estimated by running the model for both the base case and the standards cases. The results of the sensitivity analyses are examined to determine the sensitivity of the forecasts to exogenous variables and assumptions and the sensitivity of the differences between the base and standards cases (impacts of alternative standards).

The above sensitivities have been developed at the national level, and no effort has been made to link them with any specific population groups. The standards analysis assumes that nationwide average appliance usage rates, energy prices, and efficiency apply to all consumers in all areas of the nation, although DOE recognizes that there exist large variations in each of these factors. The Department seeks information concerning the extent to which any proposed national efficiency standard is likely to affect identifiable groups of consumers disproportionately and how best to consider such impacts in the selection of efficiency standard levels. The Department is also seeking additional data to help it better assess the disproportionate impacts on such groups. The Department requests comments on this issue.

The Department requests data on the effects of energy prices and usage rates on consumer energy efficiency choice other than the Carrier study submitted in 1983 in response to an earlier rulemaking. The Department also requests data on the effect of energy efficiency and energy prices on usage rates.

IV. Public Comment Procedures

a. Participation in Rulemaking

The Department encourages the maximum level of public participation

possible in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers, associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposal. The Department also encourages interested persons to participate in the public hearing to be held in Washington, DC, at the time and place indicated at the beginning of this notice.

The DOE has established a period of 90 days following publication of this notice for persons to comment on this proposal. All public comments received and the transcript of the public hearing will be available for review in the DOE Freedom of Information Reading Room.

b. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views, or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below.

Comments should be labeled both on the envelope and on the documents, "Three Products Rulemaking (Docket No. EE-RM-93-801)," and must be received by the date specified at the beginning of this notice. Ten copies are requested to be submitted. Additionally, the Department would appreciate an electronic copy of the comments to the extent possible. The Department is currently using WordPerfect™ 5.1. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE in the proposed rule.

All written comments received on the Advance Notice of Proposed Rulemaking will be available for public inspection at the Freedom of Information Reading Room, as provided at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat information as confidential, include: (1) A description of the item; (2) an indication as to whether and why such items of

information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

c. Public Hearing

1. Procedure for Submitting Requests to Speak. The time and place of the public hearing are indicated at the beginning of this notice. The Department invites any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, to make a written request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the envelope, "Three Products Rulemaking (Docket No. EE-RM-93-801)," and should be sent to the address and must be received by the time specified at the beginning of this notice. Requests may be hand-delivered or telephoned to such address between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted. Persons selected to be heard will be notified by DOE as to the time they will be speaking.

Each person selected to be heard is requested to submit ten (10) copies of the statement at the beginning of the hearing. In the event any person wishing to testify cannot meet this requirement, that person may make alternative arrangements with the Office of Hearings and Dockets in advance by so indicating in the letter requesting to make an oral presentation.

2. Conduct of hearing. The Department reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures

governing the conduct of the hearing. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 533 and section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit to the presiding official written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant and whether time limitations permit it to be presented for answer.

Further questioning of speakers will be permitted by DOE. The presiding official will afford any interested person an opportunity to question, with respect to disputed issues of material fact, other interested persons who made oral presentations as well as employees of the United States Government who have made written or oral presentations relating to the proposed rule. This opportunity will be afforded after any rebuttal statements to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of disputed issues of material fact. If the time provided is insufficient or inconvenient, DOE will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justification, including why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing

will be announced by the presiding official.

A transcript of the hearing will be made and the entire record of this rulemaking, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter.

d. Issues for Public Comment

The Department is interested in receiving comments and data concerning the accuracy and workability of this methodology. Also, DOE welcomes discussion on improvements or alternatives to this approach. In particular, DOE is interested in gathering data on the following:

- The relevance of the data inputs and outputs of the Lawrence Berkeley Laboratory Residential Energy Model and Lawrence Berkeley Laboratory Manufacturer Impact Model models, whether these models could or should capture the cumulative effects of Federal energy conservation standards on multi-product appliance manufacturers and whether or not there are acceptable alternative models that could be used;
- Descriptive and performance characteristics for baseline models of each product class that are the subject of this rulemaking. These models should be those satisfying the appropriate standards;
- Proposed product classes for products in this rulemaking;
- Costs of baseline units and incremental costs of designs improving the energy efficiency of the products that are the subject of this rulemaking;
- Appropriateness of existing and proposed test procedures to the proposed design options;
- Methods of calculating the dollar value of reduced atmospheric emissions of SO₂, NO_x, and CO₂ from reduced energy consumption;
- Data on consumer financing of appliances useful for obtaining a weighted-average discount rate;
- Data on lifetimes of the appliances;
- Data on the distributions of locations of heating and cooling

equipment relative to conditioned space and venting and air intake configurations for heating equipment; and

- Data on the possible adverse affects of standards on identifiable groups of consumers that experience below-average utility or usage rates.

The Department has been unable to identify the financial characteristics of small manufacturers. Nevertheless, for purposes of this analysis, small manufacturers' costs are assumed to equal those of medium manufacturers. The Department is especially interested in learning of the existence of small manufacturers and in obtaining costing data from such manufacturers of the products under consideration.

For the Lawrence Berkeley Laboratory Residential Energy Model, DOE requests interested parties to provide historical data on shipments and average efficiencies by class for the products subject to the proposed rulemaking. Data on consumer prices and on the installation and maintenance expenses of these appliances are also requested.

The manufacturer analysis needs financial data from the product division level. All of these data are available at the firm level; but since firms are typically much larger than the relevant division, the firm data may give a misleading indication of the division's finances.

An income statement and balance sheet at the division level would be most helpful. If this is not available, then data on the following variables are considered most essential: Net income, revenue, selling and general and administrative costs, engineering costs, costs of goods sold, interest, taxes, debt-to-equity ratio, net depreciable assets, net assets, capital investment, and long-term debt.

The Department also welcomes current data on unit sales and revenues for the industries as a whole.

Issued in Washington, DC., on August 30, 1993.

Frank M. Stewart, Jr.,
Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93-21838 Filed 9-7-93; 8:45 am]

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Wednesday
September 8, 1993

Part IV

**Department of
Health and Human
Services**

Food and Drug Administration

**21 CFR Part 314
New Drug and Abbreviated New Drug
Applications; Final Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 314**

[Docket No. 90N-0238]

New Drug and Abbreviated New Drug Applications; Preapproval Inspection Requirements**AGENCY:** Food and Drug Administration, HHS.**ACTION:** Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to revise its regulations governing the approval for marketing of new drugs and antibiotic drugs for human use to require the submission by applicants of new drug and antibiotic applications (for the purposes of this document, new drug and antibiotic applications will be referred to as NDA's), abbreviated new drug and antibiotic applications (for the purposes of this document, abbreviated new drug and abbreviated antibiotic applications will be referred to as ANDA's), and supplemental applications of an additional copy of the chemistry, manufacturing, and controls (chemistry) section of their NDA's and ANDA's and of certain supplemental applications. The additional copy will be used by FDA investigators during a preapproval inspection to audit application commitments and statements against actual manufacturing practices used by applicants. FDA is also requiring the submission in the chemistry section of an NDA or ANDA, if not ordinarily included, certain information concerning the batches used to perform bioavailability, bioequivalence, and stability tests and the proposed or actual master production record for a commercial lot. This rule is intended to improve FDA's surveillance and enforcement activities with respect to NDA's, ANDA's, and supplemental applications consistent with the agency's efforts to address certain fraudulent practices found during recent investigations of the generic drug industry.

EFFECTIVE DATE: October 8, 1993.**FOR FURTHER INFORMATION CONTACT:**

Marilyn L. Watson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1038.

SUPPLEMENTARY INFORMATION:**I. Introduction**

In the *Federal Register* of January 28, 1991 (56 FR 3180), FDA published a

proposed rule to require the submission by applicants of NDA's, ANDA's, and supplemental applications of an additional review copy of the chemistry and human pharmacokinetics and bioavailability (biopharmaceutics) sections of their applications and of certain supplemental applications and an additional copy of the applicant's draft labeling. FDA also proposed to require the submission in the chemistry section of an NDA and ANDA, if not ordinarily included, certain information concerning the batches used to perform bioavailability, bioequivalence, and stability tests and the master production record for a commercial lot. The proposed new requirements would: (1) Provide to FDA field investigators information to be used during a preapproval inspection to audit application commitments and statements against actual manufacturing practices used by applicants and (2) provide to FDA headquarters reviewers additional information to be used in FDA's determination whether new drug products meet the statutory requirements for approval. FDA provided 60 days for public comment. The agency has revised portions of the final regulations in response to comments received on the proposal.

Highlights of the final rule are summarized below, followed by a summary and discussion of the comments.

II. Highlights of the Final Rule**A. Requirements**

This final rule has been significantly revised to reduce the amount of information that an applicant would submit for a preapproval inspection and to permit a U.S. applicant to send the information directly to the appropriate FDA district office. Accordingly, the final rule requires U.S. applicants of NDA's and ANDA's to submit to the applicants' home FDA district office, at the time of submission of their application to FDA headquarters, a certified copy of the chemistry section of their NDA's and ANDA's, all amendments to that section, and certain supplemental applications. FDA has designated this copy as the field copy. Foreign applicants would submit the field copy to the FDA headquarters address specified under § 314.440 (21 CFR 314.440) for submission of original NDA's, ANDA's, amendments, and supplements. The field copy of an NDA and ANDA will be used by FDA's field investigators in conducting a preapproval inspection. Unlike the proposed rule, the final rule does not require the submission of an additional

copy of the biopharmaceutics section of an NDA and an ANDA and an applicant's draft labeling.

The final rule, like the proposed rule, provides that an applicant include in the chemistry section of its application certain information about the batches of the drug product used to conduct a bioavailability, bioequivalence, or stability study as follows: (1) The batch production record; (2) the specifications and test procedures for each component and for the drug product; (3) the names and addresses of the sources of the container and closure system for the drug product; (4) the name and address of each contract facility that performs an operation in the manufacture, processing, packaging, or testing of the drug product and identification of the operation performed by each contract facility; and (5) the components and drug product test results obtained under §§ 211.84 and 211.165 (21 CFR 211.84 and 211.165) (see § 314.50(d)(1)(ii)(b)). In response to comments, the final rule clarifies that these requirements apply only to the pivotal bioavailability and bioequivalence studies and to the primary stability studies, and that, for the components of the drug product used to conduct bioavailability, bioequivalence, and stability studies, an applicant is only required to submit the names and addresses of the sources of the active and noncompendial inactive components of the drug product rather than all components of the drug product.

In response to comments, the final rule modifies the proposed provision concerning submission of the master production record. For an ANDA and an application submitted under § 314.54, the final rule requires the applicant to provide the proposed or actual master production record to be used for manufacture of a commercial lot of the drug product (§ 314.94(a)(9)) (21 CFR 314.94(a)(9)) (§ 314.55(e)(2)(i) in the proposed rule) and § 314.54(a)(1)(i) and (a)(2) (21 CFR 314.54(a)(1)(i) and (a)(2)). However, for an NDA, the applicant may provide, in lieu of the proposed or actual master production record, a detailed description of the production process for a representative batch of its proposed product (§ 314.50(d)(1)(ii)(c)).

The final rule expands the proposed provision concerning supplemental applications. The final rule requires the submission by the applicant to the applicant's home FDA district office, or if a foreign applicant, to FDA headquarters, a field copy of all supplements to the chemistry section of an NDA and ANDA except labeling supplements (§ 314.71(b)).

In the *Federal Register* of April 28, 1992 (57 FR 17950), FDA issued final regulations on certain requirements that apply to ANDA's. These regulations implement title I of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417). That final rule, among other things, reorganized and revised 21 CFR part 314 to incorporate the new requirements. The revisions, in part, added new § 314.54 to subpart B and new §§ 314.92 through 314.99 to new subpart C. The agency is now conforming this rule to the new part 314 structure.

B. Relationship to FDA's Computer-Assisted New Drug Application (CANDA) Program

In the *Federal Register* of September 15, 1988 (53 FR 35912), the agency published a notice to give guidance to applicants interested in submitting CANDA's, including ANDA's and investigational new drug applications (IND's). The notice encouraged applicants to explore the use of CANDA's. The agency views computer technology as a promising means of making the new drug review process more efficient. FDA's long-range plans commit FDA's Center for Drug Evaluation and Research (CDER) to continue to explore the use of computer technology to enhance the timeliness, effectiveness, and efficiency of the new drug review process and reduce burdensome, nonessential hard-copy handling. Currently, the submission of a CANDA will generally not affect the required submission of an application in hard copy. Over time, there may be instances where no hard copy need be submitted. By fiscal year 1995, FDA expects that virtually all application submissions to CDER will either be full CANDA's or have major automated components.

Development and operation of an acceptable CANDA system require the acquisition and installation of appropriate computer hardware and software and orientation and training of employees in the use of the computer hardware, data file content and structure, and retrieval routines. Filing of a CANDA is also conditional on the reviewing divisions willingness to accept an application in the CANDA format used by the applicant. To date the agency has directed its efforts toward policies and procedures for CANDA submissions to headquarters. The agency's long-term goal is to extend the CANDA concept to its district offices. However, initiation of this goal will not occur before fiscal year 1995, and its completion will be conditioned

on the availability of adequate budgetary resources. Therefore, for a preapproval inspection, unless otherwise instructed by the agency, applicants will submit the additional copy of the chemistry section of an application, all amendments to that section, and certain supplemental applications in hard copy.

III. Responses to Comments

FDA received 16 comments on the proposal. The comments came from pharmaceutical manufacturers and trade associations.

A. General Comments

1. One comment asked that the regulations define the respective roles in the new drug approval process of the FDA district offices and the reviewing divisions within CDER. Two comments expressed concern that inspectors in the districts will use the additional copy of the application to duplicate the review of an application already conducted by headquarters reviewers, and that this second, unnecessary review will not be limited to current good manufacturing practice (CGMP) issues but rather will overstep the intent of the rule and impinge on headquarters' role.

FDA advises that the roles of headquarters' personnel and FDA's district offices in the new drug approval process are necessarily distinct and different. The role of the reviewing divisions in FDA's CDER is to review the data submitted by an applicant in an NDA and ANDA to determine whether, for the drug product for which an applicant seeks approval, the NDA applicant has shown by adequate scientific evidence that the drug product is safe and by substantial evidence that the drug product is effective for the conditions prescribed, recommended, or suggested in the product's proposed labeling, and that the drug product will be manufactured properly; and the ANDA applicant has shown that the drug product is bioequivalent to its brand name counterpart, and that the drug product will be manufactured properly.

Under section 505(d)(3) and (j)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(d)(3) and (j)(3)(A)), the agency must deny approval of an NDA or ANDA if the methods used in, and the facilities and controls used for, the manufacture, processing, and packaging of the drug product for which the applicant seeks approval are inadequate to preserve the drug's identity, strength, quality, and purity. Therefore, before approval of an NDA or ANDA, FDA's reviewing chemists and microbiologists must

determine that the data in an application about the composition, manufacturing methods, and specifications and test methods used for the drug substance and drug product are adequate to assure their identity, strength, quality, and purity.

The role of FDA's district offices is to determine whether all establishments that will participate in the manufacture, packaging, or testing of the drug substance or drug product are in compliance with CGMP regulations and with application commitments and statements. These determinations are made by inspections by field personnel. An FDA investigator evaluates a manufacturer's compliance with the requirements of the agency's CGMP regulations (21 CFR parts 210 and 211) that set forth comprehensive standards for drug manufacturing; determines whether the manufacturer has adequate facilities, equipment, procedures, and controls to manufacture the drug product for which an applicant seeks approval in conformance with application commitments and statements; and audits the accuracy of the manufacturing and testing data for the batches used to conduct bioavailability, bioequivalence, and stability studies submitted in an application. In short, an FDA headquarters' reviewer determines if the data in an application support the safety and effectiveness or bioequivalence of the applicant's proposed product, and if the manufacturing process described in an application can produce a consistent product; whereas an FDA field investigator determines if the data are accurate and authentic and support the commitments and statements made in the application, and if the manufacturing facilities are capable of manufacturing, packaging, controlling, and testing the applicant's proposed product as described in the application.

2. Two comments discussed the economic impact of the proposed rule on NDA applicants. One comment noted that FDA's assessment of the economic impact was based solely on copying costs and such assessment was inadequate. Both comments expressed concern that experience during the initiation of FDA's new preapproval program demonstrated that there were delays in NDA approvals attributed to the preapproval plant inspections. One of the comments stated that an industry estimate conducted at the end of 1990 revealed that at least 14 NDA's were delayed 1 to 3 months resulting in an estimated economic impact of \$280 million. The comments argued that the increased burden of the new requirements, the potential economic

loss from material delays in NDA approval, and the potential losses from the unavailability of new medicines should be accounted for in assessing the impact of the proposed rule. Another comment disagreed with FDA that submission of the additional copy would be a minimal burden on applicants because, if applicants are required to submit the copy to FDA, much time will have to be spent by applicants to track information to assure its proper and timely disposition to the applicable district.

FDA acknowledges that there were delays in application approvals during implementation of the expanded preapproval inspection program. New procedures, however, have been instituted to alleviate unnecessary delays in application approvals. Under the new procedures, inspections will be conducted earlier in the review process. By doing so, the inspection should be completed well before the application reaches the approvable stage based on review by CDER's scientists. Also, if the inspection identifies significant deficiencies that the firm is willing to correct promptly, there should be adequate time for the applicant to make the corrections before the scientific review is completed. In the past year, FDA has increased the number of its field investigators, which will provide more timely preapproval inspections and help alleviate unnecessary delays in inspections. Also, FDA's Office of Regulatory Affairs (ORA) has established a premarket approval management plan to ensure uniform implementation and efficiency of operations. Finally, FDA has conducted a series of Commissioner's exchange meetings on the preapproval inspection program to illicit suggestions and recommendations from the industry to further enhance the efficiency and effectiveness of these inspections. These meetings were held in Cherry Hill, NJ; San Francisco, CA; Chicago, IL; and San Juan, PR.

3. In the preamble to the proposed rule (56 FR 3180), FDA stated that an applicant's history of noncompliance with CGMP's may trigger a preapproval inspection. One comment asked how FDA determines that an applicant has a history of noncompliance and if the firm is advised of this.

The agency believes that responsible corporate officials in any firm know when they have a history of noncompliance with CGMP's. This is evidenced by FDA's numerous administrative and regulatory actions against a firm for failing to adhere to CGMP requirements. These actions may have included repeated failure to correct

deficiencies reflected in a list of inspectional observations (Form FDA-483) left at the firm following an inspection, frequency of FDA inspections of a firm, numerous repetitive violations of CGMP regulations as evidenced by followup inspections by FDA, number of recalls, injunction proceedings, content and frequency of correspondence and meetings between FDA and the firm, settlement agreements, and consent decrees.

4. One comment asked that FDA clarify the effective date of this final rule. The comment argued that the final rule should not be applied to cover NDA's and ANDA's submitted before the effective date.

The requirements established in this final rule apply only to NDA's and ANDA's and their amendments and to supplemental applications submitted on or after the effective date of this rule.

B. Preapproval Inspections

5. One comment asked that FDA clarify whether preapproval inspections are mandatory or discretionary. The comment expressed the opinion that there is a potential that the standard for preapproval inspections contemplated by FDA's proposed rule is materially different from FDA's Compliance Program (CP) 7346.832.¹ The comment stated that the CP appears to make inspection mandatory for the listed categories of drug approvals, as assigned by CDER. For categories of drug approvals not assigned by CDER, the CP provides that CDER and the District will consult so that Districts may "exercise judgment as to whether preapproval inspections should be conducted * * *." If preapproval inspections are mandatory, the comment asserted that clear and identified criteria FDA will use in deciding when an inspection is warranted are essential, and that without such criteria the risks of favoritism, significant differences between and within districts, and unpredictability exist.

