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Environmental Protection Agency

Animal Biologics
Animal and Plant Health Inspection Service

Buses
Interstate Commerce Commission

Customs Duties and Inspections
Customs Service

Employment Taxes
Internal Revenue Service

Fisheries
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Agricultural Marketing Service

Grain
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Panama Canal Commission

Income Taxes
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Health Care Financing Administration

Motor Vehicle Pollution
Environmental Protection Agency

Natural Gas
Federal Energy Regulatory Commission

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Title 3—

The President

Memorandum of November 29, 1982

Determination Under the Bus Regulatory Reform Act of 1982

Memorandum for the United States Trade Representative

Section 6 of the Bus Regulatory Reform Act of 1982 imposed a moratorium on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country. The Act authorized me to remove the moratorium in whole or in part for any country or political subdivision thereof upon determining that such action is in the national interest. Sixty days' advance notice to the Congress is required whenever the removal or modification applies to a foreign contiguous country or political subdivision thereof which substantially prohibits the granting of motor carrier authority to persons from the United States. I hereby determine that this sixty-day advance notification provision is not now applicable to Canada.

When I signed this Act into law on September 20, 1982, I determined that it was in the national interest to modify the moratorium by suspending it insofar as Canada is concerned, subject to certain conditions. At the same time, I instructed you, as my Trade Representative, to intensify our efforts to negotiate a fair and equitable resolution of the transborder trucking issue with Canada, and to report back to me within sixty days on those discussions. It was my expectation that such time would be sufficient for an appropriate understanding to be negotiated with Canada to allow me to completely remove the moratorium.

I am pleased that your efforts have been successful, and that an understanding between the United States and Canada has been concluded to ensure fair and equitable treatment for both Canadian and United States trucking interests on both sides of the border.

Therefore, in the further exercise of my authority under Section 6 of the Bus Regulatory Reform Act to remove in whole or in part the moratorium which prohibits issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of a contiguous foreign country, I hereby find that it is in the national interest to remove completely the moratorium for Canada.

Accordingly, you are directed to notify Congress today on my behalf that, as of tomorrow the moratorium is no longer in effect for Canada. Because of this action the Interstate Commerce Commission will now process expeditiously all outstanding applications for operating authority from Canadian owned, controlled, or domiciled firms according to the appropriate sections of the U.S. Motor Carrier Act of 1980. I should note that applications in Canada by United States firms will be similarly treated.

This determination shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, November 29, 1982.

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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Changes to Sampling Provisions by Kind of Movement

AGENCY: Federal Grain Inspection Service; USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is revising the regulations under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.),* (Act) to provide that each official sample-lot inspection for grade, factors, or other criteria on (1) domestic cargo shipments (barges) of bulk or sacked grain, (2) export land carrier shipments (railcars and trucks) of bulk or sacked grain, and (3) export cargo shipments of sacked grain be based on official samples obtained from the grain by any sampling method approved by FGIS without a statement being added to the certificate qualifying it as to the sampling method used. Under present regulations, a diverter-type (D/T) mechanical sampler would have been required to be used on these kinds of movements after January 1, 1983; otherwise, a statement would have been added to the inspection certificate indicating the samples may not be as representative as those obtained with a D/T mechanical sampler. A proposed rule was published in the September 28, 1982, **Federal Register,** and 73 comments were received. The revisions contained in this final rule are the same as those published in the proposed rule.

EFFECTIVE DATE: January 3, 1983.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Regulations and Directives Management, USDA, FGIS, Room 1636 South Building, 14th and Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382–0231.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Secretary's Memorandum 1512–1. The action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The effect of the action is to reduce the extent of regulatory control to which many entities, including some small entities, would be subjected.

Final Action

FGIS is revising § 800.18 and § 800.83 (7 CFR 800.18 and 800.83) of the regulations to provide that each official sample-lot inspection for grade, factors, or other criteria on (1) domestic cargo shipments (barges) of bulk or sacked grain, (2) export land carrier shipments (railcars and trucks) of bulk or sacked grain, and (3) export cargo shipments of sacked grain be based on official samples obtained from the grain by any sampling method approved by FGIS without a statement being added to the inspection certificate indicating the samples may not be as representative as those obtained with a D/T mechanical sampler.

The sampling methods currently approved by FGIS are the D/T mechanical sampler, probe, Ellis cup, pelican, and Woodside sampler, when used according to the procedures in instructions. Each certificate issued for an official sample-lot inspection on any domestic shipment of grain and on all export shipments of grain in railcars and trucks currently specifies the sampling method used and will continue to specify the sampling method used. Under the present regulation, which was scheduled to become effective January 1, 1983, the certificate would have shown the following additional statement when the D/T mechanical sampler was not used as required: "The lot of grain represented by this certificate was sampled by means of (*type of approved sampling method).* Samples obtained by this method may not be as representative as those obtained by approved diverter-type mechanical samplers."

The requirement to base official inspection results for domestic barge shipments of grain and export shipments of grain (except bulk export cargo shipments) on official samples obtained with a D/T mechanical sampler was originally scheduled to become effective January 1, 1982, as published in the March 11, 1980, **Federal Register** (45 FR 15802–15873). FGIS published an emergency final rule on December 1, 1981 (46 FR 58277), delaying the January 1, 1982, effective date for the required use of D/T mechanical samplers to January 1, 1983.

This requirement was enacted because a D/T mechanical sampler, which is designed to sample grain on line (i.e., during a continuous loading or unloading operation), can obtain a more uniform and representative sample from large volumes of grain being loaded at high speed than can the other sampling methods currently approved by FGIS for sampling grain during the loading operation.

After the requirement was originally promulgated, FGIS received numerous letters from grain merchandising companies and elevator operators who did not submit comments when the requirement was initially proposed. The letters provided information indicating the requirement to use the D/T mechanical sampler on domestic barge shipments and export railcar and truck shipments would not have provided the flexibility needed in the grain marketing system because the D/T mechanical sampler cannot be used for sampling grain at rest in a carrier. The information provided by these companies noted that, since the certificate specifies the sampling method used, there is no need to qualify the certificate with a statement as to the ability of the sampling method to obtain representative samples.

Further, the information received indicated the requirement to use the D/T mechanical sampler on domestic barge shipments of bulk and sacked grain would have been incompatible with established barge trading rules and practices. Barges are often loaded well

in advance of the bill of lading date because of uncertain weather conditions, the availability of barges, the need to transfer grain from a full warehouse to accept new receipts, and the desire to load several barges over a period of time and ship them together at a later date. The barges are then sampled shortly before the bill of lading date while the grain is at rest in the barge. This is to comply with the barge trading rules, which require the official inspection certificate to be dated within 3 calendar days of bill of lading date. In these cases, the requirement would not have provided the industry flexibility to market the barges when desired because the D/T mechanical sampler is practical for sampling grain only at the time the carrier is loaded.

Information provided to FGIS also indicated an increase in the use of online "over the bank" barge loading systems, which are essentially a truck dump with a conveyor to the barge. Installation of a D/T mechanical sampler on such loading systems would have been difficult and costly or, in some cases, impossible.

The comments received on the requirement when it was proposed on March 2, 1979, (43 FR 11920) stressed the cost of installing and tending the D/T mechanical sampler, the possibility of mechanical breakdowns, the problems with scheduling barges and official inspection personnel, and general satisfaction with other approved sampling methods as reasons for opposing the requirement. The issue of potential incompatibility of the regulation with industry trading rules and practices did not surface at that time.

Questions were also subsequently raised regarding the extent to which the requirement to use the D/T mechanical sampler on export shipments in railcars and trucks would have provided the flexibility needed in the grain marketing system. Because the volume of grain exported to Canada and Mexico in railcars and trucks has increased substantially in recent years, the requirement to use the D/T mechanical sampler for these kinds of movements would have affected the ability of some companies to merchandise grain. Many companies shipping railcars and trucks to Canada and Mexico are small entities, shipping a relatively low volume of grain. The volume each such entity exports is often small compared to the volume shipped in domestic movements. The D/T mechanical sampler is not required for domestic railcar and truck movements, and these companies could have been excluded from the export market if required to install D/T mechanical samplers only for this kind of movement. Moreover, each certificate issued for export shipments of grain in railcars and trucks specifies the sampling method used and, under this revision to the regulations, will continue to specify the sampling method used.

The requirement to use the D/T mechanical sampler for export cargo shipments of sacked grain in effect must be eliminated when the requirement is eliminated for domestic cargo shipments (barges) of sacked grain. While an unqualified inspection certificate will be issued for domestic shipments of sacked grain to an export port location regardless of the method of sampling used, after January 1, 1983, the exporter would have been required to unsack the grain, reelevate it, sample it with a D/T mechanical sampler, and resack it to receive an unqualified export inspection certificate. This process would have been extremely time consuming and costly. Moreover, current instructions provide that, under certain conditions, official inspection certificates issued for a domestic shipment of sacked grain to an export port location can be exchanged for an unqualified export inspection certificate when the sacks are loaded aboard the export carrier. If the D/T mechanical sampler had been required for export cargo shipments of sacked grain but not for domestic shipments of sacked grain, this accepted procedure, in effect, would no longer have been available. Under this revision, this procedure will continue unchanged. Further, unqualified inspection certificates will continue to be issued for export cargo shipments of grain sacked at the export port location, regardless of the method of sampling used.

After evaluating the information provided and considering the recommendation of the FGIS Advisory Committee to eliminate the requirement, FGIS published a proposal to revise the regulations to provide that each official inspection on (1) domestic cargo shipments (barges) of bulk or sacked grain, (2) export land carrier shipments (railcars and trucks) of bulk or sacked grain, and (3) export cargo shipments of sacked grain be based on official samples obtained from the grain by any sampling method approved by FGIS without a statement being added to the inspection certificate indicating the samples may not be as representative as those obtained with a D/T mechanical sampler.

The proposal was published in the September 28, 1982, **Federal Register** (47 FR 42576–42578) and solicited comments from interested individuals and groups for a period of 30 days. Seventy-three written comments on the proposal were received from individuals, companies, and groups representing a cross section of the grain industry. All 73 favored the proposal as written. The majority of the commentors stated they favor the proposal because, as previously indicated, the present regulation would not have provided the flexibility needed in the grain marketing system and would have been incompatible with established trading rules and practices. Several grain merchandising companies and elevator operators who previously submitted letters questioning the propriety of the requirement, as discussed above, submitted written comments during the formal comment period. All of these individuals and groups indicated their position has not changed. Many repeated the information they provided earlier or included a copy of the letter they submitted previously.

Under the revised regulations, export cargo shipments of bulk grain are the only kind of movement that will be required to have official sample-lot inspections based on official samples obtained with a D/T mechanical sampler as a condition for issuing a certificate without a qualifying statement. This requirement has been in effect since May 1, 1976, for bulk cargo shipments of grain exported from the United States and since March 31, 1981, for shipments exported from Canada. It will remain in effect for export cargo shipments of bulk grain because, in view of the large volume of grain in this kind of movement and the speed at which it is loaded, a D/T mechanical sampler can obtain a more uniform and representative sample than can other sampling methods approved by FGIS for sampling grain on line or at rest in the carrier. Moreover, FGIS has no information which would question the propriety of this requirement. If another sampling method is used for an official sample-lot inspection on this kind of movement, the certificate issued will continue to show the following statement: "The lot of grain represented by this certificate was sampled by means of (*type of approved sampling method*). Samples obtained by this method may not be as representative as those obtained by approved diverter-type mechanical samplers."

Although the effect of this final rule is to change the sampling requirement only for (1) domestic cargo shipments (barges) of bulk or sacked grain, (2) export land carrier shipments (railcars and trucks) of bulk or sacked grain, and

(3) export cargo shipments of sacked grain, the text of § 800.83 of the regulations is being revised in its entirety by classifying the kinds of movements as bulk export cargo movements, sacked export cargo movements, and other movements, instead of "In," "Out," en route, and "LOCAL" movements, to reflect the revised sampling requirements in a more simplified context. Other appropriate changes have been made in the text so as to accomplish the purpose of this regulation.

Based on the foregoing, the Administrator of FGIS is revising § 800.18 and § 800.83 to provide that each official sample-lot inspection for grade, factors, or other criteria on (1) domestic cargo shipments (barges) of bulk or sacked grain, (2) export land carrier shipments (railcars and trucks) of bulk or sacked grain, and (3) export cargo shipments of sacked grain be based on official samples obtained from the grain by any sampling method approved by FGIS without the inspection certificate being qualified as to the method of sampling used.

Specifically, § 800.18 is amended by revising subdivision (1) of paragraph (a). Section 800.83 is amended in its entirety by revising paragraphs (a) through (e) and relettering them as (a) and (b). In addition, § 800.161 is amended by changing the reference to "§ 800.83(e)" in paragraph (b)(11) to "§ 800.83(a)." The revisions contained in this final rule are the same as those published in the proposed rule on September 28, 1982.

List of Subjects in 7 CFR Part 800

Administrative practices and procedures, Export, Grain.

PART 800—GENERAL REGULATIONS

Accordingly, §§ 800.18, 800.83, and 800.161 (7 CFR 800.18, 800.83, and 800.161) of the regulations under the Act are amended as follows:

1. Section 800.18(a)(1) is revised to read:

§ 800.18 Special inspection and weighing requirements for sacked export grain.

(a) *General.* Subject to the provisions of § 800.19, sacked export grain shall be (1) officially inspected based on official samples obtained from the grain by any sampling method approved by the Service and operated in accordance with the instructions, (2) * * *

2. Section 800.83 is revised to read:

§ 800.83 Sampling provisions by kind of movement.

(a) *Export cargo movements.*—(1) *Bulk grain.* Except as may be approved by the Administrator on a shipment-by-shipment basis in an emergency, each lot inspection for official grade, official factor, or official criteria on an export cargo shipment of bulk grain shall be based on official samples obtained from the grain (i) as the grain is being loaded aboard the final carrier; (ii) after the final elevation of the grain prior to loading and as near to the final loading spout as is physically practicable (except as approved by the Administrator when representative samples can be obtained before the grain reaches the final loading spout); and (iii) by means of a diverter-type mechanical sampler approved by the Service and operated in accordance with instructions. If an approved diverter-type mechanical sampler is not properly installed at an elevator or facility as required, each certificate issued at that elevator or facility for an export cargo shipment of bulk grain shall show the following statement: "The lot of grain represented by this certificate was sampled by means of (*type of approved sampling method*). Samples obtained by this method may not be as representative as those obtained by approved diverter-type mechanical samplers."

(2) *Sacked grain.* Each lot inspection for official grade, official factor, or official criteria on an export cargo shipment of sacked grain shall be based on official samples obtained from the grain by any sampling method approved by the Service and operated in accordance with instructions.

(b) *Other movements.* Each lot inspection for official grade, official factor, or official criteria on a domestic cargo movement ("In," "Out," or en route barge movement), a movement in a land carrier (any movement in a railcar, truck, trailer, truck/trailer combination, or container), or a "LOCAL" movement of bulk or sacked grain shall be based on official samples obtained from the grain by any sampling method approved by the Service and operated in accordance with the instructions.

§ 800.161 [Amended]

3. Section 800.161 is amended by changing the reference to "§ 800.83(e)" in paragraph 800.161(b)(11) to "§ 800.83(a)."

(Sec. 18, Pub. L. 94-582, 90 Stat. 2884 (7 U.S.C. 87e)).

Dated: November 19, 1982.

D. R. Galliart,

Acting Administrator.

[FR Doc. 82-32664 Filed 11-30-82; 8:45 am]

BILLING CODE 3410-EW-M

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Docket No. R-0436]

International Banking Operations; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical correction to final rule.

SUMMARY: On November 8, 1982, the Board of Governors amended its Regulation K to change procedures for establishing a U.S. branch of an Edge corporation and to shorten the notification period in § 211.5(c)(2) of its Regulation K. This technical amendment corrects § 211.5(c)(2 by inserting a phrase that was inadvertently left out of the original amendment.

FOR FURTHER INFORMATION CONTACT: James S. Keller (202/452-2523), Division of Banking Supervision and Regulation, or Nancy P. Jacklin (202/452-3428) or Kathleen O'Day (202/452-3786), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: This notice corrects a previous **Federal Register** document (FR Doc. 82-30999) published on page 51,094 of the issue for Friday, November 12, 1982, by inserting, "unless the Board waives such period because it finds immediate action by the investor is required by the circumstances presented," after the word "Board" on line 5 of the amendment to § 211.5(c)(2) of Regulation K.

Board of Governors of the Federal Reserve System, November 24, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-32770 Filed 11-30-82; 8:45 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-19268]

Amendments Granting Additional Exemptions From Fingerprinting Requirement

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission today is adopting amendments to the rule that

establishes a scheme for complying with the fingerprinting requirement contained in Section 17(f)(2) of the Securities Exchange Act of 1934 (the "Act") and for claiming exemptions from that requirement. The adopted rule simplifies the process of claiming exemptions and makes that process less costly and more efficient.

EFFECTIVE DATE: November 22, 1982.

FOR FURTHER INFORMATION CONTACT: Thomas V. Sjoblom, Special Counsel, (202) 272-7345, or Ester Saverson, Jr., Staff Attorney, (202) 272-2906, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On April 29, 1982, the Commission published for comment in the **Federal Register** [1] Securities Exchange Act Release No. 18645 (April 14, 1982) (the "Proposal Release"), proposing amendments to Rule 17f-2 [17 CFR 240.17f-2], which describes procedures for complying with and claiming certain exemptions from the requirement of Section 17(f)(2) of the Act.[2] The proposed amendments to Rule 17f-2 as published for comment would (1) clarify the conditions necessary for claiming certain exemptions; (2) incorporate other exemptions previously granted by the Commission, on a case-by-case basis, pursuant to paragraph (g) of the rule; (3) clarify the subject matter content required in "Notices Pursuant to Rule 17f-2" ("Notices") claiming exemptions from the fingerprinting requirement; [3] (4) eliminate the Notice submission requirement and, instead, require subject organizations to retain the Notice among their records; and (5) exempt from the requirement to prepare and retain a Notice any transfer agent that performs transfer agent functions only on behalf of itself as an issuer and that receives fewer than 500 items for transfer and fewer than 500 items for processing during any six consecutive months. As stated in the Proposal Release, the Commission anticipated that these amendments would eliminate certain ambiguities in the rule and would reduce the burden on the securities industry and the Commission associated with the submission and review of Notices and other requests for exemptions.

In response to the Proposal Release, the Commission received comments from five commentators; [4] they unanimously favored the proposed amendments, although certain modifications were suggested. In light of these comments, the Commission has modified the proposed amendments and, as modified, is adopting those amendments to the rule. Since the Commission is adopting the amendments as published for comment with only minor revisions, the remainder of this release will discuss those revisions along with certain other issues raised by the commentators. The text of Rule 17f-2, as amended today, is set forth at the end of this release. Guidance concerning the operation of the basic amendments can be found in the Proposal Release, except as expressly discussed below.

I. Public Comments and Modification to Rule 17f-2

A. Exemption from the Fingerprinting Requirement

The New York Stock Exchange, Inc., ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD") commented on various aspects of the exemption granted to certain persons associated with registered broker-dealers that are engaged exclusively in the sale of certain securities ordinarily not evidenced by certificates ("uncertificated securities")—namely shares of registered open-end management investment companies, variable contracts or interests in limited partnerships, unit investment trusts or real estate investment trusts (paragraph (a)(1)(iii)). The NYSE also commented on the exemption available to persons whose fingerprint cards had been rejected by the FBI because of illegibility (paragraph (a)(1)(iv)).

1. *Broker-Dealers Engaged In Sale of Uncertificated Securities.* The NYSE questioned whether the availability of this exemption should be determined according to a broker-dealer's "business mix." The NYSE suggested that sales personnel who sell uncertificated securities should be exempt from the fingerprinting requirement, regardless of the business mix of the registered broker-dealer.

Section 17(f)(2) of the Act permits the Commission to exempt various "classes of persons" from the fingerprinting requirement, and Section 23(a)(1) of the Act permits the Commission, when making rules to implement the provisions of the Act, to classify persons, securities and transactions in various ways. In addition, Section 17(f)(2) provides that the Commission may exempt those persons upon any "specified terms, conditions and periods" deemed necessary, if not inconsistent with the public interest or the protection of investors. Accordingly, when determining whether a particular class of persons should be exempt from the fingerprinting requirement of Section 17(f)(2) of the Act, the Commission in the past has taken into account whether the particular class of persons has access to securities, monies or related original books and records. In determining whether that class of persons has access, the Commission has considered the nature of the securities handled by that class of persons and the business and operational characteristics of the broker-dealer. As a result, the Commission believes that, contrary to the views of the NYSE, the nature of a broker-dealer's business is relevant in identifying classes of persons for whom exemptions from the fingerprinting requirement are appropriate.

As noted in the Proposal Release, the exemption in paragraph (a)(1)(iii) incorporates an exemption granted in the past by the Commission, on a case-by-case basis, to a class of personnel in a certain class of broker-dealers, such as subsidiaries of insurance companies, that are engaged in a very limited securities business involving, for the most part, uncertificated securities. Unlike a general securities firm, the likelihood that non-fingerprinted sales or other personnel in such "limited-product" firms will have access to certificated securities, monies or the related original books and records is remote.[5] In contrast, in a broker-dealer engaged in a general securities business, certain nonfingerprinted personnel, including sales representatives who do not regularly have access to securities, monies or the related original books or records, may have or be able to obtain access to certificated securities, monies or the related original books and records and, for that reason, may create a type

[1] *See* 47 FR 18351 (April 29, 1982).

[2] Section 17(f)(2) of the Act provides, in pertinent part, that "[e]very member of a national securities exchange, broker, dealer, registered transfer agent, and registered clearing agency [collectively, 'subject organizations'] shall require that each of its partners, directors, officers, and employees [collectively, 'personnel'] be fingerprinted and shall submit such fingerprints, or cause the same to be submitted, to the Attorney General of the United States for identification and appropriate processing."

[3] A suggested format for the Notice was published in the Proposal Release, 47 FR 18351 (April 29, 1982).

[4] Comments were received from the New York Stock Exchange, Inc.; National Association of Securities Dealers, Inc.; North American Securities Administrators Association; Texas Instruments, Inc.; and American Council of Life Insurance. These comment letters are available for inspection and copying in the Commission's Public Reference Room, 450 5th Street, Washington, D.C. In addition, as required by Section 17A(d)(3)(A)(i) of the Act, the Commission, at least fifteen days prior to issuance of this release, consulted with and requested the views of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

[5] See Proposal Release, at 10, 13-14.

of security risk that the fingerprinting requirement could help circumscribe. Therefore, paragraph (a)(1)(iii) has been adopted without change in that respect.[6]

The NASD suggested that the bonding/insurance requirement in paragraph (a)(1)(iii)(C) would require certain broker-dealers, which are not otherwise required to carry fidelity bonding protection,[7] to obtain blanket or fidelity bonding protection. In contrast, the NYSE applauded the idea and suggested that anyone "engaged in the sale of any securities, having access to monies, securities or original books and records or having any direct supervisory responsibility in these areas should be subject to a bonding requirement."[8]

The bonding/insurance requirement (as originally proposed in paragraph (a)(1)(iii)) was not intended to impose fidelity bonding on broker-dealers not required to carry that coverage. A broker-dealer claiming an exemption from the fingerprinting requirement under paragraph (a)(1)(iii) for a class of personnel may elect to carry either insurance or bonding, and that coverage need only protect it against customer losses caused by the fraudulent or criminal acts of any of its officers or employees. Thus, paragraph (a)(1)(iii)(C) would permit insurance coverage less extensive than the NASD bonding requirements.[9]

In any event, the Commission believes that, consistent with the regulatory policy entailed in Section 17(f)(2) of the Act, a limited-product broker-dealer may legitimately be required to choose between the costs of fingerprinting its personnel and the expense associated with insuring the firm against wrongful customer losses. The importance of customer protection warrants at least that much regulatory intervention. Moreover, while the requirement to have insurance or bonding protection might seem to introduce a new requirement on non-SIPC member broker-dealers, every limited-product firm to date that has requested and obtained an exemption from the fingerprinting requirement has had insurance or bonding as a safeguard already in place for the protection of customer funds and securities. Accordingly, the Commission has concluded that the added expense associated with obtaining bonding or insurance to claim an exemption under new paragraph (a)(1)(iii)(C) is both minimal and justified.[10]

The NASD also suggested that paragraph (a)(1)(iii)(C) should expressly recognize that, under NASD rules, partners and directors, who otherwise do not serve as officers or employees of a broker-dealer, usually are excluded from the firm's blanket fidelity bonding protection [11] and that the words "losses to customers" should not include losses due to poor business judgment or advice given by associated persons of a broker-dealer, but instead should be limited to losses arising from fraudulent or criminal acts of associated persons.[12] While the Commission believes that the bonding/insurance requirement is an important safeguard when FBI processing of fingerprints does not occur, the class of persons subject to the bonding-insurance condition can be narrowed, as the NASD suggests, without lessening investor protection. To accomplish that end, the Commission is changing the language in paragraph (a)(1)(iii)(C) to require that broker-dealers maintain insurance or bonding coverage only for those partners, directors, officers and employees "for whom an exemption is being claimed under paragraph (a)(1)(iii)." Therefore, under this language change, a broker-dealer will not be subject to the insurance or bonding condition with respect to persons who qualify for the general exemption, such as outside directors or partners, in paragraph (a)(1)(i).

2. *Illegible Fingerprints.* The NYSE suggested that proposed paragraphs (a)(1)(iv)(A) and (a)(1)(iv)(B) should be collapsed into one provision because the two paragraphs are analytically similar. The commission agrees that the specific requirements in proposed paragraph (a)(1)(iv)(B) relate to the general condition stated in proposed paragraph (a)(1)(iv)(A). New paragraph (a)(1)(iv)(A), therefore, contains both a subjective standard, pursuant to which the availability of an exemption will be tested by the good faith efforts of the subject organization, and an objective standard, which will require a subject organization to obtain a complete set of fingerprints (as originally proposed in paragraph (a)(1)(iv)(A)), to have the fingerprints rolled by a person competent to do so, and to have those fingerprints submitted to the FBI for processing (as originally proposed in paragraph (a)(1)(iv)(B)).

The Commission also is adding language to paragraph (a)(1)(iv) to require expressly that the fingerprint cards must be rejected by the FBI because the fingerprints were in fact illegible. This concept was merely implicit in the originally proposed amendments.

B. Record Maintenance

1. *Subsection 240.17f-2(d).* The NYSE suggested that subsection (d), regarding record maintenance, include a provision that would allow subject organizations "or their approved designees" to maintain the records required by subsection (d). The Commission believes it would be inefficient, time consuming and costly to both the subject organization and the designated examining authority to allow outside parties, other than self-regulatory organizations ("SROs"), to act as recordkeepers for records required to be kept by subsection (d). Because several SROs have oversight responsibilities for broker-dealers, however, the Commission does believe that there may be both economic and regulatory benefits to the securities industry in allowing an SRO that is also the designated examining authority for a

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[6] Use of this exemption for sales personnel of limited-product broker-dealers will be monitored as part of the examination programs of the self-regulatory organizations and the Commission. In addition, the Commission, in appropriate cases, may deny claims for exemptions under this subparagraph. *See* § 240.17f-2(e)(1)(iii). For example, the Commission believes it usually would be inappropriate to claim an exemption on the basis that personnel in certain departments of the firm (*e.g.*, the departments that sell mutual fund shares or variable annuities) do not have access to securities, monies and related books and records by asserting that those departments are physically separate from the departments engaged in the general securities business of the firm.

[7] The NASD does not require non-SIPC member broker-dealers to carry fidelity bonding protection. *See, e.g.*, NASD Manual (CCH) ¶s2182 & 2182A (Appendix C). Section 3(a)(2)(A) of the Securities Investor Protection Act of 1970 ("SIPA") identifies broker-dealers that are not required to be members of SIPC. These include, among others, broker-dealers engaged exclusively in (1) the distribution of shares of registered open-end management investment companies or unit investment trusts; (2) the sale of variable annuities; or (3) the business of insurance. *See* 15 U.S.C. 78ccc(a)(2)(A). SIPA protection is available, however, only when a broker-dealer is forced to liquidate; it affords no protection for customer losses caused by the fraudulent or criminal acts of personnel when the firm continues in business.

[8] *See* note 4 *supra.*

[9] The condition in paragraph (a)(1)(iii)(C), however, will be met if the firm carries either insurance or bonding. If bonding is selected, protection need only cover, in addition to fidelity protection, losses occurring from forgery, alteration (including check forgery) and securities loss (including forgery) due to fraudulent trading or other criminal acts.

[10] The Commission also has cited blanket fidelity bonding protection covering all officers, employees and agents as a factor to be considered in granting exemptions from other rules under the Act, such as the financial responsibility rules, to insurance companies registered as broker-dealers and engaged in the distribution of variable annuities. *See e.g.*, Securities Exchange Act Release No. 83889 (August 28, 1968).

[11] The blanket fidelity bond required by the NASD covers officers and employees only. *See* NASD Manual (CCH) ¶ 2182A(1) (Appendix C).

[12] The Commission concurs and, accordingly, has revised the language in paragraph (a)(1)(iii)(C) to limit covered losses to those caused by the fraudulent and criminal acts of personnel.

broker-dealer to act as a repository of fingerprint cards or substitute records for that broker-dealer. Paragraph (d)(2) has been added, therefore, to provide that a broker-dealer's designated examining authority may provide for the storage and maintenance of records required to be kept by that subsection.[13]

Before an SRO may store and maintain those records for subject organizations, however, several concerns must be addressed by an SRO proposing to act as a recordkeeper under this rule. These concerns may be easily addressed in an amendment to the SRO's fingerprinting plan.[14] Because the duty to fingerprint personnel and have those fingerprints processed by the FBI is that of the broker-dealer, an SRO must design a plan that will provide to subscribing broker-dealers copies of all information received from the FBI regarding their personnel, especially any information regarding a person's criminal history record. In addition, under this amendment, an SRO would not only act as a conduit for the transmission of fingerprint cards but also act as a repository. In that regard, the SRO plan must ensure that any added responsibility does not impact adversely on the SRO's obligations under the Act to operate its trading markets efficiently. Finally, the SRO plan must offer this service to its members on a voluntary basis.

In addition, the Commission, in an effort to reduce the cost of maintenance and the amount of paper required to be kept by subject organizations, has determined that processed fingerprint cards may be reproduced and maintained on microfilm. The FBI has informed the Commission that clear and legible fingerprints can be obtained from a clear facsimile enlargement of a fingerprint card reproduced from microfilm. The Commission, therefore, is adding new paragraph (d)(3) that allows processed fingerprint cards as well as the other records required by subsection (d) to be maintained on microfilm, provided that the subject organization: (1) Has facilities for the immediate and legible projection of that microfilm and for producing clear and legible facsimile enlargements; (2) indexes and files the films in a manner as to permit the immediate location of any particular record; (3) is ready immediately to provide a clear facsimile enlargement of any records requested by the Commission, the appropriate regulatory agency (if not the Commission) or the designated examining authority; and (4) stores separately from the original microfilm records a copy of the microfilm records.

C. Rules 17a–3(a)(15) and 17a–4(e)(3)

Rule 17a–3(a) [17 CFR 240.17a–3(a)] enumerates the records that must be made and kept current by certain members of national securities exchanges and other brokers and dealers. Since subsection (e) of Rule 17f–2 will require the preparation, maintenance and continual updating of Notices claiming exemptions, the Commission is amending Rule 17a–3(a) by adding new paragraph (a)(15) to include the Notice required under subsection (e) of Rule 17f–2.

Rule 17a–4 requires certain members of national securities exchanges and other brokers and dealers to maintain and preserve certain records for certain specified periods of time. Subsection (e) of Rule 17f–2 will require the maintenance and preservation of certain records. The Commission, therefore, is amending Rule 17a–4(e)(3) to reflect the record retention requirement under subsection (e) of Rule 17f–2.

II. Regulatory Flexibility Act Certification

Pursuant to 15 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission has not received any comments concerning the Chairman's certification.

III. Paperwork Reduction Act

The information collection required by this rule has been cleared by the Office of Management and Budget and has been assigned clearance No. 3235–0031.

IV. Statutory Basis

The following amendments are being adopted pursuant to Sections 2, 17(a), 17(f)(2) and 23(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78b, 78q(a), 78q(f)(2), 78w(a)]. The Commission finds that there will be no burden upon competition imposed by these revisions and amendments to Rule 17f–2, that they are necessary and appropriate for the protection of investors, and that they are in the public interest.

As required by Section 17(f)(2) of the Act, the Commission also finds that the amendments to Rule 17f–2, granting additional exemptions and eliminating the requirement that Notices be submitted to the Commission for formal staff review and retention, are not inconsistent with the public interest or the protection of investors. The granting of additional exemptions for certain personnel of registered broker-dealers engaged in limited securities activities will not adversely affect the public interest or the protection of investors because those persons claimed as exempt do not regularly have access to the handling or processing of securities monies or the original books and records relating thereto. With respect to the elimination of the requirement to submit Notices to the Commission, subject organizations will still be required to prepare Notices and keep those Notices on their premises in order to monitor the use of exemptions as well as the physical security systems of the subject organizations.

List of Subjects in 17 CFR Part 240

Reporting requirements, Securities.

Dated: November 18, 1982.

By the Commission.

George A. Fitzsimmons,

Secretary.

Text of Proposals

In accordance with the foregoing, the Commission amends Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By revising § 240.17f–2 to read as follows:

§ 240.17f–2 Fingerprinting of securities industry personnel.

(a) *Exemptions for the fingerprinting requirement.* Except as otherwise provided in paragraph (a)(1) or (a)(2) of this section, every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency shall require that each of its partners, directors, officers and employees be fingerprinted and shall submit, or cause to be submitted, the fingerprints of such persons to the Attorney General of the United States or

[13] Records regarding personnel of registered transfer agents and registered clearing agencies, however, must be maintained by those organizations at their principal offices pursuant to paragraph (d) (1) and (3). Neither the Commission nor any of the federal bank regulatory agencies will act as repositories for those records.

[14] Currently, all SROs have fingerprint plans approved by the Commission pursuant to Rule 17f–2(c) under the Act. None of the plans, however, provide any SRO with the authority to act as a recordkeeper for records required to be kept by subsection (d). Therefore, before a designated examining authority can act as a repository of records required to be kept by subsection (d), it must have on file a plan that provides for the responsible storage and maintenance of those records and that plan must be approved by the Commission pursuant to Rule 17f–2(c) under the Act.

its designee for identification and appropriate processing.

(1) *Permissive exemptions.* Every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency may claim one or more of the exemptions in paragraph (a)(1) (i), (ii), (iii) or (iv) of this section; *Provided,* That all the requirements of paragraph (e) of this section are also satisfied.

(i) *Member of a national securities exchange, broker, dealer or registered clearing agency.* Every person who is a partner, director, officer or employee of a member of a national securities exchange, broker, dealer, or registered clearing agency shall be exempt if that person:

(A) Is not engaged in the sale of securities;

(B) Does not regularly have access to the keeping, handling or processing of *(1)* securities, *(2)* monies, or *(3)* the original books and records relating to the securities or the monies; and

(C) Does not have direct supervisory responsibility over persons engaged in the activities referred to in paragraphs (a)(1)(i) (A) and (B) of this section.

(ii) *Registered Transfer Agents.* Every person who is a partner, director, officer or employee of a registered transfer agent shall be exempt if that person:

(A) Is not engaged in transfer agent functions (as defined in section 3(a)(25) of the Securities Exchange Act of 1934) or activities incidental thereto; or

(B) Meets the conditions in paragraphs (a)(1)(i) (B) and (C) of this section.