FDA does not agree that the proposed rule and CP 7346.832 contemplate different standards for preapproval inspections. Under section 505 (d)(3) and (j)(3)(A) of the act, FDA must deny approval of an NDA or an ANDA if the methods used in, or the facilities and controls used for, the manufacture, processing, and packaging of the drug product are inadequate to assure and preserve the product's identity, strength,

quality, and purity. Therefore, before approval of an NDA or an ANDA, FDA must determine that the facilities involved in the manufacturing, testing, or other manipulation of the applicant's proposed drug product have been inspected and found to be in compliance with CGMP regulations. This determination is made by FDA's inspecting the involved facilities before approval of an NDA or an ANDA, or by relying upon results of recent on-site inspections of the applicant's facilities, which covered the same class of dosage form as the applicant's proposed product. Section 510(h) of the act (21 U.S.C. 360(h)) mandates on-site inspections for every registered drug establishment every 2 years. Because of certain fraudulent practices found during investigations of the generic drug industry, FDA expanded its preapproval inspection program beyond the statutorily required biennial on-site inspection to include additional criteria for triggering a preapproval inspection which is product and site specific and to include as part of a preapproval inspection an audit of the manufacturing and controls records concerning the batches used to conduct bioavailability, bioequivalence, and stability studies. The additional criteria cited by FDA in the proposed rule and in CP 7346.832 represent those situations most likely to trigger a preapproval inspection. For example, FDA must be assured that a manufacturer has adequate facilities, equipment, procedures, and controls to manufacture a new chemical entity or a new dosage form.

FDA's preapproval inspections are discretionary in that they are not statutorily mandated. Preapproval inspections may be requested by agency headquarters staff or conducted at the district offices' discretion. Factors considered by FDA and its district offices in determining whether a preapproval inspection is necessary include the date of the firm's last biennial inspection; the firm's CGMP inspection history; results of recent inspections that covered the same class of drug product, i.e., tablet, capsule; regulatory actions against the firm; recalls; and complaints against the firm. Because of the number and significance of the problems the agency is finding with both NDA's and ANDA's during preapproval inspections, the intensity of FDA's preapproval inspections will continue for both NDA's and ANDA's, and the inspections will be conducted for products meeting criteria such as those listed in the preamble and the CP.

6. One comment expressed concern that, if applicants are required to submit

¹ Compliance Program 7346.832 is available at cost from the Freedom of Information Staff (HFI-35), Food and Drug Administration, rm. 12A-30, 5600 Fishers Lane, Rockville, MD 20857.

review copies of each NDA, ANDA, amendment, and appropriate supplement, as well as the additional information that would be required in the chemistry section, FDA's reviewing chemists involved with the preapproval inspections will be burdened with tracking and compiling a complete record of the submission and all subsequent amendments and supplements. The comment argued that this would seriously detract from the FDA reviewers' ability to focus his or her efforts on the NDA/ANDA review and therefore interfere with FDA's current mandate to shorten NDA and ANDA review time. The comment suggested that FDA consider modeling the preapproval inspection requirements on a procedure used for methods validation packages in which the chemistry section and all related amendments would be sent, when the reviewing chemist requests an inspection, to the reviewing chemist for distribution, or, under appropriate circumstances, directly to the district office.

FDA believes that this comment misunderstood the process by which the agency would provide the additional copy to the district offices. FDA had envisioned a process that would impose minimal burdens on its reviewing personnel. Therefore, under the proposed rule, the additional copy of original submissions, amendments, and appropriate supplements submitted to FDA by applicants would be provided to the home FDA district office of the applicant by CDER's central document room. CDER's reviewing personnel would only be involved in the event it was necessary for them to assist in identifying whether an amendment or supplement did, in fact, affect either the chemistry or biopharmaceutics section of an NDA or ANDA. The concern expressed by the comment is now moot because, under the final rule, a U.S. applicant will send the additional copy of the chemistry section, amendments, and supplements directly to the appropriate district office.

7. One comment asked that FDA clarify what constitutes a drug with a narrow therapeutic range. The preamble to the proposal included as one of the grounds that may trigger a preapproval inspection those drug products that have a narrow therapeutic range, such as drugs used to treat epilepsy, asthma, high blood pressure, and heart diseases (56 FR 3180). The comment argued that this language suggests that all cardiovascular drugs, for example, have a narrow therapeutic range, and are subject to preapproval inspection.

FDA agrees that its description of narrow therapeutic range drugs may imply that all cardiovascular drugs have a narrow therapeutic range. This implication was not intended. The preamble language was intended only to give examples of the types of therapeutic classes to which the specific drug products belong. FDA has developed an informal list of drugs it believes may have a narrow therapeutic range. This list is used for various internal purposes only such as selecting drug products for preapproval inspection. FDA does not formally designate narrow therapeutic range drugs.

8. One comment noted that the preamble identified broad categories of drug products such as new chemical entities, new dosage forms for an applicant, and drugs that are difficult to manufacture and thus difficult to replicate that would be subject to the final rule. The comment asserted that it would be excessive for FDA to require preapproval inspections for all NDA's within these categories. The comment argued that, in the absence of a concern by the review divisions about the drug product, and in the absence of a concern by FDA's compliance officials about the manufacturer, a preapproval inspection should not be conducted and an NDA applicant should not have to submit the additional data that would be required by the proposed rule. Another comment noted that the criteria "are difficult to manufacture and thus difficult to replicate" and "generic versions of the top 200 most prescribed drugs" are obviously applicable to generic drugs and questioned their application to innovator companies.

The objective of FDA's preapproval inspection program is to evaluate a manufacturer's compliance with CGMP requirements, audit the manufacturing and control records for the batches used to conduct bioavailability, bioequivalence, and stability studies, and audit application commitments against actual manufacturing practices. This is intended to improve FDA's surveillance and enforcement activities with respect to NDA's and ANDA's consistent with the agency's efforts to address certain fraudulent practices found during recent investigations of the generic drug industry. FDA believes it is appropriate to apply this rule and its preapproval inspection program both to NDA's and ANDA's. As noted in section III.C.13., FDA cannot assure that NDA's are not susceptible to fraud. In addition, the agency is finding significant problems with both NDA's and ANDA's during preapproval inspections. Because of this, the

intensity of FDA's preapproval inspections will continue for both NDA's and ANDA's. An important goal of FDA's preapproval inspection program is ensuring the integrity of the data submitted to FDA by an applicant. FDA intends to continue to conduct preapproval inspections of NDA's and ANDA's for products meeting criteria such as those set forth in FDA's proposed rule and in CP 7346.832.

FDA agrees that the criteria "are difficult to manufacture and thus difficult to replicate" and "generic versions of the top 200 most prescribed drugs" are applicable to generic drugs and would not apply to innovator companies.

9. One comment noted that FDA cited five criteria that may trigger a preapproval inspection but did not address the situation in which FDA requests, by force of habit, preapproval inspection of a firm submitting an application for a drug product that does not fall within one of the enumerated criteria. To prevent this situation from occurring, the comment asked that the final rule be amended to allow a firm to satisfy such an FDA preapproval inspection request by providing a written statement that its application does not fall within one of the five enumerated criteria.

FDA declines to make the change requested. The five enumerated criteria discussed in the preamble to the proposed rule were not intended to be all-inclusive. A preapproval inspection may be triggered by other events. As discussed in the preamble (56 FR 3180), FDA may also inspect applicants who have a history of noncompliance with CGMP's and new applicants, i.e., those applicants who have not previously submitted an NDA or an ANDA or who currently are manufacturers of over-the-counter drug products and are seeking approval of their first prescription drug product. In addition, for drug products not falling within one of the enumerated categories, an unsatisfactory inspection within the past 2 years will also trigger a preapproval inspection as will discrepancies warranting an investigation resulting from headquarters review of an application.

10. One comment asked that FDA amend the regulation to provide that the additional copy of the chemistry and biopharmaceutics sections be forwarded to the field investigative teams within 30 days following the decision by FDA to begin review of the chemistry section.

Under this final rule, a U.S. applicant will send the additional copy of the chemistry section directly to the home FDA district office of the applicant at the time of submission of an NDA or

ANDA to FDA. The final rule does not require submission of an additional copy of the biopharmaceutics section. Therefore, the comment's request is now moot.

11. One comment stated that the proposed rule provides that information contained in the drug master file (DMF) must be provided to FDA which will, in turn, provide the information to its field investigators. The comment asked that FDA clarify whether FDA is referring only to the applicant's facility DMF and not DMF's from companies other than the applicant, i.e., closure manufacturers, active ingredient suppliers, etc. The comment also asked that the final rule include a 30-day timeframe following the decision by FDA to begin its chemistry review within which FDA must provide this information to its field investigators.

In the preamble to the proposed rule (56 FR 3180 at 3181), FDA noted that the regulations at 21 CFR 314.420 permit certain information to be provided to FDA in a DMF and incorporated into an NDA or ANDA by reference to the DMF. If an applicant incorporates information in an NDA or ANDA by reference to its own DMF or to another person's DMF and that information or part of the information is relevant to a preapproval inspection, FDA will provide the information to its investigators.

FDA declines to impose a time period within which it must submit information in a DMF to its investigators. Contacts between appropriate headquarters reviewing personnel and FDA's district offices before and during a preapproval inspection will ensure that the field investigators have relevant information from a DMF in a timely manner.

12. One comment asked that the rule include a provision specifying that "field inspections must be initiated at least 30 days after receipt of information from headquarters and the field investigators must report back to headquarters within 10 days of receipt of the information. A failure to do so constitutes an agency waiver of the preapproval inspection need."

FDA declines to revise the rule to include the timeframes suggested by the comment. The scheduling of inspections is left to the discretion of the district offices. District preapproval activities are an inherent part of the agency's overall review process; therefore, districts are responsible for timely responses to headquarters assignments so as not to unduly delay recommendations concerning an application approval. As discussed in section III.A.2., FDA is streamlining its

inspection scheduling and reporting procedures to allow for inspections to be conducted earlier in the review process and to avoid bottlenecks at clearance time, and is targeting increased resources for its preapproval inspection program.

C. Scope of Requirements

13. Some comments objected to imposing new requirements on NDA applicants because of instances of misrepresentation and fraud by some ANDA applicants. The comments argued that FDA's remedy for detection of fraud should not be extended to NDA's because of differences in the development sequences for original new chemical entity drug products and generic drug products and the very significant differences in the review of NDA's and ANDA's by FDA, and that the problems identified by FDA with respect to generic firms could be addressed without imposing additional burdens on NDA applicants. One comment viewed the new requirements as another tax on innovation. Another comment believed that there has been integrity in the approval process for NDA's and asserted that there is not an adequate basis for concluding that the new submission requirements by research companies will alleviate or prevent any problem.

The agency does not agree that the rule should apply only to ANDA applicants. FDA cannot assure that NDA's are not susceptible to fraud. This rule would allow FDA to prevent and remedy fraud wherever it occurs in the new drug product approval process.

14. A few comments requested clarification of the types of bioavailability and bioequivalence studies that are subject to § 314.50(d)(1)(ii)(b) of this rule. One comment asked whether the many types of clinical pharmacology, pharmacokinetic, and pharmacodynamic studies in which blood samples are routinely collected for analysis during clinical development of a dosage form would be considered within the scope of the regulation. The comment suggested that the regulation apply only to pivotal bioavailability and bioequivalence studies, i.e., those studies that define the absolute or relative bioavailability of a new drug and studies necessary to demonstrate the bioequivalence of a new formulation to that which was previously studied in clinical trials. One comment suggested that the scope of the submission requirements for NDA's be limited to records of "a batch representative of the batches used in studies of the

bioequivalence or bioavailability of the drug product."

FDA agrees that clarification of the rule is necessary and has revised § 314.50(d)(1)(ii)(b) to clarify the bioavailability and bioequivalence studies to which this final rule applies.

In the *Federal Register* of April 28, 1993 (58 FR 25918), FDA published a final rule to amend its current bioavailability/bioequivalence regulations to require the retention for a specified period of reserve samples of the drug products used to conduct certain bioavailability or bioequivalence studies, and, when specifically requested, to release the reserve samples to FDA. In response to comments on the interim rule published in the *Federal Register* of November 8, 1990 (55 FR 47034), FDA revised § 320.38 (§ 320.32 in the interim rule) and § 320.63 to clarify the bioavailability and bioequivalence studies from which reserve samples are to be retained. Therefore, like the final rule on sample retention, for an NDA, this rule applies to those studies comparing the applicant's proposed product with that formulation studied during pivotal clinical trials to establish their equivalence; and for an ANDA, this rule applies to a bioequivalence study comparing the applicant's proposed drug product to the approved drug product upon which the applicant relies for approval of its product.

15. Three comments argued that submission of the biopharmaceutics section of an application is unnecessary because that section includes data such as statistical and raw laboratory data that would be of no use to the field investigator for a preapproval inspection. One comment suggested that the only portions of this section that are relevant to the field investigator's mission are: (1) Information about the drug product used to conduct a bioavailability or bioequivalence study such as composition of the test drug product, certificates of analysis for the test and reference products, and comparative dissolution profile for the test and reference products; and (2) the synopsis or summary of the bioequivalence study results. Another comment suggested that data identifying the lots used to conduct bioavailability or bioequivalence studies and the manufacturing site for the lots would be information needed for a preapproval inspection. The comments argued that a revision of the rule to provide for the submission of an additional copy of only these portions of the biopharmaceutics section would result in a saving of time and photocopy resources for applicants as well as

greater convenience and efficiency for FDA investigators in discharging their preapproval inspection duties. One comment expressed concern that, if the entire biopharmaceutics section was provided to the district offices, overzealous inspectors may attempt to conduct a pharmacokinetic review.

The agency has carefully considered these comments in light of the objectives of its preapproval inspection program and the regulatory requirements most appropriate to achieve these objectives. Based on this review, the agency has modified the final rule to remove the proposed provision requiring submission of an additional copy of the biopharmaceutics section of an application.

FDA considers an applicant's comparative in vitro dissolution data a critical component of FDA's approval of new drug products, especially generic drug products. For an ANDA, comparative dissolution data for solid oral dosage form drug products are necessary to show comparability of the applicant's proposed drug product to its brand name counterpart. For an NDA, comparative dissolution data for solid oral dosage form drug products are necessary to show comparability of the applicant's proposed drug product to the formulation used in conducting the pivotal clinical, bioavailability, and stability studies. Where comparative in vitro dissolution data are required in addition to an in vivo bioequivalence or bioavailability study or as the sole bioequivalence requirement, the data are included in the biopharmaceutics section of an NDA and an ANDA. During preapproval inspection, FDA investigators will audit an applicant's comparative dissolution data at the facility where the testing was conducted. If either FDA's headquarters reviewing personnel or FDA's field investigators question the integrity of the comparative dissolution data submitted to FDA by an applicant, FDA will arrange with its field investigators for additional audits. If, based on FDA's inspectional experience and headquarters reviews of applications, the agency believes additional requirements are needed to ensure the integrity of the data submitted in the biopharmaceutics section of an NDA or ANDA or to facilitate its preapproval inspections, it will again consider the issue and propose appropriate revisions to this rule.

16. A few comments asked that FDA clarify the types of stability studies that are subject to § 314.50(d)(1)(ii)(b) of this rule.

This requirement is limited to primary stability studies, i.e., those

stability studies conducted with the proposed drug product in the container closure system proposed for marketing and under storage conditions that support the proposed expiration dating period. For an ANDA, generally the stability studies are conducted with the same batch of the drug product used to conduct bioequivalence studies.

17. Four comments argued that the explanation provided in the proposed rule describing the need for an additional copy of the applicant's draft labeling was inadequate because it did not define the role that the district office will have in label review, especially the package insert which is included in "labeling." The comments requested that the requirement for submission of a copy of the applicant's draft labeling be deleted.

FDA has reevaluated FDA's field investigators need for a copy of the applicant's draft labeling during a preapproval inspection and has concluded that its field investigators do not need to have access to draft labeling for every preapproval inspection. The agency is not finalizing the proposed revision of § 314.50(e)(2)(ii) that would have added the requirement for the submission of an additional copy of an applicant's draft labeling. The agency advises, however, that its field investigators may ask an applicant for a copy of its draft labeling to confirm consistency with application commitments. For example, an investigator may need to confirm that an applicant can meet the storage conditions contained in the labeling of its proposed drug product.

D. Number of Copies of an Application

18. Two comments asked that FDA clarify in the introductory paragraph of § 314.50 that extra copies are needed for only certain sections of a submission because the language of that paragraph implies that three copies of the entire application are required.

The agency does not believe that the language of the introductory paragraph of § 314.50 has the implication attributed to it by the comment. As proposed, an applicant would submit three copies of an application: An archival copy and two review copies. The content of the archival copy and of the two review copies is set forth at § 314.50(h)(1) and (h)(2), respectively. The final rule, however, retains the current requirement for one review copy and requires an additional copy of the chemistry section of an NDA and ANDA, each amendment to that section, and each chemistry supplement, which is the field copy. FDA has added new

§ 314.50(h)(3) to describe the content of the field copy.

19. Several comments questioned whether one additional copy of the chemistry section of an NDA would be adequate in some instances to facilitate a preapproval inspection. The comments argued that, for new chemical entities, as many as 10 or more sites may be specified in an NDA, including those for the manufacture of bulk drug, drug product formulation, and packaging operations. Frequently, these sites and operations are located in geographically diverse areas covered by different FDA regional offices and may be separated from the company's research facility where stability data were generated and where the bioavailability study was conducted. As an alternative proposal, the comments suggested that the reviewing chemist determine the number of additional copies of the chemistry section and all amendments based on the number of inspections requested by the reviewing chemist. The additional copies could be checked for accuracy by the reviewing chemist before issuance to the field. Other comments suggested that, if the intent is to provide the district investigators with the additional information, the information could be provided by the applicant to the field investigator or the district office at the time of an inspection (or earlier, if requested). The comments argued that this would result in reduced need for storage space of documents at FDA, less possibility or probability of document loss or mismanagement at FDA, and reduced dollar cost to the agency. The investigator would be able to see the actual data and accompanying supporting data on site and be directed to the scientists involved with such data, resulting in a better evaluation. Another comment suggested submission to FDA at a time designated by the reviewing chemist of an updated final field copy or copies which would incorporate amended information and technical section revisions. This would reduce the volume of data requiring field review by eliminating superseded or obsolete references and permit the submission of an additional copy if more than one district will be conducting inspections. Still another comment, arguing for submission of the additional copy by the applicant to the applicable local district directly, asserted that FDA neither has the resources, manpower, nor systems in place in its review and documentation areas to comply with the proposal in an efficient and timely manner, and that experience indicates applications and

other submissions inevitably get lost, misplaced, or misfiled. The comment stated that verification of submission directly to the district could be made in cover letters with an applicant's NDA, ANDA, amendment, and supplemental application submission to FDA.

FDA acknowledges that a preapproval inspection may involve more than one facility per NDA or ANDA. The purpose of the requirement for the submission of an additional copy of the chemistry section is to provide FDA's field investigators with the information to audit application commitments and statements against actual manufacturing practices and to assure early detection of fraudulent practices by an applicant. FDA's objective is to achieve this purpose without imposing unnecessary burdens on the industry and FDA. In light of this objective and FDA's consideration of the comments, FDA concludes that it is appropriate to permit U.S. applicants to provide the additional copy of the chemistry section and all amendments to that section directly to the applicant's home FDA district office who will then provide the FDA district offices that cover the inspection site(s) with the information needed to conduct a preapproval inspection. The procedure set forth in the proposed rule was based on FDA's concern that if the additional copy was provided by the applicant directly to the district, there was a possibility that the copy provided to the district would differ from that submitted to FDA headquarters. To alleviate this concern under the revised procedure in this final rule, FDA's ORA will conduct periodic evaluations, with the cooperation of FDA's CDER, to assess whether the copies sent to the home district by the applicant are identical to the copies sent to FDA headquarters. ORA will prepare specific criteria for these evaluations. In the case of a foreign applicant, the final rule provides that the additional copy be sent with the applicant's original submission to the appropriate address designated under § 314.440. In addition, the final rule provides that this additional copy shall be a certified copy, i.e., a responsible corporate official must certify that the copy is a true copy of that submitted to FDA headquarters. The final rule also provides that a U.S. applicant include in its submission to FDA headquarters a statement certifying that the applicant has provided to its home FDA district office the required information.

FDA now furnishes colored binders to applicants free of charge for organizing their applications. FDA intends to use a specific color binder for the field copy of an application. Applicants may

request supplies of the field copy binder (FDA Form 2626h) from Consolidated Forms and Publications Distribution Center, Washington Commerce Center, 3222 Hubbard Rd., Landover, MD 20785.

E. Batch Production Record

20. Three comments asked FDA to clarify what is intended to be included in the batch production record.

A batch production record is that record described under § 211.188 of the CGMP regulations.

21. Two comments argued that the information contained in the batch production records is directly related to CGMP requirements and that FDA would be able to verify the manufacturing procedures, batch size, and formulations used in bioavailability, bioequivalence, and stability studies during a preapproval inspection. Therefore, FDA should not burden the applicant by requiring that batch production records be submitted in an application.

FDA does not agree with these comments. The batch production records are significant to an FDA headquarters reviewer because they characterize the methods used in, and the facilities and controls used for, the manufacture, processing, and packaging of the product used to conduct the bioavailability, bioequivalence, and stability studies. FDA reviewers must be assured that the specific manufacturing process used to manufacture and control the batches used to perform the pivotal bioavailability and bioequivalence studies and the primary stability studies necessary for approval of an NDA or ANDA are comparable to those represented in the applicant's NDA or ANDA for production of the commercial batches. (Also, see discussion under section III.E.24. and III.I.33.)

22. Existing regulations at § 314.50(d)(1)(ii) require, in part, a description of the manufacturing procedures for the drug product for which the applicant is seeking approval. One comment asked whether the description of the manufacturing procedure required under § 314.50(d)(1)(ii) or the batch record will be considered the "official manufacturing procedure," asserting that, if the batch record, which is more detailed and may not reflect ranges established during the development of a product, is binding, it may be necessary to file supplements for variations within the description required by existing regulations.

The description of the manufacturing procedures required under § 314.50(d)(1)(ii) represents an

applicant's proposed procedures for commercial production of the applicant's product and permits FDA to determine whether or not the procedures can produce the proposed drug product and whether the procedures are adequate to determine and preserve the product's identity, strength, quality, and purity. The level of detail required in this description will vary according to the nature of the drug product and FDA's familiarity with the product. This final rule requires an applicant to include in the chemistry section of an NDA either the proposed or actual master production record or a comparably detailed description of the applicant's production process for a representative batch, and for an ANDA, the proposed or actual master production record to be used for the manufacture of a commercial lot. (See section III.I.33.) The contents of a master production record are described at § 211.188 of FDA's CGMP regulations. On the other hand, a batch production record characterizes the precise methods used in, and the facilities and controls used for, the manufacture, processing, and packing of each batch of an applicant's proposed product. For ANDA's, except for changes that are necessary to accommodate the difference in size between the test and production batches, these same methods, facilities, and controls must be applied to the manufacture of production batches of the applicant's drug product to provide assurance that the applicant's product remains bioequivalent to its brand name counterpart. For NDA's, the specific manufacturing process used to manufacture and control the clinical batches and the batches used to conduct bioavailability and stability studies must be comparable with the manufacturing processes used for future commercial production to assure safety and effectiveness of the applicant's marketed product.

Under the CGMP regulations, a batch production record is required to include an accurate reproduction of the master production record for the size of batch, strength, and dosage form to be manufactured. FDA fully expects applicants to amend a pending application or submit a supplement to an approved application providing for significant changes to the manufacturing procedures described by an applicant in a master production record or, in the case of an NDA, in its detailed description of its manufacturing process if submitted in lieu of a proposed or actual master production record. Although neither the CGMP regulations

nor the regulations under § 314.50 use the term "official manufacturing procedure," FDA considers the master production record as representing the applicant's manufacturing process for a commercial lot.

23. One comment asked for clarification of a statement in the preamble which indicated that batches used for bioequivalence studies and those represented in the application differed; for example, in some instances batches were smaller. The comment read this passage in the preamble to imply that full commercial scale batches were needed for such studies and asked FDA to clarify the statement.

FDA believes the comment misunderstood the preamble statement. The preamble discussion described actual situations where information submitted in an ANDA about the batches of a drug product used to conduct a bioequivalence study (test batches) differed from the information at the manufacturing facility about those same batches. For example, the batch production record at the manufacturing facility showed manufacture of a smaller size batch than the batch production record for that batch submitted in the applicant's ANDA. The batch production record at the manufacturing facility for a test batch must be identical to that submitted to FDA in an application. This preamble discussion in no way implies that full commercial size batches are required as test batches.

24. One comment referred to a statement in the preamble that "FDA must also be assured that the batches used to perform bioavailability, bioequivalence, and stability tests necessary for approval do not differ from batches of the drug product represented in the applicant's NDA or ANDA and subsequently marketed" and asked FDA to define "do not differ."

The language "do not differ" means that the methods, facilities, and controls described in the batch production records for the batches used to conduct the pivotal bioavailability and bioequivalence studies and the primary stability studies must be comparable to those described in the NDA or ANDA for production of a commercial lot of the applicant's proposed drug product. For example, the equipment should be of the same design and operating principles, but may differ with respect to capacity because of the difference in size between a test batch and production batch. The standard operating procedures should be the same for the test batch and production batch except for changes necessary to accommodate the larger size of the

production batch. (Also, see discussion under section III.I.33.)

F. Specifications and Test Procedures

25. Three comments contended that, for NDA's, specifications and test methods employed for the components and drug product evolve during the development of the dosage form. This information is routinely submitted to FDA as part of the IND process during development studies. The comments argued that the need to resubmit this information in the NDA is not warranted from a regulatory perspective and not adequately justified by the agency in the proposal.

The agency did not intend that an applicant resubmit information about the specifications and test procedures for each component and for the drug product used to conduct a bioavailability, bioequivalence, or stability study if the information was previously submitted in an IND. Section 314.50(g)(1) provides that an applicant may incorporate information submitted previously by reference. A reference to such information in accordance with § 314.50(g)(1) would satisfy the reporting requirement at § 314.50(d)(1)(ii)(b) of this rule.

26. One comment contended that the requirement for specifications and test procedures was too broad and unrealistic, and suggested that the requirement be limited by definition to the components of the product to be marketed (not including developmental forms of the product), and that there be no additional submission of specifications and test procedures for nonactive compendial items, when standardized procedures are used. The comment argued that the suggested limitation would avoid burdening the review process with the minutiae of the documentation which supports the manufacturing process.

As discussed previously in this preamble, the requirements of § 314.50(d)(1)(ii)(b) apply only to the components and the drug product used to conduct the pivotal bioavailability and bioequivalence studies and to the primary stability studies, and thus do not apply to developmental forms of the drug product. Reference to the current edition of the U.S. Pharmacopeia (U.S.P.) and the National Formulary (N.F.) may be made for compendial components to satisfy relevant requirements under § 314.50(d)(1)(ii)(b) of this final rule, and, as discussed above, an applicant may incorporate information submitted previously to FDA by reference.

G. Names and Addresses of Sources of Components and of the Container and Closure System for the Drug Product

27. Several comments addressed the requirement at § 314.50(d)(1)(ii)(b) to provide the names and addresses of the sources of the components and of the container and closure system for the drug product. The comments expressed concern that the requirement could be interpreted as restricting the source of excipients to those used in the bioavailability/bioequivalence batches or of the market container used for stability lots for the commercial product without the approval of a supplement. This would prevent the applicant from using components of equivalent quality from a new supplier until such approval is obtained. One comment argued that this is not current practice with NDA products and is totally inconsistent with the development of U.S.P. and N.F. specifications for inactive ingredients, which the agency has endorsed in the past. The comments asserted that, except for the drug substance, it is unnecessary to submit the name and address of each source of the raw materials or components. One comment suggested that the requirement apply only to suppliers of noncompendial inactive ingredients. The suppliers of compendial inactive components used to manufacture the drug product may change depending on the availability and price of the component. Thus, it is not economically feasible to restrict the source of these components to those suppliers identified in the application. For inactive components that comply with compendial specifications, the comment argued that it is sufficient for a sponsor to accept these materials based upon each supplier's certificate of analysis, and to periodically test representative material from each supplier to ensure compliance with compendial standards and CGMP principles.

The provision at § 314.50(d)(1)(ii)(b) has been revised to require that the applicant provide the names and addresses of the sources of only the active ingredient and noncompendial inactive ingredient components as suggested by the comments. The provision is not intended to require that an applicant submit a supplemental application for a change in the supplier of an inactive component. Because specifications for noncompendial components may differ among suppliers, FDA concludes that the information about the sources of noncompendial inactive ingredients is necessary to ensure that these components are properly controlled.

The final rule retains the proposed provision to provide the name and address of the source of the container and closure system.

H. Test Results for Components and Drug Product

28. On its own initiative, the agency has removed proposed § 314.50(d)(1)(ii)(d) and incorporated the requirement under § 314.50(d)(1)(ii)(b). The requirement for the submission of components and drug product test results was intended to apply only to the batches used to conduct the pivotal bioavailability and bioequivalence studies and primary stability studies. This corrects an inadvertent misplacement of the requirement in the proposed rule.

29. One comment asked that the FDA clarify the regulation at proposed § 314.50(d)(1)(ii)(d), which would require an applicant to include in its NDA or ANDA submission the components and drug product test results obtained under §§ 211.84 and 211.165, respectively, for the batches used to conduct bioavailability, bioequivalence, and stability studies. The comment argued that the language pertaining to § 211.84 appears to require testing of all inactive ingredients used to manufacture the bioavailability, bioequivalence, and stability batches; however, for inactive ingredients in particular, FDA reviewers have always accepted manufacturers' certificates of analysis provided that the manufacturer of the drug product has fully validated the data contained in a certificate of analysis.

FDA does not agree with the comment's interpretation of the language of proposed § 314.50(d)(1)(ii)(d) about component testing. The requirement in the proposed rule and in this final rule is consistent with the requirements at § 211.84. Final § 314.50(d)(1)(ii)(b) (proposed § 314.50(d)(1)(ii)(d)) only requires component test results as required by § 211.84(d). Section 211.84(d)(2) permits acceptance of, in lieu of component testing by the manufacturer, "a report of analysis * * * from the supplier of a component, provided that at least one specific identity test is conducted on such component by the manufacturer, and provided that the manufacturer establishes the reliability of the supplier's analysis through appropriate validation of the supplier's test results at appropriate intervals." Therefore, this final rule, consistent with § 211.84(d)(2), permits applicants to submit a supplier's report of analysis (certificate of analysis) provided the identity testing

and validation as required by that provision have been performed by the manufacturer.

30. One comment argued that the requirement for component test results be limited to components of the product to be marketed (not including developmental forms of the product), and there be no additional submission of test results for nonactive compendial components, when standardized procedures are used. Another comment requested that the final rule be modified so that this requirement apply only to drug products used for pivotal bioavailability and bioequivalence studies and for primary stability study lots for the proposed drug product in the proposed market containers.

As discussed in sections III.C.14. and III.H.28., the requirement for the submission of components and drug product test results applies only to the drug products used to conduct pivotal bioavailability and bioequivalence studies and primary stability studies. The final rule has been revised accordingly. FDA does not agree that test results should not be submitted for inactive compendial components. These test results are critical to FDA's determination that the batches of the drug product used for conducting the pivotal bioavailability and bioequivalence studies and the primary stability studies were manufactured with components that meet compendial specifications.

31. One comment suggested that component testing information be required at the time of the preapproval inspection rather than at the time of an original NDA submission. Although the comment understood the agency's desire to obtain accurate information to detect fraudulent submissions, the comment believed that the proposed requirement to include results of component testing in an NDA would add considerably to the size of an NDA, but it would add little value. Two comments argued that the test results for the components and drug product for the batches used in the bioavailability, bioequivalence, and stability studies are already subject to CGMP requirements and are available for FDA's review when conducting preapproval inspections. The comments asserted that including such data in an application would unnecessarily increase the volume of information submitted without any benefit in value, and would likely contribute to confusion and lengthier reviews.

FDA does not agree with the comments. The requirement for the submission of component test results applies only to testing of the

components of the drug product from the batches used to conduct pivotal bioavailability and bioequivalence studies and the batches used to conduct primary stability studies. (See discussion in sections III.C.14. and III.H.28.) This testing information is critical to FDA's determination that the bioavailability, bioequivalence, and stability batches were manufactured with components that met the applicant's specifications or compendial standards for identity, quality, strength, and purity. Thus, FDA does not agree that component test results are of little value and would likely contribute to confusion and lengthier reviews.

32. Two comments asked that FDA define the term "component" as used in proposed § 314.50(d)(1)(ii)(d).

The term "component" in proposed § 314.50(d)(1)(ii)(d) and § 314.50(d)(1)(ii)(b) of this final rule is used as FDA has defined the term in § 210.3(b)(3) of FDA's CGMP regulations (21 CFR 210.3(b)(3)). The agency notes that the term is used in existing § 314.50(d)(1)(ii) (redesignated in this final rule as § 314.50(d)(1)(ii)(a)), and that use is consistent with the definition of the term in § 210.3(b)(3).

I. Master Production Record

33. Several comments addressed the proposed provision in § 314.50(d)(1)(ii)(c), which would require an NDA and an ANDA to include the master production record to be used for the manufacture of a commercial lot of the drug product for which the applicant is seeking approval. The comments argued that the application of this proposed provision as part of the preapproval inspection program does not recognize the distinction between an NDA and an ANDA. Typically, an NDA is submitted at an earlier development stage than an ANDA. The comments asserted that, in the development of a new drug, the batches of the drug product used in the bioavailability, bioequivalence, and stability studies will not necessarily have been manufactured using a fully validated process. Only after full validation is completed is the final master production record generated. Some comments expressed concern that submission of the master production record with the NDA submission would constitute a firm commitment for the final manufacturing process which could not be modified as a result of final scaleup and validation. The comments argued that to wait for final scaleup and validation to be completed before submission of an NDA is impractical and would result in significant submission delays and would result in

the loss of opportunity to continue process development and achieve process improvement. Some comments suggested that the regulation require the development of master production records for NDA's coincident with the creation of validation protocols that can be reviewed just prior to NDA approval. Any differences between these initial master production records and the documents describing the manufacturing of the drug product for bioavailability, bioequivalence, and stability studies would be fully justified and recorded in the respective batch record file under the CGMP regulations. A few comments suggested that the information in an NDA about the applicant's manufacturing process should conform to the current FDA "Guideline for Submitting Documentation for the Manufacture of and Controls for Drug Products," which allows for manufacturing process information to be provided as a suitably detailed description together with a schematic diagram.

FDA recognizes the differences between NDA's and ANDA's with respect to the drug approval process as discussed by the comments. Given these differences, FDA has reevaluated the objectives of the preapproval inspection program and the regulatory requirements most appropriate to implement them. The ANDA approval process necessarily focuses on the applicant's ability to manufacture a product of acceptable quality that will be bioequivalent to the drug product it is copying, whose safety and effectiveness are established. Ordinarily, at the time of submission of an ANDA, a generic applicant will have manufactured a single batch of its proposed drug product for conducting the required bioequivalence and stability studies. Thus, the applicant has little experience in manufacturing its proposed drug product. This test batch must be produced using equipment appropriate for production of a commercial lot. In addition, the same standard operating procedures and controls for the manufacture of the test and commercial lots and the formulation must be the same except for changes necessary to accommodate the difference in size between a test batch and commercial batch. FDA's interim policy on batch size and production conditions for test batches for nonantibiotic, solid oral dosage form drug products is set forth in CDER's Office of Generic Drugs' (OGD) Policy and Procedure Guide 22-90 (Revised)

dated September 13, 1990.² In reviewing an ANDA, FDA needs to be assured that the bioequivalence batches and the production batches are made by comparable procedures and equipment. A change in the applicant's manufacturing procedure and/or equipment for the production batches may affect the bioequivalence of the applicant's proposed product.

On the other hand, an NDA applicant has from 1 to 5 years experience manufacturing a series of pilot plant production batches during the IND phases for clinical, bioavailability, and stability studies. Pilot plant production simulates full scale production. FDA recognizes that as the clinical trials proceed, manufacturing procedures, specifications, and test methods may need to be modified or refined. It is appropriate that the processes by which a drug product is manufactured in the development stage be well documented and controlled in order to assure the reproducibility of the product for further testing and for ultimate commercial production. When drug development reaches the stage where a drug product is produced for clinical trials, compliance with the CGMP regulations is required. Thus, compliance with CGMP regulations mandates that applicants document the specific manufacturing process used to manufacture and control the clinical batches as well as the pivotal bioavailability and primary stability batches. This is necessary to ensure that a product's performance characteristics that influence its safety and efficacy are maintained throughout the manufacture of the clinical, bioavailability, and stability study batches. Such data in an NDA will be used to demonstrate the comparability of the manufacturing processes used for the clinical, bioavailability, and stability batches with manufacturing processes to be used for future commercial production. At the time of submission of an NDA, FDA would expect that enough would be known about the proposed product's physical and chemical properties, stability, and product performance characteristics that any subsequent changes, if necessary, in the manufacturing process, specifications, and test methods for production of the commercial lot would be minimal.

Because of the differences in manufacturing experience between NDA and ANDA applicants, as discussed above, FDA concludes that it is

appropriate to permit the submission of different information by NDA applicants than by ANDA applicants with respect to the type of information needed by FDA to ensure that an applicant has demonstrated comparability of its manufacturing processes used for the bioavailability, bioequivalence, and stability studies with manufacturing processes to be used for a commercial lot. Therefore, for an NDA, § 314.50(d)(1)(ii)(c) of this final rule requires the submission of either a proposed or actual master production record or a comparably detailed description of the production process for a representative batch. This continues the current practice set forth in FDA's "Guideline for Submitting Documentation for the Manufacture of and Controls for Drug Products" as suggested by one comment. For ANDA's, § 314.94(a)(9) of this final rule (proposed § 314.55(e)(2)(i)) and for applications submitted under § 314.54, § 314.54(a)(1)(i) and (a)(2) require the submission of either a proposed or actual master production record. A detailed description of the production process for a representative batch, in lieu of a proposed or actual master production record, would not be acceptable. This is because, as noted above, at the time of submission of an ANDA, most generic applicants have little experience in manufacturing its proposed product. Therefore, at the time of submission of an ANDA, an applicant must document in either a proposed or actual master production record that scaleup will not result in a product quality difference between the batch used for bioequivalence and stability testing and the production batch. For both NDA's and ANDA's, the final rule requires that a proposed or actual master production record include a description of the equipment to be used in the manufacture of the commercial lot. Process validation, except sterilization process validation, need not be completed at the time of submission of an NDA and ANDA in those cases where a proposed master production record is submitted or in the case of an NDA where a detailed description of the production process is submitted in lieu of a proposed or actual master production record. In any event, an applicant is expected to amend a pending NDA or ANDA or submit a supplement to an approved NDA or ANDA to provide for changes in its manufacturing process. The types of changes requiring a supplement are described under § 314.70(b) and (c). These are the types of changes that may affect adversely the agency's previous

² OGD Policy and Procedure Guide 22-90 (Revised) is available from CDER's Executive Secretariat Staff (HFD-8), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

conclusions about the safety and effectiveness or bioequivalence of a drug product. For ANDA's, applicants may refer to OGD Policy and Procedure Guide 22-90 (Revised) for further guidance. Applicants may also consult with the appropriate reviewing chemist if further guidance is needed about the types of changes that would require submission of an amendment or supplement.

J. Supplements

34. In the preamble to the proposed rule (56 FR 3180 at 3182), FDA noted certain types of changes requiring a supplemental NDA or ANDA under § 314.70(b) that may require a preapproval inspection of the applicant's facilities. One comment noted that FDA requires that manufacturers of active ingredients rather than suppliers or distributors be included in NDA's and ANDA's, and suggested that in FDA's list of changes that may require a preapproval inspection, the wording "supplier of bulk active ingredient" be changed to "manufacturer of bulk active ingredient."

FDA agrees with the comment's noted discrepancy; however, no revision of the final rule is necessary.

35. Two comments addressed the proposed amendment to § 314.71(b), which would require the submission of an additional copy of those supplements described in § 314.70(b)(1) or (b)(2). One comment noted that there are numerous grounds for filing supplements and a range of different regulatory questions triggered by these supplements, and questioned what the inspection process is designed to find, for example, in a supplement to add a new packaging component or to change the ink in the printing on a drug product. Both comments suggested that FDA either request certain data and conduct inspections as needed when supplements are submitted or enumerate in the rule the types of supplements which FDA believes raise questions sufficient to warrant application of this rule.