(iii) *Registered broker-dealers engaged in sales of certain securities.* Every partner, director, officer and employee of a registered broker or dealer who satisfies paragraph (a)(1)(i)(B) of this section shall be exempt if that broker or dealer:

(A) Is engaged exclusively in the sale of shares of registered open-end management investment companies, variable contracts, or interests in limited partnerships, unit investment trusts or real estate investment trusts; *Provided,* That those securities ordinarily are not evidenced by certificates;

(B) Is current in its continuing obligation under §§ 240.15b1–1 and 15b3–1(b) to update Item 10 of Form BD to disclose the existence of any statutory disqualification set forth in sections 3(a)(39), 15(b)(4) and 15(b)(6) of the Securities Exchange Act of 1934;

(C) Has insurance or bonding indemnifying it for losses to customers caused by the fraudulent or criminal acts of any of its partners, directors, officers or employees for whom an exemption is being claimed under paragraph (a)(1)(iii) of this section; and

(D) Is subject to the jurisdiction of a state insurance department with respect to its sale of variable contracts.

(iv) *Illegible fingerprint cards.* Every person who is a partner, director, officer or employee shall be exempt if that member of a national securities exchange, broker, dealer, registered transfer agent or registered clearing agency, on at least three occasions:

(A) Attempts in good faith to obtain from such person a complete set of fingerprints acceptable to the Attorney General or its designee for identification and appropriate processing by requiring that person to be fingerprinted, by having that person's fingerprints rolled by a person competent to do so and by submitting the fingerprint cards for that person to the Attorney General of the United States or its designee in accordance with proper procedures;

(B) Has that person's fingerprint cards returned to it by the Attorney General of the United States or its designee without that person's fingerprints having been identified because the fingerprints were illegible; and

(C) Retains the returned fingerprint cards and any other required records in accordance with paragraph (d) of this section and §§ 240.17a–3(a)(13), 17a–4(e)(2) and 17Ad–7(e)(1) under the Securities Exchange Act of 1934.

(2) *Other exemptions by application to the Commission.* The Commission, upon specified terms, conditions and periods, may grant exemptions to any class of partners, directors, officers or employees of any member of a national securities exchange, broker, dealer, registered transfer agent or registered clearing agency, if the Commission finds that such action is not inconsistent with the public interest or the protection of investors.

(b) *Fingerprinting pursuant to other law.* Every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency may satisfy the fingerprinting requirement of section 17(f)(2) of the Securities Exchange Act of 1934 as to any partner, director, officer or employee, if:

(1) The person, in connection with his or her present employment with such organization, has been fingerprinted pursuant to any other law, statute, rule or regulation of any state or federal government or agency thereof;

(2) The fingerprint cards for that person are submitted, or are caused to be submitted, to the Attorney General of the United States or its designee for identification and appropriate processing, and the Attorney General or its designee has processed those fingerprint cards; and

(3) The processed fingerprint cards or any substitute records, together with any information received from the Attorney General or its designee, are maintained in accordance with paragraph (d) of this section.

(c) *Fingerprinting plans of self-regulatory organizations.* The fingerprinting requirement of section 17(f)(2) of the Securities Exchange Act of 1934 may be satisfied by submitting appropriate and complete fingerprint cards to a registered national securities exchange or to a registered national securities association which, pursuant to a plan filed with, and declared effective by, the Commission, forwards such fingerprint cards to the Attorney General of the United States or its designee for identification and appropriate processing. Any plan filed by a registered national securities exchange or a registered national securities association shall not become effective, unless declared effective by the Commission as not inconsistent with the public interest or the protection of investors; and, in declaring any such plan effective, the Commission may impose any terms and conditions relating to the provisions of the plan and the period of its effectiveness as it may deem necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

(d) *Record maintenance.*—(1) *Maintenance of processed fingerprint cards and other related information.* Every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency shall maintain the processed fingereprint card or any substitute record when such card is not returned after processing, together with any information received from the Attorney General or its designee, for every person required to be fingerprinted under section 17(f)(2) of the Securities Exchange Act of 1934 and for persons who have complied with this section pursuant to paragraphs (b) or (c) of this section. Every substitute record shall state the name of the person whose fingerprint card was submitted to the Attorney General of the United States, the name of the member of a national securities exchange, broker, dealer, registered transfer agent or registered clearing agency that submitted the fingerprint card, the name of the person or organization that rolled the fingerprints, the date on which the fingerprints were rolled, and the date

the fingerprint card was submitted to the Attorney General of the United States. The processed fingerprint card and every other substitute record containing the information required by this paragraph, together with any information received from the Attorney General of the United States, shall be kept in an easily accessible place at the organization's principal office and shall be made available upon request to the Commission, the appropriate regulatory agency (if not the Commission) or other designated examining authority. The organization's principal office must provide to the regional, branch or satellite office actually employing the person written evidence that the person's fingerprints have been processed by the FBI, and must provide to that office a copy of any criminal history record information received from the FBI. All fingerprint cards, records and information required to be maintained under this paragraph shall be retained for a period of not less than three years after termination of that person's employment or relationship with the organization.

(2) *Record maintenance by designated examining authorities.* The records required to be maintained and preserved by a member of a national securities exchange, broker, or dealer pursuant to the requirements of paragraph (d)(1) of this section may be maintained and preserved on behalf of that member, broker, or dealer by a self-regulatory organization that is also the designated examining authority for that member, broker or dealer, *Provided* That the self-regulatory organization has filed in accordance with § 240.17f–2(c) a fingerprinting plan or amendments to an existing plan concerning the storage and maintenance of records and that plan, as amended, has been declared effective by the Commission, and *Provided Further* That:

(i) Such records are subject at any time, or from time to time, to reasonable periodic, special or other examinations by representatives of the Commission; and

(ii) The self-regulatory organization furnishes to the Commission, upon demand, at either the principal office or at the regional office complete, correct and current hard copies of any and all such records.

(3) *Reproduction of records on microfilm.* The records required to be maintained pursuant to paragraph (d)(1) of this section may be produced or reproduced on microfilm and preserved in that form. If such microfilm substitution for hard copy is made by a member of a national securities exchange, broker, dealer, registered transfer agent or registered clearing agency, or by a self-regulatory organization maintaining and storing records pursuant to paragraph (d)(2) of this section, it shall at all times:

(i) Have available for examination by the Commission, the appropriate regulatory agency (if not the Commission) or other designated examining authority, facilities for the immediate, easily readable projection of the microfilm and for the production of easily readable and legible facsimile enlargements;

(ii) File and index the films in such a manner as to permit the immediate location and retrieval of any particular record;

(iii) Be ready to provide, and immediately provide, any facsimile enlargement which the Commission, the appropriate regulatory agency (if not the Commission) or other designated examining authority by their examiners or other representatives may request; and

(iv) For the period for which the microfilm records are required to be maintained, store separately from the original microfilm records a copy of the microfilm records.

(e) *Notice requirement.* Every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency that claims one or more of the exemptions in paragraph (a)(1) of this section shall make and keep current a statement entitled "Notice Pursuant to Rule 17f–2" containing the information specified in paragraph (e)(1) below.

(1) *Contents of statement.* The Notice required by paragraph (e) of this section shall:

(i) State the name of the organization and state whether it is a member of a national securities exchange, broker, dealer, registered transfer agent, or registered clearing agency;

(ii) Identify by division, department, class, or name and position within the organization all persons who are claimed to have satisfied the fingerprinting requirement of section 17(f)(2) of the Securities Exchange Act of 1934 pursuant to paragraph (b) of this section;

(iii) Identify by division, department, class, title or position within the organization all persons claimed to be exempt under paragraphs (a)(1)(i)–(iii) of this section, and identify by name all persons claimed to be exempt under paragraph (a)(1)(iv). Persons identified under this paragraph (e)(1)(iii) shall be exempt from the requirement of section 17(f)(2) of the Securities Exchange Act of 1934 unless notified to the contrary by the Commission;

(iv) Describe, in generic terms, the nature of the duties of the person or classes of persons, and the nature of the functions and operations of the divisions and departments, identified as exempt in paragraph (e)(1)(iii) above; and

(v) Describe the security measures utilized to ensure that only those persons who have been fingerprinted in accordance with the fingerprinting requirement of section 17(f)(2) of the Securities Exchange Act of 1934 or who are exempt under paragraph (a)(1)(iv) of this section have access to the keeping, handling or processing of securities or monies or the original books and records relating thereto.

(2) *Record maintenance.* A copy of the Notice required to be made and kept current under paragraph (e) of this section shall be kept in an easily accessible place at the organization's principal office and at the office employing the persons for whom exemptions are claimed and shall be made available upon request for inspection by the Commission, appropriate regulatory agency (if not the Commission) or other designated examining authority.

(3) *Exemption from the notice requirement.* A registered transfer agent that performs transfer agent functions only on behalf of itself as an issuer and that receives fewer than 500 items for transfer and fewer than 500 items for processing during any six consecutive months shall be exempt from the Notice requirement of paragraph (c) of this section.

2. By adding paragraph (a)(15) to § 240.17a–3 to read as follows:

§ 240.17a–3 Records to be made by certain exchange members, brokers and dealers.

* * * * *

(a) * * *

(15) Records required to be maintained pursuant to paragraph (e) of § 240.17f–2.

3. By revising paragraph (e)(3) of § 240.17a–4 to read as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(e) * * *

(3) All records required pursuant to paragraph (a)(15) of § 240.17a–3 for the life of the enterprise.

* * * * *

4. By revising paragraph (e)(2) of § 240.17Ad–7 to read as follows:

§ 240.17Ad–7 Record retention.

* * * * *

(e) * * *

(2) All records required pursuant to § 240.17f-2(e).

* * * * *

[FR Doc. 82-32782 Filed 11-30-82; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 274

[Docket No. RM83-5-000; Order No. 266]

Revision of FERC Form No. 121; Application for Determination of the Maximum Lawful Price Under the Natural Gas Policy Act of 1978 (Sections 102, 103, 107, and 108)

Issued: November 22, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Federal Energy Regulatory Commission regulations require an applicant for maximum lawful price determinations under certain Natural Gas Policy Act of 1978 (NGPA) sections to file FERC Form No. 121 with a jurisdictional agency. The Commission makes three minor revisions to that form to reflect previous rulemakings which have defined separate categories of gas under sections 107 and 108 of the NGPA. The revisions include changing the FERC information phone number, recognizing existing subcategories for NGPA section 107 gas and NGPA section 108 gas, and amending the General Instructions of the form. Applicants may continue to use the prior version of FERC Form No. 121 while supplies of the form last and need not resubmit applications using the new version.

EFFECTIVE DATE: January 1, 1983.

ADDRESS: Copies of the new FERC Form No. 121 may be obtained at: The Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street, N.E., Room 1000, Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Brooks Carter, Federal Energy Regulatory Commission, Office of Pipeline and Producer Rates, 825 North Capitol Street, N.E., Room 6410K, Washington, D.C. 20426; (202) 357-8811.

SUPPLEMENTARY INFORMATION:

I. Background and Summary

The Federal Energy Regulatory Commission (Commission) makes certain minor revisions to FERC Form No. 121.[1] Commission regulations require the use of the form in conjuction with an application for price determination under sections 102, 103, 107, and 108 of the Natural Gas Policy Act 1978 (NGPA).[2] The filing of the form is required for each well category determination. The applicant submits FERC Form No. 121 to the jurisdictional agency making the maximum lawful price determination and to all purchasers named in the application.

FERC Form No. 121 became effective on December 1, 1978, as part of the Commission's interim NGPA regulations. (43 FR 56448, Docket No. RM79-3). These regulations implemented section 107 (Part 271, Subpart G) applicable to high cost natural gas and section 108 (Part 271, Subpart H) applicable to stripper well natural gas. Following issuance of the Commission's interim NGPA regulations, there have been numerous rulemaking proceedings which have revised the interim regulations and defined new categories of gas under sections 107[3] and 108.[4] Accordingly, the Commission is revising Form No. 121 to reflect previous rulemakings which have defined separate categories of gas under sections 107 and 108.

The revised FERC Form No. 121 will therefore provide separate category codes for section 107 gas to identify applications for "deep (more than 15,000 feet) high-cost gas" (code 0), "gas produced from geopressurized brine" (code 1), "gas produced from coal seams" (code 2), "gas produced from Devonian shale" (code 3), "production enhancement gas" (code 5), "new tight formation gas" (code 6), and "recompletion tight formation gas" (code 7). Similarly, NGPA section 108 category codes have been added to identify applications for "stripper well" (code 0), "stripper well-seasonally affected" (code 1), "stripper well-enhanced recovery" (code 2), "stripper well-temporary pressure buildup" (code 3), and "stripper well-protest procedure" (code 4) categories.

In addition, two sentences are being deleted from the General Instructions of the form. The two deleted sentences are: "A separate application is required for each well. If any reservoir qualifies for a category which differs from the category applicable to the producing well, separate applications must be made for the producing well and the reservoir." The Commission's first sale regulations of parts 271 and 274 differ as to when separate applications are to be made. Therefore, these instructions may be misleading.

Finally, the form is revised to provide the current Commission's contact phone number. This new number is (202) 357-8585.

II. Public Procedure and Effective Date

The revisions prescribed in this rulemaking are minor and do not substantively change the Commission's regulations or reporting requirements. Accordingly, the Commission finds that the requirements for notice and public comment pursuant to 5 U.S.C 553(b) are unnecessary.

The changes in FERC Form No. 121 will be effective January 1, 1983. This is because the revised form has been accepted by the Office of Management and Budget for a two-year period commencing January 1, 1983. Applications submitted after December 31, 1982, under the Commission's regulations, should therefore include the revised Form No. 121, a copy of which is attached to the Commission's order in this proceeding. However, applicants may continue to use the prior version of Form No. 121 in applications submitted to the jurisdictional agency while

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[1] FERC Form No. 121, as revised (attached as an Appendix to the Commission's Order), will not be printed in the **Federal Register**. Copies of the Order, including the Appendix, are available at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street, N.E., Room 1000, Washington, D.C. 20426; (202) 357-8055.

[2] 18 CFR 274.201 to 274.208 (1982). Commission interim NGPA regulations effective December 1, 1978 first required that applications for NGPA price determinations under sections 102, 103, 107 and 108 include FERC Form No. 121. (Docket No. RM79-3 43 FR 56448, December 1, 1978.) These interim regulations have become final. *See* Order No. 65, Docket No. RM80-15 (issued January 4, 1980).

[3] *See* "Final Rule Defining and Deregulating Certain High-Cost Gas," Order No. 78 Docket No. RM79-44 issued April 22, 1980, 45 FR 28092 (April 28, 1980) which defined that portion of section 107 gas which is produced from geopressurized brine, coal seams, and Devonian shale. *See* Final Rule, "High Cost Natural Gas Production Enhancement Procedures," Order No. 107, Docket No. 80-50 issued November 13, 1980, 45 FR 77421 (November 24, 1980) which defined production enhancement gas. *See* Final Rule, "Regulations Covering High-Cost Natural Gas Produced From Tight Formations," Order No. 99, Docket No. RM79-76, issued August 15, 1980, 45 FR 56034, August 22, 1980, as clarified by Order No. 99-A, defined new tight formation gas and recompletion tight formation gas.

[4] *See* Final Regulations and Amendments to Interim Regulations, "Stripper Well Natural Gas," Order No. 44 Docket No. RM79-73 issued August 22, 1979, 44 FR 49656 (August 24, 1978) which defined seasonally affected and enhanced recovery stripper well gas. *See* "Interim Rule Under Section 108 of the NGPA Concerning Temporary Pressure Buildup in Qualifying Stripper Wells" Docket No. RM81-12 issued January 15, 1981, 46 FR 6901 (January 22, 1981) which defines temporary pressure buildup gas. *See* "Final Rule Under Section 108 of the NGPA Establishing Procedures for Operator Protests Regarding Stripper Well Natural Gas," Order No. 187 Docket No. RM81-25 issued November 16, 1981, 46 FR 57466 (November 24, 1981) which established procedures for operator protests regarding stripper well natural gas.

supplies of the form last. In addition, applications on file on the effective date of the revised form (January 1, 1983) need not be resubmitted to include the revised form.

List of Subjects in 18 CFR Part 274

Natural gas, Wage and price controls.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 142)

In consideration of the foregoing, the Commission amends FERC Form No. 121 effective January 1, 1983 as set forth as an appendix to this Order.[5]

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-32395 Filed 11-30-82; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 82-227]

Customs Regulations Amendment Relating to Vessels in Foreign and Domestic Trades; Alternative Evidentiary Requirements

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide alternative evidentiary requirements which may be elected by owners and operators of Lighter-Aboard-Ship ("LASH") barges and similar unmanned vessels applying for remission or refund of the duty to be paid on foreign repairs and equipment purchases. Because the unmanned vessels are often damaged when there are no witnesses, this amendment provides alternative evidentiary proofs to be submitted by owners and operators who cannot meet the present standards.

EFFECTIVE DATE: January 3, 1983.

FOR FURTHER INFORMATION CONTACT: Jerry C. Laderberg, Carriers, Drawback and Bonds Division, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5706).

SUPPLEMENTARY INFORMATION:

Background

The owner or master of an American vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, is required by section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), to declare, enter, and pay a special 50 percent ad valorem duty on the cost of all repairs (including purchases of equipment, repair parts, or materials) made to the vessel outside the United States. Section 466 also provides for remission of the duty if: (1) The repairs or purchases were necesary to correct damage caused by stress of weather or other casualty while the vesssel was in the regular course of its voyage and to secure the safety and seaworthiness of the vessel to enable it to reach its port of destination; (2) the equipment, repair parts, or materials purchased were of American origin and installed by the vessel's crew or U.S. residents; or (3) the equipment, repair parts, or materials purchased, including the labor cost involved, were used as dunnage for cargo, or for the erection of temporary bulkheads or similar devices for the control of cargo.

By T.D. 80–237, published in the **Federal Register** on September 30, 1980 (45 FR 64560), Customs amended § 4.14, Customs Regulations (19 CFR 4.14), to clarify and make more specific the procedures for the reporting and entry of foreign repairs to, equipment purchases by, U.S.-flag vessels.

In order for an owner or operator of a vessel to obtain a remission or refund of duties under 19 U.S.C. 1466(d)(1), he must meet the evidentiary requirements in § 4.14(d)(1)(iii), Customs Regulations (19 CFR 4.14(d)(1)(iii)).

Operators of LASH barges and similar unmanned vessels have complained to Customs that many of the requirements in § 4.14(d)(1)(iii), Customs Regulations, cannot be met because LASH barges and similar vessels are unmanned. For example, § 4.14(d)(1)(iii)(D) requires a certification by the master or other responsible vessel officer with personal knowledge of the facts and details of the claimed stress of weather or other casualty and the resulting damage to the vessel. This particular evidentiary standard cannot usually be bet because LASH barges and similar unmanned vessels are often damaged when there are no witnesses to the casualty.

In response to these complaints, Customs surveyed its regional field offices and all U.S.-flag operators of LASH-type vessels regarding various aspects of the problem. After considering the data submitted from Customs field offices, the suggestions and opinions of LASH vessel operators, and the opinions of industry organizations representing the bulk of the U.S. shipping industry, Customs concluded that requiring the same evidentiary proofs for these unmanned barges as for cargo vessels carrying a master and crew unfairly burdened those owners/operators of LASH barges and similar unmanned vessels who are claiming a remission or refund under 19 U.S.C. 1466(d)(1).

To correct this situation, by notice published in the **Federal Register** on January 25, 1982 (47 FR 3374), Customs proposed to amend § 4.14(d)(1)(iii) by adding a new subparagraph (G) to provide for alternative evidentiary proofs.

Analysis of Comments

Only two comments were received in response to the notice, one favorable and the other opposed to the proposal.

The commenter opposing the change complains that the evidentiary requirements are "unrealistically burdensome".

This commenter contends that present § 4.14(d)(1)(iii)(c) implies that an American Bureau of Shipping (ABS) or other classification society survey report is required as evidence of repair. According to the commenter, to require a survey report on a modest repair would be an unfair burden on the barge operator.

Customs experience in handling vessel repair cases has been that ABS or other classification society surveyors are routinely called in to inspect damages and repairs. Because these surveyors are independent of the vessel owners, their reports are given great weight by Customs. Customs has never required a vessel owner to hire a surveyor nor does § 4.14(d)(1)(iii)(c) mandate that course of action. However, if any ABS or other classification society survey report has been made, Customs wants to see a copy of the report.

The commenter also states that proposed subparagraph (iii)(G) appears to require outside documentation regarding inspection of the barges prior to loading in the United States and also at the point at which the damage is discovered overseas. If independent surveyors are required he argues, the cost will be disproportionate. Further, he points out that if it is the intention of Customs that inspection and certification be made by the master or the vessel owner, it should be so stated.

Customs has considered these points. It was decided that in order to give the owners/operators sufficient latitude in filing claims for remission, no specific methods would be set forth in the Customs Regulations. The statutory

[5] The amended FERC Form No. 121 is filed with the original.

requirement in 19 U.S.C. 1466, that is, "good and sufficient evidence of a casualty," will vary in each case and Customs is of the opinion that rigid requirements should not be provided. However, Customs believes that proper inspection records, kept in the ordinary course of business by a vessel owner or operator, will meet the evidentiary requirements.

Lastly, the commenter claims that because the barge is loaded in the first place attests to the fact that the owner believes it be seaworthy. Thus, there is no need for independent or outside evidence of the vessel's seaworthiness.

This argument is specious and if accepted would lead to the obvious procedure of not requiring any proof from an operator other than the fact that the barge was actually transported to a foreign country and repaired. Customs does not believe that the routine acceptance of self-serving statements from owners/operators of vessels would satisfy the statutory requirements for "good and sufficient evidence of a casualty".

The commenter favoring the proposal notes the problems involved in gathering evidence regarding barge repairs and unequivocably states that the previous requirements were not practical for the LASH barge operation. It is contended that the proposed change should provide an equitable solution to the problem.

After careful analysis of the comments and further review of this matter, the proposal to amend § 4.14(d)(1)(iii) by adding a new paragraph (G), is adopted.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Imports, Cargo vessels, Maritime carriers, and Vessels.

Amendments to the Regulations

PART 4—[AMENDED]

Section 4.14(d)(1)(iii), Customs Regulations (19 CFR 4.14(d)(1)(iii)), is amended by adding a new paragraph (G) to read as follows:

§4.14 Foreign equipment purchases by, and repairs to, American vessels.

* * * * *

(d) Procedure for remission or refund of duties.

* * * * *

(iii) *Supporting Evidence.* * * *

(G) In the case of LASH barges and similar unmanned vessels, the evidence required in paragraphs (d)(1)(iii) (B), (D), (E), and (F) of this section may be omitted, and in lieu thereof, the owner or operator of each vessel shall submit evidence showing that: (*1*) the vessel was inspected immediately prior to its lading aboard the vessel which transported it to a foreign port on the voyage in which the damage occured, (*2*) the vessel was then found to be in seaworthy condition, (*3*) the damage was discovered during the course of the foreign voyage, and (*4*) the repairs were necessary for the safety and seaworthiness of the vessel to enable it to reach its port of destination in the United States.

Authority

The change is made under the authority of R.S. 251, as amended, sections 484, 498, 624, 46 Stat. 722, as amended, 728, as amended, 759 (19 U.S.C. 66, 1484, 1498, 1624).

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

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

Drafting Information

The principal author of this document was Jesse V. Vitello, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs officers participated in its development.

William von Raab,

Commissioner of Customs.

Approved: November 8, 1982.

Robert E. Powis,

Acting Assistant Secretary of the Treasury.

[FR Doc. 82-32803 Filed 11-30-82; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 35

[T.D. 7858]

Withholding From Pensions, Annuities, and Certain Other Deferred Income; Temporary Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides additional temporary regulations relating to withholding from pensions, annuities, and certain other deferred income. Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248). These regulations affect payors and payees of pensions, annuities, and certain other deferred income and provide them with guidance necessary to comply with the law.

DATE: The temporary regulations provided by this document are effective for payments made after December 31, 1982.

FOR FURTHER INFORMATION CONTACT: Patricia K. Keesler of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W. Washington, D.C. 20224 (Attention: CC:LR-T), 202-566-3903, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to withholding of Federal income tax from pensions, annuities, and certain other deferred income. Sections 3405, 6047 (e), and 6704 were added to the Internal Revenue Code of 1954, and section 3402 (o) of the Code was amended, by section 334 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, 96 Stat. 623). These regulations clarify and supplement the questions and answers published on October 14, 1982 in the **Federal Register** (47 FR 45868). In addition, these regulations provide guidance to payors and plan administrators on procedures for obtaining a delay in implementation of the withholding provisions.

A notice of proposed rulemaking containing more comprehensive rules about withholding on pensions, annuities, and other deferred income will be published at a later date (EE-115-82). The temporary regulations contained in this document will remain in effect until superseded by final regulations on this subject.

Format

These temporary regulations are presented in the form of questions and answers. The questions and answers are intended to provide guidelines which may be relied upon by payors and others in order to resolve questions specifically considered. However, no inferences should be drawn regarding issues not raised which may be suggested by a particular question and answer or as to why certain questions, and not others, are included. Also, no inference should be drawn that the delay procedures for withholding from interest, dividends, and patronage

dividends will be similar to the delay procedures for withholding from pensions, annuities, and certain other deferred income described in these regulations.

Nonapplicability of Executive Order 12291

The Treasury Department has determined that this temporary regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 28, 1982.

Regulatory Flexibility Act

Because there is a need for immediate guidance with respect to the provisions contained in this document, it has been found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal authors of these regulations are Patricia K. Keesler and Mary M. Levontin of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 35

Employment taxes, Income taxes, Withholding.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 35 is amended as follows:

PART 35—[AMENDED]

Paragraph 1

Section 35.3405–1 is amended by revising items a–4 and a–19 of paragraph a and question e–10 of paragraph e to read as follows:

§ 35.3405–1 Questions and Answers relating to withholding on pensions, annuities, and certain other deferred income.

a. In general

* * * * *

a–4. Q. What is a commercial annuity for purposes of the new withholding rules?

A. A commercial annuity is an annuity obligation existing in connection with an annuity, endowment, or life insurance contract issued by an insurance company licensed to do business under the laws of any State. See, also, question f–21.

* * * * *

a–19. Q. Do these withholding provisions apply to designated distributions from a bond purchase plan described in section 405(a)?

A. Yes. Although a bond purchase plan is not a qualified plan, section 3402(a) does not apply to contributions to, or distributions from, such a plan. Therefore, designated distributions from a bond purchase plan are subject to the new withholding rules of section 3405. Similarly, the new withholding rules apply to designated distributions of an individual retirement bond described in section 409 or from an annuity plan described in section 403(a). For purposes of the withholding provisions of section 3405, a designated distribution from a bond purchase plan described in section 405(a) or an individual retirement bond described in section 409 occurs when an individual redeems a bond.

* * * * *

e. Reporting and Recordkeeping

* * * * *

I–10. Q. How should the payor or plan administrator remit payments of amounts withheld under section 3405?

A. The payor or plan administrator must deposit the amount withheld under section 3405 with a Federal Reserve Bank or an authorized financial institution in accordance with the provisions of § 31.6302(c)–1(a)(1)(i) of the Procedure and Administration Regulations, which provides the procedures for depositing employment taxes. For purposes of applying these procedures to amounts withheld under section 3405, the term "taxes" as defined in § 31.6302(c)–1(a)(1)(iii) includes the income tax withheld under section 3405 with respect to designated distributions. A payor or plan administrator who remits these amounts in accordance with those rules must report the amounts deposited on the same Form 941 or 941E, whichever is appropriate, that he uses to report the employment taxes he had deposited under § 31.6302(c)–1(a)(1)(i).

* * * * *

Par. 2

Section 35.3405–1 is amended by adding new paragraphs (f) and (g) at the end thereof as follows:

§ 35.3405–1 Questions and Answers relating to withholding on pensions, annuities, and certain other deferred income.

* * * * *

f. Other

f–1. Q. If a plan administrator or other payor distributes property other than cash to payees, is it permissible to use the value of the property as of the last preceding valuation date to determine the amount of Federal income tax that must be withheld from each distribution?

A. Yes. In many situations, the plan administrator or payor will not be able to determine the value of property to be distributed as of the date of distribution without delaying payment to the payee. In these cases, the plan administrator or payor may determine the value of the property to be distributed as of the last preceding valuation date prior to the date of distribution, as long as the valuation is made at least once each year. If the most recent valuation date occurred within the 90 days immediately preceding the date of distribution, the next most recent valuation date may be used.

f–2. Q. How is withholding accomplished if a payee receives only property other than employer securities?

A. A payor or plan administrator must satisfy the obligation to withhold on distributions of property other than employer securities even if this requires selling all or part of the property and distributing the cash remaining after Federal income tax is withheld. However, the payor or plan administrator may instead permit the payee to remit to the payor or plan administrator sufficient cash to satisfy the withholding obligation. Additionally, if a distribution of property other than cash includes property that is not includible in a designated distribution, such as the distribution of U.S. Savings Bonds or an annuity contract, such property need not be sold or redeemed to meet any withholding obligation.

f–3. Q. If a designated distribution includes cash and property other than employer securities, is it permissible to satisfy the withholding obligation with respect to the entire distribution by using the cash distributed, provided the cash distributed is sufficient to satisfy the withholding obligation?

A. Yes, as long as there is sufficient cash to satisfy the withholding obligation for the entire distribution. There is no requirement that tax be withheld from each type of property in portion to its value.

f–4. Q. If a loan from a qualified plan is treated as a distribution under section 72(p), is the amount of the loan subject to withholding under section 3405?

A. Yes. If, and to the extent that, the loan is treated as a distribution when

made, withholding is accomplished by withholding tax from the amount of the loan that is treated as a distribution. Thus, for example, if a loan of $12,000 that must be repaid within 5 years is made to a common law employee with a vested account balance of $5,000, $2,000 is treated as a distribution under section 72(p), and the payor or plan administrator must withhold tax from the $2,000.

f–5. Q. Is a loan that is treated as a distribution under section 72(p) a nonperiodic distribution other than a qualified total distribution?

A. Yes.

f–6. Q. Must a payor or plan administrator withhold tax on a nonperiodic distribution (including a qualified total distribution) if the amount of the distribution is less than $200?

A. No. However, all amounts received within one taxable year of the payee from the payor or plan administrator under the same plan or arrangement must be aggregated for purposes of determining whether the $200 floor is reached. If the payor or plan administrator does not know at the time a first payment of $200 or less is made whether there will be additional payments during the year for which aggregation is required, the payor or plan administrator need not withhold from the first payment. If distributions are made within one taxable year under more than one plan of an employer, the plan administrator or payor may, but need not, aggregate the distributions for purposes of determining whether the $200 floor is reached.

f–7. Q. If a nonperiodic distribution (including a qualified total distribution) to a payee will be less than $200, must the payor provide notice to the payee of the right to elect not to have withholding apply?

A. No.

f–8. Q. How is withholding accomplished if a qualified total distribution is paid in installments during one taxable year of the payee?

A. Withholding can be accomplished on a qualified total distribution that is paid in installments within one taxable year by either one of the following methods:

Under Option 1, the tax on the first installment is calculated under the qualified total distribution table. The tax on each subsequent installment is calculated by finding the tax under the table on the cumulative amount of the installments for the year and subtracting the amount of tax already withheld from the tax due with respect to the cumulative amount of the installments.

Under Option 2, the payor or plan administrator can withhold the tax on all installments except the final installment at a 10 percent rate. The tax on the final installment may be calculated by finding the tax under the qualified total distribution table on the cumulative amount of the installments for the year and subtracting the amount of tax already withheld from the installments. Option 2 may be used even if the amount of the tax that should be withheld from the final installment under the qualified total distribution tables exceeds the amount of the final installment. The plan administrator or payor will not be subject to penalties under section 6651 with respect to the difference between the tax that should have been withheld from the final installment under the qualified total distribution tables and the amount of the final installment.

The effect of these alternatives is illustrated by the following example:

An individual receives within one taxable year the balance to his credit under a plan described in section 401(a) or 403(a). The balance to his credit is paid in three installments of $1,000, $10,000, and $60,000. The amount of tax to be withheld from the installments may be calculated under Option 1 or Option 2.

Option 1—Withholding on each installment computed by finding tax under qualified total distribution tables on the cumulative amount of the distribution and subtracting the tax already withheld.

I.:	
1. Amount of installment 1	$1,000
2. Withholding obligation on installment 1	50
II.:	
1. Amount of installments 1 and 2	11,000
2. Withholding obligation on installments 1 and 2	550
3. Withholding paid on installment 1	50
4. Withholding obligation on installment 2 (2 minus 3)	500
III.:	
1. Amount of installments 1, 2, and 3	71,000
2. Withholding obligation on installments 1, 2, and 3	9,580
3. Withholding paid on installments 1 and 2	550
4. Withholding obligation on installment 3 (2 minus 3)	9,030
Total withholding obligation	9,580

Option 2—Withholding computed by withholding at 10 percent rate for all but the final installment. Withholding on the final installment computed by finding tax under qualified total distribution table for the cumulative amount of the distribution and subtracting the amount of tax already withheld:

I.:	
1. Amount of installment 1	$1,000
2. Withholding obligation on installment 1	100
II.:	
1. Amount of installment 2	10,000
2. Withholding obligation on installment 2	1,000
III.:	
1. Amount of installments 1, 2, and 3	71,000
2. Withholding obligation on installments 1, 2, and 3	9,580
3. Withholding paid on installments 1 and 2	1,100
4. Withholding obligation on installment 3 (2 minus 3)	8,480
Total withholding obligation	9,580

f–9. Q. A plan described in section 401 (a) invests in life insurance contracts for its participants. Each year the current cost of the life insurance element (PS 58 cost) is taxable to the participants under section 72. Is withholding required on this amount even though there is no amount actually distributed to the participant?

A. No. Because the PS 58 costs are not distributed or deemed to be distributed, they are not designated distributions for which withholding is required.

f–10. Q. The plan administrator or payor of a plan described in section 401 (a) has been properly reporting distributions on a multiple contract basis for purposes of section 72. How should the plan administrator or payor determine the amount of each payment that is includible in gross income for withholding purposes?

A. In the absence of revenue rulings or regulations to the contrary, the plan administrator or payor of a plan that properly reports distributions on a multiple contract basis should use that method to determine the taxable portion of a payment for withholding purposes.

f–11. Q. The plan administrator or payor of a plan described in section 401 (a) has been reporting distributions on a multiple contract basis for purposes of section 72 and has properly switched to the single contract method for reporting distributions. How should the plan administrator or payor determine the amount of each payment that is includible in gross income for withholding purposes?

A. If a plan has properly switched from the multiple contract basis to the single contract basis for reporting distributions, the plan administrator or payor may assume that all amounts prior to the year of switch were reported by the payees on a multiple contract basis. Therefore, for example, in the case of an individual whose annuity payments have not commenced prior to the date of the switch to a single contract basis, the payee's investment in the contract can be assumed to have been recovered on a multiple contract basis prior to the year of the switch and on a single contract basis thereafter for

purposes of determining the amount of each payment that is includible in gross income for withholding purposes. This rule applies even though payees may have amended their income tax returns for prior years to report all payments on a single contract basis.

f–12. Q. If a plan that makes payments subject to the withholding and notice requirements of section 3405 makes separate payments to the same individual as a retired participant and as a surviving spouse of a retired participant, must the two payments be aggregated for withholding purposes?