As with an NDA and an ANDA, before approval of a supplemental application, FDA must determine that the facilities involved in the manufacturing, testing, or other manipulation of the applicant's approved drug product have been inspected and are in compliance with CGMP. This is so whether the supplemental application provides for a change that requires preapproval under § 314.70(b)(1) and (b)(2), a change that may be made before FDA approval under § 314.70(c), or whether the supplement provides for a change of the

type that would trigger a preapproval inspection. Therefore, FDA concludes that its investigators must have a copy of all supplements providing for changes to the chemistry section of an NDA and ANDA. This would not include supplements providing for labeling changes. Therefore, on its own initiative, FDA is revising § 314.71 to require an applicant to submit a certified copy of all supplements (field copy) providing for changes to the chemistry section of its NDA described under § 314.70(b)(1), (b)(2), and (c). Section 314.97 applies this requirement to ANDA's by reference to § 314.71. As with the field copy of original submissions, a U.S. applicant would provide these supplements to its home FDA district office at the same time the supplements are submitted to FDA headquarters and would include in its submission to FDA headquarters a statement certifying that the applicant has provided to its home FDA district office the required information. Foreign applicants would provide the field copy of these supplements to FDA headquarters at the same time the archival and review copies of the supplements are submitted to FDA.

The agency notes that the regulations at § 314.70(d) and § 314.97 by reference provide that certain types of changes in the conditions in an approved NDA and ANDA may be described only in an annual report. FDA's investigators currently review, as necessary, the applicant's copy of its annual reports. FDA intends to continue this practice and not require an applicant to submit to its home FDA district office an additional copy of each annual report. If, based on FDA's inspectional experience, the agency believes additional requirements are necessary to ensure the integrity of the data submitted in an annual report, it will propose appropriate revisions to this rule.

IV. Economic Impact

FDA has examined the economic effects of this final rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). This final rule significantly reduces the amount of information that an applicant would submit for a preapproval inspection. Unlike the proposed rule, the final rule does not require the submission of an additional copy of the biopharmaceutics section of an NDA and an ANDA and of the applicant's draft labeling. The final rule also more clearly defines the types of bioavailability, bioequivalence, and stability studies to which the rule applies. The types of studies perceived

by some comments as being within the scope of the proposed rule have been greatly reduced in this final rule.

The final rule, however, expands the proposed provision concerning supplemental applications by requiring an applicant to submit an additional copy of all chemistry supplements. This revision should have a minimal impact on the firms involved.

FDA estimates the nationwide annual copying cost of this regulation to be \$93,660 for all of the applicants submitting NDA's and ANDA's. The 90 applicants submitting ANDA's would be expected to incur \$33,960 in costs for an average annual cost per firm of \$380. The 80 applicants submitting NDA's would be expected to incur \$59,700 in costs for an average annual cost per firm of \$750. These costs should have a negligible impact on the applicants involved.

These new requirements are intended to benefit preapproval inspections and should not themselves delay application approvals, as suggested by one comment. The purpose of this rule is to provide to FDA's district offices information they need in advance of a preapproval inspection thereby facilitating the inspection process. Compliance with this rule should result in more efficient and effective inspections.

Accordingly, the agency concludes that this final rule is not a major rule as defined by Executive Order 12291, and certifies that the final rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1980

The information requirements contained in this final rule will collect information from persons who must obtain FDA approval prior to marketing a new drug. These persons must submit certain manufacturing and controls information and information about the batches of a drug product used to conduct bioavailability, bioequivalence, and stability studies. FDA will use the information during a preapproval inspection to audit application commitments and statements against actual manufacturing practices.

This final rule amends 21 CFR part 314, which pertains to applications for FDA approval to market a new drug. The information collection requirements of the regulations in part 314 are subject to a separate Office of Management and Budget (OMB) approval request (OMB No. 0910-0001). This OMB approval request is currently being revised. FDA will include these amendments to part 314 in its revision of that information collection approval request.

Therefore, the estimated annual reporting and recordkeeping burden for this final rule that was published as a proposal in the *Federal Register* of January 28, 1991 (56 FR 3180 at 3182), is withdrawn.

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Before, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 314 is amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

1. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 704, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 376).

2. Section 314.50 is amended by revising the introductory text; by redesignating existing paragraph (d)(1)(ii) as paragraph (d)(1)(ii)(a); by adding new paragraphs (d)(1)(ii)(b), (d)(1)(ii)(c), and (d)(1)(v); by revising paragraph (h)(2); and by adding new paragraphs (h)(3) and (h)(4) to read as follows:

§ 314.50 Content and format of an application.

Applications and supplements to approved applications are required to be submitted in the form and contain the information, as appropriate for the particular submission, required under this section. Three copies of the application are required: An archival copy, a review copy, and a field copy. An application for a new chemical entity will generally contain an application form, an index, a summary, five or six technical sections, case report tabulations of patient data, case report forms, drug samples, and labeling. Other applications will generally contain only some of those items, and information

will be limited to that needed to support the particular submission. These include an application of the type described in section 505(b)(2) of the act, an amendment, and a supplement. The application is required to contain reports of all investigations of the drug product sponsored by the applicant, and all other information about the drug pertinent to an evaluation of the application that is received or otherwise obtained by the applicant from any source. FDA will maintain guidelines on the format and content of applications to assist applicants in their preparation.

* * *

(d) * * *

(1) * * *

(ii) * * *

(b) Unless provided by paragraph (d)(1)(ii)(a) of this section, for each batch of the drug product used to conduct a bioavailability or bioequivalence study described in § 320.38 or § 320.63 of this chapter or used to conduct a primary stability study: The batch production record; the specifications and test procedures for each component and for the drug product; the names and addresses of the sources of the active and

noncompendial inactive components and of the container and closure system for the drug product; the name and address of each contract facility involved in the manufacture, processing, packaging, or testing of the drug product and identification of the operation performed by each contract facility; and the results of any test performed on the components used in the manufacture of the drug product as required by § 211.84(d) of this chapter and on the drug product as required by § 211.165 of this chapter.

(c) The proposed or actual master production record, including a description of the equipment, to be used for the manufacture of a commercial lot of the drug product or a comparably detailed description of the production process for a representative batch of the drug product.

* * * *

(v) Except for a foreign applicant, the applicant shall include a statement certifying that the field copy of the application has been provided to the applicant's home FDA district office.

* * * *

(h) * * *

(2) The applicant shall submit a review copy of the application. Each of the technical sections, described in paragraphs (d)(1) through (d)(6) of this section, in the review copy is required to be separately bound with a copy of the application form required under

paragraph (a) of this section and a copy of the summary required under paragraph (c) of this section.

(3) The applicant shall submit a field copy of the application that contains the technical section described in paragraph (d)(1) of this section, a copy of the application form required under paragraph (a) of this section, a copy of the summary required under paragraph (c) of this section, and a certification that the field copy is a true copy of the technical section described in paragraph (d)(1) of this section contained in the archival and review copies of the application.

(4) The applicant may obtain from FDA sufficient folders to bind the archival, the review, and the field copies of the application.

* * * *

3. Section 314.54 is amended by revising paragraphs (a)(1)(i) and the first sentence of paragraph (a)(2) and by adding new paragraph (a)(4) to read as follows:

§ 314.54 Procedure for submission of an application requiring investigations for approval of a new indication for, or other change from, a listed drug.

(a) * * *

(1) * * *

(i) The information required under § 314.50(a), (b), (c), (d)(1), (d)(3), (e), and (g), except that § 314.50(d)(1)(ii)(c) shall contain the proposed or actual master production record, including a description of the equipment, to be used for the manufacture of a commercial lot of the drug product.

* * * *

(2) The applicant shall submit a review copy that contains the technical sections described in § 314.50(d)(1), except that § 314.50(d)(1)(ii)(c) shall contain the proposed or actual master production record, including a description of the equipment, to be used for the manufacture of a commercial lot of the drug product, and paragraph (d)(3), and the technical sections described in paragraphs (d)(2), (d)(4), (d)(5), (d)(6), and (f) when needed to support the modification.

(3) * * *

(4) The applicant shall submit a field copy of the application that contains the technical section described in § 314.50(d)(1), a copy of the information required under § 314.50(a) and (c), and certification that the field copy is a true copy of the technical section described in § 314.50(d)(1) contained in the archival and review copies of the application.

* * * *

4. Section 314.60 is amended by adding new paragraph (c) to read as follows:

§ 314.60 Amendments to an unapproved application.

(c) The applicant shall submit a field copy of each amendment to § 314.50(d)(1). The applicant, other than a foreign applicant, shall include in its submission of each such amendment to FDA a statement certifying that a field copy of the amendment has been sent to the applicant's home FDA district office.

5. Section 314.70 is amended by revising paragraph (a) to read as follows:

§ 314.70 Supplements and other changes to an approved application.

(a) *Changes to an approved application.* The applicant shall notify FDA about each change in each condition established in an approved application beyond the variations already provided for in the application. The notice is required to describe the change fully. Depending on the type of change, the applicant shall notify FDA about it in a supplemental application under paragraph (b) or (c) of this section or by inclusion of the information in the annual report to the application under paragraph (d) of this section. Notwithstanding the requirements of paragraphs (b) and (c) of this section, an applicant shall make a change provided for in those paragraphs (for example, the deletion of an ingredient common to many drug products) in accordance with a guideline, notice, or regulation published in the *Federal Register* that provides for a less burdensome notification of the change (for example, by notification at the time a supplement is submitted or in the next annual report). Except for a supplemental application providing for a change in the labeling, the applicant, other than a foreign applicant, shall include in each supplemental application providing for a change under paragraph (b) or (c) of this section a statement certifying that a field copy of the supplement has been provided to the applicant's home FDA district office.

6. Section 314.71 is amended by revising paragraph (b) to read as follows:

§ 314.71 Procedures for submission of a supplement to an approved application.

(b) All procedures and actions that apply to an application under § 314.50 also apply to supplements, except that the information required in the supplement is limited to that needed to support the change. A supplement is required to contain an archival copy and a review copy that include an application form and appropriate technical sections, samples, and labeling; except that a supplement for a change other than a change in labeling is required also to contain a field copy.

7. Section 314.94 is amended by revising the first two sentences of the introductory text and paragraphs (a)(9)(i) and (d)(4) and by adding new paragraph (d)(5) to read as follows:

§ 314.94 Content and format of an abbreviated application.

Abbreviated applications are required to be submitted in the form and contain the information required under this section. Three copies of the application are required, an archival copy, a review copy, and a field copy. * * *

(a) * * *

(9) *Chemistry, manufacturing, and controls.* (i) The information required under § 314.50(d)(1), except that § 314.50(d)(1)(ii)(c) shall contain the proposed or actual master production record, including a description of the equipment, to be used for the manufacture of a commercial lot of the drug product.

* * * * *

(d) * * *

(4) The applicant may obtain from FDA sufficient folders to bind the archival, the review, and the field copies of the abbreviated application.

(5) The applicant shall submit a field copy of the abbreviated application that contains the technical section described in paragraph (a)(9) of this section, a copy of the application form required under paragraph (a)(1) of this section, and a certification that the field copy is a true copy of the technical section described in paragraph (a)(9) of this section contained in the archival and review copies of the abbreviated application.

8. Section 314.96 is amended by redesignating existing paragraph (b) as paragraph (c) and by adding new paragraph (b) to read as follows:

§ 314.96 Amendments to an unapproved abbreviated application.

(b) The applicant shall submit a field copy of each amendment to § 314.94(a)(9). The applicant, other than a foreign applicant, shall include in its submission of each such amendment to FDA a statement certifying that a field copy of the amendment has been sent to the applicant's home FDA district office.

* * * * *

9. Section 314.440 is amended by revising the first two sentences in paragraph (a)(1) and the first sentence in paragraph (a)(2) and by adding new paragraph (a)(4) to read as follows:

§ 314.440 Addresses for applications and abbreviated applications.

(a) * * *

(1) Except as provided in paragraph (a)(4) of this section, an application under § 314.50 or § 314.54 submitted for filing should be directed to the Document and Records Section, 12420 Parklawn Dr., Rockville, MD 20852. Applicants may obtain folders for binding applications from the Consolidated Forms and Publications Distribution Center, Washington Commerce Center, 3222 Hubbard Rd., Landover, MD 20785. * * *

(2) Except as provided in paragraph (a)(4) of this section, an abbreviated application under § 314.94, and amendments, supplements, and resubmissions should be directed to the Office of Generic Drugs (HFD-600), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. * * *

* * * * *

(4) The field copy of an application, an abbreviated application, amendments, supplements, resubmissions, requests for waivers, and other correspondence about an application and an abbreviated application shall be sent to the applicant's home FDA district office, except that a foreign applicant shall send the field copy to the appropriate address identified in paragraphs (a)(1) and (a)(2) of this section.

* * * * *

Dated: March 30, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-21798 Filed 9-7-93; 8:45 am]

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Wednesday
September 8, 1993

Part V

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

**Onshore Oil and Gas Operations; Federal
and Indian Oil Gas Leases; Onshore Oil
and Gas Order No. 7: Disposal of
Produced Water; Final Rule**

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****43 CFR Part 3160**

RIN 1004-AA66

[WO-610-4111-02-24 1A; Circular No. 2650]

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 7; Disposal of Produced Water**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Final rule.

SUMMARY: This final rule issues Onshore Oil and Gas Order No. 7 (the Order) in accordance with 43 CFR 3164.1. This Order supersedes the Notice to Lessees and Operators of Federal and Indian (except Osage Tribe) Oil and Gas Leases (NTL) 2B, Disposal of Produced Water. This Order addresses the uniform national standards of the Bureau of Land Management (BLM) for the minimum level of performance expected from lessees and operators in the disposal of produced water associated with the oil and gas operations. The Order also details enforcement actions and prescribes the manner in which variances from specific standards may be obtained.

EFFECTIVE DATE: October 8, 1993.

ADDRESSES: Suggestions or inquiries should be sent to: Director (610), Bureau of Land Management, room 601, Premier Building, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sie Ling Chiang, (202) 653-6610.

SUPPLEMENTARY INFORMATION: Section 3164.1 of title 43 of the Code of Federal Regulations provides for the issuance of Onshore Oil and Gas Orders when needed to implement and supplement the regulations in part 3160. All orders are promulgated through the rulemaking process and, when issued in final form, apply nationwide. This final rule, Onshore Oil and Gas Order No. 7, supersedes the Notice to Lessees and Operators of Federal and Indian (except Osage Tribe) Oil and Gas Leases (NTL)-2B, Disposal of Produced Water.

This Order specifies: (1) Procedural requirements for the submission of, and the information to be contained in, an application for approval of a proposed disposal of produced water; (2) the design, construction, and maintenance requirements for an acceptable disposal facility; (3) the minimum standards necessary to satisfy those requirements; and (4) the procedures for requesting

variances from the minimum standards. The Order also identifies violations, corrective actions, normal abatement periods, and those enforcement actions that would result when violations of requirements are not abated in a timely manner. This Order should be followed in conjunction with Onshore Oil and Gas Order No. 1 for approval of operations and Order No. 2 for drilling of an injection well.

The BLM published the rule proposing Onshore Oil and Gas Order No. 7 in the *Federal Register* on January 19, 1990 (55 FR 1837), requesting comments on the proposed rule by March 20, 1990. During the 60-day comment period, comments were received from 25 sources: 12 from business entities, 7 from Federal agencies, 4 from State agencies, and 2 from individuals. The comments are discussed in the same sequence as the sections of the proposed Order. Many of the suggestions were adopted and are reflected in the final rule.

General Comments

Two comments questioned the basis for issuing the Order and argued that the rule is unnecessary. The primary basis for the issuance of this Order, and its predecessor NTL-2B, is the Mineral Leasing Act, not the Federal Oil and Gas Royalty Management Act (FOGRMA) as one of the comments stated. The NTL-2B was issued before FOGRMA. The implementing regulations at 43 CFR 3164.1 further authorize the Director, BLM, to issue Onshore Oil and Gas Orders when necessary to implement or supplement the operating regulations. There is a solid basis for the issuance of this Order. The Order is needed to protect surface and subsurface resources from contamination.

Several respondents expressed their concern over the jurisdictional overlap of multiple regulatory agencies involved, especially between the Environmental Protection Agency (EPA) or the primacy State and BLM. They are concerned that this rule would establish another layer of bureaucracy and create conflicts among agencies involved. They urged BLM to establish procedural memoranda of understanding (MOU) with other agencies to streamline the permit process and to resolve conflicts. The roles and responsibilities of EPA and BLM in administering the disposal of produced water on Federal and Indian lands are mutually complementary rather than overlapping. In approving an injection well proposal, the EPA or the primacy State exercises authority granted under the Clean Water Act to protect ground water through issuing an underground injection

control (UIC) permit, while BLM's approval focuses on downhole integrity, protection of other mineral resources and protection of surface resources. In issuing a National Pollution Discharge Elimination System (NPDES) permit to allow surface discharge, the EPA or the primacy State ensures that the water quality at the discharge point meets the standards, while BLM ensures that the treatment facilities upstream from that discharge point are satisfactory. Thus, it is unavoidable that both agencies are involved in the approval of a given application. Both agencies will keep the paperwork to a minimum. A few BLM State Offices have existing MOU's with the EPA and/or State to facilitate coordination and cooperation between the agencies in this regard.

One comment was concerned that the EPA, the Interstate Oil Compact Commission (IOCC), and the BLM may establish separate regulations to be imposed on industry. The EPA reviewed the proposed rule and did not raise the issue of possible separate sets of regulations. On the contrary, the EPA stated that Order No. 7 as proposed "has the potential to ensure that disposal of produced water from onshore oil and gas operations for Federal and Indian oil and gas leases does not degrade water quality." The IOCC consists of members representing all oil producing States that may have established standards and requirements of their own. The policy of the Department of the Interior (the Department) has been that, wherever BLM standards differ from those of the States, the operator is required to comply with whichever standards are more stringent. There have been no unresolvable conflicts in this practice.

Another comment contended that BLM should convert to consolidated regulations for onshore Federal/Indian lands similar to those of the Minerals Management Service for oil and gas operations in the Outer Continental Shelf (OCS). The recent consolidation of OCS Orders into the regulations resulted in a more comprehensive but also more voluminous set of regulations. The BLM chooses to continue to use Orders under the authority of the regulations to supplement or implement the regulations, which remain simple and general. There are pros and cons for each approach. The BLM system has been working well.

Although one respondent argued that the proposed rule will have substantial economic impacts on independent operators, another comment stated that the proposed Order will have no adverse economic impacts if timely and reasonable approval is given to disposal requests. In the interest of timely

processing of the application, this Order imposes a new requirement for the BLM to respond to a request within 30 days.

Authority

One comment stated that this Order is a regulation that will "show how the Federal government will implement the National Environmental Protection (sic) Act of 1969, plus many other acts." It went on to argue that the Order should be limited to specific direction related to oil and gas, that the National Environmental Policy Act of 1969 (NEPA) should be administered only by the EPA, and, similarly, that only the resource management agency, as opposed to the EPA, should manage the resource itself. However, NEPA establishes environmental policies to be applied by all Federal agencies. Hence, all Federal agencies are required to incorporate the policy and objectives of NEPA in their regulations. This Order is intended to provide specific standards and requirements for disposal of produced water relative to the BLM's authority under various mineral laws and must also meet the objectives of several environmental laws including NEPA. The comment also stated that specific design details for such features as pits and fences should be left either for the agency directives or plans of operations. However, one objective of the Order is to provide specific design standards and establish uniform application of the Order throughout BLM. These comments were not adopted in the final rule.

Scope

Several comments requested clarification of the second sentence under "Scope," which states that the Order does not apply to disposal facilities on non-Federal leases committed to communized or unitized areas. The BLM agrees that this seems confusing and has changed the language to clarify the scope.

Some of the same comments also requested that an exemption for secondary and tertiary recovery operations be added to the paragraph. However, because of the complexity of enhanced recovery projects and the varying situations that could occur, an exemption is not feasible. A separate approval under this Order is not required if the method of disposal has been approved as part of the enhanced recovery approved by the authorized officer.

Definitions

Two comments addressed the requirement for a leak detection system for lined pits in the definition of that

term, and recommended that it be dropped from the definition. The leak detection system is only required for lined pits used in association with long-term use for disposal of produced water. It is therefore retained as part of the definition.

Several comments were received on the definition of "free-board". The comments have been adopted and the definition is revised to read as follows: "Free-board" means the vertical distances from the top of the fluid surface to the lowest point on the top of the dike surrounding the pit.

One comment suggested that the definition for Produced Water be clarified as follows: "Water containing dissolved and free hydrocarbons produced in conjunction with oil and gas production." This comment is not adopted because it was felt that the present definition is clear enough. The suggested definition would also be too restrictive: contaminants other than dissolved and free hydrocarbons may also be present and require control.

One comment suggested that the definition for lined pit be modified to state that the materials used in the construction of pit "substantially limit seepage." This comment has not been adopted because the intent of the Order is to prevent all leaks and seepage.

One comment requested that a definition for "fresh water" and "usable water" be added to the Order. Since these terms were not used in the Order, there is no reason to define them.

Several comments suggested that the definition for unlined pits be clarified. These comments have been adopted and the last sentence in the definition has been rewritten as follows: Any pit that is lined but does not have a leak detection system is still defined as an unlined pit.

One comment requested that a list of toxic substances, or a reference to where such a list can be found, be added as an appendix to the Order. Such listing can be found at 40 CFR part 116. The subject listing of toxic constituents is very comprehensive. It is not the intent of this Order to have the oil and gas operator test all the produced water for all of these constituents. The intent of the Order is to have the produced water tested only if the authorized officer has reason to believe a toxic constituent exists in a certain area.

One comment suggested that the word "waste" in the definition of "Underground Injection Control" be removed from the definition, because the word was thought to have a negative connotation. In cases where the water is used for enhanced recovery or beneficial use, the produced water is not

considered waste water. We have therefore adopted this suggestion and have removed the word "waste" from the definition.

III.A. General Requirements

Several comments suggested that surface discharge under NPDES permit be added to this paragraph as a fourth method of disposal of produced water. This method of disposal was included in the proposed rule and Order under Section III.C. as one of the other disposal methods. In response to these comments, it was decided to identify NPDES disposal methods specifically under the third category, methods approved by the authorized officer, and provide more detailed guidance under Section III.G.

Several comments received suggested the statement "Injection is the preferred method of disposal" should be removed from the Order. However, in most instances, water disposal into a suitable formation is environmentally acceptable and preferred to surface disposal methods. Therefore, the wording will be changed to read "Injection is generally the preferred method of disposal."

With respect to the statement "Applications filed pursuant to NTL-2B and still pending approval shall be supplemented or resubmitted if they do not meet the requirements and standards of this Order", and the statement "However, upon written justification, the authorized officer may impose additional conditions * * *", some comments expressed concern that when the Order becomes effective the authorized officer might require changes to existing disposal operations approved under NTL-2B. Existing approvals will not be altered unless it is discovered that there is, or could be, environmental damage taking place and that without change the problem may worsen. This provision was always in place even under NTL-2B and this Order does not change that procedure. Applications still pending approval will require a supplement or resubmission only if they do not conform to the requirements of this Order. Most pending applications should already comply and resubmittal rates should be low. This provision of the proposed Order is not changed in the final rule.

One comment objected to the wording "or that an unlined pit should be lined," given as an example of a condition that could be imposed by the authorized officer. It is not the BLM's intent that unlined pits be routinely required to be lined. This is only an example of possible corrective measures that might be required should obvious environmental damage be taking place.

Other examples might include requiring protective flagging and/or netting for waterfowl protection, installation of skimmer pits or other similar equipment or other alterations necessary to protect the environment. Language has been added in the final rule that limits the application of such conditions to situations where changes in water quality or other environmental parameters warrant it.

Some respondents commented that the disposal method does not require applications for approval but is only a notification procedure. This is not correct. The authorized officer is responsible for ensuring proper disposal of produced water from oil and gas operations within his/her authority. The comment is not adopted in the final rule.

One comment stated that the 30-day processing time for the BLM was unreasonable because operators would have to shut in newly completed wells until such time as an application is approved. One comment suggested that the application turn-around time should be 2 days. However, the Order is clear that the operator has 90 days for temporary disposal into reserve pits if the pit was approved as part of an application for permit to drill. Extensions of disposal into reserve pits past 90 days may be granted by the authorized officer. No producing well will be shut in while the water disposal application is being processed. The comment is not adopted in the final rule.

For clarification, the following language has been added to General Requirements, at the end of III.A.: "If the approval for a disposal facility, e.g., commercial pit or class II injection well, is revoked or suspended by the permitting agency (EPA or a primary state), BLM's water disposal approval is immediately terminated and the operator shall propose an alternative disposal method."

III.B. Application and Approval Authority

Several comments addressed the structure of III.B. The comments stated that the structure in the proposed Order is confusing. Several formats were suggested. One format included a section for Natural Gas Dehydration Pits. The BLM agrees that the structure of the subsection is confusing and has reorganized it as shown below. However, the BLM believes that it is important to differentiate clearly between on-lease disposal and off-lease disposal on leased and unleased Federal/Indian Lands, because on-lease disposal is permitted as a lease right and

off-lease disposal on other leased and unleased Federal/Indian lands is required to be approved through right-of-way authorizations. Third party ownership of facilities such as natural gas dehydration pits is considered by BLM as a right-of-way issue beyond the scope of this Order. The modified organizational structure is shown below:

- B. Application and Approval Authority
 - 1. On-lease Disposal
 - a. Disposal of Water in Injection Wells
 - b. Disposal of Water in Pits
 - 2. Off-lease Disposal
 - a. Disposal of Water on leased or unleased Federal/Indian Lands
 - i. Disposal of Water in Injection Wells
 - ii. Disposal of Water in Pits
 - iii. Right-Of-Way Procedures
 - b. Disposal of Water on State and Privately-Owned Lands
 - i. Disposal of Water in Injection Wells
 - ii. Disposal of Water in Pits
 - iii. Right-of-Way Procedures

Several comments recommended that this subsection include specific approval procedures for surface discharge authorized by NPDES permits. This Order has been modified to include more specific procedures for such disposal methods in III.G. Other Disposal Methods.

Several comments expressed concern that the proposed Order would create an unwarranted amount of paperwork by requiring copies of permits and information to support obtaining UIC permits as well as information already furnished in conjunction with Orders No. 1 and 2. The following sentence has been added to III.B.1.a.: "If the authorized officer has on file a copy of the approval for the receiving facilities, he/she may determine that a reference to that document is sufficient." This statement is also found in III.B.2.a. The BLM believes these statements make it clear that if the authorized officer has copies of permits and supporting data, it would not be necessary to require such data to be submitted again.

One comment suggested that a sentence be added to indicate BLM's authority on split-estate lands, i.e., where minerals rights are held by the United States or Indian tribes and the surface is private or State land. The BLM believes that it is clearly understood that the Order is applicable to water produced from Federal/Indian lands, including private/State surface with Federal/Indian Minerals. This comment further points out that "Federal Lands" include private surface/Federal minerals and that no right-of-way can be issued on private surface. This point is clear in the right-of-way regulations; the use of the term

"Federal Lands" in the Order should not be misunderstood.

Two comments questioned the approval of surface disturbing activities on National Forest System lands and the effect of the Leasing Reform Act of 1987 on this Order. A MOU will be written specifically to address this question.

One comment suggested that these provisions should provide for notification to the surface managing agency (SMA). Order No. 1 requires that the authorized officer, in consultation with any other involved SMA, may require a field inspection before approving surface disturbing activities subsequent to drilling. Therefore, the requirement does not need to be repeated in this Order.

Two comments questioned why provisions for disposal of produced water from non-Federal or non-Indian leases were not identified. This Order pertains only to water produced from Federal and Indian leases and not water produced on State and private lands and disposed of on Federal/Indian lands. The latter cases are strictly right-of-way issues.

III.B.1. Comments were received concerning the first sentence of this subsection and the reference to " * * * committed leases if in a unit or community area, * * *." Subsection I.C. Scope has been modified in this final rule to make it clear that the scope of this Order is disposal of produced water from completed wells of Federal and Indian oil and gas leases. The words "Federal/Indian" will be inserted after "committed" to make this subsection consistent with the defined scope.

B.2. Several comments concerned inconsistencies related to right-of-way and disposal facility authorizations. This subsection has been amended to consolidate and clarify the information concerning procedures for rights-of-way contained in B.2.a.1 and B.2.a.2 of the proposed Order. The revisions are included in subsection B. under B.2.a.iii and B.2.b.iii.

B.2.a.1. and B.2.a.2. Two comments suggested that the phrase in B.2.a.1 and B.2.a.2. " * * * authorization from the Bureau of Land Management for disposing of the water * * * " include the term "right-of-way" before the word "authorization." These sentences refer to Title V of FLPMA and 43 CFR part 2800 which is sufficient to make it clear that the disposals referred to are those made under right-of-way authority. No change is made in the final rule except as noted in the previous paragraph.

B.2.a., B.2.b. and B.3. (renumbered B.2.a., B.2.b., and B.2.b.iii.). One comment pointed out that authorization under a right-of-way could be required

for transportation even if surface disturbance would not occur. The BLM agrees and the references to surface disturbances have been removed.

B.2. and B.3. (renumbered as B.2. and B.2.b.iii.). One comment stated that it should be the responsibility of the operator generating the produced water to obtain necessary road and pipeline right-of-ways. The Order states "**** or other responsible party." This provides flexibility for several situations.

III.B.2.b.1. and B.2.b.2. (renumbered B.2.b.i. and ii.). Some comments objected to the statement in B.2.b.1. that the permits "will be accepted by the authorized officer and approval will be granted for removal of the produced water unless the authorized officer states in writing that such approval will have adverse effects on the Federal/Indian lands or public health and safety." The authorized officer does have the authority and obligation to deny removal of produced water under such conditions. The key word in this sentence is "removal". The BLM is not suggesting approval/disapproval authority for such facilities but does maintain approval/disapproval authority for removal of produced water. In conjunction with other comments on this section and specifically on the last sentence of B.2.b.2., the sentence is revised to read: "If such a permit is not issued by the State or other regulatory agency, the requested removal of the produced water from leased Federal or Indian lands will be denied."

III.C. Informational Requirements for Injection Wells

One comment recommended that this Order should address the procedures relative to private and State lands. The BLM has issued policy with regard to its authority on wells on communized or unitized private or State lands (43 CFR part 3161.1). Such authority does not extend to approval of the disposal of produced water.

One comment stated that the Order is unclear as to right-of-way requirements for off-lease disposal wells on public lands and procedures to be followed by third parties operating such facilities. These elements are appropriately addressed in the right-of-way regulations (43 CFR part 2800) and are beyond the scope of this Order.

One comment stated that the Order fails to require certain data on environmental impacts that had been required under NTL-2B, and argued that the BLM therefore cannot properly document its actions under NEPA. Information and data to support EPA or

State approval under the UIC program are the responsibility of those agencies, and compliance with NEPA in connection with such approvals is no longer under the BLM's jurisdiction. Portions of the program outside of the scope of the UIC program are analyzed through Order No. 1 and NEPA is applied through that Order for those portions.

III.D. Informational Requirements for Pits

Several comments stated that the sentence concerning water analysis samples being taken at the discharge point was vague because the proposed discharge point may be different from the existing discharge point at the time an application was being considered. Since this is a point source sampling procedure, the word "current" was added before "discharge point."

Several respondents argued that it is unnecessary to include a reclamation plan at the time of application for a permit to dispose of produced water. Reclamation plans are more appropriate when a location or pit is being abandoned. The requirement was changed to require reclamation plans to be submitted prior to pit abandonment.

Another comment suggested that the reclamation plan should include plans for disposal of any precipitated or collected solids. As noted above, the requirement that a reclamation plan be submitted was changed to "prior to pit abandonment." If, at that time, precipitated or collected solids are a problem, the authorized officer may require them to be disposed of properly.

One respondent stated that this section was unclear as to who would take water samples, when, and how often. Normally only one sampling is required unless there is an indication of a major change in water quality over time. Where approval is based on a NPDES permit, the sampling schedule is determined by and under the jurisdiction of the EPA or State having primacy. Sampling procedures will also be covered for BLM field personnel in the Manual.

One comment recommended that anticipated emergency situations should be identified with the required content of a contingency plan. These types of conditions are site specific and will be prescribed by the authorized officer when a contingency plan is required.

Under III D.1. Lined Pits, one comment stated that reference to a topographic map would result in too small a scale to show the necessary information. The BLM agrees and has removed the word "topographic."

One comment stated that the informational requirements should apply to pits located off a Federal/Indian lease but on BLM-administered Federal surface. It is BLM policy to accept the requirements established in Onshore Order No. 7 for rights-of-way administration of such pits.

One comment stated that, at a minimum, tests should be carried out for toxic constituents as defined on page 1840 of the proposed rule. This has been addressed in the discussion under "Definitions."

Another comment stated that the authorized officer should receive copies of all other applicable permits including those for disposal of hazardous solid waste. As stated under the section on "Scope," this Order is limited to disposal of produced water from Federal and Indian oil and gas wells. Hazardous solid waste is outside the scope of this Order.

III. D.2. Several respondents urged that NPDES permits should be included in this section. Others stated that pits for NPDES permits should be under the permit authority of the EPA or the primacy State. Section III.G. has been expanded to clarify requirements relative to NPDES permits.

III.D.2.a.(i). Two comments stated that disposal of produced water into unlined pits could, in some circumstances, violate Section 101(a) of the Clean Water Act. They stated that the water going into these pits should be tested for toxic constituents as well as dissolved solids. The criteria applied to unlined pits have been designed to address this type of problem. If the authorized officer has reason to believe that toxic constituents exist in produced water to be disposed of in any pit, a water analysis for those constituents can be required. It is not economically feasible to require expensive analysis for the entire range of toxic chemicals if the authorized officer has no reasonable basis for expecting the presence of these toxins. Protection of surface and groundwater is the primary purpose of this Order. Disposal in unlined pits is only allowed in certain circumstances. The sections on disposal in unlined pits should be read in their entirety for a full understanding of the requirements. Each method of disposal is required to meet all other Federal and State standards. Guidance will be provided for BLM field personnel in the Manual for this Order. This will include the determination of the need for water analysis.

III.D.2.a.ii. Several comments expressed concerns about the term "beneficial use." Some felt it meant the same as beneficial use as identified in

State water quality standards. It does not. The water described as intended for beneficial use is not discharged into a stream. It should not be confused with the requirements of a NPDES permit. One purpose of the standards of the Order is to prevent degradation of existing fresh and usable aquifers and surface water from historical water quality standards (where this information is available), in compliance with the intent of Section 101(a) of the Clean Water Act.

Two comments stated that paragraph III.D.2.a.iii. was confusing and unclear. This part addresses the non-degradation of surface or subsurface waters in the area. It has been reorganized without changing its substance in order to clarify the meaning.

One comment outlined conditions under which paragraph III.D.2.a.iv., which would allow discharge of less than five barrels per day into an unlined pit, would not be acceptable, given the need to protect aquifers. The BLM agrees with the concerns expressed. Where shallow fresh water aquifers exist, they should be protected. A lined pit may be necessary in this type of situation. The authorized officer should consider existing conditions and act accordingly.

Paragraph III.D.2.b.i.(B) requires information on the daily quantity of water to be disposed of and a water analysis. One comment suggested that this should be required of facilities applying under paragraph III.D.2.a.iv. that do not exceed an average production of five barrels of produced water per day on a monthly basis. This suggestion was not adopted in the final rule and Order. The Order does not prohibit a water analysis, and the authorized officer can request one for this type of facility if it is necessary.

One comment recommended a change in the second sentence of paragraph III.D.2.b.i.(D), to clarify the term "certifiable percolation test". The BLM agrees that the language in the proposed rule was confusing, and the sentence has been changed to read, "In some cases the authorized officer may require percolation tests using accepted test procedures."

Another clarification recommended and accepted was in paragraph III.D.2.b.i.(E) of the proposed Order. The word "known" was added between "shallowest" and "aquifer" in order to enhance practicability. Order No. 1 requires the testing of all fresh water zones encountered while drilling, which will provide the information necessary for this requirement.

Paragraphs III.D.2.b.iii. (A) and (B) both address requirements in terms of a

2-mile radius. Several comments stated that this was an excessive distance. The requirements in Onshore Oil and Gas Order No. 1 call for a 1-mile radius. The distance requirements for this Order have been changed to 1 mile for consistency with Order No. 1.

One comment stated that paragraph III.D.2.b.iii.(C) was overly vague. The intent of the requirements of this standard is to leave the burden of proof up to the operator to show there will be no adverse effects on existing water quality. There is no need to change this provision for clarity.

Several comments were received seeking clarification as to the scope of section III.D.3. The section was restructured and limited to emergency pits for overall clarification. The temporary use of reserve pits has been moved to the Section III.A. General Requirements.

A suggestion to add the words "and fluids" after "produced water" in the second sentence of section III.D.3, which discusses reserve pits, was considered but rejected. This Order is concerned only with produced water. Other fluids are addressed in Orders Nos. 1 and 2 regarding drilling operations.

One comment stated that the Order should require any disposal of produced water into a reserve pit to be covered by a contingency plan. Order No. 1 does not require a contingency plan for construction and use of a reserve pit. If extenuating circumstances call for a contingency plan, the authorized officer can require one under 43 CFR 3162.5. The need for a contingency plan would be dependent on whether or not there were any surface or subsurface waters or other resources to be protected.

Another general comment concerned the use of bentonite or clay as liners for disposal pits. The experiences of the correspondent with bentonite-lined pits were described as unsatisfactory. We agree with the view that bentonite is unsatisfactory when the produced water contains high salt content. It is well known that potassium chloride is added to drilling fluid to prevent swelling when drilling through bentonite. Bentonite liners are effective under certain conditions other than those with high salt content.

Another comment urged that neither lined nor unlined pits should be allowed for temporary or emergency use. The correspondent wanted such uses restricted to metal containers. In some circumstances the use of tanks may be necessary or even preferred. However, the Order should remain sufficiently flexible to permit the use of pits in circumstances where they would

be appropriate. The comment is not adopted in the final rule.

Two comments argued that reference to NTL-3A was inappropriate. They wanted the BLM to require a 48-hour notification on emergency pit use and to allow up to 7 days for disposal of the contents. The comment was not adopted in the final rule. The reference to NTL-3A is merely to provide guidance on how to report undesirable events. It requires an oral notification of major undesirable events within 24 hours, followed by a full written report within 15 days. The notice also provides for tracking volumes lost and recovered. We believe that 48 hours is a reasonable time within which to empty pits upon conclusion of an emergency. However, under this section the authorized officer can extend the 48 hours based on field conditions, if requested.

One comment asked why emergency pits were a part of Order No. 7, and stated that they could be authorized under the Application for Permit to Drill (APD) process. If the type of pit for disposal of produced water is known or anticipated, the construction of such pits can be requested in the APD. The requirements for construction and use of those pits remain in Onshore Order No. 7.

Two comments stated that there was some confusion as to the process of permitting a pit under the emergency use category and the use of the pit without some other approval. The suggestion was to change the wording to make it clearer. The suggestion was accepted and the first sentence now begins: "Application for a permanent pit (lined or unlined) to be used for anticipated emergency purposes * * *."

Another comment stated that construction of an emergency pit normally would have to be done instantly in order to contain a sudden fluid flow, and suggested that the Order should provide for verbal approval to be given. The suggestion is not adopted in the final rule. As stated above, an emergency pit is a permanent pit to be used for anticipated emergency purposes. This would not be the same as necessary stop-gap construction measures to prevent or limit damage from an accident. Such temporary measures as were described in the comment would require immediate restoration as determined by the authorized officer.

One comment said the last sentence in the first paragraph should have the word "written" added between "requires" and "approval." Any extension of time, even if verbal, must

be documented, and the Order has been amended to make this clear.

One comment stated that blow-down/flare pits should have been covered under section III.D.3. Routine or regular use of a pit does not qualify for use as an emergency pit. Such use may qualify under the category of unlined pit for operations producing water at a rate of no more than five barrels per day per disposal facility.

Section E Design Requirements

General Comments

There were two comments suggesting that the design requirements of this section should not apply to drilling and workover pits. This is true. Any requirements for pits approved in conjunction with drilling or workover of wells will be addressed at the time of approval of these types of operations.