A. No, unless the payor wishes to aggregate them.

f–13. Q. An insurance company makes payments under certain variable annuity contracts. The Investment Company Act of 1940 (section 22(e)) applies to these variable annuity contracts and requires that the insurance company make a pay-out within 7 days after a payee requests a withdrawal from his contract. Under these circumstances, how may notice be provided to a payee of his right to elect out of withholding for a nonperiodic distribution?

A. In this situation, the insurance company has only seven days in which to notify a payee of his right to elect out of withholding. It is not feasible for the insurance company to secure an election in writing unless the payee supplies the written election at the time he requests a withdrawal. Therefore, the notice and election can be provided in the following manner: (1) The insurance company may mail a notice to a payee on the day the request for withdrawal is received and (2) the notice may specify that unless the payee calls the company at a toll-free telephone number supplied on the notice within seven days of the date the request was received, the company will withhold from the distribution. Notice provided in this manner is deemed to satisfy the "reasonable time" requirement of question d–9. Insurance companies that encounter this problem are encouraged to supply an election form to a payee at the time an annuity contract is purchased. If a payee supplies an election with the request for withdrawal, notice still must be given but the insurance company may honor the election received if no other communication is received after notice is provided to the payee.

f–14. Q. If an individual receives periodic payments from two or more plans of one member of a controlled group of corporations, separate periodic payments from two members of a controlled group of corporations out of one plan, or periodic payments from separate plans of two members of a controlled group, must the periodic payments be aggregated for withholding purposes?

A. No, unless the plan administrator or payor wishes to aggregate the payments. Section 414(b) does not require that plans of a controlled group of corporations be aggregated for withholding purposes. The same rule applies to a group of trades or businesses under common control or an affiliated service group described in section 414 (c) or (m).

f–15. Q. How is withholding appplied to a designated distribution from an individual retirement account (IRA) described in section 408(a) that is payable upon demand even though payments are scheduled to be made over a period certain greater than one year?

A. Distributions from IRAs that are payable upon demand are not periodic payments taxable under section 72 because they do not constitute annuity contracts within the meaning of section 408(d)(2). Therefore, designated distributions from an IRA that are payable upon demand are treated as nonperiodic distributions subject to withholding at the 10% rate even if the distributions are paid over a period certain.

f–16. Q. Under the rules of section 72, a portion of certain payments that may vary because of investment experience, cost of living indices, or similar criteria is treated as not received as an annuity. For withholding purposes, must these amounts be treated as nonperiodic distributions even though part of each payment is a periodic payment?

A. No. For withholding purposes, amounts will be considered periodic payments even though a portion of each payment is treated as an amount not received as an annuity under § 1.72–2(b)(3) of the Income Tax Regulations.

f–17. Q. Is the payor of distributions under a funded nonqualified deferred compensation plan that are payable as an annuity and taxable under section 72 required to withhold under section 3405?

A. Yes. Section 31.3401(a)–1(b)(1)(i) of the Employment Tax Regulations provides that any amounts received as an annuity and taxable under section 72 are excepted from the general definition of wages. Therefore, to the extent that section 402(b) requires that distributions from nonqualified plans which are received as an annuity are taxable under the rules of section 72, section 3405 will apply. See, however, question a–18 for the rules relating to distributions from a nonqualified deferred compensation plan that are taxable under section 83. Therefore, whether the payor or plan administrator of a nonqualified plan is required to withhold under section 3402 or section 3405 depends upon what section of the Code governs the taxation of amounts contributed or distributed.

f–18. Q. Does an annuity obligation exist in connection with an endowment or life insurance contract under which the recipient may choose to receive payments in the form of an annuity but has not yet chosen to receive payments in that form?

A. No. However, an annuity obligation exists once the recipient has irrevocably chosen to receive payments in the form of an annuity.

f–19. Q. Are amounts paid in connection with a partial or complete surrender of an annuity contract subject to the new withholding rules?

A. Yes. Amounts paid in connection with a partial or complete surrender of an annuity contract are subject to the new withholding rules to the extent that they are designated distributions.

f–20. Q. Are amounts paid in connection with a partial surrender of an annuity contract periodic payments?

A. No. Unless the amount paid in connection with the partial surrender is one of a series of payments payable over a period of greater than one year and taxable under section 72 as amounts received as an annuity, the amount paid is not a periodic payment.

f–21. Q. Are amounts paid in connection with a complete surrender of a commercial annuity a qualified total distribution?

A. A qualified total distribution must be made under a plan described in section 401(a) or 403(a). Unless the commercial annuity is surrendered under such a plan and meets the other requirements for a qualified total distribution, the total surrender will be treated as a nonperiodic payment that is not a qualified total distribution.

f–22. Q. Is it reasonable to believe that amounts distributed in connection with a commerical annuity that was acquired on or before August 13, 1982, which are not amounts treated as an annuity under section 72, will not be includible in the gross income of the recipient?

A. Generally, yes. Under the rules of section 72(e) prior to the passage of TEFRA, amounts not received as an annuity were not taxable until the investment in the contract was recovered. Thus, for distributions that are not received as an annuity under a commercial annuity contract acquired on or before August 13, 1982, it is reasonable to believe that amounts distributed are not includible in the

payee's gross income to the extent they represent unrecovered investment in the contract. The special transitional rule of question a–33, available for plan administrators, may be used until December 31, 1983, by payors of commercial annuities who lack records with regard to the payee's unrecovered investment in the contract.

f–23 Q. For annuity contracts entered into after August 13, 1982, is it reasonable to believe that amounts distributed, which are not amounts received as an annuity under section 72, are not includible in gross income?

A. Generally, no. TEFRA amended section 72(e) to provide that amounts not received as an annuity will be includible in gross income until all earnings or other amounts that are not part of the investment in the contract have been distributed. Thus, it is not reasonable to believe that amounts distributed in connection with a commercial annuity contract entered into after August 13, 1982, are excludible from gross income until all earnings or other amounts that are not part of the investment in the contract have been distributed. This new rule does not apply to distributions that are not received as an annuity from plans described in section 401(a), from contracts purchased by tax-exempt trusts, qualified annuity plans, annuities described in section 403(b), or plans described in section 805(d)(3), and from individual retirement accounts or annuities. Question f–22 provides the proper rule with respect to distributions described in the preceding sentence.

f–24. Q. Is it reasonable to believe that amounts distributed solely in connection with an exchange of annuity contracts under section 1035 of the Code will not be includible in the gross income of the recipient?

A. Yes. Designated distributions include only amounts that it is reasonable to believe are includible in the gross income of the recipient. In the case of an annuity exchange under section 1035 in which no cash or other property is exchanged, it is reasonable to believe that no portion is includible in the gross income of a recipient. Thus, such exchanges are not subject to the withholding rules of section 3405. However, see question e–8 concerning recordkeeping requirements with respect to the nontaxable exchange of annuity contracts under section 1035.

f–25. Q. Do the requirements of section 3405(d)(10), relating to the time at which notice must be provided, also apply to the time at which an election out of withholding may be made?

A. Generally, yes. For example, an individual may not at commencement of employment execute an election out of withholding to be honored by a plan administrator or payor when the individual terminates employment and receives a distribution from a deferred compensation plan. See, however, question f–13 for a special rule applicable to certain annuity contracts.

f–26. Q. If a payor provided notice prior to January 1, 1983, but failed to include all of the information required by question d–18, may the abbreviated notice of question d–27 be supplied when making the first payment?

A. Yes, as long as the abbreviated notice contains all of the information required by question d–18 that was not supplied with the earlier notice.

g. Delay Procedures

g–1. Q. When does the new law take effect?

A. In general, withholding is required on any designated distributions made after December 31, 1982.

g–2. Q. Is there a penalty for failure to withhold under section 3405 on designated distributions made after December 31, 1982?

A. Yes. In general, section 6651 governs the failure to file a return and to withhold tax under section 3405.

g–3. Q. Are there any circumstances under which the withholding and notice requirements of section 3405 may be delayed to a date later than January 1, 1983?

A. Yes. The Secretary has authority to delay, but not beyond June 30, 1983, the application of these withholding provisions to any payor or plan administrator if the payor or plan administrator can establish that he is unable to comply with these provisions without undue hardship.

g–4. Q. Under what circumstances may a payor or plan administrator who is experiencing undue hardship in complying with section 3405 delay implementation of the notice and withholding requirements?

A. For those payors and plan administrators who experience undue hardship in complying with the provisions of section 3405, the withholding and notice requirements of section 3405 may be delayed so long as undue hardship exists up to July 1, 1983.

g–5. Q. Must approval be obtained from the Internal Revenue Service to be entitled to the delay referred to in question g–4 if the delay will be no later than April 1, 1983?

A. No. If a payor or plan administrator can establish that undue hardship would result if required to comply with the provisions of this section before April 1, 1983, prior approval from the Internal Revenue Service is not required and should not be requested. For purposes of this delay up to April 1, 1983, undue hardship will be presumed to exist, in the absence of bad faith, as long as the payor or plan administrator can establish that at least one of the conditions listed in question g–6 is present. The payor or plan administrator should prepare and retain a statement of undue hardship as described in question g–9 and should maintain any documents necessary to support the representations made in that statement.

g–6. Q. What constitutes undue hardship?

A. For purposes of these delay procedures, the term "undue hardship" generally means more than an inconvenience or increased costs to the payor or plan administrator. In the case of a payor or plan administrator who complies with the notice and withholding requirements of section 3405 on or before April 1, 1983, undue hardship will be presumed to exist if one or more of the following conditions is present:

(1) The payor or plan administrator encounters significant delay or other substantial difficulty in obtaining authorization for funds to develop forms, to mail notices, to process responses, to develop new computer programs, or to obtain and train personnel to implement withholding.

(2) The payor or plan administrator incurs substantial increases in unbudgeted costs to develop forms, to mail notices, to process responses, to develop new computer programs, or to obtain and train personnel.

(3) There is difficulty in obtaining trained personnel, including professional or semi-professional individuals, whose skills are necessary to implement withholding.

(4) Training new or present employees or hiring new employees to implement withholding would cause substantially increased costs or would disrupt the payor's or plan administrator's operations, and such disruption or increased costs would not occur if withholding were implemented at a later date.

(5) Plan benefits change due to a collective bargaining agreement concluded between October 1, 1982, and April 1, 1983.

(6) A payor who provided notice prior to January 1, 1983, receives a substantial number of inquiries from payees. These inquiries indicate the payees' lack of understanding of the new withholding provisions and the payor cannot answer all questions and receive responses by January 1, 1983.

(7) The payor or plan administrator is unable to implement withholding on account of the occurrence of an event, such as fire, flood, earthquake, explosion, or strike, beyond the control of the payor or plan administrator.

(8) The payor or plan administrator is scheduled to install a new data processing hardware package or system between December 1, 1982, and July 1, 1983, that will be used for the process of pension withholding.

An examble of a circumstance not considered as resulting in undue hardship would be changes in the withholding tables effective July 1, 1983.

The following examples illustrate situations in which an undue hardship that will permit delay in implementation of the notice and withholding provisions exists:

Example (1). A is the payor and plan administrator of a deferred compensation plan that is the subject of a collective bargaining agreement. The collectively bargained plan has fewer than 100 participants receiving annuity payments. All of A's available budget is scheduled to be used to pay plan benefits and administrative costs, and no funds are available to implement the new withholding requirements. A must obtain authorization to expend funds to implement withholding. Meetings at which A can obtain such authorization are held August 1 and February 1 of each year. After obtaining authorization on February 1, 1983, A will need to develop and mail withholding notices and elections, process responses and determine the amount to be withheld from each payee's annuity payment. A can implement withholding on April 1, 1983, without substantially disrupting its operations, but earlier implementation would disrupt its normal operations. Under these facts, A experiences undue hardship until at least April 1, 1983, as a result of the circumstances described in items (1) and (4) of question g–6.

Example (2). B, a bank, is a payor of pensions and annuities under plans described in section 401(a). The plan administrators of all these plans have transferred liability to B for withholding under section 3405. After T.D. 7839, relating to withholding from pensions, annuities and other deferred income, was published in the Federal Register on October 14, 1982, B determines that the withholding provisions can be implemented before April 1, 1983, on a reasonaable schedule, without substantial increases in costs or disruption of daily bank operations, according to the following schedule:

(a) B's counsel analyzes regulations and reports requirements to operations personnel; operations personnel develop new Forms, which are reviewed and revised by management and legal personnel; new forms are printed; personnel begin reprogramming computers, 8 weeks (Dec 9, 1982).

(b) Forms distributed to branch offices, 1 week (Dec 16, 1982).

(c) Forms mailed to payees, 1 week (Dec 23, 1982).

(d) Time allowed for response to mailing of notices, answering questions, mailing follow-up notices to payees, 6 weeks (Feb 3, 1983).

(e) Withholding calculated and entered into payment system, 6 weeks (Mar 17, 1983).

Total: 22 weeks.

Implementation is scheduled to begin March 17, 1983. Implementation prior to March 17, 1983, would substantially increase costs and would disrupt B's operations.

Under these facts, B experiences undue hardship under item (4) of question g–6, up to March 17, 1983, the scheduled date of implementation.

g–7. Q. If a payor or plan administrator qualifies for the delay described in question g–5, is there a procedure for requesting an additional delay up to July 1, 1983?

A. Yes. However, any request made for this additional delay will be considered on a case-by-case basis. It is anticipated these requests will be carefully scrutinized and generally will be granted only in circumstances where the payor or plan administrator can reasonably expect that more than one of the conditions described in question g–6 will exist on or after April 1, 1983, and up to July 1, 1983.

g–8. Q. How may a payor or plan administrator request this additional delay of up to 3 months for undue hardship?

A. The payor or plan administrator may request an additional delay of up to 3 months by filing in duplicate a written statement of undue hardship signed under penalties of perjury with the director of the service center where the payor or plan administrator files Form 941 or Form 941E. This written request must state on the envelope and at the top of the letter "PENSION WITHHOLDING: Undue Hardship" and must include all the information required in a statement of undue hardship as described in question g–9.

g–9. Q. What information must the statement of undue hardship include?

A. The statement of undue hardship must include the following information:

(1) The name, address, and taxpayer indentification number of the payor or plan administrator.

(2) A complete statement of the facts upon which the payor is relying to show why a delay beyond April 1, 1983, is warranted. This statement must include as many of the conditions of undue hardship listed in question g–6 as pertain to the payor or plan administrator.

(3) A schedule or plan of implementation showing dates on which the payor will implement the provisions of this section, with no date later than July 1, 1983. This schedule should provide a complete timetable that includes such items as development of forms, mailing of notices, time for responses, programming computers, and calculation of withholding.

(4) An explanation of the steps taken which demonstrate the payor's or plan administrator's good faith attempt to comply with these notice and withholding requirements.

g–10. Q. When must the plan administrator or payor file this request for delay and statement of undue hardship?

A. Payors or plan administrators must file the statement of undue hardship on or before March 1, 1983. However, no request for delay may be filed with the Internal Revenue Service before January 1, 1983.

g–11. Q. Who must request the delay?

A. The delay should be requested by the payor or plan administrator who is actually liable for withholding. Therefore, generally the payor should request the delay. However, in the case of a distribution from a plan described in section 401(a), section 403(a), or section 301(d) of the Tax Reduction Act of 1975, the plan administrator is liable for withholding and should request the delay unless the plan administrator has transferred liability for withholding to the payor under section 3405(c).

g–12. Q. If a plan administrator has not yet transferred liability for withholding under section 3405(c) or has inadequately transferred liability, and the payor requests a delay, will the request for delay be treated as if the plan administrator had requested it?

A. Yes.

g–13. Q. If a plan administrator and a payor both file requests for delay and statements of undue hardship with respect to the same plan, will there be two separate three-month extensions?

A. No. A request for delay will delay the effective date only up to three months and in no case will it extend it past July 1, 1983.

g–14. Q. What are the consequences for failure to file the request for delay and statement of undue hardship in a timely manner?

A. If the request for delay and statement of undue hardship are not filed in a timely manner, the payor or plan administrator will not be entitled to any delay beyond the delay to which he may be entitled under question g–5. This rule will not apply in the case of an event such as strike, fire, flood, earthquake, or explosion that occurs after March 1, 1983, if compliance with the withholding provisions would have been possible absent the occurrence of the event.

g–15. Q. Will a payor or plan administrator receive a response from

the Internal Revenue Service as to whether a delay after April 1, 1983, has been granted?

A. Yes. Since these requests for delay will be reviewed on a case-by-case basis, the payor or plan administrator will receive a response by April 1, 1983, as to whether or not a requested delay has been granted. If the request for delay is denied by the director of the service center, the payor or plan administrator is required to begin withholding by the later of April 1, 1983, or 10 days from the date on the response. No penalties will be imposed under section 6651 for failure to withhold between April 1, 1983, and the day 10 days from the date on the response.

g–16. Q. If the director of the service center grants a delay up to July 1, 1983, must the payor or plan administrator retain a copy of the response from the Internal Revenue Service?

A. Yes. In addition, the payor or plan administrator must attach a copy of the response to the first Form 941 or 941E filed after the response is received.

g–17. Q. If a plan administrator or payor begins withholding before April 1, 1983, or July 1, 1983, can the payee request a refund from the plan administrator or payor of the amounts withheld?

A. No. Because plan administrators and payors are required to comply with the withholding and notice requirements as soon as they no longer experience undue hardship, they cannot refund any amounts withheld to a payee, except as provided in the regulations under section 6413 (in the case of a mistake by the payor or plan administrator).

g–18. Q. If a payor or plan administrator properly files the statement of undue hardship and receives a delay as provided in question g–7, will withholding from payments made after the delay period be required to make up for amounts that would have been withheld if there had been no delay granted?

A. No. No catch-up withholding is required for plan administrators or payors who are entitled to a delay up to April 1, 1983, as provided in question g–5 or granted a delay up to July 1, 1983, as provided in question g–7. However, if a payor or plan administrator who is entitled to a delay up to April 1, 1983, as provided in question g–5, is not granted a delay up to July 1, 1983, but is unable to implement withholding until July 1, 1983, despite a good faith effort to comply, no penalties will be imposed under section 6651 if the payor or plan administrator withholds between July 1, 1983, and December 31, 1983, both the amounts required to be withheld during that period and the amounts that should have been withheld between April 1, 1983, and June 30, 1983.

g–19. Q. If a payor or plan administrator does not receive and is not otherwise entitled to a delay under these regulations, will withholding from future payments be required to make up for amounts that would have been withheld if there had been no delay?

A. Yes, to the extent possible. An example of a situation in which a payor or plan administrator would not be able to withhold enough from subsequent payments to satisfy pre-July 1, 1983, withholding obligations is one where the recipient of a single life annuity died on July 1, 1983, before the payor or plan administrator began to withhold income tax from the annuity. In addition, a payor or plan administrator would not be able to satisfy the pre-July 1, 1983, withholding requirements if the payee elects out of withholding before all of the make-up withholding has been accomplished.

g–20. Q. What are the consequences if the payor or plan administrator cannot establish undue hardship and does not comply on January 1, 1983?

A. In general, if the payor or plan administrator cannot establish undue hardship and fails to withhold beginning January 1, 1983, the payor or plan administrator will be liable for the tax that should have been withheld and, in addition, the penalties provided in section 6651 will apply. However, the payor or plan administrator will not be liable for penalties for failure to file a return and for failure to pay the tax if a good faith effort is made to comply, and if, to the extent possible, withholding from post-implementation payments is sufficient to satisfy the pre-implementation withholding obligation. Whether the payor or plan administrator has made a good faith effort to comply depends on the facts and circumstances of each case. The facts and circumstances that will be considered in clude, but are not limited to, those conditions listed in question g–6.

g–21. Q. If a payor or plan administrator is required to make up amounts that should have been withheld, must he withhold from the first subsequent payment the entire amount that should have been previously withheld?

A. No. A payor or plan administrator may withhold a proportional amount out of each subsequent payment made before January 1, 1984.

g–22. Q. Will the notice requirements of section 3405 apply before July 1, 1983, with respect to recipients of periodic payments that total less than $5400 per year?

A. No.

g–23. Q. Will the notice and withholding requirements of section 3405 apply before July 1, 1983, with respect to payments to nonresident alien individuals?

A. No.

g–24. Q. Does a payor or plan administrator who requested a delay prior to the publication of these procedures in the **Federal Register** *need to resubmit the request in light of these procedures?*

A. Yes. In order to be entitled to a delay, payors and plan adminstrators must follow the procedures required by these temporary regulations.

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

This Treasury decision is issued under the authority contained in sections 6047(e), and 7805 of the Internal Revenue Code of 1954 (96 Stat. 625 and 68A Stat. 917; 26 U.S.C. 6047(e) and 26 U.S.C. 7805) and section 334(e) (5) and (6) of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat 623).

Approved: November 24, 1982.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 82-32771 Filed 11-26-82; 2:04 pm]

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PANAMA CANAL COMMISSION

35 CFR Ch. I

Revised Shipping and Navigation Rules for the Panama Canal; Correction

AGENCY: Panama Canal Commission.

ACTION: Final Rule; correction.

SUMMARY: This document corrects the final rule document which contained the regulations of the Commission relating to shipping and navigation in the Panama Canal that appeared at page 63174, in the **Federal Register** of Wednesday, December 30, 1981. (46 FR 63174). The action is necessary to correct typographical errors.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, (202) 724–0104 or Mr. Dwight A. McKabney,

General Counsel, Panama Canal Commission, telephone in Balboa Heights, Republic of Panama 52–7511.

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 81–37100, appearing on page 63174, in the issue of December 30, 1981:

§ 103.3 [Corrected]

1. On page 63176, column three, § 103.3 in the Table of Contents for Part 103, "underway" is corrected to read "under way".

§ 103.34 [Corrected]

2. On page 63176, column three, § 103.34 in the Table of Contents for Part 103, "division" is corrected to read "Division".

§ 103.3 [Corrected]

3. On page 63176, column three, in the heading of § 103.3 "underway" is corrected to read "under way".

4. On page 63176, column three, in the first sentence of § 103.3 the word "underway" is corrected to read "under way".

§ 103.6 [Corrected]

5. On page 63179, column two, § 103.6(i)(2), line three, "TWF" is corrected to read "TFW".

§ 105.1 [Corrected]

6. On page 63182, column one, § 105.1(c), second sentence, line seven, the word "underway" is corrected to read "under way".

§ 107.2 [Corrected]

7. On page 63182, column three, § 107.2(a), the word "underway" is corrected to read "under way".

8. On page 63182, column three, § 107.2(c), is amended to read "The manning levels of Commission vessels shall be determined by the Marine Director or his designee.".

§ 109.6 [Corrected]

9. On page 63183, column one, § 109.6(a), the word "visability" is corrected to read "visibility".

10. On page 63183, column one, § 109.6 (b), (d) and (e), where the word "milimeters" appears, it is corrected to read "millimeters".

11. On page 63183, column three, § 109.6(m) is corrected to read as follows:

"Vessels over 173.74 meters (570 feet) long or 22.86 meters (75 feet) in beam or over shall have a double chock at the stem and stern; a double chock, port and starboard, 12 to 16 meters (40 to 50 feet) abaft the stem; a single chock, port and starboard, 24 to 28 meters (80 to 90 feet) abaft the stem; a double chock, port and starboard, 12 to 16 meters (40 to 50 feet) forward of the stern and a single chock, port and starboard, 24 to 28 meters (80 to 90 feet) forward of the stern."

§ 111.161 [Corrected]

12. On page 63184, column three, § 111.161(d), line three, the word "underway" is corrected to read "under way".

§ 111.163 [Corrected]

13. On page 63184, column three, § 111.163(a), the word "underway" is corrected to read "under way".

§ 111.203 [Corrected]

14. On page 63185, column one, § 111.203 (a) and (b), the word "underway" in the second and fourteenth lines of paragraph (a) and in the tenth and fourteenth lines of paragraph (b) is corrected to read "under way".

§ 111.206 [Corrected]

15. On page 63185, column two, § 111.206, the word "underway" is corrected to read "under way".

§ 113.1 [Corrected]

16. On page 63185, column three, § 113.1(c), the number "100" is corrected to read "110".

§ 113.21 [Corrected]

17. On page 63186, column three, § 113.21, the word "underway" is corrected to read "under way".

§ 113.42 [Corrected]

18. On page 63187, column two, § 113.42(b), "Phosphous Trichloride" is corrected to read "phosphorous Trichloride".

19. On page 63187, column three, § 113.42(b), "14. Methyl Cyclopentadien (YL). 15. Meganese Tricarbonyl" is corrected to read "14. Methylcyclopentadienyl Manganese Tricarbonyl."

§ 119.6 [Corrected]

20. On page 63189, column three, § 119.6, "bonafide" is corrected to read "bona fide".

§ 119.14 [Corrected]

21. On page 63190, column two, § 119.14(c), the phrase "in his discretion" is corrected to read "at his discretion".

§ 123.3 [Corrected]

22. On page 63193, column two, § 123.3(d), "underway" is corrected to read "under way".

§ 123.7 [Corrected]

23. On page 63194, column one, § 123.7, "underway" is corrected to read "under way".

Dated: November 12, 1982.

D. P. McAuliffe,

Administrator.

[FR Doc. 82–32718 Filed 11–30–82; 8:45 am]

BILLING CODE 3640–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL 2145–1]

Approval and Promulgation of Implementation Plans; Temporary Sulfur-in-Fuel Revision for the Polaroid Corp., Waltham, Mass.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving a revision to the Massachusetts State Implementation Plan (SIP) submitted by the Commissioner of the Massachusetts Department of Environmental Quality Engineering (DEQE), Mr. Anthony D. Cortese, Sc.D. The revision will allow the Polaroid Corp., Waltham, Mass., to increase the sulfur content of its residual fuel oil. The burning of less expensive, higher sulfur content fuel oil will provide this source with some of the capital needed to implement permanent energy conservation measures.

EFFECTIVE DATE: December 1, 1982.

ADDRESSES: Copies of the Massachusetts submittal which is incorporated by reference are available for public inspection during regular business hours at the Environmental Protection Agency, Region I, Room 2111, JFK Building, Boston, Mass. 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20406; Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408 and the Department of Environmental Quality Engineering, One Winter Street, Boston, Mass. 02108.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Greene, State Air Programs Branch, EPA Region I, Room 2111, JFK Building, Boston, Mass. 02203, (617) 223–5130.

SUPPLEMENTARY INFORMATION: On September 28, 1982, the Massachusetts DEQE submitted a SIP revision for Polaroid Corporation's Waltham, Mass., fossil fuel utilization facility. The revision allows the burning of 2.2% sulfur fuel in the three boilers (maximum thermal input rated at 258,000,000 Btu per hour) for 30 months or less. During this time period, Polaroid has committed

to the installation of permanent energy conservation measures, an economizer on two boilers and the reduction of fan speed on the third. This will reduce the boilers maximum thermal input to 252,000,000 Btu/hour and fuel use will be reduced by 77,000 gallons per year. The facility will use the savings realized during the temporary (30 months or less) utilization of less expensive 2.2% sulfur fuel oil to defray the costs of implementing the permanent energy conservation measures.

This temporary sulfur-in-fuel revision is being approved pursuant to the provisions of Regulation 310 CMR 7.19, "Interim Sulfur-in-Fuel Limitation for Fossil Fuel Utilization Facilities Pending Conversion to an Alternate Fuel or Implementation of Permanent Energy Conservation Measures." EPA approved the addition of this regulation to the Massachusetts SIP. In order to qualify for a temporary sulfur-in-fuel relaxation, DEQE must determine, using EPA approved screening procedures, that the increases in sulfur emissions will not violate air quality standards. Sources rated at less than 250 million Btu per hour heat input which are currently burning residual fuel oil and have made a commitment to either (a) convert to an alternate fuel or (b) implement conservation measures are eligible for a temporary sulfur-in-fuel revision, not to exceed 30 months under this regulation. Applications under Regulation 7.19 are reviewed by the DEQE for compliance with air quality standards. A state public comment period is held on each application.

Further details on the requirements of Regulation 7.19 and EPA's reasons for approving it were discussed in the Notice of Proposed Rulemaking (NPR) published on December 16, 1980 (45 FR 82675). In the NPR, EPA also proposed approval of all individual sources which are later determined to meet the eligibility requirements of this new regulation. EPA has determined that the DEQE has approved Polaroid Corporation's request to burn higher sulfur fuel oil in accordance with the provisions of Regulation 310 CMR 7.19, and agrees that no air quality standards will be violated by the temporary burning of 2.2% sulfur fuel oil at this facility. EPA finds good cause for making this action effective immediately because the implementation plan is already in effect under State law and imposes no additional regulatory burden.

As noted above, EPA published a Notice of Proposed Rulemaking on December 16, 1980, approving both Regulation 7.19 and all individual sources later determined to be eligible for a temporary sulfur-in-fuel relaxation pursuant to the new regulation. In addition, the DEQE published a notice and held a comment period to receive comments on its proposed approval of the temporary sulfur-in-fuel relaxation at the Polaroid Corporation. Since the public has had these other opportunities to comment and since the Polaroid Corporation is a small source (each piece of equipment is less than 250 million Btu per hour heat input), EPA is taking final action today to approve this SIP revision without first publishing a new proposed rulemaking. EPA believes that publishing a new NPR is unnecessary.

EPA received no comments on its proposal to approve individual sources for sulfur-in-fuel relaxations using this revision, published on December 16, 1980 (45 FR 82675). In addition, the DEQE received no public comments during the state comment period pertaining to this action.

Action

EPA is approving Polaroid's sulfur-in-fuel relaxation revision.

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court for the appropriate circuit by January 31, 1983. 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, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: November 24, 1982.

Anne M. Gorsuch,

Administrator.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52, Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart W—Massachusetts

Section 52.1120, paragraph (c)(52) is added as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(52) A revision submitted on December 29, 1981 by the Commissioner of the Massachusetts Department of Environmental Quality Engineering allowing the burning of higher sulfur content fuel oil at the Polaroid Corporation for a period of up to 30 months commencing on December 1, 1982.

[FR Doc. 82-32745 Filed 11-30-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[AD-FRL-2228-7]

Standards of Performance for New Stationary Sources; Methods 6A and 6B for the Determination of SO_2, Moisture, and CO_2 Emissions From Fossil Fuel Combustion Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Two reference methods (Methods 6A and 6B) were proposed in the **Federal Register** on January 26, 1981 (46 FR 8352). This action promulgates the test methods for the determination of SO_2, moisture, and CO_2 emissions from fossil fuel combustion sources as acceptable procedures for compliance in §§ 60.46 and 60.47a of 40 CFR Part 60, Subparts D and Da, respectively. Revisions to §§ 60.46 and 60.47a are being made to make this section consistent with use of the new test methods.

EFFECTIVE DATE: December 1, 1982.

Under Section 307(b)(1) of the Clean Air Act, judicial review of these new test methods is available *only* by filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Summary of Comments and Responses.* The summary of comments and responses for the proposed methods may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Summary of Comments and Responses—Addition of Methods 6A and 6B to Apppendix A of 40 CFR Part

60, EPA–450/3–82–015." The document contains (1) a summary of the changes made to the test methods since proposal and (2) a summary of all the public comments made on the proposed specifications and the Administrator's responses to the comments.

Docket. A docket, number A–80–30, containing information considered by EPA in the development of the methods is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (A–130), West Tower Lobby, Gallery 1, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Roger T. Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION:

Public Participation

Methods 6A and 6B were proposed and published in the **Federal Register** on Januray 26, 1981 (46 FR 8352). Public comments were solicited at the time of proposal. To provide interested persons the opportunity for oral presentation of data, views or arguments concerning the test methods, a public hearing was scheduled for February 19, 1981, beginning at 9:00 a.m. The hearing was not held because no one requested to speak. The public comment period was from January 26, 1981 to March 27, 1981.

Eleven comment letters were received concerning issues relative to the proposed test methods. The comments have been carefully considered; and, where determined to be appropriate by the Administrator, changes have been made in the proposed methods.

Significant Comments and Changes to The Proposed Test Methods

Comments on the proposed test methods were received for industry, Federal agencies, State air pollution control agencies, trade associations, and equipment manufacturers. A detailed discussion of these comments and responses can be found in the separate document mentioned in the ADDRESSES section of this preamble. The summary of comments and responses serves as a basis for the revisions which have been made to the test methods between proposal and promulgation. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments and responses have been divided into the following areas.

Accuracy

One commenter had several questions about the accuracy achievable with Methods 6A and 6B. Specifically, the commenter noted experience with test data that were in error due to invalid diluent data. The commenter stated further that the F-factor calculation would also be invalid due to the inaccurate diluent data. Another commenter questioned the proposed use of a method that could not be qualified or certified as could a continuous emission monitoring system (CEMS). A lack of data supporting an evaluation of the precision and accuracy of Methods 6A and 6B was noted by two other commenters.

The EPA has conducted several field studies using Methods 6A and 6B, and the reports are listed in the bibliography of the methods. The reports are available upon request. The results show the methods to be accurate and comparable to the results of Methods 6 and 3 in determining SO_2 emission rates. The difficulties encountered in accurately measuring diluent data as mentioned by the one commenter can usually be traced to the testers and the testers' failure to follow adequately the quality assurance procedures in the method. Additionally, these comments seemed to be directed at Method 3, rather than Methods 6A or 6B. The CO_2 measurement procedures used in Methods 6A and 6B are based on the American Society for Testing and Materials (ASTM) standard method D 3178 commonly used by the utility industry and others. In response to the comment concerning certification of Method 6B as a CEMS, the Agency feels that the method can be certified as a CEMS, if desired; and, with adequate quality assurance and quality control measures, can be used in place of an instrumental CEMS during periods of CEMS breakdown, as required by the applicable regulation.

Applicability

One commenter noted that the use of Method 6A without the dry gas meter should be specified only for fossil fuel combustion sources. Two commenters asked about the intention of the Agency in use of Method 6B in place of CEMS and recommended that its applicability be extended to include Method 6B as an acceptable alternative to CEMS. Another commenter said that Method 6B could not be applied to stacks or ducts with significant, negative static pressure due to the possibility of reverse flow through the sample train.

Methods 6A and 6B state clearly that they are applicable only for fossil fuel combustion sources in either configuration, that is, with or without the dry gas meter. The Agency considers Method 6B an appropriate method for providing long-term emission data during periods of CEMS breakdown. The Agency is also considering use of Method 6B as an alternative to CEMS for fossil fuel combustion sources, but that determination is not final. The application to specific types of stacks or ducts must be determined on a case-by-case basis. Use of probe valves in connection with the sample timer or a switch to continuous sampling could resolve the problem of negative stack pressure.

Technical Changes to Methods

Several commenters recommended the use of heated probes, an isopropanol impinger, additional ascarite absorbers, larger volume sampling vessels, and higher peroxide concentrations.

The Agency agrees that some of these changes are valid and useful. A heated probe requirement has been added to both methods, as well as modification to the ascarite absorber design. An isopropanol impinger has been included in Method 6A, but, due to possible interferences with the CO_2 measurement, the isopropanol impinger is not included in Method 6B. The methods also include the use of hydrogen peroxide concentrations up to 10 percent over the 3 percent included in the proposal. The methods do not recommend the use of larger volume sampling equipment, such as is used with Method 8. The Agency feels that the cost of the expendable materials should be considered in determining the sample volume and, in addition, feels that the accuracy of the method is not impaired by the use of lower volume flow rate equipment. The use of such equipment or some of the other alternatives is not prohibited by the methods. The tester may use any of several alternatives in equipment, operating parameters, or techniques and remain within the restrictions of the methods providing accurate and precise results.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and

locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated test methods and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review [Section 307(d)(7)(A)].

Miscellaneous

This rulemaking does not impose any additional emission measurement requirements on facilities affected by this rulemaking. Rather, this rulemaking provides alternative test methods which may be used by the affected facilities. If future standards impose emission measurement requirements, the impacts of the alternative test methods promulgated today will be evaluated during development of these standards.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities.

This rule was submitted to the Office of Management and Budget under E.O. 12291.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

This final rulemaking is issued under the authority of Sections 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)).

Dated: November 22, 1982.

Anne M. Gorsuch,

Administrator.

PART 60—[AMENDED]

Sections 60.46, 60.47a, and Appendix A of 40 CFR Part 60 are amended as follows:

1. By revising § 60.46(a)(4) as follows:

§ 60.46 Test methods and procedures.

(a) * * *

(4) Method 6 for concentration of SO_2. Method 6A may be used whenever methods 6 and 3 data are used to determine the SO_2 emission rate in ng/J, and

* * * * *

2. By revising § 60.47a(h)(1) as follows:

§ 60.47a Emission monitoring.

* * * * *

(h) * * *

(1) Reference Methods 3, 6, and 7, as applicable, are used. Method 6B may be used whenever Methods 6 and 3 data are required to determine the SO_2 emission rate in ng/J. The sampling location(s) are the same as those specified for the continuous emission monitoring system.

* * * * *

3. By adding Methods 6A and 6B to Appendix A of 40 CFR Part 60 to read as follows:

Appendix A—Reference Test Methods

* * * * *

Method 6A—Determination of Sulfur Dioxide, Moisture, and Carbon Dioxide Emissions From Fossil Fuel Combustion Sources

1. Applicability and Principle

1.1 Applicability. This method applies to the determination of sulfur dioxide (SO_2) emissions from fossil fuel combustion sources in terms of concentration (mg/m^3) and in terms of emission rate (ng/J) and to the determination of carbon dioxide (CO_2) concentration (percent). Moisture, if desired, may also be determined by this method.

The minimum detectable limit, the upper limit, and the interferences of the method for the measurement of SO_2 are the same as for Method 6. For a 20-liter sample, the method has a precision of 0.5 percent CO_2 for concentrations between 2.5 and 25 percent CO_2 and 1.0 percent moisture for moisture concentrations greater than 5 percent.

1.2 Principle. The principle of sample collection is the same as for Method 6 except that moisture and CO_2 are collected in addition to SO_2 in the same sampling train. Moisture and CO_2 fractions are determined gravimetrically.

2. Apparatus

2.1 Sampling. The sampling train is shown in Figure 6A–1; the equipment required is the same as for Method 6, Section 2.1, except as specified below:

2.1.1 SO_2 Absorbers. Two 30-ml midget impingers with a 1-mm restricted tip and two 30-ml midget bubblers with an unrestricted tip. Other types of impingers and bubblers, such as Mae West bubblers, may be used with proper attention to reagent volumes and levels.

2.1.2 CO_2 Absorber. A sealable glass or plastic cylinder or bottle with an inside diameter between 30 and 90 mm and a length between 125 and 250 mm and with appropriate connections at both ends. Note: For applications downstream of wet scrubbers, a heated out-of-stack filter (either borosilicate glass wool or glass fiber mat) is necessary. The probe and filter should be heated to at least 20° C above the source temperature, but not greater than 120° C.

2.2 Sample Recovery and Analysis. The equipment needed for sample recovery and analysis is the same as required for Method 6. In addition, a balance to measure within 0.05 g is needed for analysis.

3. Reagents

Unless otherwise indicated, all reagents must conform to the specifications established by the committee on analytical reagents of the American Chemical Society. Where such specifications are not available, use the best available grade.

3.1 Sampling. The reagents required for sampling are the same as specified in Method 6. In addition, the following reagents are required:

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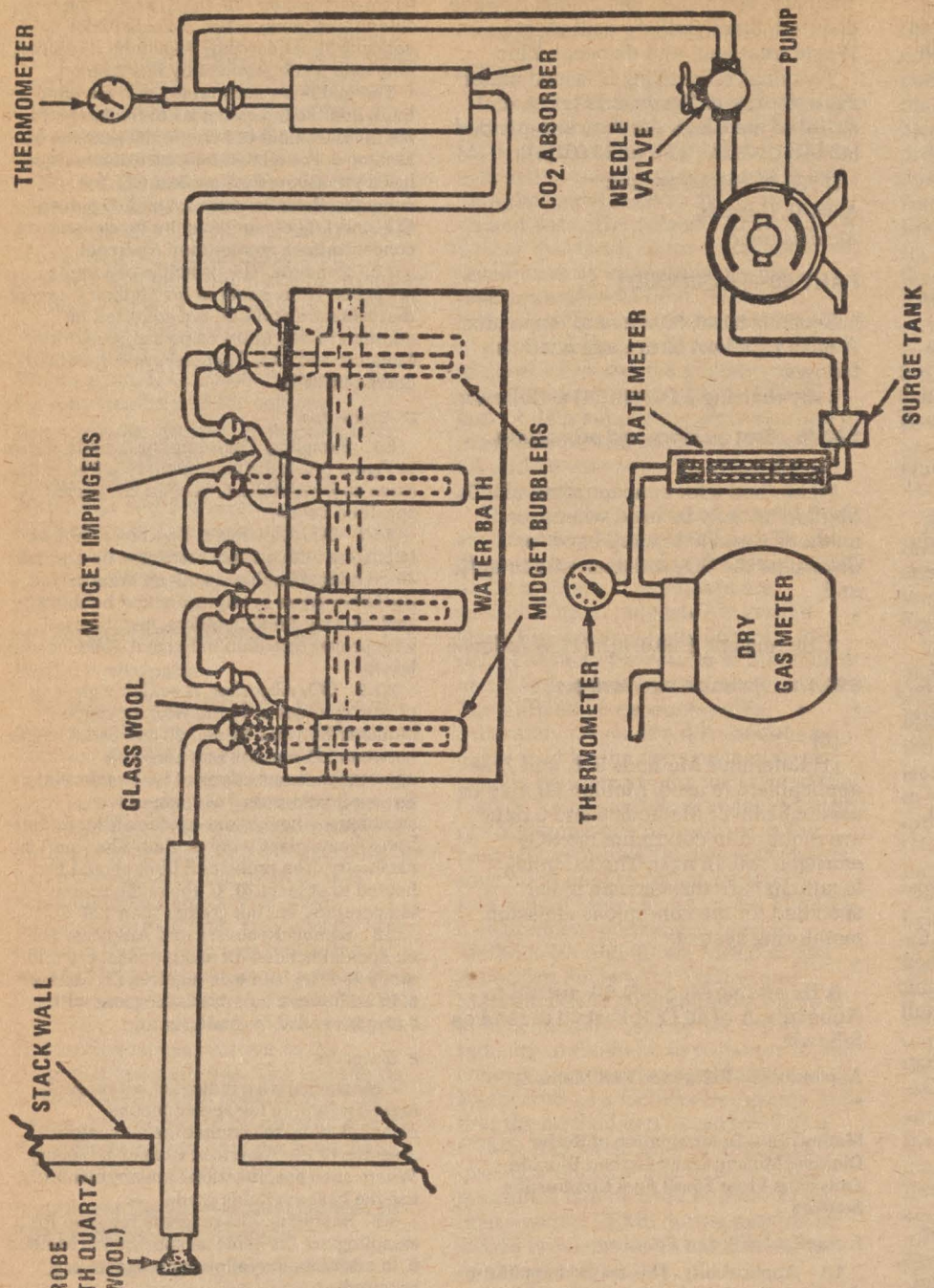


Figure 6A-1. Sampling train.

BILLING CODE 6560-50-C

3.1.1 Drierite. Anhydrous calcium sulfate ($CaSO_4$) desiccant, 8 mesh. (Do not use silica gel or similar desiccant in this application.)

3.1.2 Ascarite or Ascarite II. Sodium hydroxide coated asbestos or silica for absorption of CO_2, 8 to 20 mesh.

3.2 Sample Recovery and Analysis. The reagents needed for sample recovery and analysis are the same as for Method 6, Sections 3.2 and 3.3, respectively.

4. Procedure

4.1 Sampling.

4.1.1 Preparation of Collection Train. Measure 15 ml of 80 percent isopropanol into the first midget bubbler and 15 ml of 3 percent hydrogen peroxide into each of the first two midget impingers as described in Method 6. Insert the glass wool into the top of the isopropanol bubbler as shown in Figure 6A–1. Into the second midget bubbler, the fourth vessel in the train, place about 25 g of drierite. Clean the outsides of the bubblers and impingers and weigh (at room temperature, ≃20° C) to the nearest 0.1g. Weigh the four vessels simultaneously and record this initial mass.

With one end of the CO_2 absorber sealed, place glass wool in the end filling the cylinder about 1 cm deep. Place about 150 g of ascarite in the cylinder on top of the glass wool and fill the remaining space in the cylinder with glass wool. Assemble the cylinder as shown in Figure 6A–2. With the cylinder in a horizontal position, rotate it around the horizontal axis. The ascarite should remain in position during the rotation and no open spaces or channels should be formed. If necessary, pack more glass wool into the cylinder to make the ascarite more stable. With the outside of the cylinder cleaned, weigh (at room temperature, ≃ 20° C) to the nearest 0.1 g. Record this initial mass.

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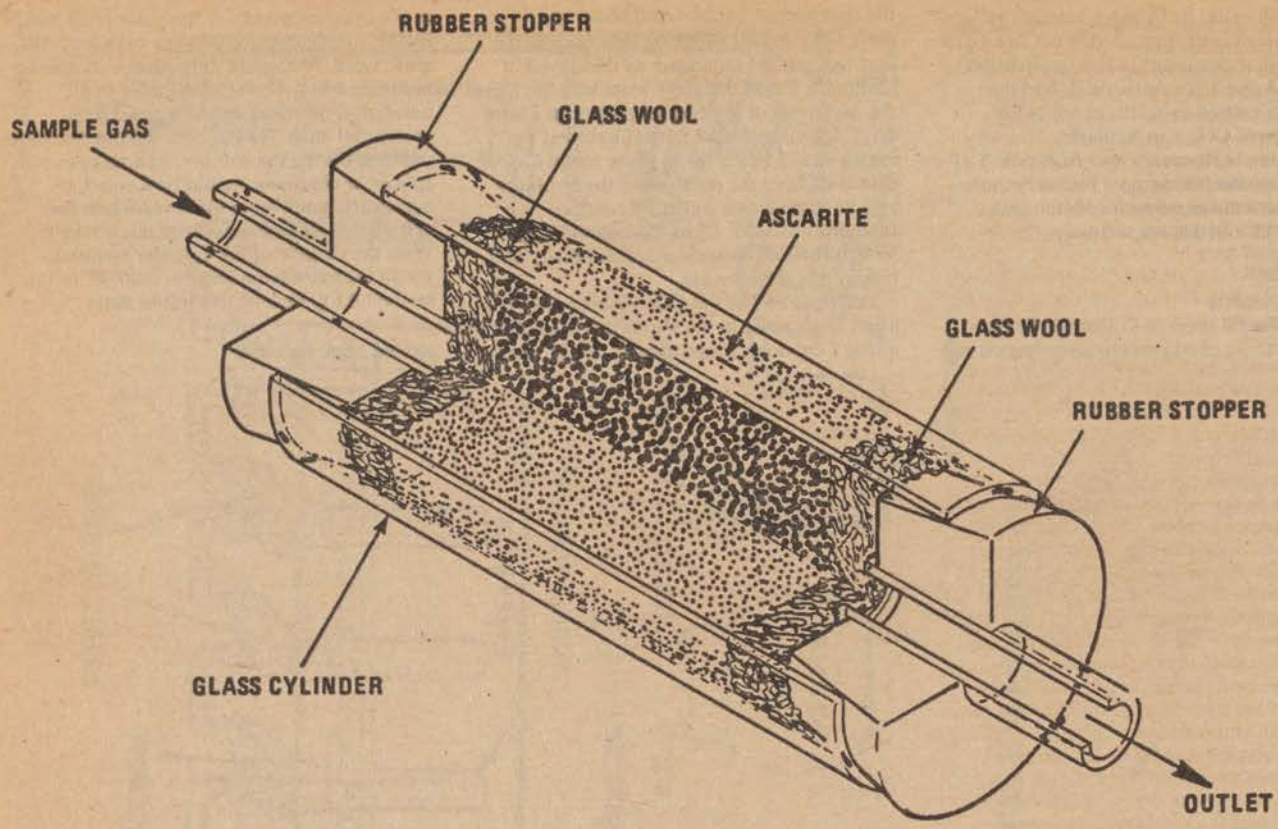


Figure 6A-2. CO_2 absorber.

BILLING CODE 6560-50-C

Assemble the train as shown in Figure 6A–1. Adjust the probe heater to a temperature sufficient to prevent water condensation. Place crushed ice and water around the impingers and bubblers. Mount the CO_2 absorber outside the water bath in a vertical flow position with sample gas inlet at the bottom. Flexible tubing, e.g., Tygon, may be used to connect the drierite bubbler to the CO_2 absorber. A second, smaller ascarite CO_2 absorber may be added in line downstream of the primary CO_2 absorber as a breakthrough indicator, if so desired by the tester. As carite turns white when CO_2 is absorbed.

4.1.2 Leak-Check Procedure and Sample Collection. The leak-check procedure and sample collection procedure are the same as specified in Method 6, Sections 4.1.2 and 4.1.3, respectively.

4.2. Sample Recovery.

4.2.1 Moisture Measurement. Disconnect the isopropanol bubbler, the peroxide impingers, and the drierite bubbler from the sample train. Allow time (about 10 minutes) for them to reach room temperature, clean the outsides, and then weigh them simultaneously in the same manner as in Section 4.1.1. Record this final mass.

4.2.2 Peroxide Solution. Discard the contents of the isopropanol bubbler and pour the contents of the midget impingers into a leak-free polyethylene bottle for shipping. Rinse the two midget impingers and connecting tubes with deionized distilled water, and add the washings to the same storage container.

4.2.3 CO_2 Absorber. Allow the CO_2 absorber to warm to room temperature (about 10 minutes), clean the outside, and weigh to the nearest 0.1 g in the same manner as in Section 4.1.1. Record this final mass and discard the used ascarite.

4.3 Sample Analysis. The sample analysis procedure for SO_2 is the same as specified in Method 6, Section 4.3.

5. Calibration

The calibrations and checks are the same as required in Method 6, Section 5.

6. Calculations

Carry out calculations, retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after final calculations. The calculations, nomenclature, and procedures are the same as specified in Method 6 with the addition of the following:

6.1 Nomenclature

C_{H2O} = Concentration of moisture, percent.
C_{CO2} = Concentration of CO_2, dry basis, percent.
m_{wi} = Initial mass of peroxide impingers and drierite bubbler, g.
m_{wf} = Final mass of peroxide impingers and drierite bubbler, g.
m_{ai} = Initial mass of ascarite bubbler, g.
m_{af} = Final mass of ascarite bubbler, g.
$V_{CO_2(std)}$ = Standard equivalent volume of CO_2 collected, dry basis, M^3.

6.2 CO_2 Volume Collected, Corrected to Standard Conditions.

$$V_{co_2(std)} = 5{,}467 \times 10^{-4} (m_{af} - m_{ai}) \quad \text{(Eq. 6A–1)}$$

6.3 Moisture Volume Collected, Corrected to Standard Conditions.

$$V_{w(std)} = 1.336 \times 10^{-3} (m_{wf} - m_{wi}) \quad \text{(Eq. 6A–2)}$$

6.4 SO_2 Concentration.

$$C_{SO_2} = 32.03 \frac{(V_t - V_{tb}) N \left(\frac{V_{soln}}{V_a}\right)}{V_{m(std)} + V_{CO_2(std)}} \quad \text{(Eq. 6A–3)}$$

6.5 CO_2 Concentration.

$$C_{CO_2} = \frac{V_{CO_2(std)}}{V_{m(std)} + V_{CO_2(std)}} \times 100 \quad \text{(Eq. 6A–4)}$$

6.6 Moisture Concentration.

$$C_{H_2O} = \frac{V_{H_2O(std)}}{V_{m(std)} + V_{H_2O(std)} + V_{CO_2(std)}} \quad \text{(Eq. 6A–5)}$$

7. Emission Rate Procedure

If the only emission measurement desired is in terms of emission rate of SO_2 (ng/J), an abbreviated procedure may be used. The differences between Method 6A and the abbreviated procedure are described below.

7.1 Sample Train. The sample train is the same as shown in Figure 6A–1 and as described in Section 4, except that the dry gas meter is not needed.

7.2 Preparation of the Collection Train. Follow the same procedure as in Section 4.1.1, except that the isopropanol bubbler, the peroxide impingers, and the drierite bubbler need not be weighed before or after the test run.

7.3 Sampling. Operate the train as described in Section 4.1.3, except that dry gas meter readings, barometric pressure, and dry gas meter temperatures need not be recorded.

7.4 Sample Recovery. Follow the procedure in Section 4.2, except that the isopropanol bubbler, the peroxide impingers, and drierite bubbler need not be weighed.

7.5 Sample Analysis. Analysis of the peroxide solution is the same as described in Section 4.3.

7.6 Calculations.

7.6.1 SO_2 Mass Collected.

$$m_{SO2} = 32.03 (V_t - V_{tb}) N \left(\frac{V_{soln}}{V_a}\right) \quad \text{(Eq. 6A-7)}$$

Where:

m_{SO2} = Mass of SO_2 collected, mg.

7.6.2 Sulfur Dioxide Emission Rate.

$$E_{SO2} = F_c (1.829 \times 10^9) \frac{m_{SO2}}{(m_{af} - m_{ai})} \quad \text{(Eq. 6A-8)}$$

Where:

e_{so2} = Emission rate of SO_2 (ng/J).
F_c = Carbon F Factor for the fuel burned, m^3/J, from Method 19.

8. Bibliography

8.1 Same as for Method 6, citations 1 through 8, with the addition of the following:

8.2 Stanley, Jon and P.R. Westlin. An Alternate Method for Stack Gas Moisture Determination. Source Evaluation Society Newsletter. Vol. 3, No. 4. November 1978.

8.3 Whittle, Richard N. and P.R. Westlin. Air Pollution Test Report: Development and Evaluation of an Intermittent Integrated SO_2/CO_2 Emission Sampling Procedure. Environmental Protection Agency, Emission Standard and Engineering Division, Emission Measurement Branch. Research Triangle Park, North Carolina. December 1979. 14 pages.

Method 6B—Determination of Sulfur Dioxide and Carbon Dioxide Daily Average Emissions From Fossil Fuel Combustion Sources

1. Applicability and Principle

1.1 Applicability. This method applies to the determination of sulfur dioxide (SO_2) emissions from combustion sources in terms of concentration (mg/m^3) and emission rate (ng/J), and for the determination of carbon dioxide (CO_2) concentration (percent) on a daily (24 hours) basis.

The minimum detectable limit, upper limit, and the interferences for SO_2 measurements are the same as for Method 6. For a 20-liter sample, the method has a precision of 0.5 percent CO_2 for concentrations between 2.5 and 25 percent CO_2.

1.2 Principle. A gas sample is extracted from the sampling point in the stack intermittently over a 24-hour or other specified time period. Sampling may also be conducted continuously if the apparatus and procedure are modified (see the note in Section 4.1.1). The SO_2 and CO_2 are separated and collected in the sampling train. The SO_2 fraction is measured by the barium-thorin titration method and CO_2 is determined gravimetrically.

2. Apparatus

The equipment required for this method is the same as specified for Method 6A, Section 2, except the isopropanol bubbler is not used and with the addition of an industrial timer-switch, designed to operate in the "on" position at least 2 minutes continuously and "off" the remaining period over a repeating cycle. The cycle of operation is designated in the applicable regulation. At a minimum the sample operation should include at least 12 equal, evenly spaced periods of sampling per 24 hours.

Stainless steel sampling probes, type 316, are not recommended for use with Method 6B due to potential corrosion and contamination of sample. Glass probes or other types of stainless steel, e.g., Hasteloy or Carpenter 20, are recommended for long term use such as with Method 6B. See note in Section 2.1 of

Method 6A regarding filter types and probe heat specifications.

3. Reagents

All reagents for sampling and analysis are the same as described in Method 6A, Section 3, except that isopropanol is not used for sampling. The hydrogen peroxide absorbing solution shall be diluted to no less than 6 percent by volume, instead of 3 percent as specified in Method 6.

4. Procedure

4.1 Sampling.

4.1.1 Preparation of Collection Train. Preparation of the sample train is the same as described in Method 6A, Section 4.1.4, with the addition of the following:

The sampling train is assembled as shown in Figure 6A–1, except the isopropanol bubbler is not included. The probe must be heated to a temperature sufficient to prevent water condensation and must include a filter (either in-stack, out-of-stack, or both) to prevent particulate entrainment in the peroxide impingers. The electric supply for the probe heat should be continuous and separate from the timed operation of the sample pump.

Adjust the timer-switch to operate in the "on" position from 2 to 4 minutes on a 2-hour repeating cycle or other cycle specified in the applicable regulation. Other timer sequences may be used with the restriction that the total sample volume collected is between 25 and 60 liters for the amounts of sampling reagents prescribed in this method.

Add cold water to the tank until the impingers and bubblers are covered at least two-thirds of their length. The impingers and bubbler tank must be covered and protected from intense heat and direct sunlight. If freezing conditions exist, the impinger solution and the water bath must be protected.

Note.—Sampling may be conducted continuously if a low flow-rate sample pump (20 to 40 ml/min for the reagent volumes described in this method) is used. Then the timer-switch is not necessary. In addition, if the sample pump is designed for constant rate sampling, the rate meter may be deleted. The total gas volume collected should be between 25 and 60 liters for the amounts of sampling reagents prescribed in this method.

4.1.2 Leak-Check Procedure. The leak-check procedure is the same as described in Method 6, Section 4.1.2.

4.1.3 Sample Collection. Record the initial dry gas meter reading. To begin sampling, position the tip of the probe at the sampling point, connect the probe to the first impinger (or filter), and start the timer and the sample pump. Adjust the sample flow to a constant rate of approximately 1.0 liter/min as indicated by the rotameter. Assure that the timer is operating as intended, i.e., in the "on" position for the desired period and the cycle repeats as required.

During the 24-hour sampling period, record the dry gas meter temperature one time between 9:00 a.m. and 11:00 a.m., and the barometric pressure.

At the conclusion of the run, turn off the timer and the sample pump, remove the probe from the stack, and record the final gas meter volume reading. Conduct a leak check as described in Section 4.1.2. If a leak is found, void the test run or use procedures acceptable to the Administrator to adjust the sample volume for leakage. Repeat the steps in this section (4.1.3) for successive runs.

4.2 Sample Recovery. The procedures for sample recovery (moisture measurement, peroxide solution, and ascarite bubbler) are the same as in Method 6A, Section 4.2.

4.3 Sample Analysis. Analysis of the peroxide impinger solutions is the same as in Method 6, Section 4.3.

5. Calibration

5.1 Metering System.

5.1.1 Initial Calibration. The initial calibration for the volume metering system is the same as for Method 6, Section 5.1.1.

5.1.2 Periodic Calibration Check. After 30 days of operation of the test train, conduct a calibration check as in Section 5.1.1 above, except for the following variations: (1) The leak check is not to be conducted, (2) three or more revolutions of the dry gas meter must be used, and (3) only two independent runs need be made. If the calibration factor does not deviate by more than 5 percent from the initial calibration factor determined in Section 5.1.1, then the dry gas meter volumes obtained during the test series are acceptable and use of the train can continue. If the calibration factor deviates by more than 5 percent, recalibrate the metering system as in Section 5.1.1; and for the calculations for the preceding 30 days of data, use the calibration factor (initial or recalibration) that yields the lower gas volume for each test run. Use the latest calibration factor for succeeding tests.

5.2 Thermometers. Calibrate against mercury-in-glass thermometers initially and at 30-day intervals.

5.3 Rotameter. The rotameter need not be calibrated, but should be cleaned and maintained according to the manufacturer's instruction.

5.4 Barometer. Calibrate against a mercury barometer initially and at 30-day intervals.

5.5 Barium Perchlorate Solution. Standarize the barium perchlorate solution against 25 ml of standard sulfuric acid to which 100 ml of 100 percent isopropanol has been added.

6. Calculations

The nomenclature and calculation procedures are the same as in Method 6A with the following exceptions:

P_{bar} = Initial barometric pressure for the test period, mm Hg.

T_m = Absolute meter temperature for the test period, °K.

7. Emission Rate Procedure

The emission rate procedure is the same as described in Method 6A, section 7, except that the timer is needed and is operated as described in this method.

8. Bibliography

The bibliography is the same as described in Method 6A, Section 8.

[FR Doc. 82–32763 Filed 11–30–82; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 81

[MS–003; A–4–FRL–2234–4]

Designation of Areas for Air Quality Planning Purposes; Mississippi; Designation of Hinds, Rankin, Yazoo, and Madison Counties as Attainment for Ozone (O_3)

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today announcing the designation of Hinds, Rankin, Yazoo, and Madison Counties in Mississippi as attainment for ozone (O_3). This is being done because the State has submitted three years of air quality data showing no violation of the national ambient air quality standards for this pollutant.

EFFECTIVE DATE: This action will be effective January 31, 1983, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: A copy of the material submitted by Mississippi may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

Air Management Branch, EPA Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Mississippi Department of Natural Resources, Bureau of Pollution Control, P.O. Box 10385, Jackson, Mississippi 39209

FOR FURTHER INFORMATION CONTACT: Denise Pack of the EPA Region IV Air Management Branch at the Atlanta address given above (telephone 404/881–3286 or FTS 257–3286).

SUPPLEMENTARY INFORMATION: On July 13, 1982, the Mississippi Department of Natural Resources (DNR) submitted three years of air quality monitoring data (January 1979 to December 1981) showing that the National Ambient Air Quality Standard (NAAQS) for ozone had not been violated in the counties of Yazoo, Madison, Hinds and Rankin. The State has therefore requested that these areas be designated attainment.

Action

EPA is today designating Hinds, Rankin, Yazoo, and Madison Counties as attainment for ozone. It should be noted that Section 107 of Clean Air Act does not provide for EPA to make a formal distinction in the Code of Federal

Regulations between areas which are attainment for ozone and those which cannot be classified. So the Mississippi attainment status table for ozone in 40 CFR 81.325 will not change as a result of this action. The entire State of Mississippi will continue to be shown as attainment or unclassifiable for ozone.

This action is being taken without prior proposal because the designations are noncontroversial and EPA anticipates no comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b) the Administrator has certified that area designations do not have a significant economic impact on a substantial number of small entities.

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 on or before January 31, 1983. This action may be challenged later in proceedings to enforce its requirements.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107, Clean Air Act (42 U.S.C. 7407))

Dated: November 24, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-32802 Filed 11-30-82; 8:45 am]

BILLING CODE 6560-50-M

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 600, 680, 681, 682, 683, and 684

Conflict of Interests; Correction

AGENCY: National Science Foundation.

ACTION: Final rule; correction.

SUMMARY: This document makes technical corrections on a final rule document relating to conflict of interests published on July 26, 1982, 47 FR 32130.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, National Science Foundation, 1800 G Street, NW, Washington, DC 20550, Attention: Martin Lefcowitz (202/357-7439).

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 82-20067 appearing on pages 32130-32153 in issue for July 26, 1982:

(1) On page 32130, column 3, paragraph 2, line 4, appearing under the heading "Classification" which reads "* * * Executive Order 12044," is corrected to read, * * * Executive Order 12291."

(2) On page 32131, column 2, paragraph 1, line 4, appearing under the heading "Subpart B—Statutory Exemptions" which reads "§ 680.22 Certification under 18 USC 205" is removed.

(3) On page 32145, column 2, paragraph 2, line 14, appearing under the heading for § 682.23(b) which reads "While an NSF employee you may not * * * NSF award except as provided for in § 682.23(c)"; is corrected to read, "While an NSF employee you may not * * * NSF award."

(4) On page 32145, column 2, paragraph 2, lines 19-21 appearing under the heading for §682.23(c) which reads *"Rotators home visits.* Authorized travel and related expenses may be charged to your NSF award;" is removed.

(5) On page 32152 the following changes are requested:

Column 2, Line 11

Old: Visiting Committees—680.21(d)
NEW: Visiting Committees—680.21(b)(8)

Column 2, Line 26

Old: Directories
NEW: Directorates

Column 3, Line 20

Old: Presidential appointee—683.30
NEW: Presidential appointee (full-time)—683.30(c) (d)

Column 3, Line 24

Old: Candidacy and Campaigns—683.42(c)
NEW: Candidacy and Campaigns—683.42(a)

Column 3, Line 25

Old: Candidacy and Campaigns
NEW: Candidacy and Campaigns—683.42(c)

Dated: November 23, 1982.

Donald N. Langenberg,

Deputy Director, National Science Foundation.

[FR Doc. 82-32781 Filed 11-30-82; 8:45 am]

BILLING CODE 7555-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 55 (Sub-No. 55)]

Revision and Redesignation of Rules of Practice; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rules; correction.

SUMMARY: At 47 FR 49534, November 1, 1982, the Commission published rules revising and redesignating all of its procedural regulations governing the conduct of formal cases which come before it for decision. That document contained inadvertent errors and omissions which this document corrects, as set forth below.

FOR FURTHER INFORMATION CONTACT: James H. Bayne (202) 275-7429; or Kathleen M. King (202) 275-0976.

SUPPLEMENTARY INFORMATION: Title 49 of the CFR is corrected by correcting the document published at 47 FR 49534-49597 as follows:

PART 1132—PROTESTS AGAINST TARIFFS; PROCEDURES IN CERTAIN SUSPENSION AND LONG AND SHORT HAUL RESTRICTION MATTERS

§ 1132.2 [Corrected]

(1) The newly redesignated and revised § 1132.2 on page 49575 is corrected by redesignating paragraph (b) as paragraph (b)(1).

PART 1138—PROCEDURES FOR REQUESTING SURCHARGE COST AND REVENUES FROM RAIL CARRIERS APPLYING A COMMODITY ORIENTED SURCHARGE OR CANCELLING THE APPLICATION OF A JOINT RATE PURSUANT TO 49 U.S.C. 10705(a)

(2) The amendments to Part 1138 on page 49577 are corrected by removing amendatory instruction (61).

PART 1139—PROCEDURES IN MOTOR CARRIER REVENUE PROCEEDINGS

(3) Amendatory instruction (62) on page 49577 is corrected by changing the Part heading of Part 1139 to read as set forth above.

Appendices I and II—[Corrected]

(4) In Appendices I and II to the newly redesignated and revised Subpart A to Part 1139 on pages 49579-49581 the references to "Appendix A" or "appendix A" are corrected to read "Appendix I" and the references to "Appendix B" or "appendix B" are

corrected to read "Appendix II" wherever they appear in Appendix I or II.

(5) In the footnotes to Appendix I to the newly redesignated and revised Subpart A of Part 1139 on page 49580 the reference to "§ 1104.3" in footnote 2, line 2, is corrected to read "§ 1139.3."

§ 1139.5 [Corrected]

(6) In the newly redesignated and revised § 1139.5 on page 49578, the second sentence is corrected by adding the words "data as" to follow the word "underlying."

(7) The amendents to Part 1139 on page 49581 are corrected by removing amendatory instruction (66).

PART 1140—REASONABLY EXPECTED COSTS UNDER 49 U.S.C. 10705a

(8) The amendments to Part 1140 on page 49581 are corrected by adding an amendatory instruction (67A) to read as follows:

(67A) The authority citation to the newly redesignated Part 1140 is revised to read as follows:

Authority: 49 U.S.C. 10705a and 10321; 5 U.S.C. 559.

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

(9) The part heading which precedes amendatory instruction (70) on page 49581 is corrected to read as set forth above.

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

(10) The amendments to Part 1152 on pages 49581 and 49582 corrected by adding amendatory instruction (74A) to read as follows:

(74A) In the newly redesignated Part 1152, the part heading is revised to read as set forth above.

PART 1153—DISCONTINUANCE OF CHANGE OF RAIL OR FERRY OPERATIONS UNDER 49 U.S.C. 10908 or 10909

(11) Amendatory instruction (92)(f) on page 49582 is corrected to read as follows:

(f) In the newly redesignated paragraph (f), the reference to "paragraph (e)" in the last sentence is revised to read "paragraph (b)."

PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

§ 1160.20 [Corrected]

(12) The section heading to the newly redesignated and revised § 1160.201 on page 49585 is corrected to read:

"§ 1160.20 Appeals to rejections of the application."

§ 1160.64 [Corrected]

(13) The filing fee of "$100" named in paragraph (b) of § 1160.64 on page 49587 is corrected to read "$200."

PART 1163—TEMPORARY OPERATING AUTHORITIES AND APPROVALS

(14) Amendatory instruction (132)(a) on page 49590 is corrected to read as follows:

(a) In paragraph (a), "210a(a) or 311(a) of the Interstate Commerce Act (49 U.S.C. 310a(a), 911(a))" is revised to read "49 U.S.C. 10928."

PART 1175—ISSUANCE OF SECURITIES AND ASSUMPTION OF OBLIGATIONS AND LIABILITIES

(15) Amendatory instruction (155) on page 49691 is corrected by redesignating paragraphs (b) and (c) as paragraphs (a) and (b) and by adding the following to precede the newly redesignated paragraph (a):

§ 1175.6 [Amended]

(155A) In the newly redesignated § 1175.6, the statutory references are revised to read as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

(16) Amendatory instruction (176) on page 49592 is corrected to read as follows:

(176) The authority citations of Subparts A and B of the newly redesignated Part 1180 are removed.

PART 1181—TRANSFERS OF OPERATING AUTHORITY UNDER 49 U.S.C. 10926

(17) The amendments to Part 1181 on pages 49592 and 49593 are corrected by adding an amendatory instruction (206A) to read as follows:

(206A) The authority citation to the newly redesignated Subparts A–E are removed.

PART 1182—MOTOR CARRIER APPLICATIONS TO CONSOLIDATE, MERGE, OR ACQUIRE CONTROL UNDER 49 U.S.C. 11343–11344

(18) Amendatory instruction (210)(r) on page 49594 is corrected to read as follows:

(r) In paragraph (g)(2), "Also" and the commas which precede and follow the word "simultaneously" in the second sentence, and "the" which precedes "dismissed" in the third sentence are removed.

(19) Amendatory instruction (213)(b) on page 49594 is corrected to read as follows:

(b) In paragraph (a)(2), the word "determine" and the word "it" that follows "bring" are removed, and "the evidence" is added to follow the word "out."

(20) Amendatory instruction (214)(g) on page 49594 is corrected to read as follows:

(214) In paragraph (g), the commas which follow the word "oppose" both times it appears and the word "seasonably" are removed.

PART 1183—CONTROL OF CONSOLIDATION OF MOTOR CARRIERS OR THEIR PROPERTIES

(21) Amendatory instruction (215) on page 49594 is corrected to read as follows:

(215) Former Part 1134 is redesignated as Part 1183 as follows:

§ 1134.1 redesignated as § 1183.1;
§ 1134.3 redesignated as § 1183.2;
§ 1134.4 redesignated as § 1183.3;
§ 1134.6 redesignated as § 1183.4;
§ 1134.50 redesignated as § 1183.5;
§ 1134.51 redesignated as § 1183.6;

PART 1184—MOTOR CARRIER POOLING OPERATIONS

(22) The amendments to Part 1184 on page 49595 are corrected by adding an amendatory instruction (227A) to read as follows:

(227A) In the newly redesignated Part 1184, the part heading is revised to read as set forth above.