One comment requested that pits approved under a NPDES permit be exempt from paragraphs III.E.1.d. and e., as are pits approved under criterion III.D.2.a.iv. Another comment argued that no pits should be exempt from any of the design requirements set forth in this section, and a third comment suggested that emergency pits be exempt from all of the design requirements. None of these suggestions has been adopted in the final rule for the following reasons:

1. Pits used in conjunction with NPDES permitted discharges are used to skim the oil off the water in order to condition the water for discharge in accordance with the approved NPDES permit. Generally, these types of pits are of large size and handle a large volume of liquids. For these reasons, the pits should be constructed to meet all the design standards in order to prevent spills due to erosion or any other type of pit failure.

2. Pits approved under criterion III.D.2.a.iv. are exempt from the requirements of paragraphs III.E.1.d. and e., because the volume of water that goes into these types of pits is so small that, in the majority of cases, there is no accumulation of fluid in the pit due to evaporation or percolation. Also the authorized officer may, when circumstances require, modify or condition the approval of these types of pits to include any other requirements or stipulations, under section A. General Requirements.

3. Emergency pits cannot be exempt from the requirement of section E. These pits are constructed to contain all liquids, whether oil or water, during emergency situations involving, in some cases, large volumes. Therefore, these pits have to be constructed to the design

standards for safe containment of these liquids.

III.E.1.b. Two comments suggested that this subsection should not apply to pits approved under criterion III.D.2.a.iv. Although the volume of water going into pits approved under criterion III.D.2.a.iv. is small, and in most cases there is no accumulation of fluids in the pits, there are periods when evaporation rates are low and precipitation is high. The pits need to be designed using this standard to prevent overflow during these periods.

Several comments discussed the requirement that the pit be equipped to deter entry by birds. The comments suggested that the standard was too vague and requested that it specify a minimum pit size to require such deterrence. This suggestion is not adopted because there are different types of devices now in use to deter entry by birds, two examples of which are netting material and flags. No minimum size is specified: birds may be attracted by any body of water, regardless of the size of the pit containing it, and be killed or injured by contaminants. The only requirement the BLM will impose is that whatever material or device is used, it must serve its intended purpose.

One comment suggested that the fencing requirement be limited to the use of stock tight fence. The fencing requirements vary throughout the country, depending on the kind of livestock or wildlife deterrence to be accomplished. Accordingly, the requirement is best left to the operator and the authorized officer to work out at the time the application for pit approval is received. The comment is not adopted.

One comment suggested that emergency pits should be exempt from this subsection. Although emergency pits have to be emptied within 48 hours following their use, the deterrence of entry by birds, livestock, and wildlife during the emergency is still necessary; therefore, this suggestion is not adopted.

III.E.1.d. A comment concerning the slope of the pits suggested showing the ratios as the vertical rise to the horizontal distance, thus describing the inside grade of the levee as no steeper than 1:2 and the outside grade no steeper than 1:3. This suggestion is adopted, and the Order reflects the change.

One comment requested that the pit wall and levee grade requirements be relaxed to allow the use of levees at the natural angle of repose. The construction of levees at the natural angle of repose can be approved by requesting a variance from the

authorized officer if the operator can furnish soil test information that would justify the use of steeper grades without compromising the integrity of the pit.

III.E.1.e. There were two comments concerning the levee width at the top. One suggested that the top width be limited to 6 inches, while the other wanted the top to be no less than 10 feet wide. Neither of the comments was accepted because the BLM considers 18 inches to be the minimum top width necessary to enable a person to safely stand on the levee and take a sample of the fluid, if needed, and yet sufficient to prevent failure as long as the pit is maintained to the design standards.

III.E.2. Several comments were received on this section concerning the types of materials used in the construction of lined pits. The comments requested that the Order specify the minimum thickness, burst, break, or tear strength, in pounds per square inch, of the materials to be used in the construction of the pits. It is not the intent of this Order to specify the type of liner or set the minimum strength for the materials used. The requirement imposed by the final Order remains that the installation be done according to the manufacturer's specifications. In all cases, the BLM will require that lined pits contain leak detection systems. If a pit fails and leaks are detected, the pit will be required to be emptied of its contents and repaired prior to any further use.

III.F. Construction and Maintenance

One comment expressed a concern that the title "Construction and Maintenance" was inappropriate and should be changed to "Incidences of Noncompliance." Although this section does address violations, corrective actions, and abatement periods, it is primarily a compilation of the BLM's standards for construction and maintenance of pits. The suggestion was rejected.

F.1. One comment requested that the language in III F.1. "whether existing prior to or after the effective date of this Order" be stricken from the Order as unnecessary. This suggestion was adopted and the phrase has been deleted accordingly.

F.3. One respondent suggested that, if a liner is installed and then covered with material (i.e., sand, gravel, etc.) to protect the liner, the authorized officer should be notified prior to the covering. It is not necessary to address this matter in the final Order, because its occurrence would be rare. It will be handled in the Manual Handbook and can be considered as a condition of approval when needed.

One comment stated that failure to notify under section III.F.3. should be a major violation. Another comment stated that section III.F.3. should apply only to lined pits. The intent of this standard is to apply to both lined and unlined pits. The purpose of the requirement is to verify whether pits were constructed in accordance with the approved plan. As the consequence of failure to notify is determined by the degree of failure to comply with the approved plan, the violation for failure to notify the authorized officer is considered minor. However, the violation for failure to comply with the approved plan may be minor or major. If, as a result of substandard construction, the pit is causing or threatening immediate, substantial, and adverse impacts on public health, safety, or the environment, then the violation would be major by definition. The violation, corrective action, and abatement period provisions of section III.F.3. for failure to construct in accordance with the approved plan have been rewritten to clarify the matter.

F.5. One comment suggested that requirement III.F.5. appears contradictory in stating that a pit should be designed to prevent entrance of surface water by providing surface drainage. The requirement has been rewritten for clarification as follows. "The pit shall be maintained as designed to prevent entrance of surface water by providing adequate surface drainage away from the pit."

F.8. Many comments stated that the requirement in III.F.8. "that the pit shall be kept reasonably free from surface accumulations of liquid hydrocarbons" was ambiguous and in need of clarification. It is extremely difficult to specify that a pit must be kept free of hydrocarbons over a certain percent of the surface, during a particular season, or that the oil may be allowed to accumulate to a certain thickness. As is the practice under NTL-2B, the authorized officer must use experience and judgment to determine whether the amount of oil in a pit is out of compliance. He or she will weigh the requirement against the intent of the approval, the nature and type of pit, seasonal factors, and environmental sensitivity.

F.9. Several respondents stated that the 30-day operator self-inspection requirement in III.F.9. was too frequent. Other respondents stated it was too infrequent and suggested 7 days. The requirement remains as written. The 30-day period was chosen because it is within the range of inspection requirements imposed by other Orders and is a reasonable period of time.

III.G. Other Disposal Methods

One comment stated that the authorized officer may allow surface discharges in violation of effluent guidelines. Any surface discharge would either be under a NPDES permit or otherwise meet the requirements of State and Federal laws and regulations. Coordination with the EPA or the primacy State would be necessary.

In response to several comments on the 3 methods of disposal mentioned in III.A., and one comment urging the BLM to allow use of new technology, final III.G. now contains 3 subcategories. Additional guidance has been provided as to disposal under an NPDES permit.

One respondent asked whether a buried tank should meet all the requirements applied to a lined pit. A buried tank used in lieu of a lined pit is considered a lined pit and therefore should meet all applicable standards of this Order. The leak detection requirements for buried tanks could be met by a monitoring well system depending on an analysis of the subsurface conditions by the authorized officer.

III.H. Reporting Requirements for Disposal Facilities

One comment suggested that the annual report for well and/or surface water facilities should be required to track water quantity and quality. Such reports were required under NTL-2B but have been deleted from this Order because they created burdensome paperwork that was of limited usefulness to the authorized officer. The BLM now places the responsibility on the operator to amend the pit design when changes in quantity and/or quality of water cause the pit no longer to meet the unlined pit criteria.

IV. Variances From Requirements or Minimum Standards

One comment stated that Indian Tribes may obtain primacy for UIC programs, and therefore that Tribal authority should be included in the last sentence. The comment was correct and a reference to the Tribal authority has been made in the final Order.

Comments were received from two entities stating that the Order should allow the authorized officer orally to approve variances from minimum standards under unusual or emergency situations. The intent of this section of the Order is to accommodate special situations where an alternative means may meet or exceed the objectives. Temporary deviation from standards under an emergency situation may be granted orally by the authorized officer

followed by written confirmation. Such temporary deviation is not considered as a variance under this section. Any variance must be pre-approved in writing.

Two comments expressed concern that the authorized officer has too much latitude in granting variances and suggested developing criteria or guidance for the authorized officer. A Manual and Handbook will be prepared for this Order to provide such guidance. One example of such criteria would be that if an applicant proposes to use a 1:2.5 slope for the levee, soil test data supporting the proposed slope shall be presented for approval. The authorized officer will take into account a proper factor of safety in addition to the test data.

Attachments

Two comments recommended that the words "minimum standards" be removed from the titles of Figures 1 through 3. The recommendation was adopted, because the figures were presented as examples of what could be acceptable under the standards established in this Order.

With respect to Figures 4 and 5, one respondent expressed a preference for the vertical riser over the sloped riser and the location of the riser to be on the transverse centerline of the pit, rather than at the end of the pit as indicated. The BLM agrees with the view expressed and affirms that the suggested location of the riser is equally acceptable.

In response to a comment that a low riser shown in Figure 5 may cause surface discharge if leakage occurs, the example now shows the riser to be even with the top of the levee.

Editorial corrections have been made as necessary.

The principal authors of this final rule are Sie Ling Chiang, Chief, Division of Minerals Policy Analysis and Economic Evaluation, Washington Office, Jamie Sparger, Vernal District Office, Utah; Armando Lopez, Roswell District Office, New Mexico; T.R. Beaven, Wyoming State Office; and Bob Schooler, Jackson District Office, Mississippi, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this proposed rule is categorically excluded from further environmental

review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets. This order does not establish new requirements and therefore will not cause an increase in costs or prices. Reporting requirements have been reduced, which will ease the burden on industry. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. No private property would be taken as a result of this rule, and no lawful activity would be impaired on private property. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004-0135.

List of Subjects in 43 CFR Part 3160

Government contracts, Indian lands-mineral resources, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

For the reasons cited in the Preamble, and under the authorities cited below, part 3160, group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

Dated: July 16, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

PART 3160—[AMENDED]

1. The authority citation for part 3160 is revised to read:

Authority: 43 U.S.C. 1733; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351-359; 30 U.S.C. 301-306; 25 U.S.C. 396; 25 U.S.C. 396a-396q, 397, 398, 398a-398e, 399; 43 U.S.C. 1457; see also 40 Op. Atty. Gen. 41; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 4321 *et seq.*; 43 U.S.C. 6508; 30 U.S.C. 1701 *et seq.*; and 25 U.S.C. 2101 *et seq.*

2. Section 3164.1(b) is amended by revising the table to read as follows:

§ 3164.1 Onshore Oil and Gas Orders.

* * * * *

(b) * * *

Order No.	Subject	Effective date	FEDERAL REGISTER reference	Supersedes
1. Approval of operations	Nov. 21, 1983	48 FR 48916 and 48 FR 56226.	NTL-6.	
2. Drilling	Dec. 19, 1988	53 FR 46790	None.	
3. Site security	Mar. 27, 1989	54 FR 8056	NTL-7.	
4. Measurement of oil	Aug. 23, 1989	54 FR 8086	None.	
5. Measurement of gas	Mar. 27, 1989, new facilities greater than 200 MCF production; Aug. 23, 1989, existing facility greater than 200 MCF production; Feb. 26, 1990, existing facility less than 200 MCF production.	54 FR 8100	None.	
6. Hydrogen sulfide operations	Jan. 22, 1991	56 FR 48968	None.	
7. Disposal of produced water	October 8, 1993	NTL-2B.		

Note: Numbers to be assigned sequentially by the Washington Office as proposed Orders are prepared for publication.

The Appendix—Text of Oil and Gas Order reads as follows:

Appendix—Text of Oil and Gas Order

Note: This appendix will not appear in the Code of Federal Regulations.

Onshore Oil and Gas Order No. 7

Disposal of Produced Water

I. Introduction.

- A. Authority.
- B. Purpose.
- C. Scope.

II. Definitions.

III. Requirements.

- A. General Requirements.
- B. Application and Approval Authority.
- C. Informational Requirements for Injection Wells.

D. Informational Requirements for Pits.

E. Design Requirements for Pits.

F. Construction and Maintenance Requirements for Pits.

G. Other Disposal Methods.

H. Reporting Requirements for Disposal Facilities.

IV. Variances from Requirements or Minimum Standards.

Attachment.

I. Figures.

Onshore Oil and Gas Order No. 7

Disposal of Produced Water

I. Introduction

A. Authority. This Order is established pursuant to the authority granted to the Secretary of the Interior by various Federal

and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. Said authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR part 3160. Section 3164.1 thereof specifically authorizes the Director to issue Onshore Oil and Gas Orders when necessary to implement or supplement the operating regulations and provides that all such Orders shall be binding on the operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter, be issued.

As directed by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, for National Forest lands the Secretary of Agriculture shall regulate all surface-disturbing activities and shall determine reclamation and other

actions required in the interest of conservation of surface resources. Specific authority for the provisions contained in this Order is found at section 3162.3, Conduct of Operations; section 3162.5, Environment and Safety; and Subpart 3163, Noncompliance and Assessments.

B. Purpose. This Order supersedes Notice to Lessees and Operators of Federal and Indian Oil and Gas Leases (NTL-2B), Disposal of Produced Water. The purpose of this Order is to specify informational and procedural requirements for submittal of an application for the disposal of produced water, and the design, construction and maintenance requirements for pits as well as the minimum standards necessary to satisfy the requirements and procedures for seeking a variance from the minimum standards. Also set forth in this Order are certain specific acts of noncompliance, corrective actions required and the abatement period allowed for correction.

C. Scope. This Order is applicable to disposal of produced water from completed wells on Federal and Indian (except Osage) oil and gas leases. It does not apply to approval of disposal facilities on non-Federal leases. Separate approval under this Order is not required if the method of disposal has been covered under an enhanced recovery project approved by the authorized officer.

II. Definitions

The following definitions are used in conjunction with the issuance of this Order.

A. Authorized officer means any employee of the Bureau of Land Management authorized to perform duties described in 43 CFR Groups 3000 and 3100.

B. Federal lands means all lands and interests in lands owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate.

C. Free-board means the vertical distance from the top of the fluid surface to the lowest point on the top of the dike surrounding the pit.

D. Injection well means a well used for the disposal of produced water or for enhanced recovery operations.

E. Lease means any contract, profit share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorized exploration for, extraction of, or removal of oil or gas (see 43 CFR 3160.0-5).

F. Lessee means a person or entity holding record title in a lease issued by the United States (see 43 CFR 3160.0-5).

G. Lined pit means an excavated and/or bermed area that is required to be lined with natural or manmade material that will prevent seepage. Such pit shall also include a leak detection system.

H. Unlined pit means an excavated and/or bermed area that is not required to be lined, or any pit that is lined but does not contain a leak detection system.

I. Major violation means noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income (see 43 CFR 3160.0-5).

J. Minor violation means noncompliance that does not rise to the level of a "major violation" (see 43 CFR 3160.0-5).

K. National Pollutant Discharge Elimination System (NPDES) means a program administered by the Environmental Protection Agency or primacy State that requires permits for the discharge of pollutants from any point source into navigable waters of the United States.

L. Operator means any person or entity, including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof (see 43 CFR 3610.0-5).

M. Produced water means water produced in conjunction with oil and gas production.

N. Toxic constituents means substances in produced water that when found in toxic concentration have harmful effects in plant or animal life. These substances include but are not limited to arsenic (As), barium (Ba), cadmium (Cd), hexavalent chromium (hCr), total chromium (tCr), lead (Pb), mercury (Hg), zinc (Zn), selenium (Se), benzene, toluene, ethylbenzene, and xylenes, as defined in 40 CFR 116.

O. Underground Injection Control (UIC) program means a program administered by the EPA, primacy State, or Indian Tribe under the Safe Drinking Water Act to ensure that subsurface waste injection does not endanger underground sources of drinking water.

III. Requirements

A. General Requirements

Operators of onshore Federal and Indian oil and gas leases shall comply with the requirements and standards of this Order for the protection of surface and subsurface resources. Except as provided under section III.D.3 of this Order, the operator may not dispose of produced water unless and until approval is obtained from the authorized officer. All produced water from Federal/Indian leases must be disposed of by (1) injection into the subsurface; (2) discharging into pits; or (3) other acceptable methods approved by the authorized officer, including surface discharge under NPDES permit.

Injection is generally the preferred method of disposal. Operators are encouraged to contact the appropriate authorized officer before filing an application for disposal of produced water so that the operator may be apprised of any existing agreements outlining cooperative procedures between the Bureau of Land Management and either the State/Indian Tribe or the Environmental Protection Agency concerning Underground Injection Control permits for injection wells, and of any potentially significant adverse effects on surface and/or subsurface resources. The approval of the Environmental Protection Agency or a State/Tribe shall not be considered as granting approval to dispose of produced water from leased Federal or Indian lands until and unless BLM approval is obtained. Applications filed pursuant to NTL-2B and still pending approval shall be supplemented or resubmitted if they do not meet the requirements and standards of this

Order. The disposal methods shall be approved in writing by the authorized officer regardless of the physical location of the disposal facility. Existing NTL-2B approvals will remain valid. However, upon written justification, the authorized officer may impose additional conditions or revoke any previously approved disposal permit, if the authorized officer, for example, finds that an existing facility is creating environmental problems, or that an unlined pit should be lined, because the quality of the produced water has changed so that it no longer meets the standards for unlined pits.

Unless prohibited by the authorized officer, produced water from newly completed wells may be temporarily disposed of into reserve pits for a period of up to 90 days, if the use of the pit was approved as a part of an application for permit to drill. Any extension of time beyond this period requires documented approval by the authorized officer.

Upon receipt of a completed application the authorized officer shall take one of the following actions within 30 days: (1) Approve the application as submitted or with appropriate modification or conditions; (2) return the application and advise the applicant in writing of the reasons for disapproval; or (3) advise the applicant in writing of the reasons for delay and the expected final action date.

If the approval for a disposal facility, e.g., commercial pit or Class II injection well, is revoked or suspended by the permitting agencies such as the Environmental Protection Agency or the primacy State, the BLM water disposal approval is immediately terminated and the operator is required to propose an alternative disposal method.

B. Application and Approval Authority

1. On-lease Disposal. For water produced from a Federal/Indian lease and disposed of on the same Federal/Indian lease, or on other committed Federal/Indian leases if in a unit or communityized area, the approval of the disposal method is usually granted in conjunction with the approval for the disposal facilities. An example would be the approval of a proposal to drill an injection well to be used for the disposal of produced water from a well or wells on the same lease.

a. Disposal of water in injection wells. When approval is requested for onlease disposal of produced water into an injection well, the operator shall submit a Sundry Notice, Form 3160-5. Information submitted in support of obtaining the Underground Injection Control permit shall be accepted by the authorized officer in approving the disposal method, provided the information submitted in support of obtaining such a permit satisfies all applicable Bureau of Land Management statutory responsibilities (including but not limited to drilling safety, down hole integrity, and protection of mineral and surface resources) and requirements. If the authorized officer has on file a copy of the approval for the receiving facilities, he/she may determine that a reference to that document is sufficient.

b. Disposal of water in pits. When approval is requested for disposal of produced water in a lined or unlined pit, the operator shall submit a Sundry Notice, Form 3160-5. The

operator shall comply with all the applicable Bureau of Land Management requirements and standards for pits established in this Order. On National Forest lands, where the proposed pit location creates new surface disturbance, the authorized officer shall not approve the proposal without Forest Service concurrence.

2. Off-lease Disposal

a. *On leased or unleased Federal/Indian lands.* The purpose of the off-lease disposal approval process is to ensure that the removal of the produced water from a Federal or Indian oil and gas lease is proper and that the water is disposed of in an authorized facility. Therefore, the operator shall submit a Sundry Notice, Form 3160-5, for removal of the water together with a copy of the authorization for the disposal facility. If the authorized officer has a copy of the approval for the receiving facilities on file, he/she may determine that a reference to that document is sufficient. Where an associated right-of-way authorization is required, the information for the right-of-way authorization may be incorporated in the Sundry Notice, and the Bureau of Land Management will process both authorizations simultaneously for Bureau lands.

i. *Disposal of water in injection wells.* When approval is requested for removing water that is produced from wells on leased Federal or Indian lands and that is to be injected into a well located on another lease or unleased Federal lands, the operator shall submit to the authorized officer a Sundry Notice, Form 3160-5, along with a copy of the Underground Injection Control permit issued to the operator of the injection well, unless the well is authorized by rule under 40 CFR part 144.

ii. *Disposal of water in pits.* When approval is requested for removing water that is produced from wells on leased Federal or Indian lands and is to be disposed of into a lined or unlined pit located on another lease or unleased Federal lands, the operator shall submit to the authorized officer a Sundry Notice, Form 3160-5.

iii. *Right-of-way procedures.* The operator of the injection well or pit is required to have an authorization from the Bureau of Land Management for disposing of the water into the pit or well, under Title V of FLPMA and 43 CFR part 2800, or a similar authorization from the responsible surface management agency. In transporting the produced water from the lease to the pit or injection well, e.g., building a road or laying a pipeline, a right-of-way authorization under Title V of FLPMA and 43 CFR Part 2800 from the Bureau of Land Management or a similar permit from the responsible surface management agency also shall be obtained by the operator of the pit or any injection well or other responsible party.

b. *Disposal of water on State and privately-owned lands.*

i. *Disposal of water in injection wells.* When approval is requested for removing water that is produced from wells on leased Federal or Indian lands and that is to be injected into a well located on State or privately-owned lands, the operator shall submit to the authorized officer, in addition to a Sundry Notice, Form 3160-5, a copy of

the Underground Injection Control permit issued for the injection well by the Environmental Protection Agency or the State where the State has achieved primacy. Submittal of the Underground Injection Control permit will be accepted by the authorized officer and approval will be granted for the removal of the produced water unless the authorized officer states in writing that such approval will have adverse effects on the Federal/Indian lands or public health and safety.

ii. *Disposal of water in pits.* When approval is requested for removing water that is produced from wells on leased Federal and/or Indian lands and is to be disposed of into a pit located on State or privately-owned lands, the operator shall submit to the authorized officer, in addition to a Sundry Notice, Form 3160-5, a copy of the permit issued for the pit by the State or any other regulatory agency, if required, for disposal in such pit. Submittal of the permit will be accepted by the authorized officer and approval will be granted for removal of the produced water unless the authorized officer states in writing that such approval will have adverse effects on the Federal/Indian lands or public health and safety. If such a permit is not issued by the State or other regulatory agency, the requested removal of the produced water from leased Federal or Indian lands will be denied.

iii. *Right-of-way procedures.* If the water produced from wells on leased Federal and/or Indian lands, and to be disposed of at a location on State or privately-owned lands, will be transported over off-lease Federal or Indian lands, the operator of the disposal facility or other responsible party shall have an authorization from the Bureau of Land Management under Title V of FLPMA and 43 CFR part 2800, or a similar authorization from the responsible surface management agency.

C. Informational requirements for injection wells.

For an injection well proposed on Federal or Indian leases, the operator shall obtain an Underground Injection Control (UIC) permit pursuant to 40 CFR parts 144 and 146 from the Environmental Protection Agency or the State/Tribe where the State/Tribe has achieved primacy. The operator shall also comply with the pertinent procedural and informational requirements for Application for Permit to Drill or Sundry Notice as set forth in Onshore Oil and Gas Order No. 1. The injection well shall be designed and drilled or conditioned in accordance with the requirements and standards described in Order No. 2 and pertinent NTLs, as well as the Underground Injection Control permit.

D. Informational requirements for pits.

Operators who request approval for disposal of produced water into a lined or unlined pit shall file an application on a Sundry Notice, Form 3160-5, and identify the operator's field representative by name, address and telephone number, and the source of the produced water. Sources of produced water shall be identified by facility, lease number, well number and name, and legal description of well location. A reclamation plan should be included as

appropriate. If requested, a contingency plan as prescribed by the authorized officer shall be provided. All samples for water analysis shall be taken at the current discharge point. A reclamation plan detailing the procedures expected to be followed for closure of the pit and the contouring and revegetating of the site shall be submitted prior to pit abandonment. If requested by the authorized officer, a contingency plan to deal with specific anticipated emergency situations shall be submitted as provided for in 43 CFR 3162.5-1(d).

1. *Lined pits.* The authorized officer shall not consider for approval an application for disposal into lined pits on Federal/Indian leases unless the operator also provides the following information:

a. A map and drawings of the site on a suitable scale that show the pit dimension, cross section, side slopes, leak detection system, and location relative to other site facilities.

b. The daily quantity of water to be disposed of (maximum daily quantity shall be cited if major fluctuations are anticipated) and a water analysis (unless waived by the authorized officer as unnecessary) that includes the concentrations of chlorides, sulfates, pH, Total Dissolved Solids (TDS), and toxic constituents that the authorized officer reasonably believes to be present.

c. Criteria used to determine the pit size, which includes a minimum of 2 feet of freeboard.

d. The average monthly evaporation and the average monthly precipitation for the area.

e. The method and schedule for periodic disposal of precipitated solids.

f. The type, thickness, and life span of material to be used for lining the pit and the method of installation. The manufacturer's guidebook and information for the product shall be included, if available.

2. Unlined pits.

Application for disposal into unlined pits may be considered for approval by the authorized officer where the application of the operator shows that such disposal meets one or more of the following criteria:

i. The water to be disposed of has an annual average TDS concentration equal to or less than that of the existing water to be protected, provided that the level of any toxic constituents in the produced water does not exceed established State or Federal standards for protection of surface and/or ground water.

ii. All, or a substantial part, of the produced water is being used for beneficial purposes and meets minimum water quality standards for such uses. For example, usage of produced water for purposes such as irrigation and livestock or wildlife watering shall be considered as beneficial.

iii. (A) The water to be disposed of will not degrade the quality of surface or subsurface waters in the area;

(B) The surface and subsurface waters contain TDS above 10,000 ppm, or toxic constituents in high concentrations; or

(C) The surface and subsurface waters are of such poor quality or small quantity as to eliminate any practical use thereof.

iv. That the volume of water to be disposed of per disposal facility does not exceed an

average of 5 barrels per day on a monthly basis.

b. Operators applying for disposal into an unlined pit shall also submit the following information, as appropriate:

(i) Applications for disposal into unlined pits that meet the criteria in a., above, shall include:

(A) A map and drawings of the site on a suitable scale that show the pit dimension, cross section, side slopes, size, and location relative to other site facilities.

(B) The daily quantity of water to be disposed of and a water analysis that includes Total Dissolved Solids (in ppm), pH, oil and grease content, the concentrations of chlorides and sulfates, and other parameters or constituents toxic to animal or plant life as reasonably prescribed by the authorized officer. The applicant should also indicate any effect or interaction of produced water with any water resources present at or near the surface and other known mineral deposits. For applications submitted under criterion a.iv., above, the water quality analysis is not needed unless requested by the authorized officer.

(C) The average monthly evaporation and the average monthly precipitation for the area. For applications submitted under criterion a.iv., average annual data will be acceptable.

(D) The estimated percolation rate based on soil characteristics under and adjacent to the pit. In some cases the authorized officer may require percolation tests using accepted test procedures.

(E) Estimated depth and areal extent of the shallowest known aquifer with TDS less than 10,000 ppm, and the depth and extent of any known mineral deposits in the area.

ii. Where beneficial use (criterion a.ii., above) is the basis for the application, the justification submitted shall also contain written confirmation from the user(s).

iii. If the application is made on the basis that surface and subsurface waters will not be adversely affected by disposal in an unlined pit (criterion a.iii., above), the justification shall also include the following additional information:

(A) Map of the site showing the location of surface waters, water wells, and existing water disposal facilities within 1 mile of the proposed disposal facility.

(B) Average concentration of TDS (in ppm) of all surface and subsurface waters within the 1-mile radius that might be affected by the proposed disposal.

(C) Reasonable geologic and hydrologic evidence that shows the proposed disposal method will not adversely affect existing water quality or major uses of such waters, and identifies the presence of any impermeable barrier(s), as necessary.

(D) A copy of any State order or other authorization granted as a result of a public hearing that is pertinent to the authorized officer's consideration of the application.

3. Emergency pits

Application for a permanent pit (lined or unlined) to be used for anticipated emergency purposes shall be submitted by the operator on a Sundry Notice, Form 3160-5, for approval by the authorized officer, unless it has been approved in conjunction

with a previously approved operational activity. Design criteria for an emergency pit will be established by the authorized officer on a case by case basis. Any emergency use of such pits shall be reported in accordance with NTL-3A or subsequent replacement Order procedures, and the pit shall be emptied and the liquids disposed of in accordance with applicable State and/or Federal regulations within 48 hours following its use, unless such time is extended by the authorized officer.

E. Design requirements for pits

1. Pits shall be designed to meet the following requirements and minimum standards. For unlined pits approved under criterion D.2.a.iv., requirements d. and e., below, do not apply.

a. As much as practical, the pit shall be located on level ground and away from established drainage patterns, including intermittent/ephemeral drainage ways, and unstable ground or depressions in the area.

b. The pit shall have adequate storage capacity for safe containment of all produced water, even in those periods when evaporation rates are at a minimum. The design shall provide for a minimum of 2 feet of free-board.

c. The pit shall be fenced or enclosed to prevent access by livestock, wildlife, and unauthorized personnel. If necessary, the pit shall be equipped to deter entry by birds. Fences shall not be constructed on the levees. Figure 1 shows an example of an acceptable fence design.

d. The pit levees are to be constructed so that the inside grade of the levee is no steeper than 1 (vertical):2 (horizontal), and the outside grade no steeper than 1:3.

e. The top of the levees shall be level and at least 18 inches wide.

f. The pit location shall be reclaimed pursuant to the requirements and standards of the surface management agency. On a split estate (private surface, Federal mineral) a surface owner's release statement or form is acceptable.

2. Lined pits shall be designed to meet the following requirements and minimum standards in addition to those specified above:

a. The material used in lining pits shall be impervious. It shall be resistant to weather, sunlight, hydrocarbons, aqueous acids, alkalies, salt, fungi, or other substances likely to be contained in the produced water.

b. If rigid materials are used, leak-proof expansion joints shall be provided, or the material shall be of sufficient thickness and strength to withstand expansion without cracking, contraction, and settling movements in the underlying earth. Semi-rigid liners such as compacted bentonite or clay may also be used provided that, considering the thickness of the lining material chosen and its degree of permeability, the liner is impervious for the expected period of use. Figure 2 shows examples of acceptable standards for concrete, asphalt, and bentonite/clay liners.

c. If flexible membrane materials are used, they shall have adequate resistance to tears or punctures. Figure 3 gives an example of acceptable standards for installation of the flexible membrane.

d. Lined pits shall have an underlying gravel-filled sump and lateral system or other suitable devices for the detection of leaks. Examples of the acceptable design of the leak detection system are shown in Figure 4 and Figure 5.

3. Failure to design the pit to meet the above requirements and minimum standards will result in disapproval of the proposal or a requirement that it be modified unless a request for variance is approved by the authorized officer.

F. Construction and maintenance requirements for pits

Inspections will be conducted according to the following requirements and minimum standards during the construction and operation of the pit. Failure to meet the requirements and standards may result in issuance of an Incident of Noncompliance (INC) for the violation. The gravity of the violation, corrective actions, and the normal abatement period allowed are specified for each of the requirements/standards.

1. Any disposal method that has not been approved shall be considered an incident of noncompliance and may result in the issuance of a shut-in order or assessment of penalties pursuant to 43 CFR part 3163 until an acceptable disposal method is provided and approved by the authorized officer.

Violation: Minor: If it causes no significant environmental damages or effects.

Major: If it causes or threatens immediate, substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income.

Corrective action: Minor: Submit acceptable application.

Major: Shut-in, take corrective action to repair or replace damages according to instructions of authorized officer.

Abatement period: Minor: 1 to 20 days or as directed by authorized officer.

Major: Within 10 days.

2. The operator shall notify the authorized officer to inspect the leak detection system at least 2 business days prior to the installation of the pit liner.

Violation: Minor.

Corrective action: Require verification of its installation.

Abatement period: Prior to use of pit.

3. At least 2 business days prior to its use, the operator shall notify the authorized officer of completion of the pit construction, so that the authorized officer may verify that the pit has been constructed in accordance with the approved plan.

For failure to notify:

Violation: Minor.

Corrective action: Not applicable.

For failure to construct in accordance with the approved plan:

Violation: Minor, unless Major by definition.

Corrective action: The authorized officer may shut-in operations and require corrections to comply with the plan or require amendment of the plan.

Abatement period: 1 to 20 days depending on the severity of the violation and the degree of difficulty to correct, if the pit is in use.

4. Lined pit shall be maintained and operated to prevent unauthorized subsurface discharge of water.

Violation: Usually Minor, unless Major as result of discharge.

Corrective action: Repair/replace liner and possibly shut in operations.

Abatement period: 1 to 20 days depending on the onsite situation.

5. The pit shall be maintained as designed to prevent entrance of surface water by providing adequate surface drainage away from the pit.

Violation: Minor.

Corrective action: Provide surface drainage.

Abatement period: Within 20 days.

6. The pit shall be maintained and operated to prevent unauthorized surface discharge of water.

Violation: Usually Minor, unless discharge results in Major.

Corrective action: Clean up if spill occurs, and reduce the water level to maintain the 2 feet of free-board; shut-in operations, if required by authorized officer.

Abatement period: 1 to 20 days depending upon the onsite situation.

7. The outside walls of the pit levee shall be maintained as designed to minimize erosion.

Violation: Minor.

Corrective action: Necessary repair.

Abatement period: Within 20 days.

8. The pit shall be kept reasonably free from surface accumulation of liquid hydrocarbons that would retard evaporation.

Violation: Minor.

Corrective action: Clean-up, and may require skimmer pits, settling tanks, or other suitable equipment.

Abatement period: Within 20 days.

9. The operator shall inspect the leak detection system at least once a month. The record of inspection shall describe the result of the inspection by date and shall be kept and made available to the authorized officer upon request.

Violation: Minor.

Corrective action: Commence the required routine inspection and recordkeeping.

Abatement period: Within 30 days.

10. Prior to pit abandonment and reclamation, the operator shall submit a Sundry Notice for approval by the authorized officer, if not previously approved.

Violation: Minor.

Corrective action: Cease operations and file an application.

Abatement period: Within 10 days.

11. When change in the quantity and/or quality of the water disposed into an unlined pit causes the pit no longer to meet the unlined pit criteria listed under section D.2.a., the operator shall submit a Sundry Notice amending the pit design for approval by the authorized officer.

Violation: Minor unless the resulting damage is Major.

Corrective action: Submit the required amendment; shut-in operations if damage is determined by the authorized officer to be Major.

Abatement period: As specified by the authorized officer.

G. Other disposal methods

1. Surface discharge under NPDES permit.

The person applying to use this disposal method shall furnish a copy of the NPDES permit issued by the EPA or the primacy State, a current water quality analysis and a Sundry Notice, Form 3160-5, describing site facilities (e.g., retention ponds, skimmer pits and equipment, tanks, and any additional surface disturbance). Operations from the point of origin to the point of discharge are under the jurisdiction of the BLM. Operations from the point of discharge downstream are under the jurisdiction of the EPA or the primacy State.

2. Use of existing commercial pits designed for containment of produced water or tanks in lieu of pits.

3. New technology or any other proposal meeting the objective of this Order that the authorized officer deems acceptable and that

meets the requirements of State and Federal laws and regulations.

H. Reporting requirements for disposal facilities

All unauthorized discharges or spills from disposal facilities on Federal/Indian leases shall be reported to the authorized officer in accordance with the provisions of NTL-3A or subsequent replacement Order.

Violation: Minor unless resulting damage is major.

Corrective action: Submit the required report.

Abatement period: As specified by the authorized officer.

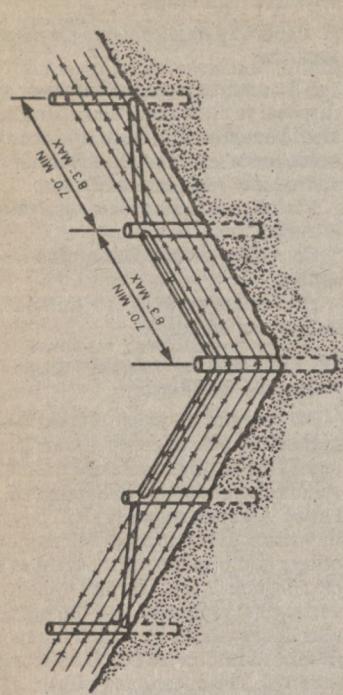
IV. Variances from Requirements or Minimum Standards

An operator may request that the authorized officer approve a variance from any of the requirements or minimum standards prescribed in Section III. of this Order. All such requests shall be submitted in writing to the appropriate authorized officer and provide information as to the circumstances that warrant approval of the variance(s) requested and the proposed alternative means by which the requirements or related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, will approve the requested variance(s) if it is determined that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s); or if the authorized officer determines that the exemption of the requirement is justified. Variances granted by BLM under this section shall be limited to proposals and requirements under BLM statutory and/or regulatory authority only, and shall not be construed as granting variances to regulations under EPA, State, or Tribal or State authority.

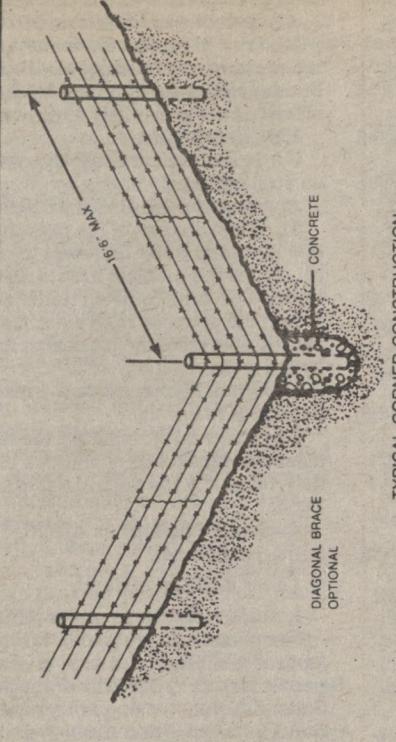
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BILLING CODE 4310-04-P

CORNER CONSTRUCTION
(applicable to barbed or net type wire)

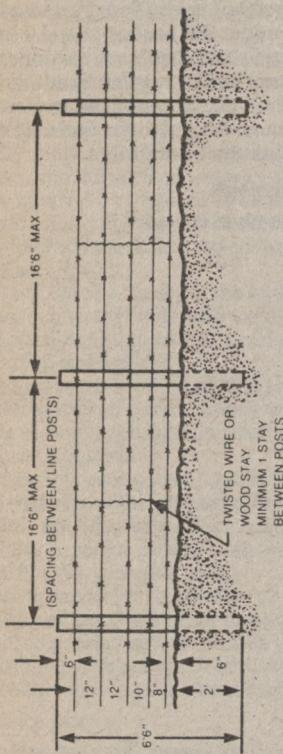


TYPICAL CORNER CONSTRUCTION
for barbed or net type wire

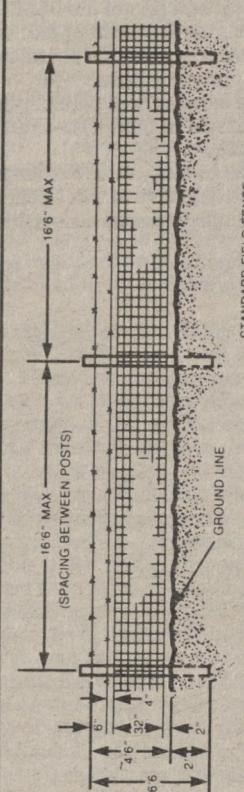


TYPICAL CORNER CONSTRUCTION
for buried corner posts

FENCE CONSTRUCTION



TYPICAL 5-WIRE BARB WIRE FENCE
using wood, pipe or steel 'T' type posts



STANDARD FIELD FENCE
8 LATERAL WIRES. VERTICAL STAY
WIRES SPACED AT 6' TOP AND BOTTOM
WIRES #10 GAUGE. INTERMEDIATE
AND STAY WIRES #12½ GAUGE

TYPICAL 'STOCK TIGHT' FENCE
using wood, pipe or steel 'T' type posts

FIGURE 1. EXAMPLES FOR DESIGN AND CONSTRUCTION OF FENCES
AND CORNER POSTS.