PARTS 1186–1189—[RESERVED]

(23) Amendatory instruction (240) on page 49595 is corrected to read as follows:

(240) New parts 1186–1189 are added and reserved.

PART 1190—REORGANIZATION OF RAILROADS

(24) Amendatory instruction (246) on page 49595 is corrected to read as follows:

(246) In the newly redesignated Part 1190, § 1190.20–1190.24 are designated as Subpart B, and the heading "Ratification of Appointment as Trustee" is amended by designating it as the heading for Subpart B as follows:

Subpart B—Ratification of Appointment as Trustee

PART 1191—CORPORATE REORGANIZATION OF CARRIERS AND CORPORATIONS

(25) Amendatory instruction (249) on page 49596 is corrected to read as follows:

(249) The authority citation to the newly redesignated Part 1191 is revised and a note is added to follow the revised citation to read as follows:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559 and Section 177 of Act of June 22, 1938, 52 Stat. 891.

Note.—The regulations in parts 1190, 1191 and 1192 apply only to carriers which are the subject of bankruptcy or reorganization proceedings instituted prior to October 1, 1978 under the then-effective bankruptcy laws. Carriers in bankruptcy or undergoing reorganization pursuant to proceedings filed after October 1, 1978 and subject to the present provisions of Title 11, United States Code, are not subject to these regulations.

PART 1192—CORPORATE REORGANIZATION OF MOTOR CARRIERS

(26) Amendatory instruction (254) on page 29596 is corrected to read as follows:

(254) The authority citation to the newly redesignated Part 1192 is revised and a note is added to follow the revised citation to read as follows:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559 and Section 177 of Act of June 22, 1938, 52 Stat. at 891.

Note.—The regulations in parts 1190, 1191 and 1192 apply only to carriers which are the subject of bankruptcy or reorganization proceedings instituted prior to October 1, 1978 under the then-effective bankruptcy laws. Carriers in bankruptcy or undergoing reorganization pursuant to proceedings filed after October 1, 1978 and subject to the present provisions of Title 11, United States Code, are not subject to these regulations.

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

(27) Amendatory instruction (271) on page 49597 is corrected to read as follows:

(271) In § 1011.7, the words "Rule 66(a) of the general rules of practice," in paragraph (d) are removed.

(28) Amendatory instruction (272) on page 49597 is corrected to read as follows:

(272) In § 1011.7, the words "Rule 95 of the general rules of practice" and the parentheses that surround "49 CFR 1113.3(a)," in paragraph (e) are removed.

PART 1012—MEETINGS OF THE COMMISSION

(29) Amendatory instruction (260) on page 49596 is corrected to read as follows:

(260) Part 1012 is amended by replacing the reference in the left-hand column with the reference in the right-hand column wherever it appears.

Old Reference	*New Reference*
49 CFR 1100.09	49 CFR Part 1115

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-32841 Filed 11-30-82; 8:45 am]

BILLING CODE 7035-01

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49 CFR Part 1057

[Ex Parte No. MC-43 (Sub-No. 13)]

Lease and Interchange of Vehicles; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rules; correction.

SUMMARY: At 47 FR 51136, November 12, 1982, the Commission modified its lease and interchange regulations set forth at 49 CFR 1057.12. In that decision, an addition to paragraph (f) concerning allocation of responsibility for loading and unloading property was inadvertently omitted. This notice corrects that omission.

FOR FURTHER INFORMATION CONTACT:
Wayne Miller, (202) 275–1763,
or
Mary Kelly, (202) 275–7292.

SUPPLEMENTARY INFORMATION: Section 1057.12 is corrected by adding the following sentence to follow the first sentence in paragraph (f).

§ 1057.12 Written lease requirements.

* * * * *

(f) *Items specified in lease.* * * * The lease shall clearly specify who is responsible for loading and unloading the property onto and from the motor vehicle, and the compensation, if any, to be paid for this service.

* * * * *

Dated: November 23, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Sterrett was absent and did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-32813 Filed 11-30-82; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1306

[Docket No. 38900]

Identification of Rates Filed Under Zone of Rate Freedom by Motor Carriers of Passengers

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules.

SUMMARY: The Interstate Commerce Act, as amended by the Bus Regulatory Reform Act of 1982, permits motor carriers of passengers to file individual rate changes within a zone of rate freedom. Under the provisions of Section 11 of the Bus Act, the Commission may not investigate, suspend, revise, or revoke any single-line rate proposed by a motor common carrier of passengers, or joint rate proposed by one or more such carriers, applicable to any transportation (other than special or charter transportation) on the basis that such rate is unreasonable because it is too high or too low. Larger adjustments are allowed in subsequent years. The Act requires that the carriers notify the Commission when they wish to have rates considered under this provision. Participation in a general rate increase by a passenger carrier will reduce the upward zone of freedom.

This document publishes rules which will set forth the manner in which notification of these changes will be made. The effect on the carriers will be minimal since only a small amount of additional wording will be required in the letters of transmittal.

DATE: These final rules will become effective on December 1, 1982.

FOR FURTHER INFORMATION CONTACT:
William P. Geisenkotter, Chief, Section of Tariffs, Bureau of Traffic, Interstate Commerce Commission, Washington, D.C. 20423, (202) 275–7739.

SUPPLEMENTARY INFORMATION: On October 20, 1982, the Commission served a Notice of Proposed Rulemaking, to amend the tariff publishing regulations, setting forth the manner in which notification of changes in rates under the Zone of Rate Freedom will be made (47 FR 46727, October 20, 1982). This notice presented the manner in which notification to the Commission

and the public is to be made on tariff publications and revisions, as well as their accompanying letters of transmittal. Also, the upper and lower limits of the Zone of Rate Freedom as set out in the Bus Regulatory Reform Act of 1982, are now incorporated into our tariff publishing rules.

Comments, Discussion and Conclusion

Comments concerning the proposed rules were received from the National Bus Traffic Association, Inc., Agent (NBTA). In their comments, NBTA makes suggestions of possible changes in the proposed rules.

One of the suggestions is the inclusion of the word "rate" whenever the phrase "fare, charge, or provision" is used in the regulations. The phrase would be "fare, rate, charge, or provision."

NBTA first suggests that we include the word "rate" whenever the phrase "fare, charge, or provision" is used in the regulations. This change confirms that ZORF procedures apply to express service as well as passenger service, and will be adopted. The phrase "fare, rate, charge, or provision" will be used in the regulations.

NBTA next observes that the proposed rules apply only to increases of 10 percent and decreases of 20 percent above or below the rate in effect one year prior to the effective date of the Act. The Act, however, provides for an expanding zone of freedom for 3 years, followed by the complete removal of our suspension and investigation power with respect to the reasonableness of independently established rates of motor carriers of passengers. Our rules will therefore be amended to reflect the complete scope of the ZORF under the Act.

Finally, NBTA argued that the proposed rules are "onerous" and need to be simplified. The burden alleged in the proposed rules lay in two requirements. First, carriers were required to notify us that particular tariff proposals were filed under the ZORF by including an "appropriate statement" not only in the letter of transmittal, but also on each title page of a ZORF tariff and on every other page containing a ZORF rate. Second, the carrier was required to identify, on the letter of transmittal accompanying every ZORF filing, the specific page or item in which the comparison rate (the rate in effect one year prior to the filing date or on November 19, 1982, as applicable) could be found.

We have revised our rules to limit substantially the burden in filing ZORF tariffs. Identification of the comparison rate will be required only when ZORF rates or fares are protested; we can then quickly determine whether the proposal is properly filed under the ZORF. Also, only the letter of transmittal need contain the statement notifying use of which rates and fares are filed under the ZORF. We do not need to encumber our permanent tariff files with ZORF notifications because we anticipate that any complaints against rates and fares will be filed very shortly after they become effective. Our proposed rules have been amended accordingly.

We do not believe that bus riders will be prejudiced by our decision to only identify rates or fares filed within the zone in the letter of transmittal. Bus rider's information about rates and fare increases generally comes from simplified public notices by the carrier and not from the actual tariffs filed at the ICC. Nothing would be gained by requiring information to be added to the tariff document about whether a rate or fare is filed under the zone of freedom provisions. Since zone rates properly filed cannot be suspended, investigated, or revoked by the Commission on the basis of reasonableness, we would expect carriers to seek to minimize protests in their own interest, by informing bus riders or their representatives of these zone filed non-suspendible rate or fare changes.

Regulatory Flexibility Act

This revision does not require notice and comment under Section 553 of the Administrative Procedure Act (5 U.S.C. 553) because it merely establishes notification procedures mandated by Congress and thus is only a procedural and not a substantive rule. Indeed, this will impose a very minor burden on the carriers who will benefit overall from the zone of rate freedom. Since notice and comment is not required, the Regulatory Flexibility Act is inapplicable.

This decision does not affect significantly either the quality of the human environment or energy resources.

It Is Ordered

1. Chapter X of Title 49 of the Code of Federal Regulations is amended as set forth in the appendix.

2. Notice of this decision will be given to the public by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and by delivering a copy to the Director, Office of the Federal Register as notice to all interested persons.

List of Subjects in 49 CFR Part 1306

Buses, Freight, Motor carriers.

This decision is issued under authority of Section 10762 of the Interstate Commerce Act, (49 U.S.C. 10762), and under Section 553 of the Administrative Procedure Act, (5 U.S.C. 553), and Section 11 of the Bus Regulatory Reform Act of 1982.

Decided: November 17, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons and Gradison. Commissioner Sterrett was absent and did not participate.

Agatha L. Mergenovich,

Secretary.

Appendix

Chapter X of Title 49 is amended as follows:

PART 1306—[AMENDED]

1. Section 1306.1 is amended by adding a new paragraph (d) as follows:

§ 1306.1 Construction and filing of tariffs.

* * * * *

(d)(1) The letter of transmittal accompanying each tariff publication which contains a fare, rate, charge, or provision which the carrier wishes to have considered pursuant to the zone of rate freedom provisions of 49 U.S.C. 10708(d)(4) shall indicate this by including an appropriate statement.

(2) If application of the proposed fare, rate, charge, or provision would result in an increase in charges, the letter shall state that the proposed increase in the aggregate is not more than 10 percent above that in effect one year prior to the effective date of the proposed increase. On November 19, 1983, the figure increases to 15 percent. On November 19, 1984, the figure increases to 20 percent. When only some increases are within the zone, they should be designated individually.

(3) If the application of the proposed fare, rate, charge, or provision would result in a reduction in charges, the letter shall state that the proposed reduction in the aggregate shall be no more than 20 percent below the lesser of that in effect on November 19, 1982 (or, in the case of any charges which the carrier or carriers first establish after such date for a service not provided by the carrier or carriers on such date, such charge on the date such charge first becomes effective) or the charge in effect one year prior to the effective date. On November 19, 1983, the figure changes to 25 percent; and, on November 19, 1984, the figure changes to 30 percent. When only some decreases are within the zone, they should be designated individually.

(4) Three years after the effective date of the Act, the Commission may not investigate, suspend, revise, or revoke

any rate proposed by a motor common carrier of passengers on the grounds that such rate is unreasonable on the basis that it is too high or too low, unless the proposed rate is established collectively in accordance with the procedures of an agreement approved by the Commission under section 10706(b) of the Act. After November 19, 1985, statements required in (d)(2) and (d)(3) of this section shall no longer be required. In publishing and filing a tariff under section 10762, the carrier shall disclose whether such rate is the result of collective ratemaking procedures pursuant to an agreement approved by the Commission under section 10706(b) of this title.

(5) If a fare, rate, charge, or provision filed under the zone of rate freedom provisions of 49 USC 10708(d)(4) is protested, the carrier shall, in its reply to the protest, identify the number of the item (or page) and tariff in which the fare, rate, charge, or provision may be found that was in effect one year prior to the effective date of the proposed rate, or on November 19, 1982, or both, as appropriate.

2. Part 1306 is amended by adding a new § 1306.20 as follows:

§ 1306.20 Zone of rate freedom.

(a) The letter of transmittal accompanying each tariff, supplement or looseleaf page which contains a fare, rate, charge, or provision which the carrier wishes to have considered pursuant to the zone of rate freedom provisions of 49 U.S.C. 10708(d)(4) shall indicate this by including an appropriate statement.

(b) If application of the proposed fare, rate, charge, or provision would result in an increase in charges, the letter shall state that the proposed increase in the aggregate is not more than 10 percent above that in effect one year prior to the effective date of the proposed increase. On November 19, 1983, this figure changes to 15 percent; and, on November 19, 1984, the figure changes to 20 percent. When only some increases are within the zone, they should be designated individually.

(c) If the application of the proposed fare, rate, charge, or provision would result in a reduction in charges, the letter shall state that the proposed reduction in the aggregate shall be no more than 20 percent below the lesser of the charges in effect on November 19, 1982 (or, in the case of any charge which the carrier or carriers first establish after such date for a service not provided by the carrier or carriers on such date, such charge on the date such charge first becomes effective) or the charge in effect one year prior to the effective date. On November 19, 1983, this figure changes to 25 percent; and, on November 19, 1984, the figure changes to 30 percent. When only some decreases are within the zone, they should be designated individually.

(d) Three years after the effective date of the Act, the Commission may not investigate, suspend, revise, or revoke any rate proposed by a motor common carrier of passengers on the grounds that such rate is unreasonable on the basis that it is too high or too low, unless the proposed rate is established collectively in accordance with the procedures of an agreement approved by the Commission under section 10706(b) of the Act. After November 19, 1985, statements required in paragraphs (b) and (c) of this section shall no longer be required. In publishing and filing a tariff under section 10762, the carrier shall disclose whether such rate is the result of collective ratemaking procedures pursuant to an agreement approved by the Commission under section 10706(b) of the Act.

(e) If a fare, rate, charge, or provision filed under the zone of rate freedom provisions of 49 U.S.C. 10708(d)(4) is protested, the carrier shall, in its reply to the protest, identify the number of the item (or page) and tariff in which the fare, rate, charge, or provision may be found that was in effect one year prior to the effective date of the proposed rate, or on November 19, 1982, or both, as appropriate.

(5 U.S.C. 553; 49 U.S.C. 10762)

[FR Doc. 82-32812 Filed 11-30-82; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 47, No. 231
Wednesday, December 1, 1982

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products [1] Regulations Governing Inspection and Certification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to revise the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products. The proposed rule is being developed at the request of the processed food industry and for clarification purposes. The proposed revision would: (1) Delete the authorization for licensed samplers to collect fees directly from an applicant; (2) delete the tables of charges for certain micro, chemical and other special analyses; (3) revise the examples of approved identification marks; (4) replace descriptive grade nomenclature with a uniform, single letter grade designation; (5) provide for the purchase of review samples; and (6) incorporate minor editorial changes.

DATE: Comments must be received on or before January 31, 1983.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250. Comments should cite the date and page number of this issue of the **Federal Register** and those received will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Raymondo O'Neal, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–5021

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices to consumers; individual firms; Federal, State, or local government agencies; or geographic regions. It will not result in significant adverse effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Eddie F. Kimbrell, Deputy Administrator, Commodity Services, Agricultural Marketing Services, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96–534 (5 U.S.C. 601), because it reflects current marketing practices.

The Agricultural Marketing Act of 1946 authorizes the official inspection, grading, and certification of processed food products including processed fruits, vegetables, and processed products thereof. The Agricultural Marketing Service (AMS) makes available an impartial, official inspection service for processed fruits and vegetables. Applicants may make use of this service to obtain inspection of products in which they have a financial interest. The service is voluntary and self-supporting and is offered on a fee-for-service basis.

It is in the interest of both the agency and users of the service to conduct the program on a cost effective basis. "Licensed samplers" are used in the effort to minimize fees for grading services incurred by applicants who are located considerable distances from a central grading facility. Fees can be reduced by using a local licensed sampler who usually incurs less mileage and travel time than a regular full time Federal employee.

These licensed samplers are trained to perform basic sampling, examinations of condition of food containers, and to submit sampling reports. Regulations now contain provisions for these samplers to collect fees. However, in order to protect the integrity of the Federal grading service, the Department of Agriculture believes it would be prudent to rescind the provision which permits licensed samplers to collect fees directly from an applicant.

The tables containing charges for micro, chemical and certain other special analyses would be deleted and the regulations revised to provide that charges for analyses be paid on the basis for the regular fee schedule set forth in § 52.42. Changes in analytical procedures may result in an increase or decrease in the time needed for completion of certain types of analytical testing. Time required for analysis may also vary among types of products. The cost of chemicals may also change. Adjustment of the charges to applicants cannot be made rapidly enough to accommodate these changes since it requires a change in the regulations. Revising this section to adopt the regular schedule of fees would result in a more cost efficient method of charging fees for micro, chemical, and certain other special analyses.

The regulations set forth official grade and inspection marks of the U.S. Department of Agriculture for use by fruit and vegetable processors. These processors contract for the fee-for-service grading programs of the Department and, as permitted, may use various types of official grade and inspection marks for processed fruits and vegetables and other related products. Revising and increasing utilization of these official marks would provide industry with greater flexibility in marketing, and also provide greater consumer awareness.

It is also necessary to provide more flexibility in the type of official marks used for programs within the USDA, such as the Child Nutrition Label Program. Use of the proposed official marks would provide the assurance to users of these products that they comply with program requirements. In addition, the revision would provide for the use of specified official marks on product labels that are not covered by U.S. grade standards.

[1] May include the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea, cocoa, coffee, spices, condiments.

The revision also eliminates the descriptive grade names such as "fancy," "choice" or "standard" in favor of a single letter grade designation of "A", "B", or "C" within the figure or examples.

Elimination of such descriptive names and adoption of the exclusive use of single letter grade designations not only simplifies industry and consumers understanding of grades but also continues application of a uniform set of terms common to processed fruits, vegetables, and related products.

It is necessary for the grading service to review periodically samples of products purchased by the Government for school lunch and other domestic feeding programs. These reviews enable the agency to monitor its specifications and make comparisons with processed fruits and vegetables which are available in the commercial marketplace. In addition, the agency may wish to "sensory test" specific purchases of foods which differ from traditional diet patterns. It is also necessary from time to time to perform specific studies on processed fruits and vegetables including, but not limited to, fill weight, drained weight, soluble solids measurements or analysis of nutritional data.

The regulations do not now specifically provide for the purchase of samples for review or study purposes. The regulations do not include or describe the act of drawing these samples that may be necessary in addition to the number required for grading and certification purposes. Therefore, a provision is necessary to provide for the purchase of review samples acquired from industry and Government sources to avoid a potential conflict of interest situation or an appearance of such situation.

List of Subjects in 7 CFR Part 52

Processed fruits and vegetables, Food grades and standards.

PART 52—[AMENDED]

Accordingly, the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (7 CFR 52.43, 52.44, 52.45, 52.47, 52.53, and 52.56) would be revised to read as follows:

1. Section 52.43 is revised to read as follows:

§ 52.43 Fees to charged and collected for sampling when performed by a licensed sampler.

Such sampling fees as are specifically prescribed by the Administrator in connection with the licensing of the particular sampler will be assessed and collected from the applicant by the office of inspection serving the area where services are performed. *Provided,* That if the employee is an employee of a state, the appropriate authority of that state may make the collection.

2. Section 52.44 is revised to read as follows:

§ 52.44 Inspection fees when charges for sampling have been collected.

For any lot of processed products from which a sample is drawn by a licensed sampler and the applicable sampling fee is collected, as provided in § 52.43, the fees for the other inspection services with respect to such lot shall not include charges for sampling.

3. Section 52.45 is revised to read as follows:

§ 52.45 Inspection fees when charges for sampling have not been collected.

For any lot of processed products from which a sample is drawn by a license sampler and the sampling fee is not collected by the appropriate authority as provided in §52.43, the fees and charges for inspection services with respect to such lot shall be the applicable fees and charges prescribed in § 52.42.

4. Section 52.47 is revised to read as follows:

§ 52.47 Fees to be charged for micro, chemical and certain other special analyses.

Fees for micro, chemical and certain other special analyses made at the request of the applicant, or because of additional specification requirements, and whether or not performed in connection with the normal inspection to determine the quality or condition of the product, shall be at the rate specified in § 52.42.

5. Paragraphs (c), (d), and (f)(1) of § 52.53 are revised to read as follows:

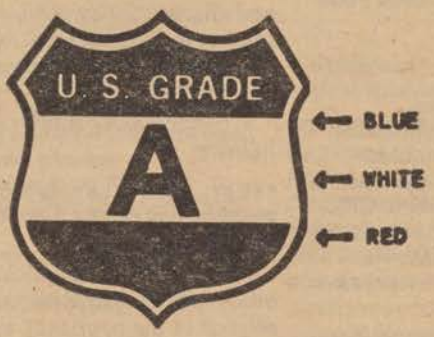
§ 52.53 Approved identification.

* * * * *

(c) *In-plant inspection (other than continuous) grade and inspection marks.* The official marks approved for use by plants operating under USDA inspection service contracts (other than continuous) requiring a resident inspector shall be limited to those similar in form and design to the examples in figures 5 through 12 of this section; Provided: That the official marks illustrated by figures 11 and 12 are limited to products packed by plants operating under an approved Quality Assurance type of an inspection contract.

BILLING CODE 3410-02-M

Figures 5 through 10 would be changed as follows:



Shield using red, white, and blue background or other colors appropriate for Label.

FIGURE 5



Shield with plain background.

FIGURE 6



FIGURE 7



Statement enclosed within a shield.

FIGURE 8

PACKED UNDER
INSPECTION
OF THE
U. S. DEPT. OF
AGRICULTURE

Statement without the use of the shield.
FIGURE 9

(1) U. S. GRADE A

(2) U. S. GRADE B

(3) U. S. GRADE C

FIGURE 10



FIGURE 11

PACKED UNDER
QUALITY ASSURANCE
PROGRAM
of the
U.S. DEPT. OF AGRICULTURE

Statement without the use of the shield.

FIGURE 12

BILLING CODE 3410-02-C

(d) *Approved plant-lot inspection grade marks.* Processed products that are produced in an "approved plant" as defined in § 52.2 and inspected and certified by an inspector on a lot basis may be labeled with an "official mark" as defined in § 52.3 when adequate control and use is approved. The use of "official marks" for this type service is restricted to grade marks (with or without plain shield) and/or the statement "Inspected by the U.S. Department of Agriculture" (with or without plain shield). Failure to have all lots bearing official marks either inspected and certified or certified as produced in an "approved plant" shall cause the debarment of the user from receiving subsequent services, and such other actions as provided for in the Agricultural Marketing Act of 1946.

* * * * *

(f) *Removal of labels bearing approved grade or inspection marks.* (1) At the time a lot of processed products bearing approved grade or inspection marks is found to be mislabeled, the processor shall separate and retain such lot for relabeling. Removal and replacement of labels shall separate and retain such lot for relabeling. Removal and replacement of labels shall be done, under the supervision of a USDA inspector, within the time specified by the administrator or as may be mutually agreed by the processor and the administrator.

* * * * *

6. Section 52.56 will read as follows:

§ 52.56 Purchase of commodity samples for review.

Employees are authorized to purchase commodity samples for review. Employees must pay and obtain receipts for such purchases and keep receipts subject to inspection by supervisory or other authorized Department employes.

* * * * *

(Agricultural Marketing Act of 1946, sec. 203, 205, 60 stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624))

Done at Washington, D.C., on: November 23, 1982.

Eddie F. Kimbrell,

Deputy Administrator.

[FR Doc. 82-32779 Filed 11-30-82; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 82-028]

Viruses, Serums, Toxins, and Analogous Products; Revisions of Standard Requirements for Live Bacterial Vaccines and Animal Safety Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Standard Requirements by adding § 113.64, General Requirements for Live Bacterial Vaccines; § 113.44, Swine Safety Test; and § 113.45, Sheep Safety Test. Presently, requirements with which all live bacterial vaccines must comply are specified for each product in Outlines of Production filed by producers and approved by the Animal and Plant Health Inspection Service (APHIS). The purpose of this proposed amendment is to codify requirements that would be applicable to all live bacterial vaccines and master seeds. This would make uniform requirements available for use by all producers.

DATE: Comments must be received on or before January 31, 1982.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed regulations to: Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 828-A, Federal Building, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Gerald J. Fichtner, USDA, APHIS, VS, Room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8245.

SUPPLEMENTARY INFORMATION: These proposed amendments have been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 to implement Executive Order 12291 and have been classified as "non-major."

These proposed rules would be applicable to producers of live bacterial vaccines. Most of the 12 licensed establishments manufacturing these products and the National Veterinary Services Laboratories (NVSL) are currently using the methods proposed in this rulemaking. Therefore, the entire industry should be able to adopt the proposed tests at no additional costs. There should be no significant change in the bacterial vaccine serial rejection rate and, therefore, no change in production costs or consumer prices.

Additionally, Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action would not have an adverse economic impact on a substantial number of small entities.

Twelve licensed establishments produced one or more of 14 live bacterial vaccines totaling 25 licensed products. One of these establishments is considered a small entity; i.e., a business which is independently owned and operated and is not dominant in the field of veterinary biologics manufacturing. The proposed amendments do not greatly differ from this firm's present Outline of Production tests and should not significantly affect its production costs.

Currently, tests and procedures with respect to the production of live bacterial vaccines are specified in a firm's Outline of Production. Such tests and procedures are generally similar for most of the establishments.

These proposed amendments would codify in Part 113 test methods, procedures, and criteria established by Veterinary Services (VS) for evaluating live bacterial vaccines to determine whether they are pure, safe, potent, and efficacious. All such vaccines and the master seeds would be required to meet the applicable requirements before marketing release is authorized by USDA.

These proposed requirements have been developed over a period of years in cooperation with interested members of the scientific community and have been utilized by the veterinary biologic industry either as approved requirements (in their Outlines of Production) or as proposed requirements under development. When satisfactory standard requirements have been developed by VS through experience with a number of Outlines of Production and/or through the development of scientific knowledge at NVSL or elsewhere, such requirements are codified in the regulations. Codification assures uniformity of requirements for licensees and makes information with regard to regulatory standards generally available to the public. These proposed amendments would increase the consistency of test results for live bacterial vaccines and animal safety tests by specifying uniform procedures

to be used. They would also make uniform requirements available to the general public and applicable to all licensees.

List of Subjects in 9 CFR Part 113

Animal biologics.

PART 113—[AMENDED]

Part 113 would be amended by adding § 113.64 to read:

§ 113.64 General requirements for live bacterial vaccines.

When prescribed in an applicable Standard Requirement or in the filed Outline of Production, a live bacterial vaccine shall meet the requirements in this section.

(a) *Purity test.* Final container samples of completed product from each serial and subserial, and samples of each lot of Master Seed shall be tested for the presence of extraneous viable bacteria and fungi in accordance with the test provided in § 113.27(b)

(b) *Safety tests.* (1) Samples of completed product from each serial or first subserial and samples of each lot of Master Seed shall be tested for safety in young adult mice in accordance with the test provided in § 113.33(b) unless:

(i) The bacteria or agents in the vaccine are inherently lethal for mice.

(ii) The vaccine is recommended for poultry.

(2) Samples of completed product from each serial or first subserial of live bacterial vaccine shall be tested for safety in one of the species for which the product is recommended as follows:

(i) Live bacterial vaccine recommended for use in dogs shall be tested as provided in § 113.40, except that dogs shall be injected with the equivalent of two doses of vaccine administered as recommended on the label.

(ii) Live bacterial vaccine recommended for use in cattle shall be tested as provided in § 113.41, except that calves shall be injected with the equivalent of two doses of vaccine administered as recommended on the label.

(iii) Live bacterial vaccine recommended for use in sheep shall be tested as provided in § 113.45.

(iv) Live bacterial vaccine recommended for use in swine shall be tested as provided in §113.44.

(c) *Identity test.* At least one of the identity tests provided in this paragraph shall be conducted for the Master Seed and final container samples from each serial or first subserial of completed biological product. A known positive control (reference) provided or approved by Veterinary Services shall be included in such tests.

(1) *Fluorescent antibody test.* The direct fluorescent antibody staining technique shall be conducted using suitable smears of the vaccine bacteria. Fluorescence typical for the bacteria concerned shall be demonstrated. Fluorescence shall not occur in control smears treated with specific antiserum.

(2) *Tube agglutination test.* A tube agglutination test shall be conducted with a suitable suspension of the vaccine bacteria using the constant antigen decreasing serum method with specific antiserum. Agglutination typical for the bacteria shall be demonstrated. Agglutination shall not occur with negative serum used as a control in this test.

(3) *Slide agglutination test.* The rapid plate (slide) agglutination test shall be conducted with suitable suspensions of the vaccine bacteria using the hanging drop, slide or plate method, with specific antiserum. Agglutination typical for the bacteria shall be demonstrated by microscopic or macroscopic observation. Agglutination shall not occur with negative serum used as a control in this test.

(4) *Characterization tests.* Applicable biochemical and cultural characteristics shall be demonstrated as specified in the filed Outline Production.

(d) *Ingredient requirements.* Ingredients used for the growth and preparation of Master Seed and of live bacterial vaccine shall meet the requirements provided in § 113.50. Ingredients of animal origin shall meet the applicable requirements provided in § 113.53.

(e) *Moisture content.* (1) The maximum percent moisture in desiccated vaccines shall be stated in the filed Outline of Production and shall be established by the licensee as follows:

(i) *Prelicensing.* Data obtained by conducting accelerated stability tests and bacterial counts shall be acceptable on a temporary basis.

(ii) *Licensed products.* Data shall be obtained by determining the percent moisture and bacterial count at release and expiration on a minimum of 10 consecutive released serials.

(2) Final container samples of completed product from each serial and subserial shall be tested for moisture content in accordance with the test provided in § 113.29.

Part 113 would be amended by adding §§ 113.44 and 113.45 to read:

§113.44 Swine safety test.

The swine safety test provided in this section shall be conducted when prescribed in a Standard Requirement or in the filed Outline of Production for a product.

(a) *Test procedure.* (1) Inject each of two swine of the minimum age for which the product is recommended with the equivalent of two doses of bacterial vaccine or 10 doses of viral vaccine.

(2) Administer vaccine in the manner recommended on the label.

(3) Observe swine each day for 21 days.

(b) *Interpretation.* If unfavorable reactions attributable to the product occur in either of the swine during the observation period, the serial or subserial is unsatisfactory. If unfavorable reactions which are not attributable to the product occur, the test shall be declared inconclusive and may be repeated; *Provided,* That, if the test is not repeated, the serial or subserial shall be declared unsatisfactory.

§ 113.45 Sheep safety test.

The sheep safety test provided in this section shall be conducted when prescribed in a Standard Requirement or in the filed Outline of Production for a product.

(a) *Test procedure.* (1) Inject each of two sheep of the minimum age for which the product is recommended with the equivalent of two doses of bacterial vaccine or 10 doses of viral vaccine.

(2) Administer vaccine in the manner recommended on the label.

(3) Observe sheep each day for 21 days.

(b) *Interpretation.* If unfavorable reactions attributable to the product occur in either of the sheep during the observation period, the serial or subserial is unsatisfactory. If unfavorable reactions which are not attributable to the product occur, the test shall be declared inconclusive and may be repeated; *Provided,* That, if the test is not repeated, the serial or subserial shall be declared unsatisfactory.

All written submissions made pursuant to this notice will be made available for public inspection at the address listed in this document during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 12.7(b)).

(37 Stat. 832–833; 21 U.S.C. 151–158)

Done at Washington, D.C., this 24th day of November 1982.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 82-32769 Filed 11-30-82; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4 and 148

Proposed Customs Regulations Amendments Relating to Clearance of Personnel Arriving on Military Transports

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations relating to the clearance of personnel arriving in the United States on military transports and other Government vessels. The regulations would be amended to provide that all persons entering the United States on carriers operated by or for the Department of Defense are required to execute written baggage declarations. This would bring the Customs Regulations into conformity with Department of Defense Regulations which require that all personnel execute written baggage declarations.

DATE: Comments must be received on or before January 31, 1983.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, N.W, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Ben Mahoney, Entry, Licensing and Restricted Merchandise Branch (202–566–5765); Operational Aspects: Kevin Cummings, Passenger Processing Division (202–566–5607). U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Section 148.73(a), Customs Regulations (19 CFR 148.73(a)), now provides that commissioned officers and enlisted personnel of the Armed Forces of the United States engaged in the operation of any Army or Navy transport, enlisted men carried as passengers, and civilian officers and crewmembers are not required to execute baggage declarations when they enter the United States. All articles acquired by these personnel must be listed on the vessel manifest. A Department of Defense Regulation (DOD 5030.41–R, Chapter 4, paragraph 4003), however, provides that all personnel are required to execute written baggage delcarations. To bring the Customs Regulations into conformity with the Department of Defense Regulations, it is proposed to amend § 148.73 by requiring all persons, including crewmenbers, entering the United States on carriers operated by or for the Department of Defense, to execute written baggage declarations. The baggage declaration requirements will tend to discourage the introduction of contraband and encourage the payment of duty.

Section 148.72, Customs Regulations (19 CFR 148.72), requires the commanding officer of any vessel operated by the United States or any agency to file a declaration of all dutiable articles acquired abroad by the officers and crewmembers of the vessel. Because the proposed amendment to § 148.73(a) would require baggage declarations by each individual, § 148.72 would no longer be necessary. Accordingly, it would be deleted.

A conforming amendment to § 4.5, Customs Regulations (19 CFR 4.5), would be necessary to reflect the deletion of § 148.72.

List of Subjects

19 CFR Part 4

Customs duties and inspections, Imports, Cargo vessels, Vessels, Reporting and recordkeeping requirements.

19 CFR Part 148

Customs duties and inspection, Imports, Armed Forces, Military personnel.

Proposed Amendments to the Regulations

It is proposed to amend Parts 4 and 148, Customs Regulations (19 CFR Parts 4, 148), in the following manner:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

It is proposed to revise § 4.5(a) to read as follows:

§ 4.5 Government vessels.

(a) No report of arrival or entry shall be required of any vessel owned by, or under the complete control and management of, the United States or any of its agencies, if such vessel (1) is manned wholly by members of the uniformed services of the United States, by personnel in the civil service of the United States, or by both, and (2) is transporting only property of the United States or passengers traveling on official business of the United States, or is in ballast. However, the master or commander of each such vessel arriving from abroad shall file a cargo manifest in duplicate. The original of each cargo manifest required under this paragraph shall be filed with the district director within 48 hours after the arrival of the vessel. The other copy shall be made available for use by the discharging inspector at the pier.

* * * * *

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

§ 148.72 [Removed and reserved]

1. It is proposed to amend Part 148 by removing section 148.72 and by marking it "Reserved".

2. It is proposed to revise § 148.73(a) to read as follows:

§ 148.73 Baggage on military transports.

(a) *Declaration.* All persons, including crewmembers, entering the United States on carriers operated by or for the the Department of Defense shall execute written baggage declarations.

* * * * *

Authority

These amendments are proposed under the authority of R.S. 251, as amended, section 498, 46 Stat. 728, as amended, section 624, 46 Stat. 759 (19 U.S.C. 66, 1498, 1624).

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the amendments, if promulgated, will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to: have significant secondary or incidental effects on a substantial number of small entities; impose, or otherwise cause, a significant increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities; or generate significant interest or attention from entities through comments, either formal or informal.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the proposed amendments,

if promulgated, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

The proposed amendments will not result in a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author to this document was Gerard J. O'Brien Jr., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: August 5, 1982.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 82-32804 Filed 11-30-82; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Parts 1, 11, and 54

[EE-99-78]

Minimum Funding Requirements and Minimum Funding Excise Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the minimum funding requirements for employee pension benefit plans, and to excise taxes for failure to meet the minimum funding standards. Changes to the applicable tax law were made by the Employee Retirement Income Security Act of 1974. The regulations would provide the public with guidance needed to comply with that Act and would affect all pension plans subject to the provisions of the Act.

The proposed amendments would apply generally for plan years beginning after 1975, but earlier (or later) in the case of some plans as provided for meeting the minimum funding requirements under the Act. The proposed rules pertaining to the frequency of actuarial valuations, and to the time for making contributions, generally would not be effecive prior to the publication of final regulations

DATES: Written comments and requests for public hearing must be delivered or mailed by January 31, 1983.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-99-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-6212, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 412 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 1013(a) of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 914). The proposed amendments would also apply for purposes of sections 302 and 305 of ERISA (88 Stat. 869, 873).

The proposed amendments would be issued under the authority of section 302 (b)(4), (b)(5), (c)(2)(B), (c)(9) and (c)(10) of ERISA (88 Stat. 870, 871, and 872; 29 U.S.C. 1082) and sections 412 (b)(4), (b)(5), (c)(2)(B), (c)(9) and (c)(10) and 7805 of the Internal Revenue Code of 1954 (88 Stat. 915, 916, and 917; 68A Stat. 917; 26 U.S.C. 412 (b)(4), (b)(5), (c)(2)(B), (c)(9) and (c)(10) and 7805).

This document also contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) and the Pension Excise Tax Regulations (26 CFR Part 54) under section 413 (b)(6) and (c)(5) and section 4971 of the Internal Revenue Code of 1954. These regulations are proposed primarily to conform the regulations to section 1013(b) of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 920). They are to be issued under the authority of section 413 (b)(6) and (c)(5) and section 7805 of the Internal Revenue Code of 1954 (88 Stat. 924, 925, 68A Stat. 917; 26 U.S.C. 413 (b)(6) and (c)(5), 7805).

The proposed regulations do not reflect changes to the second-level excise tax made by the Act of Dec. 24, 1980, Pub. L. 96-596 (94 Stat. 3469), or amendments to sections 412 and 4971 made by the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. 96-364 (94 Stat. 1208).

Purpose and Scope

The proposed amendments address the remaining statutory provisions not yet addressed by regulations relating to the minimum funding requirements with respect to which either regulatory guidance is required by law or interpretative assistance would be helpful in applying the law. These proposed amendments, together with proposed or final regulations previously issued under section 412 of the Code, generally constitute the regulatory guidance to be provided with respect to the minimum funding requirements, with exception of rules relating to mergers. However, comments noting additional issues with respect to which regulatory guidance might be helpful will be considered along with comments addressing issues that arise under the proposed amendments.

The provisions under section 4971 of the Code contain sanctions for enforcing the minimum funding requirements. The sanctions are two excise taxes. The initial tax is 5 percent of an accumulated funding deficiency, and an additional tax of 100 percent is imposed if the deficiency is not corrected. Generally, the employer responsible for contributing to the plan is liable for these taxes.

Section 3002(b) of ERISA provides special rules regarding the section 4971 taxes and coordination of matters regarding these taxes with the Secretary of Labor.

Funding Standard Account

Under section 412(b) of the Code, a plan must maintain a funding standard account. The mechanics for reflecting charges and credits to the account appear in section 412(b) (2) and (3). The proposed amendments address a number of key issues arising under the funding standard account provisions.

Money Purchase Plans

Under the proposed amendments, a money purchase pension plan is, like other plans, required to maintain a funding standard account. However, the accounting under such a plan for funding purposes is limited to charges for the contribution required under the formula provided by the plan, credits for amounts actually contributed, and charges and credits to amortize certain bases.

Normally, the need to create an amortization base does not exist under a money purchase plan. However, such a base would be created, for example, with the issuance of a waiver of the minimum funding standard for a plan.

Combining and Offsetting

The proposed amendments would provide rules, as required under section 412(b)(4)of the Code, for combining and offsetting amortization amounts determined under the funding standard account. The proposed method for combining and offsetting these amounts

is described in the legislative history of ERISA. (See H.R. Rep. No. 93-807, 93d Cong., 2d Sess. 86-87 (1974), 1974-3 C.B. Supp. 321-322.)

Treatment of Interest

The proposed amendments would provide rules, as required by section 412(b)(5) of the Code, for treating interest charges and credits under the funding standard account.

Generally under the proposed amendments, charges and credits are made as of an assumed accounting date under the plan. There must be an interest charge or credit, as the case may be, for the period between this assumed date and the end of the plan year.

A contribution made during the "grace period" between the last day a plan year and the day determined under section 412(c)(10) is treated as having been made on the last day of the plan year.

Retroactive Changes

The proposed amendments provide for reflecting in the funding standard account retroactive changes required by the Commissioner to adjust for the use of unreasonable assumptions or funding methods.

Plan Termination

The proposed amendments relating to the effect of plan termination on the funding standard account are substantially identical to the provisions of Rev. Rul. 79-237, 1979-2 C.B. 190.

Bond Valuation Election

The proposed amendments would provide rules, as required by section 412(c)(2)(B) of the Code, for the election of a special valuation rule applicable to bonds and other evidences of indebtedness. The proposed amendments would be substantially identical to temporary regulations published in 1974 with respect to the bond valuation election. However, the proposed amendments would clarify the temporary rules by providing that certain convertible debt instruments are treated as debt until converted into equity securities. The rules concerning valuation of convertible debt would be effective only for debt instruments acquired after the date on which the proposal is adopted as a final regulation. For debt instruments acquired before that date, a valuation method will be considered acceptable if it is applied on a consistent basis.

Actuarial Valuation

The proposed amendments would provide rules, as required by section 412(c)(9) of the Code, relating to the frequency of actuarial valuations for plans. These rules would identify situations in which valuations may be required more frequently than once every 3 years. Comments are requested as to the appropriateness of requiring more frequent valuations under the situations described in the proposed amendments. Comments are also requested as to any additional circumstances where valuations should be required more frequently than once every 3 years. The rules also would describe how the funding standard account is to be maintained for years when there is no valuation.

Timing of Contributions

The proposed amendments would provide rules, as required by section 412(c)(10) of the Code, relating to the time for making contributions for purposes of section 412. Unlike the temporary regulations published in 1976, these rules would not contain an automatic six-month extension of the two and one-half month grace period set forth as a general rule under the statute for meeting the minium funding requirements. The Commissioner may approve applications for an extension of the grace period of up to six months. This more restrictive approach would be applied prospectively from a date after the publication of final regulations. However, a transitional rule is provided to phase in the two and one-half month period over the first three plan years following a date after publication of final regulations, and extensions may be approved by the Commissioner.

Alternative Funding Standard Account

The proposed amendments contain rules that would apply to plans maintaining the alternative minimum funding standard account. These rules would reflect section 412(g)(1) by limiting the use of the alternative account to plans using a funding method that requires contributions in all years at least equal to those required under the entry age normal funding method. Thus, only plans that use the entry age normal funding method may use the alternative account.

Allocation of Excise Tax Liability

The proposed amendments would contain rules to allocate excise tax liability under section 4971 of more than one employer, but they would permit allocation in a reasonable manner that is not inconsistent with the rules provided.

Under the proposed amendments, the tax liability of each employer would generally be based on the obligation of each employer to contribute to the plan. To the extent that a funding deficiency would be attributable to the deliquent contribution of an individual employer, that employer would be liable for the tax. To the extent that a funding deficiency is not attributable to a deliquent contribution, each employer would share liability in proportion to its share of required contributions to the plan.

Allocations for Related Employers

The general rules for allocating tax liability would not apply to certain related employers. To the extent that an accumulated funding deficiency is attributable to related employers, those employers would be jointly and severally liable for the excise tax with respect to that deficiency. This rule would apply to related employers maintaining a plan of their own or in conjunction with other employers.

Employer Withdrawal

The proposed amendments would generally provide that an employer withdrawing from a plan remains liable for tax imposed with respect to the portion of an accumulated funding deficiency attributable to that employer for years before withdrawal. The remaining employers would be liable for the tax attributable to the accumulated funding deficiency for years after an employer's withdrawal, even if the deficiency is attributable to prior years.

Temporary Regulations Superseded

The proposed amendments contain rules that would supersede the following temporary regulations: § 11.412(c)-7, relating to the election to treat certain retroactive plan amendments as made on the first day of the plan year; § 11.412(c)-11, relating to the election with respect to bonds; and § 11.412(c)-12, relating to the extension of time to make contributions to satisfy requirements of section 412.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this proposed regulation is not a major regulation for purposes of Executive Order 12291. Accordingly, a regulatory impact analysis is not required.

Although this document is a notice of proposed rulemaking which solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly,

these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. It is requested that persons submitting comments use professional letterhead stationery only if the comment represents the position of the firm or a named client, rather than the views of the writer. All comments are available for public inspection and copying. A public hearing will be held upon written request to the Comissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Joel E. Horowitz of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.401–0–1.425–1

Income taxes, Employee benefit plans, Pensions.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Parts 1, 11, and 54 are as follows:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. The Income Tax Regulations, 26 CFR Part 1, are amended by adding the following new sections immediately after § 1.411(d)–3:

§ 1.412(a)–1 General scope of minimum funding standard requirements.

(a) *General rule.* Section 412 of the Code provides minimum funding requirements for plans that include a trust qualified under section 401(a) and for plans that meet the requirements of section 403(a) or section 405(a). Generally, such plans include defined benefit pension plans, money purchase pension plans (including target benefit plans), qualified annuity plans, and qualified bond purchase plans. The minimum funding requirements continue to apply to any plan that was qualified under, or was determined to have met the requirements of, these sections for any plan year beginning on or after the effective date described in paragraph (d) of this section for the plan. Also, under section 302 of the Employee Retirement Income Security Act of 1974 ("ERISA"), the minimum funding requirements apply to employee pension benefit plans described in section 301(a) of that Act. The regulations prescribed under this section and the following sections with respect to section 412 also apply for purposes of sections 302 and 305 of ERISA. These topics are among those discussed in the following sections: maintenance of a funding standard account (including rules for combining and offsetting amounts to be amortized, rules for computing interest on amounts charged and credited to the account, rules relating to the treatment of gains and losses, and rules relating to retroactive changes in the funding standard account required by the Commissioner), § 1.412(b)–1; amortization of experience gains in connection with group deferred annuity contracts, § 1.412(b)–2; funding standard account adjustments for plan mergers and spinoffs, § 1.412(b)–3; plan terminations, § 1.412(b)–4; election of the alternative amortization method of funding, § 1.412(b)–5; determinations to be made under funding method, § 1.412(c)(1)–1; shortfall method, § 1.412(c)(1)–2; valuation of plan assets and reasonable valuation methods, § 1.412(c)(2)–1; bond valuation election, § 1.412(c)(2)–2; reasonable funding methods, § 1.412(c)(3)–1 and –2; certain changes in accrued liability, § 1.412(c)(4)–1; changes in funding method or plan year, § 1.412(c)(5)–1; full funding and the full funding limitation, § 1.412(c)(6)–1 and § 1.412(c)(7)–1; retroactive plan amendment, § 1.412(c)(8)–1; frequency of actuarial valuations, § 1.412(c)(9)–1; time for making contributions to satisfy section 412, § 1.412(c)(10)–1; and maintenance of an alternative funding standard account, § 1.412(g)–1.

(b) *Exceptions.* See section 412(h) for a list of plans not subject to the requirements of section 412. These excepted plans include profit-sharing or stock bonus plans; certain insurance contract, government, and church plans; and certain plans that do not provide for employer contributions.

(c) *Failure to meet minimum funding standards.* A plan fails to meet the minimum funding standards for a plan year if, as of the end of that plan year, there is an accumulated funding deficiency as defined in section 412(a) and § 54.4971–1(d). See regulations under section 4971 for rules relating to taxes for failure to meet the minimum funding standards.

(d) *Effective date.*—(1) *In general.* Unless otherwise provided, this section and the following sections providing regulations under section 412 apply to any plan year to which section 412 applies. For a plan in existence on January 1, 1974, section 412 generally applies to plan years beginning in 1976. However, this time is extended by special transitional rules under section 1017(c)(2) of ERISA for such existing plans under collective bargaining agreements. For a plan not in existence on January 1, 1974, section 412 generally applies for plan years beginning after September 2, 1974.

(2) *Date when plan is in existence.* See § 1.410(a)–2(c) for rules concerning the date when a plan is considered to be in existence.

(3) *Early application of section 412.* See § 1.410(a)–2(d) for rules permitting plans in existence on January 1, 1974, to elect to have section 412, as well as other provisions added by section 1013 of ERISA, apply to plan year beginning after September 4, 1974, and before the effective date of the provision otherwise applicable to the plan.

(4) *Transitional rule.* The regulations issued under sections § 1.412(b)–1, § 1.412(b)–3, § 1.412(b)–4, § 1.412(c)(2)–2, § 1.412(c)(4)–1, § 1.412(c)(5)–1, § 1.412(c)(6)–1, § 1.412(c)(7)–1, § 1.412(c)(8)–1, § 1.412(c)(9)–1, § 1.412(c)(10)–1, and § 1.412(g)–1, unless otherwise indicated, are effective with respect to a particular plan when section 412 first applies to that plan. However, for plan years beginning on or before date 60 days after publication of these regulations as a Treasury Decision in the **Federal Register**, the plan may rely on the prior published position of the Internal Revenue Service with respect to the application of section 412. Other effective dates are included in § 1.412(b)–2, § 1.412(c)(1)–2, § 1.412(c)(2)–1, § 1.412(c)(3)–2, and § 1.412(i)–1.

§ 1.412(b)–1 Funding standard account.

(a) *General rule.* Generally, for each single plan subject to the minimum funding standards there must be maintained a funding standard account as prescribed by section 412(b). (See § 1.414(l)–1(b)(1) for definition of "single plan".) Such an account for a money purchase pension plan reflects charges for contributions required under the plan, credits for amounts contributed, and charges and credits for amortization bases described in paragraph (b)(3) of this section.

(b) *Definitions and special rules.*—(1) *Accounting date.*—(i) *In general.* Each charge or credit to the funding standard account is charged or credited as of an accounting date. The accounting date for an item depends on the nature of the item and must be consistent with the computation of the amount of that item.

(ii) *Specific accounting dates.* The accounting date for each individual charge for normal cost or any charge or credit for the amortization of an amortization base is the date as of which the charge or credit is computed as due during the plan year. The last day of the plan year is the accounting date for any credit described in section 412(b)(3)(C). The first day of the plan year is the accounting date for any credit described in section 412(b)(3)(D) or for any accumulated funding deficiency or credit balance existing as of the end of the prior plan year. The accounting date for each contribution is the date the contribution is made or, if made during the period described in section 412(c)(10), the last day of the plan year. Further any contribution made must be credited as of the accounting date.

(2) *Valuation rate.* The term "valuation rate" means the assumed interest rate used to value plan liabilities.

(3) *Amortization base.* For purposes of this section, the term "amortization base" means any amount established under section 412(b)(2)(B), (C), or (D) to be amortized as a charge to the funding standard account, under section 412(b)(3)(B) to be amortized as a credit to the funding standard account, any other base resulting from a combination of offset of bases or any shortfall gain or loss base under § 1.412(c)(1)–2. Any base required by the Commissioner to be established pursuant to an approved change in funding method is also an amortization base. Each amortization base established under one of the provisions enumerated above with respect to a particular year is referred to as an "individual base".

(4) *Amortization period.* The amortization period for a base is the period of years stated in section 412(b)(2) or (3) over which a particular base is to be amortized. See § 1.412(c)(1)–2(g)(2) and (h)(2) for amortization periods under the shortfall method. See section 412(b)(2) and (3) for amortization periods for bases described in those sections. See paragraph (d) of this section for amortization periods of bases resulting from a combination or offset of bases. If the number of years in the amortization period is not an integer, the charge or credit in the last year will not be for the entire amortization amount but will be for the outstanding balance of the base at the time of the charge or credit.

(5) *Outstanding balance.* The outstanding balance of a base as of the end of a plan year equals the difference between two amounts:

(i) The first amount is the outstanding balance of the base as of the beginning of the plan year (or, if later, the date as of which the base is required to be established) increased by interest at the valuation rate.

(ii) The second amount is the charge (or credit) for that year for the base increased by interest at the valuation rate.

For purposes of testing the basic funding formula in § 1.412(c)(3)–1(b)(1) the outstanding balance of amortizable bases must be computed as of the valuation date (the same date as of which the present value of future benefits and the present value of normal costs over the future working lifetime of participants are determined), rather than as of the end of the plan year. In testing the basic funding formula, the outstanding balance as of a valuation date equals the difference between two amounts. The first amount is the outstanding balance as of the preceding valuation date (or, if later, the date as of which the base is required to be established) increased by interest at the valuation rate. The second amount is the charge (or credit) for the plan year preceding the plan year to which the current valuation refers increased by interest at the evaluation rate.

(6) *Remaining amortization period.* The remaining amortization period for an amortization base is the difference between the amortization period and the number of years (including whole and fractional years) for which the base has been reduced by charging or crediting the funding standard account, as the case may be, with the amortization payment for each year.

(7) *Amortization amount.* The amortization amount is the amount of the charge or credit to the funding standard account required with respect to an amortization base for a plan year.

(8) *True and absolute values.* See § 1.404(a)–14(b) (4) for a definition of the terms "true value" and "absolute value."

(9) *Immediate gain type funding method.* A funding method is an immediate gain type method if, under the method—

(i) The accrued liability may be determined solely from the computations with respect to the liabilities;

(ii) The accrued liability is an integral part of the funding method; and

(iii) The accrued liability is the excess of the present value, as of any valuation date, of the projected future benefit costs for all plan participants and beneficiaries over the present value of future contributions for the normal cost of all current plan participants.

Examples of the immediate gain type of funding method are the unit credit method, the entry-age normal cost method, and the individual level premium method.

(10) *Spread gain type funding method.* A funding method is a spread gain type method if it is not an immediate gain type method. Examples of the spread gain type of funding method are the aggregate cost method, the frozen initial liability cost method, and the attained age normal cost method.

(11) *Actual unfunded liability for immediate gain funding methods.*—(i) *In general.* For a funding method of the immediate gain type, the actual unfunded liability as of any valuation date is the excess, if any, of the accrued liability over the actuarial value of assets as of that date.

(ii) *Accrued liability.* The accrued liability is equal to the present value of future normal costs. Generally, for purposes of computing costs for a plan year and gains and losses for a plan year, the normal cost for the plan year to which the valuation refers is considered to be a future normal cost and is not included in the accrued liability.

(iii) *Actuarial value of assets.* The value of assets must be determined in a manner consistent with section 412(c)(2) of the Code and § 1.412(c)(2)–1. Furthermore, for purposes of computing costs for a plan year and gains and losses for a plan year, the assets must be treated in a manner that is consistent wuth the method of calculation of the accrued liability. If, in determining the accrued liability, the normal cost for the plan year to which the valuation refers is treated as a future normal cost, then the assets used to compute the unfunded accrued liability should not include contributions that are credited to the funding standard account for the plan year to which the valuation refers or for any plan year thereafter.

(12) *Actual unfunded liability for spread gain funding methods.* For a funding method of the spread gain type that maintains an unfunded liability, the actual unfunded liability equals the expected unfunded liability.

(13) *Expected unfunded liability.* The expected unfunded liability as of any valuation date is determined as:

(i) The actual unfunded liability as of the prior valuation date increased with

interest at the valuation rate to this later valuation date, plus;

(ii) Normal costs representing accrued liabilities that were not included in determining the accrued liability as of the prior valuation date (*i.e.*, such costs were considered future normal costs as of the prior valuation date) but that are included (*i.e.*, are not considered future normal costs) in determining the accrued liability as of this later valuation date, plus interest at the valuation rate from the date as of which the normal costs were assumed payable to this valuation date, minus

(iii) The amount considered contributed by the employer to or under the plan for the plan year that was not included in the calculation of the actual unfunded liability as of the prior valuation date and was included in the calculation of the actual unfunded liability as of this later valuation date, plus interest at the valuation rate from the date on which the contribution was made if made during the plan year, or under section 412(C)(10) was deemed to have been made if made after the plan year, to this later valuation date.

(14) *Plan year to which a valuation refers.* The plan year for which the funding standard account is charged with the first normal cost determined by a valuation is the plan year to which the valuation refers. See also § 1.412(c)(9)–1(b) concerning the date of a valuation.

(c) *Establishment and maintenance of amortization bases.*—(1) *Immediate gain type funding methods.* Under a plan using an immediate gain type funding method, a new amortization base must be established to reflect each change in unfunded past service liability arising from a plan amendment, net experience gain or loss, and change in unfunded past service liability arising from a change in funding method or actuarial assumptions.

(2) *Spread gain type funding methods.*—(i) *In general.* Under a plan using a spread gain type funding method, amortization bases may be established to reflect changes in unfunded past service liability arising from plan amendments or changes in actuarial assumptions. Alternatively, these changes in unfunded liability may be reflected in the normal cost. Whether these changes are reflected in amortization bases or in the normal cost is part of the funding method. Thus, any change from past practice constitutes a change in funding method and must be approved under section 412(c)(5). Furthermore, the method must treat increases and decreases due to any type of event consistently.

(ii) *Experience gain or loss.* An amortization base may not be established to reflect a net experience gain or loss under a plan using a spread gain type funding method.

(3) *Special amortization bases.* Any amortization base established to amortize a waived funding deficiency under section 412(b)(2)(C) must continue to be maintained regardless of the type of funding method used by the plan. Also see § 1.412(b)–1(d)(1).

(d) *Combining and offsetting amounts to be amortized.*—(1) *In general.* Under section 412(b)(4), individual bases, with the exception of bases under section 412(b)(2)(C), may be combined and offset to form a single base. This single base is computed under the provisions of paragraph (d) that follow. However, any number of amortization bases having the same remaining amortization period may be combined and offset simply by adding the outstanding balances of the individual bases, using true rather than absolute values, without regard to the computations under paragraph (d) of this section that follow. Bases under section 412(b)(2)(C) may not be combined with any bases not established under section 412(b)(2)(C).

(2) *Combine outstanding balances of bases for changes and for credits.* Except as provided in subparagraph (1), the outstanding balances of any individual bases established for the purpose of charging the funding standard account may be combined as of any date by adding the outstanding balance of each base to be combined as of that date. Likewise, the outstanding balances of any bases for crediting the account may be combined.

(3) *Determine remaining amortization period of each combined base.* The remaining amortization period of a combined base is determined as follows:

(i) Add the amortization amounts, based on the same mode of payment, for the individual bases being combined. Amortization amounts are of the same mode of payment if they are charged or credited on the same day of the plan year, or on the same days if charged or credited in installments during the plan year.

(ii) Divide the outstanding balance of the combined base by the combined amortization amount determined under subdivision (i).

(iii) Compute the period of years for which the amount determined under subdivision (ii) provides an annuity certain of $1 per year at the valuation rate. This number, the remaining amortization period, must be computed in terms of fractional years, if necessary. Standard present value tables may be used together with linear interpolation.

(iv) As an alternative, the amortization period may be rounded to the next lowest integer (if charge bases) or next highest integer (if credit bases) and the amortization amount must then be recomputed by dividing the outstanding balance of the combined base by the present value of an annuity certain of $1 per year at the valuation rate for the rounded amortization period.

(4) *Offset.* Combined bases may be offset only if all charge and credit bases have been combined (except those that may not be combined pursuant to subparagraph (1)). The combined charge base and the combined credit base are offset by subtracting the lesser outstanding balance from the greater outstanding balance. The difference between these two outstanding balances is amortized over the remaining amortization period for the greater of the two outstanding balances, whether for charges or for credits. The amortization amount (charge or credit) for this offset base is the level amount payable for each plan year to reduce the outstanding balance of the base to zero over the remaining amortization period at the valuation rate. However, see paragraph(d)(3)(iv) of this section concerning an alternative method of computing the remaining amortization period.

(5) *Example.* The principles of paragraph (d) of this section are illustrated by the following example:

Example. Assume that at the beginning of a plan year the actuary for a plan decides to combine and offset the amortization bases as reflected in the plan's funding standard account. No funding deficiency of the plan has been waived. All amortization amounts are due at the end of the plan year. The valuation rate is 5 percent. Based on pertinent information from the plan records, all amortization bases, A and B for charges and C and D for credits, are combined and offset as follows:

Base	Outstanding balance (beginning of year)	Amortization amount (due end of year)	Remaining amortization period
(i) Individual bases:			
A	$165,468	$10,000	36
B	8,863	1,000	12
C	(4,153)	(500)	11
D	(30,745)	(2,000)	30
(ii) Combined bases:			
AB	$174,331	$11,000	32.23
CD	(34,896)	(2,500)	24.53

Base	Outstanding balance (beginning of year)	Amortization amount (due end of year)	Remaining amortization period
(iii) Offset base: ABCD	$139,433	$8,798	32.23

(iv) The outstanding balances of the charge and credit bases were combined in step (ii) by adding the outstanding balances of the like bases (165,468+8,863=174,331 and 4,153+30,745=34,898). The charge and credit base amortization amounts were similarly computed (10,000+1,000=11,000 and 500+2,000=2,500). The remaining amortization periods were derived from standard present value tables and linear interpolation as the amount having a present value at the 5 percent valuation rate for a $1 per year annuity certain equal to the ratio of the outstanding balance to the amortization amount.

(v) The combined bases were offset in step (iii) by subtracting base CD from AB to obtain the $139,433 outstanding balance, using the 32.23 remaining amortization period for base AB, and computing the $8,798 amortization amount as the level annual amount necessary to amortize the base fully over 32.23 years. (Alternatively, the amortization period may be rounded to 32 years. The amortization charge corresponding to that amortization period is $8,823.)

(e) *Interest.*—(1) *General rule.* The funding standard account is charged or credited with interest at the valuation rate for the time between the accounting date for the item giving rise to the interest charge or credit and the end of the plan year.

(2) *Change of interest rate.* A change of the assumed interest rate under a plan does not affect the outstanding balance or the remaining amortization period of any existing base. However, the amortization amount for each base is increased to reflect an increase in interest and decreased to reflect a decrease in interest so that the present value of future amortization amounts equals the outstanding balance of the base. This change is made in addition to creating any new base required by § 1.412(b)–1(c).

(f) *Gains and losses.*—(1) *Amortization requirements.*—(i) *Immediate gain type funding method.* A plan that uses an immediate gain type of funding method separately amortizes experience gains and losses over the period prescribed in section 412(b)(2)(B)(iv) and (3)(B)(ii). The first year of the amortization of an experience gain or loss determined as of a particular valuation date is the plan year to which the valuation refers.

(ii) *Spread gain type funding method.* A plan that uses a spread gain type of funding method spreads experience gains and losses over future periods as a part of the plan's normal cost. These gains and losses are reflected in the amount charged to the funding standard account under section 412(b)(2)(A) and are not separately amortized.

(2) *Amount of experience gain or loss.*—(i) *In general.* For an immediate gain type of funding method the experience gain determined as of a valuation date is the excess of the expected unfunded liability described in § 1.412(b)–1(b)(13) over the actual unfunded liability described in § 1.412(b)–1(b)(11). The experience loss is the excess of the actual unfunded liability described in § 1.412(b)–1(b)(11) over the expected unfunded liability described in § 1.412(b)–1(b)(13).

(ii) *Special rule.* Paragraph (f)(2)(ii) of this section applies to an immediate gain funding method if there are no other amortization charges (under section 412(b)(2)(B), (C), or (D)) or credits (under section 412(b)(3)(B)) for the first plan year in which the loss will be amortized. The experience loss as of the valuation date is the sum of—

(A) The actual unfunded liability as of the valuation date, plus

(B) Any credit balance (or minus any funding deficiency) in the funding standard account as of the first day of the first plan year in which the loss will be amortized adjusted with interest at the valuation rate to the valuation date.

(g) *Certain retroactive changes required by Commissioner.* Under section 412(c)(3), all costs liabilities, rates of interest, and other factors under the plan must be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable. Assumptions and methods are established in the first Schedule B (Form 5500) that is filed with respect to a plan year and may not be changed for that plan year. However, upon a determination by the Commissioner that the actuarial assumptions and methods used by a plan are not reasonable in the aggregate, the Commissioner may require certain retroactive adjustments to the funding standard account of the plan. The funding standard account must reflect these changes as required by the Commissioner.

(h) *Reasonable actuarial assumptions.*—(1) *In general.* The determination whether actuarial assumptions are reasonable in the aggregate is generally based upon the experience under the plan, unless it is established that past experience is not likely to recur and thus is not a good indication of future experience. In addition, assumptions may be considered unreasonable in the circumstances described in paragraphs (h)(2)–(4) of this section.

(2) *Non counterbalancing assumptions.* Assumptions may be considered unreasonable if an assumption used by the plan is not yet reflected in the experience of the plan, is not reasonable under the circumstances of the plan, and is not counterbalanced by another assumption. For example, in a plan with one participant who has not yet attained the normal retirement age, an assumption of an unreasonable annuity purcahse rate at normal retirement age may cause assumptions to be unreasonable in the aggregate. In contrast, an unreasonable annuity purchase rate could be counterbalanced by a change in the plan interest rate.

(3) *Inconsistent with benefit structure.* Assumptions may be unreasonable if use of an assumption is inconsistent with the benefit structure of the plan. For example, a plan which provides benefits not based on compensation may not assume a salary increase if it spreads the present value of future normal costs over the present value of future compensation.

(4) *Inconsistent assumptions.* Assumptions may be considered unreasonable in the aggregate if one plan assumption is inconsistent with other assumptions used by the plan. For example, an assumption which projects benefits based on a salary increase of 5-percent per year may cause assumptions to be unreasonable in the aggregate in a plan which spreads normal costs over future years' compensation using an assumption of 8-percent annual compensation increases.

Par. 2. The Income Tax Regulations, 26 CFR Part 1, are amended by adding the following new sections after § 1.412(b)–2:

§ 1.412(b)–3 Funding standard account adjustments for plan mergers and spinoffs. [Reserved]

§ 1.412(b)–4 Plan termination and plan years of less than twelve months.

(a) *General rules.* The minimum funding standard under section 412 applies to a plan until the end of the plan year in which the plan terminates. Therefore, the funding standard account (or the alternative funding standard account, as the case may be) must be maintained until the end of the plan year in which the plan terminates even though the plan terminates before the last day of the plan year.

(b) *Defined benefit plans.* In the case of a defined benefit plan, the charges and credits to the funding standard account are adjusted ratably to reflect the portion of the plan year before the day of plan termination. Similarly, annual charges and credits to the funding standard account are adjusted for a short plan year. However, this ratable adjustment is not made for charges described in section 412(b)(2)(C), credits under section 412(b)(3)(A), (C) and (D), for interest charges and credits under section 412(b)(5), and for credits under section 412(c)(6).

(c) *Money purchase pension plans*—(1) *General rule for termination.* In the case of a money purchase pension plan, the minimum funding standard requires the funding standard account to be charged with the entire amount of any contribution due on or before the date of plan termination. However, it does not require a charge for contributions due after that date.

(2) *General rule for short plan year.* In the case of a money purchase pension plan, the minimum funding standard requires the funding standard account to be charged with the entire amount of any contribution due as of a date within a short plan year.

(3) *Due date of contributions.* For purposes of paragraphs (c) (1) and (2) of this section, a contribution is due as of the earlier of—

(i) The date specified in the plan, or

(ii) The date as of which the contribution is required to be allocated.

(4) *Date for allocation of contribution.* For purposes of paragraph (c)(3)(ii) of this section, a contribution is required to be allocated as of a date if all the requirements for the allocation have been satisfied as of that date.

(d) *Date of plan termination*—(1) *Title IV plans.* In the case of a plan subject to Title IV of ERISA, the date of plan termination is generally the date described in section 4048 of ERISA. However, if that date precedes the tenth day after the date on which notice of intent to terminate is filed, and if any contributions made or required by Code section 412 to avoid an accumulated funding deficiency for the period ending on such tenth day would increase any participant's benefits upon termination (taking benefits guaranteed by the Pension Benefit Guaranty Corporation into account), the date of termination will be the tenth day after the date on which notice of intent to terminate is filed.

(2) *Other plans.* In the case of a plan not subject to Title IV of ERISA, the date of plan termination occurs no earlier than the date on which the actions necessary to effect the plan termination are taken. The determination of this date is based on the facts and circumstances of each case.

(e) *Partial terminations.* This section does not apply to a partial plan termination within the meaning of section 411(d)(3)(A).

(f) *Funding excise taxes.* See § 54.4971–3(d) of the Pension Excise Tax Regulations (26 CFR Part 54) for the effect of plan termination on an employer's liability for taxes imposed by section 4971 (a) and (b).

Par. 3. The Income Tax Regulations, 26 CFR Part 1, are amended by adding the following new section after § 1.412(c)(2)–1:

§ 1.412(c)(2)–2 Bond valuation election.

(a) *Scope of election.*—(1) *In general.* The election described in section 412(c)(2)(B) with respect to bonds generally applies to all bond and evidence of indebtedness including those acquired by merger. The election applies only to defined benefit plans. A defined contribution plan must value bonds and other evidences of indebtedness on the basis of fair market value.

(2) *Exception.* The election does not apply to bonds or evidences of indebtedness at any time that they are in default as to principal or interest.

(3) *Convertible debt.* For purposes of this section, a debt instrument which is convertible into an equity security and acquired after [the date 90 days after the date on which § 1.412(c)(2)–2 is adopted as a Treasury Decision] is treated as an evidence of indebtedness until the conversion occurs.

(b) *Effect of election.*—(1) *In general.* The effect of the election is that bonds and other evidences of indebtedness included among the plan assets are valued on an amortized basis rather than on a fair market value basis.

(2) *Amount amortized.*—(i) *In general.* The amount amortized with respect to a bond or other evidence of indebtedness is generally the difference between its initial costs when acquired by the plan and its redemption value at the end of the amortization period. In the case of a bond or other evidence of indebtedness that was acquired by the plan in a plan year before the plan year for which the election was made, the amortized value for each year must be determined as though the election had always been in effect with respect to the bond or other evidence of indebtedness.

(ii) *Spinoffs.* The amount amortized after a spinoff is based on the initial cost to the plan which acquired the bond or other evidence of indebtedness and not the value to the plan after the spinoff.

(iii) *Mergers.* The amount amortized after a merger is based on the cost to the plan which first elected to value the bonds and other evidences of indebtedness on an amortized basis. In the case of a bond or other evidence of indebtedness that was acquired by any merging plan before the election was first made with respect to the bond or other evidence of indebtedness, the premium or discount shall be amortized as provided in paragraph (b)(2)(i).

(3) *Amortization period.* The amortization period is the time from the date on which the plan acquires the bond or other evidence of indebtedness ot its maturity date (or, in the case of a debt instrument that is callable prior to maturity, the earliest call date).

(c) *Effect of default.* Once the election is made, it applies to each debt instrument held or acquired that is not in default as to principal or interest. While in default, the instrument is subject to the fair market value requirements of section 412(c)(2)(A).

(d) *Manner of making election.* The plan administrator makes the election by preparing a statement that the election described in section 412(c)(2)(B) is being made and by filing the statement attached to the annual return required under section 6058 for the first plan year for which the election is to apply.

(e) *Revocation of election*—(1) *Effect.* Once consent to the revocation of the election is obtained as prescribed in paragraph (e)(2) of this section, all plan assets are valued under section 412(c)(2)(A).