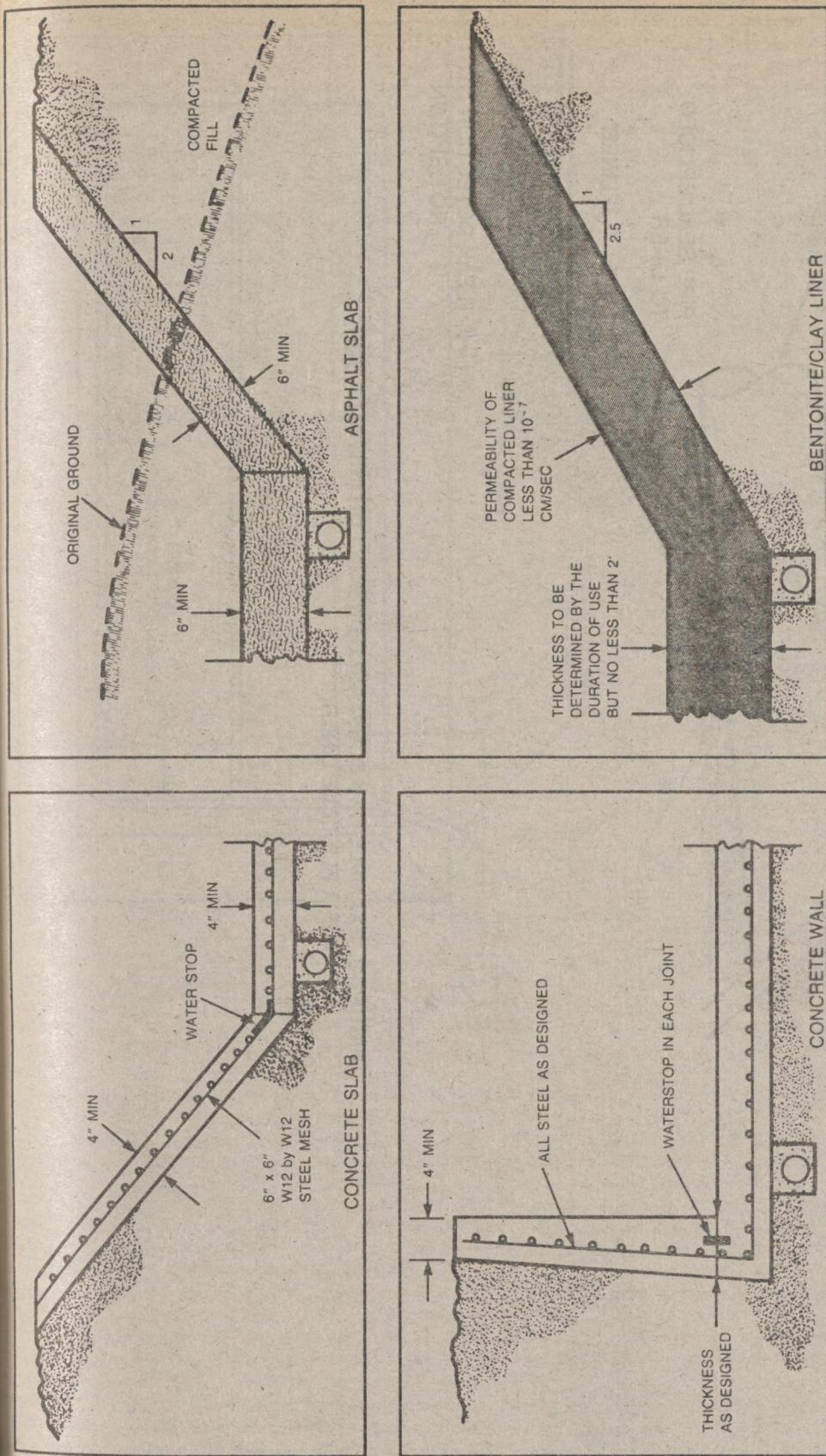


FIGURE 2. EXAMPLE OF ACCEPTABLE DESIGN FOR CONCRETE, ASPHALT AND BENTONITE/CLAY LINERS.

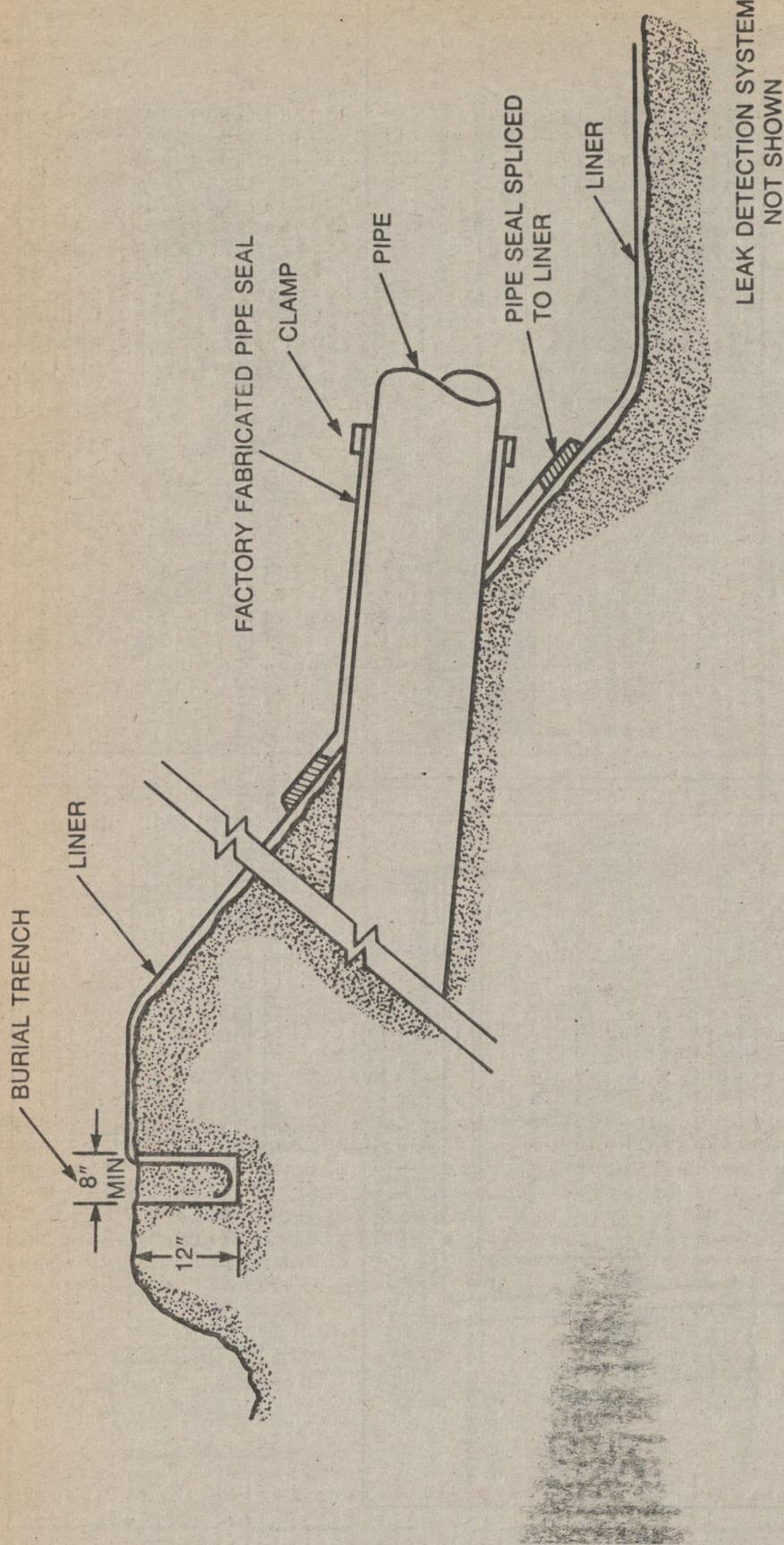


FIGURE 3. EXAMPLE OF ACCEPTABLE DESIGN FOR INSTALLATION
OF A FLEXIBLE LINER.

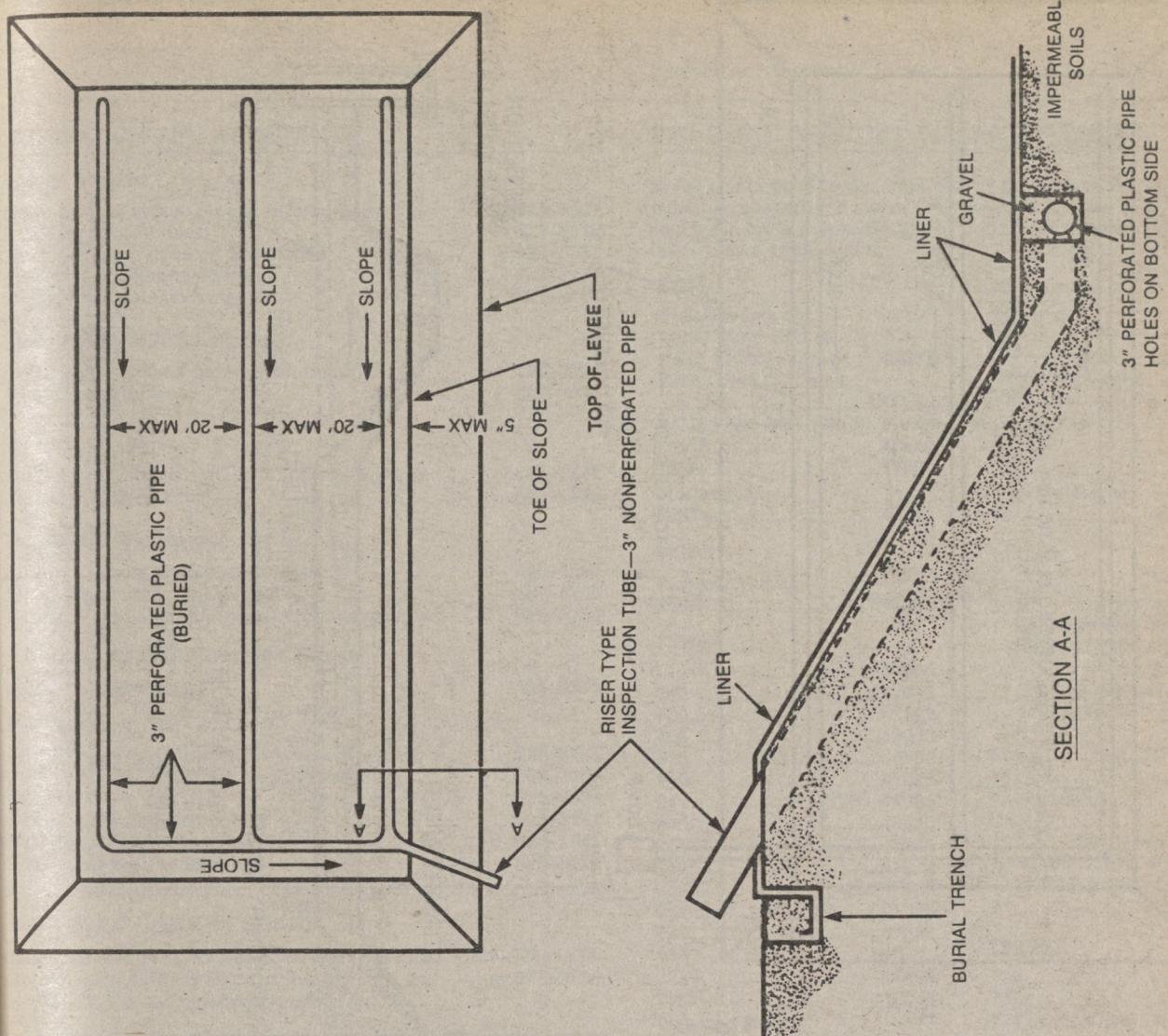


FIGURE 4. EXAMPLE OF A LEAK DETECTION SYSTEM FOR A LINED PIT
CONSTRUCTED IN RELATIVELY IMPERMEABLE SOILS.

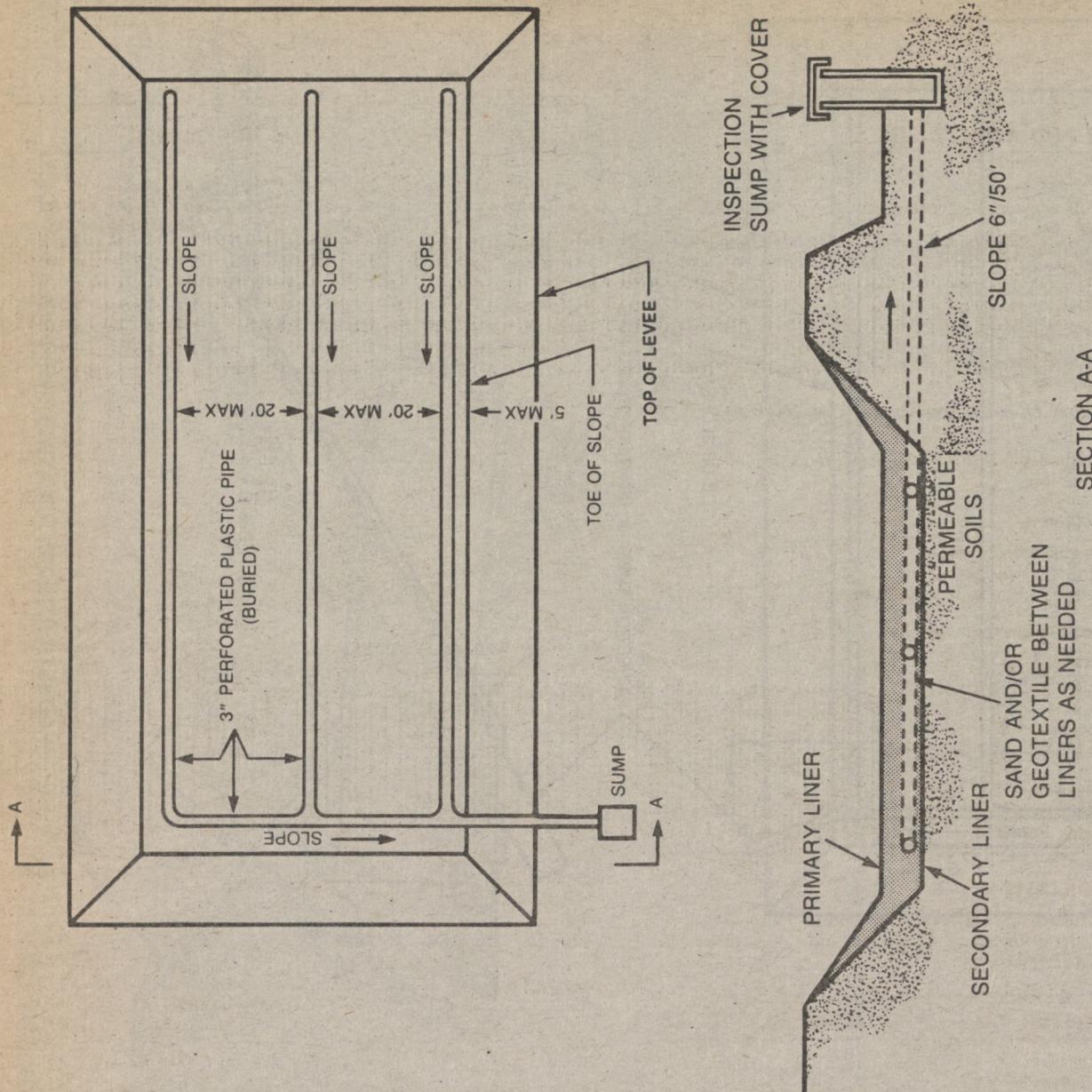


FIGURE 5. EXAMPLE OF A LEAK DETECTION SYSTEM FOR A LINED PIT CONSTRUCTED IN PERMEABLE SOILS.

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Wednesday, September 8, 1993

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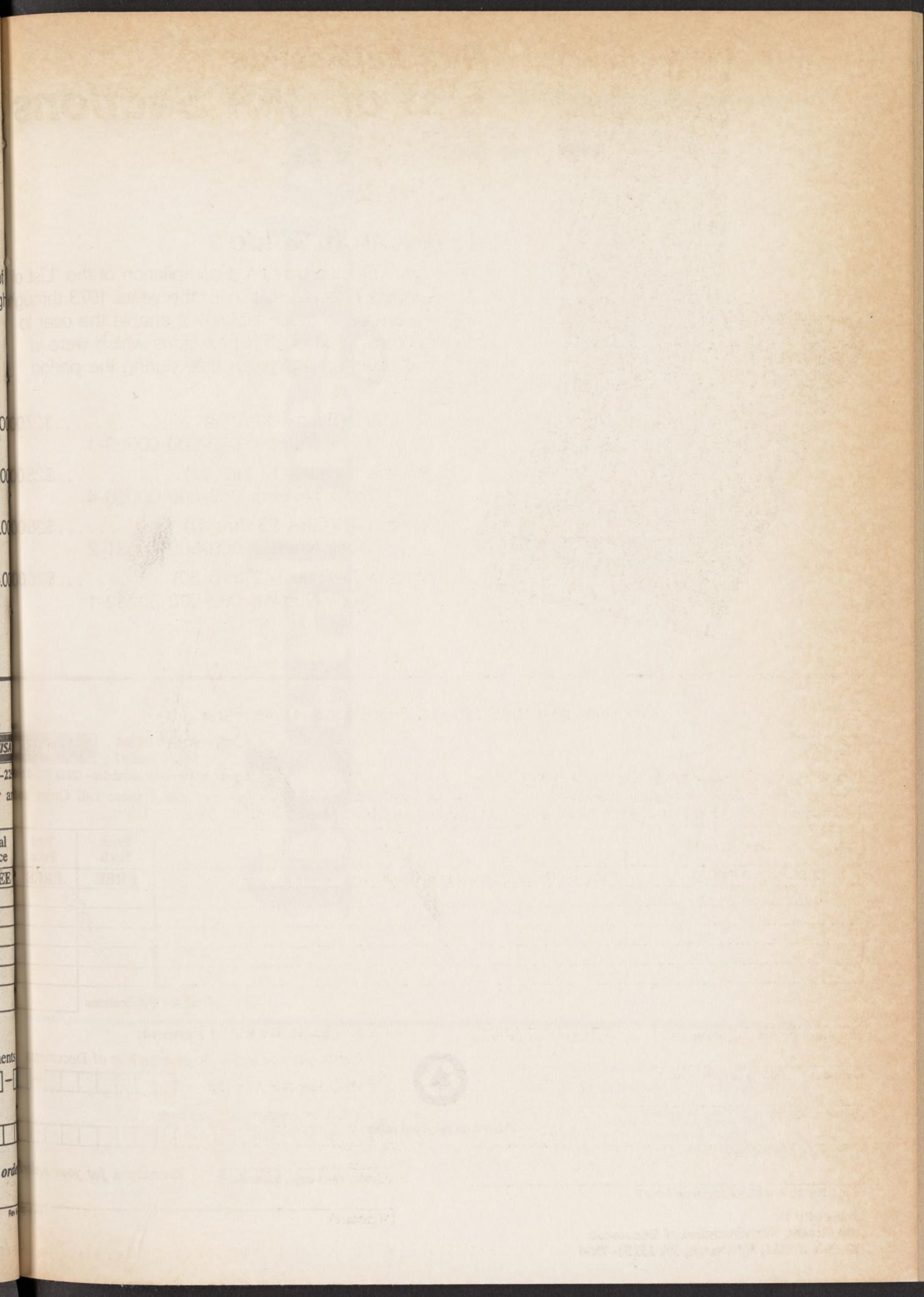
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