(2) *Consent.* Consent for the revocation of the election must be obtained in the manner prescribed by the Commissioner for obtaining permission to change funding methods under section 412(c)(5) and § 1.412(c)(5)–1.

(3) *Mergers.* A plan which has acquired a bond or other evidence of indebtedness by merger must obtain the consent of the Commissioner to value bonds and other evidences of indebtedness on a basis other than amoritized value if an election under section 412(c)(2)(B) with respect to the asset acquired had been made prior to the merger.

Par. 4. The Income Tax Regulations, 26 CFR Part 1, are amended by adding the following new sections after § 1.412(c)(3)–2:

§ 1.412(c)(4)–1 Certain changes in accrued liability.

(a) *In general.* In the case of immediate gain type funding methods, section 412(c)(4) treats certain increases and decreases in the accrued liability under a plan as an experience gain or loss. Plans using a spread gain type of funding method will reflect the gain or loss in determining the normal cost under the plan. Under section 412(b) (2) and (3), plans which are valued using a funding method of the immediate gain type will amortize the amount treated as an experience gain or loss in equal amounts over the period described in section 412(b). See § 1.412(b)–1(b) (9)

and (10) for examples of spread gain type and immediate gain type funding methods.

(b) *Applicable changes.* A change treated as an experience gain or loss under section 412(c)(4) includes an increase or decrease in accrued liability caused by:

(1) A change in benefits under the Social Security Act,

(2) A change in other retirement benefits created under Federal or State law,

(3) A change in the definition of "wages" under section 3121, or

(4) A change in the amount of wages under section 3121 that are taken into account for purposes of section 401(a)(5) and the regulations thereunder.

§ 1.412(c)(5)–1 Change in plan year or funding method.

Approval given under section 412(c)(5) authorizes a change in plan year or funding method. Written requests for approval are to be submitted, as directed by the Commissioner, to Commissioner of Internal Revenue, Attention: OP:E:A:P, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Such a request must be submitted before the close of the plan year for which the change is to be effective unless an extension of time for filing the request is granted.

§ 1.412(c)(6)–1 Full funding and full funding limitation.

(a) *In general.* This section provides rules relating to full funding and the full funding limitation under section 412(c)(6) and (7). The full funding limitation for a plan year is the excess, if any, of the accrued liability under the plan plus the normal cost for the plan year over the value of the plan's assets.

(b) *Valuation.*—(1) *Timing rule.* For purposes of this section, assets and accrued liabilities are to be valued at the usual time used by the plan for valuations.

(2) *Interest adjustments.* If the valuation is performed before the end of the plan year, the assets and accrued liabilities (including normal cost) are projected to the end of the plan year. The projection is based on the valuation rate.

(c) *Calculation of accrued liability.* The accrued liability of a plan is determined under the funding method used by the plan. However, if the funding method used by the plan is not an immediate gain method and, thus, does not directly calculate an accrued liability, the calculation of the accrued liability is made under the entry age normal funding method.

(d) *Calculation of normal cost.* In general, the normal cost is the normal cost determined under the funding method used by the plan. However, if under paragraph (c) accrued liability is calculated under the entry age normal cost method, then the normal cost is also calculated under the entry age normal cost method.

(e) *Calculation of assets.* The value of plan addets used to determine the full funding limitation is the lesser of the fair market value of the assets or the actuarial value of the assets, if different. The value of plan assets must be reduced by any credit balance existing on the first day of the plan year.

(f) *Effect of full funding on deduction limits.* See § 404(a)–14(k) for provisions relating to the effect of the full funding limitation on the maximum deductible contribution limitations and 10-year amortization bases under section 404(a).

(g) *Effect of the full funding limitation on the funding standard account.*—(1) *General rule.* If, as of the end of any plan year, the acumulated funding deficiency (calculated without regard to any credit balabce for the plan year or any contributions made for that plan year) exceeds the full funding limitation of section 412(c)(7) calculated as of the valuation date and projected, if necessary, to the end of the plan year, then the following adjustments are made:

(i) The amount of such excess is credited to the funding standard account for that plan year.

(ii) As of the end of that plan year, all the amounts described in paragraphs (2)(B), (C), (D), and (3)(B) of section 412(b) which are required to be amortized shall be considered fully amortized.

(2) *Example.* The principles of section 412(c)(6) and of paragraph (e) of this section are illustrated in the following example:

Example. Assume that a single employer plan is established on January 1, 1976, with a calendar plan year. The funding method is the accrued benefit cost method (unit credit method), the interest assumption is 5 percent, and both the normal cost and the amortization charges and credits are calculated on the basis of payment at the beginning of the year. The annual charge to the funding standard account due to the amortization (over 30 years) of the initial past service liability is $200, and the annual credit due to the amortization (over 15 years) of a 1979 experience gain is $10. A valuation is performed as of January 1, 1985, to determine costs for the 1985 plan year. There was a credit balance of $100 in the funding standard account on December 31, 1984. As of January 1, 1985, plan assets (determined in accordance with section 412(c)(7)(B) and reduced by the $100 credit balance as of January 1, 1985) were $10,400; the accrued liability under the plan was $10,000; the normal cost (for the 1985 plan year) was $1,200; and the 1985 employer contribution (made as of January 1, 1985) was $1,000. The accumulated funding deficiency (calculated ignoring the credit balance and employer contribution) as of December 31, 1985, is $1,459.50, determined as the excess of charges of $1,470 ($1,200 normal cost, plus $200 amortization charge, plus $70 interest) over the credits of $10.50 ($10 amortization credit, plus $.50 interest). The full funding limitation as of the valuation date (January 1, 1985) is $800, determined as the excess of the sum of the accrued liability ($10,000) plus normal cost ($1,200) over the adjusted plan assets ($10,400). The value of this $800 as of the end of the year (i.e., December 31, 1985) is $800 plus $40 interest, or $840.00. The excess, as of the end of the 1985 plan year, of the accumulated funding deficiency over the full funding limitation is thus $1,459.50 minus $840.00, or $619.50. The funding standard account is charged and credited as follows:

Charges:		
Normal cost	$1,200.00	
Amortization charge	200.00	
Interest	70.00	
Total		$1,470.00
Credits:		
Credit balance	100.00	
Contribution	1,000.00	
Amortization credit	10.00	
Interest	55.50	
Sec. 412(c)(6) credit	619.50	
Total		1,785.00
Credit balance December 31, 1985		315.00

§ 1.412(c)(7)–1 Full funding limitation.

See § 1.412(c)(6)–1 for rules relating both to full funding under section 412(c)(6) and to the full funding limitation under section 412(c)(7).

§ 1.412(c)(8)–1 Election to treat certain retroactive plan amendments as made on first day of a plan year.

The function of the Secretary of Labor described in section 412(c)(8) was transferred to the Secretary of Treasury as of December 31, 1978, by Reorganization Plan No. 4 of 1978, 1979–1 C.B. 480. Therefore, the material described in section 412(c)(8) now must be filed as directed by the Secretary of the Treasury.

§ 1.412(c)(9)–1 Frequency of actuarial valuations.

(a) *Required valuation.* Section 412(c)(9) requires an actuarial valuation not less frequently than once every three years. Paragraph (b) of this section provides general rules for performing valuations. Paragraph (d) describes certain situations in which the Commissioner may require an actuarial valuation more frequently than once

every three years. These rules may be waived at the discretion of the Commissioner and do not apply to multiemployer plans within the meaning of section 414(f).

(b) *General rules for valuations.*—(1) *Date of valuation.* Except as provided by the Commissioner, the valuation must be as of a date within the plan year to which the valuation refers or within the one month prior to that year. All assets and liabilities must be valued as of the same date. The valuation must use data as of the valuation date; it is not permissible to use adjusted date from a prior or subsequent year.

(2) *Use of prior valuations.* A plan may not use a valuation for any subsequent plan year if that valuation was not also used for the year to which it refers. Also, a prior valuation may not be used if the plan has used any subsequent valuation for another plan year.

(c) *Funding standard account rules for years when there is no valuation.*—(1) *Amortization of bases.* After an amortization base is established, the amortization amount of that base is charged or credited in each plan year, whether or not a valuation is performed for the year, until the outstanding balance of the base is zero. However, see § 1.412(c)(6)–1 for rules for years after a full funding limitation credit and § 1.412(b)–1 for combining and offsetting bases.

(2) *Normal cost.* If valuations are performed less frequently than every year, then any valuation computes the normal cost for the year to which the valuation refers and for subsequent years until another valuation applies. In those subsequent years, the normal cost is—

(i) If the funding method computes normal cost as a level dollar amount, the same dollar amount as for the year to which the valuation refers;

(ii) If the funding method computes normal cost as a level percentage of pay, the same percentage of current pay as for the year to which the valuation refers, or

(iii) If the funding method computes normal cost as an amount equal to the present value of benefits accruing under the method for the year, under any reasonable method.

The rules in subdivisions (i) and (ii) apply whether the funding method computes normal cost on either an individual or an aggregate basis.

(d) *Situations when more frequent valuations are required.*—(1) *Amendments increasing actuarial costs.*—(i) *General rule.* A valuation is required for any plan year when a plan amendment first increases the actuarial costs of a plan. For this purpose, actuarial costs consist of the plan's normal cost under section 412(b)(2)(A), amortization charges under section 412(b)(2)(B), and amortization credits under section 412(b)(3)(B).

(ii) *Exception.* No valuation will be required under paragraph (d)(1)(i) of this section if two conditions are met: first, the plan actuary estimates that the cost increase attributable to the amendment is less than 5 percent of the acturial cost determined without regard to the amendment; and second, the actuary files a signed statement to that effect with the annual return required under section 6058 for the year of the amendment.

(2) *Certain changes in number of participants.*—(i) *General rule.* A valuation is required for a plan year when the actual number of plan participants that would be considered in the current valuation differs from the number of participants that were considered in the prior valuation by more than 20 percent of that number.

(ii) *Exception.* Notwithstanding subdivision (i), no valuation will be required merely because of a change in the number of estimated participants under a plan that determines normal cost as a level percentage of payroll (on either an individual or aggregate basis) or as a level dollar amount per individual.

(iii) *Plans using shortfall method.* No valuation will be required merely because of a change in the number of estimated participants under a plan which uses the shortfall method described in § 1.412(c) (1)–2. However, a valuation is required for a plan year if the estimated units of service or production ("estimated base units" under § 1.412(c) (1)–2 (e)) for the prior plan year exceeds the actual number of units of service or production for that plan year by more than 20 percent.

(3) *Change in actuarial funding method or assumptions.* A valuation is required for any plan year with respect to which a change in the funding method or actuarial assumptions of a plan is made.

(4) *Mergers and spinoffs.*—(1) *General rule.* A valuation is required for any plan year in which a plan merger or spinoff occurs.

(ii) *Safe harbor for mergers.* In the case of a merger, no valuation will be required under paragraph (d)(4) of this section if the *de minimis* rule in § 1.414 (l)–1 (h) is satisfied.

(iii) *Safe harbor for spinoffs.* In the case of a spinoff, no valuation will be required under paragraph (d)(4) of this section if the present value of all the benefits being spun off from the plan during the plan year is less than 3 percent of the plan's assets as of the beginning of the year.

(5) *Change in average age of participants.*—(1) *General rule.* A valuation is required for any plan year with respect to which the average age of plan participants changes significantly, within the meaning of subdivisions (ii) and (iii), from the average age of plan participants at the last valuation.

(ii) *Rule for large plans.* For a plan with 100 or more participants, an increase or decrease in average age of more than two years is a significant change.

(iii) *Rule for small plans.* For a plan with fewer than 100 participants, an increase or decrease in average age of more than four years is a significant change.

(6) *Alternative minimum funding standard account.* A valuation is required for each year for which the plan uses the alternative minimum funding standard account.

(7) *Deductibility considerations.* A valuation is required when it appears that the full funding limitation has been reached for purposes of determining the maximum deductible contribution limitations of section 404(a).

(8) *Other situations.* The Commissioner may require valuations in other situations as the facts and circumstances warrant.

§ 1.412(c)(10)–1 Time for making contributions to satisfy section 412.

(a) *General rule.* Under section 412(c)(10), a contribution made after the end of a plan year but no later than two and one-half months after the end of that year is deemed to have been made on the last day of that year.

(b) *Extension of general rule.—(1) Plan years ending before [90 days after publication date of final regulations].* For plan years ending before [90 days after publication of final regulations], for purposes of section 412 a contribution for such a plan year that is made not later than eight and one-half months after the end of that plan year is deemed to have been made on the last day of that year.

(2) *Plan years ending on or after [90 days after publication of final regulations].*—(i) *Transitional rule.* The two and one-half month period provided in section 412(c)(10) and § 1.410(c)(10)–1(a) is extended for each of the first three plan years ending after [90 days after publication of final regulations]. For the first plan year ending after [90 days after publication of final regulations], a contribution made not

later than eight and one-half months after the end of that plan year is deemed to have been made on the last day of that year. For the second year, the two and one-half month period is extended to six and one-half months, and for the third year, the two and one-half month period is extended to four and one-half months.

(ii) *Extensions of general and transitional periods.* The time for making contributions under the general rule described in paragraph (a) and transitional rule of paragraph (b)(2)(i) of this section may be extended to a date not beyond eight and one-half months after the end of the plan year. Extensions of the two and one-half month period and transitional years' periods are granted on an individual basis by the Commissioner. A request for extension should be submitted to the Commissioner of Internal Revenue, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention OP:E:A).

(c) *Effect on section 404.* The rules of this section, relating to the timing of contributions for purposes of section 412, operate independently from the rules under section 404(a)(6), relating to the timing of contributions for purposes of claiming a deduction under section 404.

§ 1.412(g)–1 Alternative maximum funding standard account.

(a) *In general.* A plan that maintains an alternative minimum funding standard account ("ASA") for any plan year under section 412(g) must satisfy the requirements of this section. To use the ASA, a plan must use a funding method that requires contributions for all years that are not less than those required under the entry age normal cost method of funding. A funding method does not affect the actual cost of plan benefits but only the incidence of contributions in different years. Thus, any funding method that requires a contribution in one year that exceeds that required by the entry age normal method (EAN) for that year must require a lesser contribution in another year. Hence, only a plan which uses the EAN cost method may use the ASA.

(b) *Special rules.*—(1) *Dual accounting.* While maintaining an ASA, a plan must maintain the funding standard account under section 412(b) for each plan year.

(2) *Change of method.* For any plan year, the choice of whether to use the ASA is independent of whether the ASA or funding standard account was used in the prior year. Any change from the choice made in the prior year does not require approval of the Commissioner. Further, a plan which has filed for a plan year the actuarial report described in section 6059(b) using the ASA to determine its minimum funding requirement may change to use the funding standard account to determine the funding requirement for that year. However, a plan may not switch to the ASA for a plan year after having filed the actuarial report for that year using the funding standard account.

(3) *PBGC Valuation.* In determining charges and credits to the ASA under paragraphs (b) and (c) of this section (other than the amount in paragraph (c)(2)(i)), a plan must value its assets and liabilities on a termination basis as provided in regulations issued by the Pension Benefit Guaranty Corporation (PBGC) under sections 4041 and 4062 of the Employee Retirement Income Security Act of 1974 ("ERISA") for plans placed in trusteeship by PBGC.

(4) *Cumulative nature of account.* When the ASA is used for a plan year after a plan year for which the ASA was not used, the credit balance and charge balance as of the first day of the year equal zero. However, during any continuous period of years for which the ASA is used, the credit or charge balance as of the end of any ASA year are carried forward as beginning balances in the next ASA year.

(c) *Charges.*—(1) *In general.* The ASA is charged with the amounts described in paragraph (c) of this section.

(2) *Normal cost.* The ASA is charged with the normal cost of the plan for a plan year. This amount is the normal cost for that plan year computed—

(i) Under the method of funding and actuarial assumptions used for purposes of maintaining the plan's funding standard account or, if less,

(ii) As the present value of benefits expected, on a termination basis, to accrue during the plan year.

(3) *Unfunded accrued benefits.* The ASA is charged with the unfunded accrued benefits of the plan for a plan year. This amount is the excess of—

(i) The present value of accrued benefits under the plan, determined as of the valuation date for the plan year, over

(ii) The fair market value of plan assets, determined as of the valuation date for the plan year.

Because fair market value is used, any election to value evidences of indebtedness at amortized value does not apply in computing this value.

(4) *Credit balance from prior plan year.* The ASA is charged as of the first day of a plan year with any ASA credit balance carried forward from the prior plan year.

(5) *Interest.* The ASA is charge with interest on the amounts charged to the ASA under paragraph (b)(2), (b)(3) and (b)(4) of this section, as generally prescribed for the funding standard account under § 1.412 (b)–1 (e).

(d) *Credits.*—(1) *In general.* The ASA is credited with the amounts described in paragraph (d) of this section.

(2) *Employer contributions.* The ASA is credited with the amount of contributions made by the employer to the plan for the plan year.

(3) *Interest.* The ASA is credited with the interest on the amount credited under paragraph (d)(2) of this section, determined as of the end of the plan year as generally prescribed for the funding standard account under § 1.412 (b)–1(e).

Par. 5. The Income Tax Regulations, 26 CFR Part 1, are further amended by adding new paragraphs (f) and (g) of § 1.413–1 to read as follows:

§1.413–1 Special rules for collectively bargained plans.

* * * * *

(f) *Minimum funding standard.* The minimum funding standard for a collectively bargained plan shall be determined as if all participants in the plan were employed by a single employer.

(g) *Liability for funding tax.* See § 54.4971–3 of the Pension Excise Tax Regulations, 26 CFR Part 54, for rules under section 413 (b)(6), relating to liability for excise tax on failure to meet minimum funding standards with respect to collectively bargained plans.

* * * * *

Par. 6. The Income Tax Regulations, 26 CFR Part 1, are further amended by adding new paragraphs (e) and (f) of § 1.413–2 to read as follows:

§ 1.413–2 Special rules for plans maintained by more than one employer.

* * * * *

(e) *Minimum funding standard.* The minimum funding standard for a plan maintained by more than one employer shall be determined as if all participants in the plan were employed by a single employer.

(f) *Liability for funding tax.* See § 54.4971–3 of the Pension Excise Tax Regulations, 26 CFR Part 54, for rules under section 413 (c)(5), relating to liability for excise tax on failure to meet minimum funding standards with respect to plans maintained by more than one employer.

PART 11—TEMPORARY INCOME TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

§§ 11.412(c)-7, 11.412(c)-(11) and 11.412 (c)-12 [Removed]

Par. 7. The Temporary Regulations under the Employee Retirement Income Security Act of 1974, 26 CFR Part 11, are amended by removing the following sections: § 11.412(c)-7, § 11.412(c)-11, and § 11.412(c)-12.

PART 54—PENSION EXCISE TAX REGULATIONS

Par. 8. The Pension Excise Tax Regulations, 26 CFR Part 54, are amended by adding in the appropriate place the following new sections:

§ 54.4971-1 General rules relating to excise tax on failure to meet minimum funding standards.

(a) *Scope.* This section and §§ 54.4971-2 and 54.4971-3 provide rules for the imposition of tax on a failure to meet the minimum funding standards of section 412. General rules appear in this section. Operational rules and special definitions appear in § 54.4971-2. Rules relating to tax liability appear in § 54.4971-3.

(b) *Initial tax.*—(1) *General rule.* Section 4971(a) imposes an initial tax on an employer who maintains a plan to which section 412 applies for each taxable year in which there is an accumulated funding deficiency as of the end of the plan year ending with or within such taxable year.

(2) *Amount of tax.* The initial tax is 5 percent of the accumulated funding deficiency determined under section 412 as of the end of the plan year ending with or within the taxable year of the employer.

(c) *Additional tax.* [Reserved]

(d) *Accumulated funding deficiency.*—(1) *In general.* The accumulated funding deficiency of a plan for a plan year is the lesser of the amounts described in paragraphs (d)(2) and (d)(3). Paragraph (d)(3) only applies for a year if the actuarial report decribed in section 6059(b) was filed using the alternative funding standard account for that year.

(2) *Funding standard account method.* The accumulated funding deficiency under this subparagraph is equal to the excess, as of the end of the plan year, of the total charges to the funding standard account under section 412 for all plan years to which section 412 applies over the total credits to that account under section 412 for those years.

(3) *Alternative funding standard account method.* The accumulated funding deficiency under this subparagraph is equal to the excess, as of the end of the plan year, of the total charges to the alternative minimum funding standard account under section 412(g) for that plan year over the total credits to that account under section 412(g) for that year.

§ 54.4971-2 Operational rules and special definitions relating to excise tax on failure to meet minimum funding standards.

(a) *Correction.*—(1) *General rule.* To correct an accumulated funding deficiency for a plan year, a contribution must be made to the plan that reduces the deficiency, as of the end of that plan year, to zero. To reduce the deficiency to zero, the contribution must include interest at the plan's actuarial valuation rate for the period between the end of that plan year and the date of the contribution.

(2) *Corrective effect of certain retrooactive amendments.* Certain retroactive plan amendments that meet the requirements of section 412(c)(8) may reduce an accumulated funding deficiency for a plan year to zero.

(3) *Optional corrective actions when employers withdraw from certain plans.* See § 54.4971-3(e)(2) for correcting deficiencies attributable to certain withdrawing employers.

(b) *No deduction.* Under section 275(a)(6), no deduction is allowed for a tax imposed under section 4971 (a) or (b).

(c) *Waiver of imposition of tax.* Under section 3002(b) of the Employee Retirement Income Security Act of 1974 (ERISA), the Commissioner may waive the imposition of the additional tax under section 4971(b) in apppropriate cases. This authority does not extend to the imposition of the initial tax under section 4971(a).

(d) *Notification of the Secretary of Labor.*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, before issuing a notice of deficiency with respect to the tax imposed under section 4971 (a) or (b), the Commissioner must notify the Secretary of Labor that the Internal Revenue Service proposes to assess the tax. The purpose of this notice is to give the Secretary of Labor a reasonable opportunity to obtain a correction of the accumulated funding deficiency or to comment on the imposition of the tax. (See section 4971(d) and section 3002(b) of ERISA.) The Commissioner may issue a notice of deficiency with respect to the tax imposed under section 4971(a) or (b) 60 days after the mailing of the notice of proposed deficiency to the Secretary of Labor. Any action taken by the Secretary of Labor will not affect the imposition of the 5-percent initial tax imposed by section 4971(a). See paragraph (c) of this section, however, concerning the Commissioner's authority to waive the 100-percent additional tax imposed by section 4971(b).

(2) *Jeopardy assessments.* The Commissioner may determine that the assessment or collection of the tax imposed under section 4971 (a) or (b) will be jeopardized by delay. If the Commissioner makes this determination, the Internal Revenue Service may immediately assess a deficiency under section 6861 without prior notice to the Secretary of Labor. Abatement of the assessment may be granted upon correction of the deficiency. See section 6861 and § 301.6861-1 concerning abatement of assessments.

(e) *Request for investigation with respect to tax imposed under section 4971.* Under section 3002(b) of ERISA, upon receiving a written request from the Secretary of Labor or from the Pension Benefit Guaranty Corporation, the Commissioner will investigate whether the taxes under section 4971 (a) and (b) should be imposed on any employer referred to in the request.

§ 54.4971-3 Rules relating to liability for excise tax on failure to meet minimum funding standards.

(a) *General rule.*—(1) *One employer.* An excise tax imposed under section 4971 (a) or (b) with respect to a plan to or under which only one employer is responsible for contributing must be paid by that employer.

(2) *More than one employer.* An excise tax imposed under section 4971 (a) or (b) with respect to a plan to or under which more than one employer is responsible for contributing must be allocated between these employers under paragraph (b) of this section.

(3) *Related employers.* Related corporations, trades, and businesses described in section 414 (b) and (c) are "related employers" for purposes of this section. All related employers are treated as one employer for purposes of paragraph (b) of this section. The tax liability of each such related employer is determined separately by allocations under paragraph (c) of this section.

(b) *Allocation of tax liability.*—(1) *In general.* Section 413 (b)(6) and (c)(5) and section 414 (b) and (c) discuss liability for tax under section 4971 (a) or (b) with respect to collectively bargained plans and plans of more than one employer. Each employer's tax liability relates to an accumulated funding deficiency under a plan. However, the funding deficiency is determined with respect to a plan as a whole, not with respect to

individual employers adopting the plan. Therefore, the deficiency must be allocated among employers adopting or maintaining the plan to determine their individual liability for a tax. Except as otherwise provided in paragraphs (c) and (d) of this section, this liability must be determined in a reasonable manner that is not inconsistent with the requirements of this paragraph (b).

(2) *Failure of individual employer to meet obligation under plan or contract.*—(i) *Single delinquency.* An accumulated funding deficiency may be attributable, in whole or in part, to a delinquent contribution, that is, the failure of an individual employer to contribute to the plan as required by its terms or by the terms of a collectively bargained agreement pursuant to which the plan is maintained. To the extent that an accumulated funding deficiency is attributable to a delinquent contribution, the delinquent employer is solely liable for the resulting tax imposed under section 4971 (a) or (b).

(ii) *Multiple delinquency.* If an accumulated funding deficiency is attributable to more than one delinquent employer, liability for tax is allocated in proportion to each employer's share of the delinquency.

(iii) *Further liability.* A delinquent employer may also be liable for the portion of tax determined by an allocation under paragraph (b)(3) of this section.

(3) *Failure of employers in the aggregate to avoid accumulated funding deficiency.*—(i) *Aggregate failure.* An accumulated funding deficiency may be attributable, in whole or in part, to the failure of employers in the aggregate to contribute to the plan a sufficient amount to avoid an accumulated funding deficiency. To the extent that a deficiency for a plan year is not attributable to a delinquent contribution for that year, the deficiency is attributable to an aggregate failure described in this subparagraph (3). Thus, for example, if 10 percent of the deficiency results from a delinquent contribution described in paragraph (b)(2) of this section, 90 percent results from failures described in this subparagraph (3). The allocation of tax liability to an individual employer for such an aggregate failure to avoid an accumulated funding deficiency is made under paragraph (b)(3)(ii) of this section.

(ii) *Allocation rule for aggregate failure.* An individual employer's liability for tax attributable to an aggregate failure described in this subparagraph (3) is the product of the tax attributable to the aggregate failure times a fraction. The numerator of this fraction is the contribution the employer is required to make for the plan year under the plan or under the collectively bargained agreement pursuant to which the plan is maintained. The denominator of this fraction is the total contribution all employers are required to make for the plan year under the plan or under the collectively bargained agreement pursuant to which the plan is maintained. Thus, for example, if an employer is responsible for one-half of a plan's required contribution and 90 percent of an accumulated funding deficiency arises under this subparagraph (3), that employer is liable under this subparagraph (3) for 45 percent of the tax under section 4971(a) or (b), as the case may be, with respect to that deficiency.

(c) *Allocation rules for related employers.*—(1) *In general.* To the extent that an accumulated funding deficiency is attributable to related employers, those employers are jointly and severally liable for an excise tax imposed under section 4971(a) or (b) with respect to that deficiency.

(2) *Plans not solely maintained by related employers.* A plan that is not solely maintained by related employers first allocates tax liability under paragraph (b) of this section by treating the related employers as a single employer. The related employers are jointly and severally liable for the tax liability so allocated to any of the related employers.

(d) *Effect of plan termination on employer's tax liability.* No tax is imposed under section 4971(a) for years after the plan year in which a plan terminates. An employer is liable only for unpaid 5-perecent initial taxes under section 4971(a) and any additional tax which has been imposed under section 4971(b).

(e) *Effect of employer withdrawal from plan.*—(1) *General rule.* An employer that withdraws from a plan remains liable for tax imposed with respect to the portion of an accumulated funding deficiency attributable to that employer for plan years before withdrawal.

(2) *Years subsequent to withdrawal.* For any plan year with an accumulated funding deficiency, the tax is allocated between the employers responsible for contributing to the plan for that plan year in accordance with paragraphs (b) or (c) even if the deficiency in that year is attributable to an uncorrected deficiency from a prior year.

(f) *Examples.* The provisions of paragraphs (a) through (c) of this section may be illustrated by the following examples:

Example (1). Employers *W, X, Y* and *Z* maintain a collectively bargained plan. *Y* and *Z* are related employers under paragraph (a) (3). *W* and *X* are each unrelated to any other employer. For plan year 1982, the employers are obligated, under the collectively bargained agreement, to contribute the following amount: *W*—$10x; *X*—$20x; *Y*—30x; *Z*—$40x. As of the last date for making plan contributions, there is a delinquency of $10x attributable to *W* and $30x attributable to *Y*. Under paragraph (b) (2) (ii), *W* is liable for 10/40 of the tax imposed for 1982. Under paragraphs (b) (2) (ii) and (c) (2), *Y* and *Z* are jointly and severally liable for 30/40 of the tax.

Example (2). Assume the same facts as in Example (1). For plan year 1983, the minimum funding requirement is $145x. Contributions totalling $110x are made for 1983 in the amounts provided by the agreement: *W*—$15x; *X*—$20x; *Y*—$30x; *Z*—$45x. Under paragraph (b) (3) (i) of this section, there is an aggregate failure to avoid an accumulated funding deficiency, as the minimum funding requirement exceeds plan contributions by $35x. The tax attributable to the aggregate failure is allocated under paragraphs (b)(3)(ii) and (c)(2) as follows: *W* is liable for 15/110, or 13.6 percent of the tax; *X* is liable for 20/110, or 18.2 percent. *Y* and *Z* are jointly and severally liable for 75/110, or 68.2 percent.

Example (3). Assume the same facts as in Example (1). For 1984, the minumum funding requirement is $210x and employers are obligated under the agreement to contribute $130x: *W*—$15x; *X*—$25x; *Y*—$30x; *Z*—$60x. There is a funding deficiency due in part to a delinquency attributable to *Y*. Under paragraph (b) (3) (i), the remaining deficiency is an aggregate failure. Under paragraphs (b) (2) (i) and (c), *Y* and *Z* are jointly and severally liable for the 23 percent (30/130) of the excise tax attributable to the delinquency. The remaining 76.9 percent of the tax is allocated as follows: *W*—15/130 (11.5 percent) of the 76.9 percent; *X*—25/130 (19.2 percent of the aggregate failure tax; *Y* and *Z*, combined under paragraph (c) (2)—90/130 (69.2 percent) of the aggregate failure tax. *Y* and *Z* are jointly and severally liable for approximately 76.3 percent of the total tax under section 4971 for the year: 23.1 percent attributable to *Y*'s delinquency and 53.2 percent (69.2 x 76.9 attributable to the aggregate failure under paragraph (b) (3).

Roscoe L. Egger, Jr.,

Commissioner.

[FR Doc. 82-32582 Filed 11-30-82; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

The Privacy Act of 1974; Proposed Exemption Rule

AGENCY: Department of the Navy, DOD.

ACTION: Proposed exemption rule.

SUMMARY: The Department of the Navy proposes to add a new Privacy Act general exemption for a proposed new system entitled: "Individual Correctional Records."

DATES: Comments must be received on or before January 3, 1983.

ADDRESS: Send comments to the Chief of Naval Operations, ATTN: Privacy Act Coordinator (OP–09B1P), Department of the Navy, The Pentagon, Washington, D.C. 20350.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken at the above address, telephone: 202/694–2817.

SUPPLEMENTARY INFORMATION: The proposed exemption rule would apply to proposed new system of records #NO1640–1, entitled: "Individual Correctional Records," a system of records used in conjuction with administering military prisoner affairs and confinement facilities. Exemption is needed in conjunction with this enforcement of criminal laws so that there is no interference with orderly administration of the activities and to preclude suspects from avoiding detection or apprehension. Exemption will ensure that no investigative techniques, sources and methods used by the component are disclosed, nor is the personal privacy of law enforcement personnel or third parties to include confidential informants is needlessly jeopardized.

List of Subjects in 32 CFR Part 701

Privacy.

Accordingly, Part 701 of Title 32 CFR will be amended as follows.

§ 701.123 Exemptions for specific Navy records systems.

* * * * *

Exempted Record System (General Exemption)

* * * * *

(b) Bureau of Naval Personnel

* * * * *

(6) ID: N01640–1

Sysname:

Individual Correctional Records.

Exemption:

Portions of this system are exempt from the following subsections of title 5, United States Code, section 55a: (c)(3), (c)(4), (d), (e)(2), (3)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

Authority:

5 U.S.C. 552a(j)(2).

Reasons:

Granting individuals access to portions of these records pertaining to or consisting of, but not limited to, disciplinary reports, criminal investigations, and related statements of witnesses, and such other related matter in conjunction with the enforcement of criminal laws, could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirement of the other cited provisions.

M. S. Healy

OSD Federal Register Liaison Officer, Department of Defense.

November 23, 1982.

[FR Doc. 82–32788 Filed 11–30–82; 8:45 am]

BILLING CODE 3810–01–M

PANAMA CANAL COMMISSION

35 CFR Ch. I

Revised Shipping and Navigation Rules for the Panama Canal

AGENCY: Panama Canal Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Certain changes in the shipping and navigation rules for the Panama Canal are proposed in order to conform to International Maritime Organization (IMO) rules and federal regulations concerning the carriage of hazardous cargo.

DATE: Written comments should be submitted on or before January 3, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, (202) 724–0104, or Mr. Dwight A. McKabney, General Counsel, Panama Canal Commission, telephone in Balboa Heights, Republic of Panama, 52–7511.

SUPPLEMENTARY INFORMATION: By a document published on December 30, 1981 (46 FR 63174), the Panama Canal Commission made comprehensive revisions to the shipping and navigation regulations for the Panama Canal. The purposes of that revision were to conform the regulations to the new name, organization, structure and responsibilities of the agency under the Panama Canal Treaty of 1977 and to make certain substantive revisions. The purpose of this document is to make several additional substantive changes to the shipping and navigation rules.

Section 103.27 is revised to require a bow steering light on all vessels over 100 meters in length, in order to make night-time navigation of such vessels safer and easier. Section 113.24 is revised to comply with regulations issued by the International Maritime Organization (IMO) concerning certain nuclear fuels and materials. Section 113.25 which permitted a limited waiver of certain requirements concerning nuclear fuels and materials is incorporated in § 113.24, and § 113.25 is revoked. Section 113.42 is modified to incorporate by reference the Department of Transportation regulations concerning dangerous cargoes not permitted to be transported by water.

In addition, 119.141(a)(3) is revised to specify that persons applying for a Panama Canal pilot's license on the basis of experience on Commission vessels of 1,000 horsepower or over must have served at least 520 eight-hour watches while holding a Panama Canal license as Master of Steam and Motor vessels. This suggested change merely clarifies the present rule, which requires two years of experience on such a vessel.

Finally, § 123.3, paragraphs (d) and (e) are revised to restrict the use of certain radio frequencies on the radiotelephones that must be carried aboard vessels while in Panama Canal waters, in order to be consistent with internationally accepted practices, particularly as defined by the International Maritime Organization (IMO) and the U.S. Coast Guard. Specifically, § 123.3, paragraph (d) is revised to limit the use of Channel 13, radio frequency 156.650 MHz, to bridge-to-bridge navigational communication, and § 123.3, paragraph (e) is revised to restrict the use of Channel 16, radio frequency 156.800 MHz, to distress, urgency, safety and calling purposes.

The Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are, first, that the rule, when implemented, would not have an annual effect on the economy of $100 million or more per year. Secondly, the rule would

not result in a major increase in costs or prices for consumers, individual industries or local governmental agencies or geographic regions. Finally, the agency has determined that implementation of the rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Further, the Commission has determined that this proposed rule is not subject to the requirements of section 603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C 605(b).

List of Subjects

35 CFR Part 103

Vessels.

35 CFR Part 113

Cargo vessels, Hazardous materials transportation.

35 CFR Part 119

Administrative practice and procedure.

35 CFR Part 123

Radio, Vessels.

Accordingly, it is proposed to revise 35 CFR Parts 103 and 113, 119 and 123 as follows:

PART 103—[AMENDED]

§ 103.27 [Amended]

1. In § 103.27(b), the first sentence is revised to read as follows:

* * * * *

(b) All vessels over 100 meters (328 feet) in length shall have installed, at or near the stem, a steering range equipped with a fixed blue light which shall be clearly visible from the bridge along the centerline.

* * * * *

PART 113—[AMENDED]

2. Section 113.24 is revised to read as follows:

§ 113.24 Irradiated fuel elements and special nuclear materials; shipments not originating in or destined to a port of the United States.

A vessel carrying irradiated fuel elements or special nuclear materials not originating in, or destined to, a port of the United States shall comply with all regulations issued by the International Maritime Organization (IMO), as contained in the International Maritime Dangerous Goods Code (IMDG Code), with regard to the packaging, handling, stowage, storage and movement of Class 7—Radioactive substances; or, in the absence of compliance with the IMDG Code, shall not transit the Canal or enter Canal waters unless prior permission has been obtained. In addition, the following requirements apply to the carrying of such cargo by such a vessel:

(a) IMDG Code vessel:

(1) A vessel carrying such cargo must obtain in advance approval from the Panama Canal Commission.

(2) Any cask containing irradiated fuel elements, or special nuclear materials, together with any attachments thereto, may not weigh more than 150 tons.

(3) Upon arrival at the Canal of a vessel carrying such cargo, the Master shall deliver to the boarding officer transport documents issued by the appropriate country, or, if no such loading certificate is available, a declaration of Irradiated Fuel Elements or Special Nuclear Materials carried, similar to that contained in § 113.23(c), shall be executed.

(b) Non-compliance vessels: A vessel carrying such cargo may not transmit the Canal or enter Canal waters unless prior permission therefore has been obtained from the Canal authorities. Such permission may not be granted without adequate provision for indemnity covering public liability and loss to the United States or any agency thereof, comparable in general scope to the protection afforded under section 170 of the United States Atomic Energy Act of 1954, as amended, 68 Stat. 919.

§ 113.25 [Removed]

3. Section 113.25, Certification by Commission, is removed.

4. Section 113.42(b) is revised to read as follows:

§ 113.42 Other dangerous cargo.

Certain dangerous cargoes identified by 49 CFR 172.101 are prohibited from being transported over water. These cargoes are also not permitted aboard vessels in Panama Canal waters.

PART 119—[AMENDED]

5. Section 119.141(a)(3) is revised to read as follows:

§ 119.141 Pilot, Panama Canal; qualification.

(a) * * *

(3) He must have served at least 520 eight-hour watches as Master of Panama Canal Commission vessels of 1,000 horsepower or over while holding a Panama Canal license as Master of Steam and Motor Vessels; or

* * * * *

PART 123—[AMENDED]

6. Section 123.3 (d) and (e) are revised as follows:

§ 123.3 Radiotelephones required.

* * * * *

(d) A vessel of a type described in paragraph (a) of this section shall maintain a continuous watch on Channel 13 when under way in Panama Canal waters for bridge-to-bridge navigational communications only. One watt maximum power shall be used on that frequence, except that in emergencies or unusual circumstances more power may be used. When such vessels have a Panama Canal pilot aboard, Channel 13 may be used only by the pilot or at his direction for navigational communications.

The Signal Stations on Flamenco Island and in Cristobal may be called on Channels 12 or 16. Channel 16, however, is reserved for cases of distress, urgency, safety and calling only. Once radio contact is established on Channel 16, another channel should be selected for routine communications.

D. P. McAuliffe,

Administrator.

[FR Doc. 82-32784 Filed 11-30-82; 8:45 am]

BILLING CODE 3640-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 2E2668/P260; PH-FRL 2255-4]

Chlorpyrifos; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for the combined residues of the insecticide chlorpyrifos and its metabolite in or on the raw agricultural commodity figs. The proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments must be received on or before January 3, 1983.

ADDRESS: Written comments to: Emergency Response Section, Process Coordination Branch, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716B, CM #2,

1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703–557–1192) at the above address.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 2E2668 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Station of California.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide chlorpyrifos (*O,O*-diethyl-*O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate) and its metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodity figs at 0.1 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance were a 2–year rat feeding study with a red blood cell (RBC) cholinesterase (ChE) no-observed-effect level (NOEL) of 0.1 milligram (mg)/kilogram (kg)/day, a systemic NOEL of 3.0 mg/kg/day (highest dose tested) and no observed oncogenicity; a 2–year dog feeding study with an RBC ChE NOEL of 0.1 mg/kg/day and a systemic NOEL of 3.0 mg/kg/day (highest dose tested); a 2-year mouse oncogenicity study with no observed oncogenicity at 15 ppm (highest dose tested); a 3-generation rat reproduction study with a NOEL for reproductive effects at 1.0 mg/kg/day (highest dose tested); an acute delayed neurotoxicity (hen) study which was negative for neurotoxic potential at 100 mg/kg; and a mouse teratogenicity study with no observed teratogenic effects up to 25 mg/kg./day (highest dose tested).

The acceptable daily intake (ADI), based on the 2-year rat feeding study (RBC ChE NOEL of 0.1 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.01 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.6 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 0.4786 mg/day; the current action will increase the TMRC by 0.00005 mg/day (0.01 percent). Published tolerances utilize 79.77 percent of the ADI; the current action will utilize less than 0.01 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency and the fact that currently established tolerances for meat and milk are adequate to cover any residues in the event cull figs are used as animal feed, the tolerance established by amending 40 CFR 180.342 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, "[PP 2E2668/P260]". All written comments filed in response to this petition will be available in the Emergency Response Section, Registration Division, at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 23, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.342 be amended by adding and alphabetically inserting the raw agricultural commodity figs to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Figs	0.1
* * * * *	

[FR Doc. 82–32805 Filed 11–30–82; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 201

[FRL 2053–2]

Noise Emission Standards for Transportation Equipment; Interstate Rail Carriers

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of proposed standards.

SUMMARY: As a result of a lawsuit brought by the Association of American Railroads (AAR), the United States Court of Appeals for the District of Columbia Circuit directed the U.S. Environmental Protection Agency to promulgate additional noise emission standards covering railroad facilities and equipment. EPA promulgated several standards in response to the Court's order. The parties to the case filed an agreement to dismiss on November 12, 1981, stating their belief that standards promulgated to date satisfied the Court's order. The Court dismissed the case on November 24, 1981. This notice, therefore, withdraws the Agency's proposed railyard property line and refrigerator car noise emission standards.

FOR FURTHER INFORMATION CONTACT: Louise Giersch, (202) 382–2935.

SUPPLEMENTARY INFORMATION: As required by Section 17 of the Noise Control Act of 1972 (42 U.S.C. 4916), the Environmental Protection Agency (EPA) promulgated a regulation (41 FR 2184) setting noise emission standards for railroad locomotives and railcars

operated by interstate rail carriers on December 31, 1975. At the same time, the Agency announced that it would not promulgate additional standards for railyard facilities and equipment, since these sources could be controlled most effectively through State and local regulation.

The Association of American Railroads (AAR) brought suit to require EPA publish further noise standards for railroads. The Court ruled in favor of the AAR and directed the Administrator of EPA to promulgate additional noise emission standards covering railroad "facilities and equipment." *Association of American Railroads* v. *Costle*, 562 F. 2d 1310 (D.C. Cir. 1977).

On April 17, 1979 the Agency published (44 FR 22960) proposed additional standards which included a railyard property line noise standard, as well as standards for three noise sources within railyards: retarders, refrigeration cars, and car coupling operations.

On January 4, 1980, the Agency published (42 FR 1252) final noise emission standards for locomotive load cell test stands, switcher locomotives, retarders and car coupling operations. On September 30, 1980, the Agency published (45 FR 64876) a Notice of the Availability of New Data and Advance Notice of Intent relevant to the outstanding proposal. The AAR submitted extensive comments in response to this notice which, among other things, asserted that standards already promulgated by EPA constituted complete and effective compliance with the requirements of Section 17 of the Noise Control Act, and that additional standards were not necessary. The Agency initiated discussions with the AAR and with the State of Illinois, which had intervened in the lawsuit on behalf of EPA. These discussions led to an agreement among the parties that the noise emission standards already promulgated by EPA, including those promulgated in response to the Court's order, satisfied the Court's order. The standards promulgated to date cover the major sources of noise from railroad equipment which in turn generate a larger proportion of the noise emissions from rail facilities. Since those standards addressed the major sources of noise from railroad operations, and since the cumulative effect of regulating equipment used within railyards is also to regulate, to a significant degree, noise emissions from rail facilities, it was agreed by the AAR, the State of Illinois and EPA that it is unnecessary for EPA to establish further property line facility emission standards. This agreement and a joint motion to dismiss the lawsuit were submitted to the Court, which dismissed the case on November 24, 1981.

In view of the foregoing, EPA concludes that it has satisfied its statutory requirements, under Section 17 of the Noise Control Act of 1972, to promulgate noise standards for railroad equipment and facilities, and that the proposed standards are unnecessary. Accordingly, this notice withdraws the proposed property line and refrigerator car noise emission standards.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not a major regulation because it is not likely to result in:

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

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

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

Because this action withdraws, rather than promulgates a regulation, there is no cost of compliance (with a regulation). Therefore, adverse effects on production, marketing or commerce due to the withdrawal are unlikely.

For the same reasons, under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 201

Noise control, Railroads.

(Sec. 17 of the Noise Control Act of 1972 (42 U.S.C. 4916))

Dated: November 22, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-32801 Filed 11-30-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 204 and 205

[W-FRL 2147-1]

Proposed Withdrawal of Products From the Agency's Reports Identifying Major Noise Sources and Withdrawal of Proposed Rules

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Administrator of the Environmental Protection Agency proposes to withdraw certain products from the Agency's reports identifying major noise sources ((40 FR 23105), (42 FR 2525), (42 FR 6722)), issued under authority of section 5(b)(1) of the Noise Control Act of 1972 (42 U.S.C. 4904(b)(1)). These products are: Truck transport refrigeration units, power lawn mowers, pavement breakers, rock drills, wheel and crawler tractors and buses. The Administrator also proposes to withdraw proposed regulations for wheel and crawler tractors (42 FR 35804), and Buses (42 FR 45775), issued under the authority of section 6(a)(1) of the Act.

Based on consideration of Federal budgetary constraints, Agency regulatory priorities, national economic conditions, and other factors discussed below, it is the present judgment of the Administrator that it is inappropriate at this time to proceed with Federal regulations for these products.

DATES: The Administrator will consider public comments on this intended action which are submitted before 4:30 p.m., January 3, 1983.

ADDRESS: Written comments should be submitted to: Director, Standards and Regulations Division (ANR-490), Office of Noise Control Programs, Attention: ONAC Docket No. 01-82, U.S. Environmental Protection Agency, Washington, D.C. 20460.

Persons wishing to review the information upon which the proposed action is based may do so at the Environmental Protection Agency's Central Docket Section, West Tower, Gallery 1, 401 M Street, SW., Washington, D.C. 20460, Docket No. ONAC 01-82, between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Louise Giersch, (202) 382-2935.

SUPPLEMENTARY INFORMATION: The Noise Control Act of 1972, 42 U.S.C. 4901 *et seq.*, states "that while primary responsibility for control of noise rests with State and local government, Federal action is essential to deal with major noise sources in commerce, control of which requires national uniformity of treatment." The Act further directs that "the Administrator shall, after consultation with appropriate Federal agencies, compile and publish a report or series of reports (1) Identifying products (or classes of products) which in his judgment are major sources of noise, and (2) giving information on techniques for control of noise from such products, including available data on the technology, costs and alternative methods of noise control." The Congress identified and listed in section 6(a)(1)(C) for the Administrator's consideration, construction equipment, transportation equipment, engines and motors, and electrical or electronic equipment as principal classes of noise sources for Federal regulation.

The most dramatic reduction in overall environmental noise would be effected by simultaneously reducing the noise level of all major noise producing products. From the outset of the noise

control program, however, practical considerations of Agency resources have dictated that regulatory priorities be established. Based on preliminary analysis by the Agency, construction equipment and transportation equipment were judged to be the most prominent sources of noise affecting the public and thus were selected as the initial categories for Agency regulatory actions.

On June 21, 1974, the Administrator published the first in a series of reports pursuant to section 5(b)(1) of the Act, formally identifying medium- and heavy-duty trucks and portable air compressors as major sources of noise within their respective categories (39 FR 22297). The notice also listed a number of other products as possible candidates for future identification.

A subsequent report published on May 28, 1975 (40 FR 23105) formally identified as additional major sources of noise: Motorcycles, buses, wheel and crawler tractors, truck transport refrigeration units (TTRU's) and truck-mounted solid waste compactors (TMSWC's). TTRU's and TMSWC's are special auxiliary equipment for trucks and were, in part, identified to complement and assure maximum effectiveness of a medium and heavy truck noise emission regulation.

A third report published on January 12, 1977 (42 FR 2525), identified power lawn mowers. Pavement breakers and rock drills were identified as major noise sources in a fourth report published on February 3, 1977 (42 FR 6722).

Final noise emission regulations were promulgated for Portable Air Compressors (41 FR 2162) on January 14, 1976, for Medium- and Heavy-Duty Trucks (41 FR 15538) on April 13, 1976, for Truck-Mounted Solid Waste Compactors (44 FR 56524) on October 1, 1979 and for Motorcycles and Motorcycle Exhaust Systems (45 FR 86694) on December 31, 1980.

Proposed regulations were published for Wheel and Crawler Tractors (42 FR 35804) on July 11, 1977, and for Buses (42 FR 45775) on September 12, 1977.

Proposed regulations have not been published for power lawn mowers, pavement breakers and rock drills, or truck transport refrigeration units.

The actions proposed here are to revise the Agency's reports identifying major noise sources ((40 FR 23105), (42 FR 2525), (42 FR 6722)), issued under authority of Section 5(b)(1) of the Noise Control Act of 1972 (42 U.S.C. 4904(b)(1), by withdrawing certain products from those reports. These actions do not affect the final regulations listed above, or those for various railroad noise sources promulgated under Section 17 of the Act and those for Interstate Motor Carriers promulgated under Section 18 of the Act.

The principal authority for the proposed withdrawals rests in Section 5(b) and (c) of the Act. These provisions give the Administrator broad discretion both to publish reports identifying products which "in his judgment are major sources of noise," and to review and, as appropriate, revise those identification reports. Had the products in question not already been identified as major noise sources, the Administrator would now have the discretion to identify and subsequently regulate the products over a period of time, based on consideration of Federal budgetary constraints, Agency regulatory priorities, and national economic conditions. When the Agency initially published the reports that identified these products as major noise sources the state of the above factors supported the actions. However, with the passage of time these conditions have changed, and are no longer supportive of these major noise source identifications.

In response to the President's directive, the Administrator has re-evaluated EPA's objectives and priorities regarding the products discussed above, giving careful consideration to existing Federal budgetary constraints and the attendant effects on these activities. Further, although the Noise Control Act does not require the consideration of costs of potential regulations when products are identified as major sources of noise, the Act does direct the Administrator to take into consideration, among other factors, the cost of compliance in the establishment of regulations for products which have been identified. Accordingly, the Administrator has concluded that economic considerations are relevant in deciding whether to proceed at this time with these regulatory actions.

Among the changed circumstances supporting this action are national economic concerns. In the mid 1970's, when the original preregulatory studies were undertaken for these products, the general economic outlook was good as was the economic well-being of those industries that would potentially be affected by any resulting noise regulations. The Agency's decisions to develop regulations were based on the assumption that these economic conditions would continue and, in particular, that strong consumer demand would alleviate most adverse cost and economic impacts from any resulting noise regulations. However, these early assumptions are not consistent with the national economic conditions that have evolved over the past several years. This is particularly true for the two industries, motor vehicle and construction equipment, that would be most affected by the promulgation of regulations for the above listed products. Current economic indicators show that motor vehicle and replacement parts activities declined approximately 26 percent during the 1979–1980 time frame. Construction starts, which have a direct influence on the construction equipment market, decreased by approximately 24 percent during the same period.

On the basis of these considerations the administrator proposes to remove buses, wheel and crawler tractors, power lawn mowers, truck transport refrigeration units, pavement breakers and rock drills from the Agency's reports of major noise sources. In addition, the Administrator proposes to withdraw the proposed rules that were previously published for buses and wheel and crawler tractors. The Administrator may, at a later time, choose to review these products in light of other environmental priorities, available Agency resources, the effectiveness of State and local noise control programs and the voluntary product noise reduction efforts of industry. Where appropriate, the Administrator may consider restoration of a product to the agency's report(s) of major noise sources by publishing a further revision of the report(s), or new reports.

Such a step does not mean that these products will be automatically freed from all noise control regulation. Under the Noise Control Act, Federal regulations preempt all State new product regulations that are not identical to the Federal regulations. Accordingly, one effect of identifying products federally, which is a necessary prelude to Federal regulation, is to call into question State efforts to regulate these same products. Discouraging State efforts is not consistent with Congressional directions subsequent to enactment of the Noise Control Act in 1972. The Quiet Communities Act of 1978, amending the Noise Control Act, initiated an extensive effort to support State and local noise control programs. These amendments and their legislative history indicate Congress' intent to deemphasize federal regulatory efforts in favor of State and local controls. *See, e.g.*, S. Rep. No. 95–875, 95th Cong., 2d Sess. 3 (1978).

Since enactment of the Act and the 1978 amendments, significant strides in noise control program development and capabilities have been made at the State and local levels. This is illustrated by the steady growth of State and local government noise control programs and ordinances. As of June 30, 1981, there were 272 cities with populations over 25,000 that had active noise control programs. "Active" programs are defined as those with ordinances having quantitative noise limits, the commitment of personnel and budget, and an active enforcement program. Many more communities have quantitative or nuisance type ordinances, which give them the legal capability to enforce noise control if

they choose to do so. In 1981, 24 States had enabling legislation for noise control and a number of others had programs operating under general authorization, e.g., in health departments, though not specifically mandated.

In addition, EPA has worked with these governments to establish a new approach as an alternative to regulations, known as the Buy Quiet Program. Rather than requiring manufacturers to reduce noise levels of products consistent with technological and economic feasibility, manufacturers are motivated to reduce those levels through competitive market forces. Currently, the market for quiet products is being organized through State and local agencies and some utilities, but could be expanded to the private sector market. Over 100 State and local units of government are currently participating.

Finally, a number of voluntary industry noise control efforts are underway and others planned pertaining to both product labeling and technological improvements. Continuing progress is being made on the part of industry via voluntary noise control programs. Before restoring products to the reports identifying major noise sources, it may be relevant to examine the extent to which State, local, and industry efforts have reduced adverse exposure from these products.

List of Subjects

40 CFR Part 204

Construction industry, Noise control, Reporting and recordkeeping requirements.

40 CFR Part 205

Labeling, Motor vehicles, Noise control Reporting and recordkeeping requirements.

Miscellaneous: Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not a major regulation as it proposes to withdraw proposed regulatory actions, and because:

(1) It will not have an annual adverse effect on the economy of $100 million or more;

(2) It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) It will not cause 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.

Under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, I hereby certify that this action will not have a significant adverse economic impact on a substantial number of small entities. This action should not cause significant economic impacts, as it only proposes not to proceed with regulatory action at this time, and imposes no new regulatory requirements.

This proposed action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

(Secs. 5 and 6 of the Noise Control Act of 1972, 42 U.S.C. 4904 and 4905)

Dated: November 22, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-32797 Filed 11-30-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 205

[N-FRL 2053-3]

Noise Emission Standards for Transportation Equipment; Additional Testing Requirement for Motorcycles and Motorcycle Exhaust Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed amendment.

SUMMARY: This notice withdraws a proposed amendment concerning the testing requirements for the noise emission regulation for motorcycles and motorcycle exhaust systems. The proposed amendment would have required manufacturers to remove all "easily removable" components from their motorcycle exhaust systems before conducting the required noise measurements to show compliance with 40 CFR Part 205, Subparts D and E. The intent of the proposed test procedure was to strengthen the existing anti-tampering provisions of the motorcycle noise emission regulation. The Agency finds that there is insufficient in-use tampering data to substantiate a need, at this time, for this added test requirement, and that the existing anti-tampering provisions provide adequate protection against in-use exhaust modifications.

FOR FURTHER INFORMATION CONTACT: Louise Giersch (202) 382-2935.

SUPPLEMENTARY INFORMATION: On December 31, 1980, EPA promulgated a regulation (45 FR 86694) that set limits on the noise emitted by motorcycles and motorcycle exhaust systems manufactured after January 1, 1983. At the same time the Agency also published a notice of a proposed amendment to the noise testing requirements of these regulations (45 FR 86732). The amendment would have required motorcycle and motorcycle exhaust system manufacturers to remove all easily removable components of an exhaust system before conducting noise measurements requisite for compliance. The Agency believed that a segment of the motorcycling public would modify the exhaust systems of their motorcycles with the specific intention of increasing noise levels. The proposed test amendment was intended to encourage manufacturers to build tamper-proof exhaust systems that did not have easily removable noise suppression components.

The benefits to public health and welfare anticipated from the motorcycle noise emission regulations are dependent, in large part, on motorcycle exhaust systems' retaining their noise suppression qualities. Reductions in their noise suppression effectiveness generally occur through degradation of noise attenuating components or intentional removal of these key components. The motorcycle and exhaust system regulations specify not-to-exceed noise levels which must be met for a specific period of time. Anti-tampering provisions make it illegal for users to remove or render inoperative any device or element of a design incorporated into a new motorcycle for noise control except for purposes of maintenance, repair, or replacement. The proposed amendment was intended to strengthen these existing anti-tampering provisions.

Information received by the Agency, from motorcycle manufacturers, dealer distributors, trade associations, and State and local governments, during comment periods attendant to the promulgated motorcycle noise emission regulations and the proposed amendment, confirmed the Agency's belief that tampering can be a principal factor in the eventual effectiveness of these regulations.

Because the motorcycle regulations do not become effective until January 1, 1983, the extent and severity of user tampering cannot be accurately ascertained at this time. There is currently no indication that the anti-tampering provisions of the existing motorcycle regulations will be inadequate without this amendment. Given that the proposed test amendment would likely impose additional manufacturing and testing costs which may not be necessary if the existing anti-tampering requirements are effective, promulgation of the test amendment at this time would be premature. Additionally, there is the potential for a possible technical conflict with State, local and Federal (U.S. Forest Service) requirements for the maintenance and cleaning of exhaust system spark arrestors.

In view of present anti-tampering provisions and the possibility of imposing unnecessary cost and economic burdens on both

manufacturers and users, EPA is withdrawing the proposed test amendment. After the effective date of the motorcycle regulations, should the Agency receive evidence that existing anti-tampering provisions are inadequate, EPA may then reconsider the need for additional Federal regulatory action.

Miscellaneous

Under Executive Order 12291 EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Based on Office of Management and Budget criteria, this regulatory action is not considered major because:

(1) It will not have an annual adverse effect on the economy of $100 million or more;

(2) It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) It will not cause 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.

Withdrawal of the proposed amendment will eliminate potential increased costs.

For the same reasons, under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, I hereby certify that this action will not have a significant adverse impact on a substantial number of small entities.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

(Secs. 6, 10, and 13 of the Noise Control Act of 1972 (42 U.S.C. 4905, 4909, 4912))

Dated: November 22, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-32768 Filed 11-30-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 205

[N-FRL 2099-8]

Noise Emission Standards; Truck-Mounted Solid Waste Compactors

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Administrator of the Environmental Protection Agency proposes to rescind the noise emission regulation for Truck-Mounted Solid Waste Compactors (40 CFR Part 205, Subpart F) issued under the authority of Section 6(a)(1) of the Noise Control Act of 1972 (42 U.S.C. 4904(b)(1)).

This action is being taken pursuant to Section 6(c)(1) of the Noise Control Act, which requires that the Administrator consider costs of compliance among other factors in promulgating noise regulations for new products. The Administrator believes that rescission of the regulation at this time is appropriate in the light of the significant (and unanticipated) costs that the regulation would impose on the compactor manufacturing industry, prevailing conditions of the national economy in general, and the manufacturing industry in particular, and the President's policy to reduce the burdens of Federal regulations. In proposing to rescind this regulation, the Adminstrator has given full consideration to the ability of State and local governments to effectively control the noise of this product and to substantially mitigate the environmental effects on rescinding these regulations.

DATES: The Administrator will consider all comments on this intended action which are submitted before 4:30 p.m., March 1, 1983.

ADDRESS: Written comments should be submitted to: Assistant Administrator, Office of Air, Noise, and Radiation (ANR 443) Attention: ONAC Docket 02–82: Compactors, U.S. Environmental Protection Agency, Washington, D.C. 20460.

Persons wishing to review the information upon which this proposed action is based may do so at the Environmental Protection Agency's Central Docket Section, West Tower, Gallery 1, 401 M Street, S.W., Washington, D.C. 20460, Docket Number 02–82—Truck-Mounted Solid Waste Compactors, between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rose, Office of Air, Noise and Radiation (ANR 443), U.S. Environmental Protection Agency, Washington, D.C. 20460, Tel: (202) 426–2485.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with Section 5(b)(1) of the Noise Control Act of 1972, the Administrator of the Environmental Protection Agency, on May 28, 1975 (40 FR 23105) identified Truck-Mounted Solid Waste Compactors (TMSWC), more commonly referred to as "garbage trucks" or "compactors," as a major source of noise. This identification was made, in part, on the basis that, as special auxiliary equipment for trucks, the regulation of compactors would complement the existing Federal noise emission regulation for medium and heavy trucks (40 CFR Part 205, Subpart B).

Furthermore, in keeping with Section 2(a)(3) of the Act, an additional consideration in the Agency's identification was the anticipated need to establish a single, national uniform standard for newly-manufactured compactors that would free manufacturers from potential trade and economic burdens resulting from a multiplicity of conflicting State and local new-product noise regulations.

Under the authority of Section 6(a)(1) of the Act, the Administrator published, on August 26, 1977, a Notice of Proposed Rulemaking that specified "not-to-exceed" noise emission levels for newly manufactured compactor vehilces (42 FR 43226). In conjunction with the proposed rule, the Agency solicited public participation, established a public comment period from August 26 through November 26, 1977, and held two public hearing: one in New York City on October 18, 1977 and the other in Salt Lake City of October 20, 1977. The Agency published a Notice of Final Rulemaking on October 1, 1979 (44 FR 56524).

In late 1980, several compactor manufacturers informed the Agency that the regulation placed testing and reporting requirements upon them that, in their opinion, were excessively burdensome and costly. To explore these claims, the Agency held three open meetings with chassis and compactor manufacturers and other interested parties between February and March 1981. The results of these discussions indicated that many manufacturers were compelled to test a much higher percentage of their products than was originally anticipated by EPA because their compactor bodies were mounted on truck chassis provided to them by their customers. Thus, with little or no control over the chassis selection and without advance knowledge of the detailed chassis specifications, particularly noise data, many compactor manufacturers considered it necessary to test each vehicle to ensure compliance with the regulation.

Based on these meetings, as well as information obtained through practical experience with this regulation by several compactor manufacturers and by EPA's enforcement personnel, the

Agency agreed that alternative testing and compliance provisions could and should be developed. Accordingly, on February 12, 1981, the Administrator issued a Notice of Reconsideration (46 FR 12975) that suspended all enforcement of the regulation until EPA could reassess the testing and reporting requirements.

Considerations for Rescission

Since promulgation of the compactor regulation, a number of developments have occurred, including: (a) The economic position of the TMSWC industry has weakened substantially since promulgation of the regulation, unit sales having declined nearly 25 percent between 1979 and 1981; (b) discussions with the industry have revealed that many compactor manufacturers regard each combination of compactor body and truck chassis as unique which results in significantly higher testing costs than were originally anticipated by the Agency; (c) a major portion of the TMSWC industry had indicated that it no longer desires the protection of national uniformity of treatment provided by the preemption provisions of the Act; and (d) bills to amend the Noise Control Act have passed both the House and Senate and would explicitly remove the Agency's authority to regulate this product.

Discussion

The legislative history of the Noise Control Act indicates that a principal objective of Congress in its passage was to establish a mechanism through the Federal regulatory process and the preemption provisions of the Act to assure national uniform standards for major sources of noise that are distributed in interstate commerce. The supporting reasoning was that a proliferation of diverse State and local noise standards could disrupt the economic efficiences of mass production and result in technical barriers to trade by requiring manufacturers to design and build a number of different models to meet differing State and local standards. A single national standard would promote production-line efficiencies.

In support of this "uniform" approach, the National Solid Wastes Mgt. Assn. (NSWMA) and two major manufacturers of compactor bodies testified at the New York City public hearings in September 1977 that they favored a Federal regulation that provided a national uniform standard (although they did not agree with all provisions of the proposed regulation). However, since promulgation of the regulation, the industry, through its trade association, has reversed its position and now expresses opposition to the regulation and the preemption it affords over State and local rules. During recent open meetings, industry representatives stated that industry and customer practices lead to a diversity of configurations, and the uniformity of configuration that most effectively exploits the inherent advantages of mass-production techniques does not appear to be a major factor in their industry; consequently, the industry now sees no economic benefit in a regulation that establishes a national uniform standard.

Section 6(c)(1) of the Noise Control Act directs the Administrator to take into consideration, among other factors, the costs of compliance in the establishment of regulations for products which have been identified as major sources of noise. Accordingly, the Administrator has concluded that economic considerations are relevant in deciding to rescind the noise emission regulation for truck-mounted solid waste compactors.

Studies by the Agency in the 1975–1977 time period estimated that the potential list price increases in compactor bodies and necessary components related to compliance with the regulation ranged from 12.8 to 25.6 percent, depending on compactor type and size. In terms of the composite vehicle, i.e., truck chassis, compactor body and associated companents, it was estimated that the potential increases in list price could range from 6.4 to 12.8 percent, with an average for the composite (truck chassis and compactor body) vehicle of about 10.3 percent. EPA originally estimated the equivalent annual cost of this regulation to be $33 million. First year capital costs to vehicle purchasers due to increased prices were estimated to be $42 million with first year increases in operating and maintenance costs estimated at approximately $10 million (in 1981 dollars).

Analysis also indicated potential costs to compactor body manufacturers of an estimated $6 million annually for engineering and testing. This latter estimate was based on the premise that manufacturers would design their quieting features using an economically efficient approach utilizing quieter truck chassis conforming to Federal noise standards that became effective January 1, 1978. Further, EPA anticipated that compliance testing would be carried out on a "configuration" basis; i.e., only the worst-case chassis-body combination would be tested. Subsequent to promulgation of the rule, the Agency learned that to minimize their potential liability under the enforcement provisions of the regulation, many compactor manufacturers chose to regard each configuration and combination of compactor body and truck chassis as unique, thereby requiring an individual abatement design and test effort for each configuration.

In light of the above, the wide diversity of vehicles produced by the industry could more realistically be characterized as "custom-manufacturing" rather than "mass-production." Therefore, the costs of design and testing compactors for conformance with a national standard would be substantially more costly than initially estimated by the Agency, possibly totalling as much as $15 million per year.

In the mid-1970's, when the preregulatory analysis for compactors was undertaken, the general economic outlook was good as was the economic well-being of the compactor manufacturing industry. The Agency's decision to promulgate a noise emission regulation for compactors was based on the premise that these conditions would continue and, in particular, that strong consumer demand would alleviate most adverse cost and economic impacts from the regulation. The Agency originally anticipated that the increased costs of production resulting from this regulation would be passed on to the vehicle purchaser and eventually to the user of solid waste collection services. Thus, within the context of the healthy economic environment that existed in the 1975 to 1979 time frame, it was concluded that the direct economic effect on manufacturers would be slight. However, these early assumptions are not consistent with the economic conditions which have evolved over the past several years. The industry has claimed that recent reductions in sales (nearly 25 percent over the last two years), coupled with inflationary price increases for supplies and labor, have forced manufacturers to absorb a significant portion of any cost increases in order to remain competitive. Present market conditions have imposed on them a burden that further exacerbates their already weakened economic condition. This appears to be particularly true for the smaller manufacturers, who may lack the

financial strength to withstand the potential increased economic burden this regulation imposes. NSWMA has recently claimed that the regulation will impose first year compliance costs of approximately $50 million and will seriously impact industry revenues by significantly reducing compactor sales.

Based on these factors, EPA has concluded that the costs of compliance with this regulation are excessive. However, as developed in the next section, State and local regulation can substantially mitigate the environmental effects of rescinding these regulations.

Environmental Considerations

Analysis of health and welfare effects by the Agency has led to the estimate that by 1991, the regulation could reduce the number of persons exposed to adverse levels of noise from compactors from just under 20 million persons to about 6 million. This represents a reduction in adverse noise impact of approximately 70 percent.

In proposing this rescission, the Administrator has taken into consideration the nature of compactor noise impacts and the substantial growth in local noise control programs and ordinances since this product was identified as a major noise source for Federal regulation. For the most part, noise impacts from compactors are highly localized, occurring primarily along local roads and streets. Approximately 50 percent of the compactors in use are under the direct control of State and local governments through government waste collection services, and much of the private waste collection sector is subject to controls on routing, hours of operation, and number of trucks in operation.

The Administrator believes that, absent the industry's need for uniform national noise control standards, the control of compactor noise by State and local governments has the potential to mitigate any adverse environmental impacts that might result from rescission of the TMSWC noise emission regulation. Since enactment of the Noise Control Act of 1972, and the Quiet Communities Act of 1978 (amending the 1972 Act), State and local governments have made significant strides in noise control program development and capabilities. This is illustrated by the steady growth of State and local government noise control programs and ordinances. As of June 30, 1981, there were 272 cities with populations of 25,000 or more, that had "active" noise control programs. "Active" programs are defined as those with ordinances having quantitative noise level (decibel) limits, the commitment of personnel and budget, and an active enforcement program. Many more communities have qualitative or nuisance type ordinances, which give them the legal capability to enforce noise control if they choose to do so. In 1981, 24 States had enabling legislation for noise control and a number of others had programs operating under general authorization, e.g., in health departments, though not specifically mandated.

In addition to a State and local capacity to regulate the use of noisy products, EPA has worked with these governments to establish a new approach as a new alternative to regulations, known as the Buy Quiet Program. Rather than requiring manufacturers to reduce noise levels of products consistent with technological and economic feasibility, manufacturers are motivated to reduce those levels through competitive market forces. Currently, the market for quiet products is being organized through State and local agencies and some utilities, but could be easily expanded to the private sector market. Over 100 State and local units of government are currently participating in the Buy Quiet Program.

List of Subjects in 40 CFR Part 205

Labeling, Motor vehicles, Noise control, Reporting and recordkeeping requirements.

Conclusions

On the basis of the foregoing considerations, it is the Administrator's present judgment that the Federal Noise Emission Regulation for Truck-Mounted Solid Waste Compactors (40 CFR Part 205, Subpart F) should be rescinded.

This action is expected to save societal resources estimated at $33 milion in equivalent annual costs, and enable the compactor manufacturing industry to avoid an estimated $15 million annually in engineering and testing costs. Further, the Administrator believes that it is within the ability of State and local governments to control the noise of these products, and thereby substantially mitigate any adverse environmental effects that might result from the rescission of this regulation.

Miscellaneous

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not a major regulation as it proposes to rescind a regulation, and because:

(1) It will not have an annual adverse effect on the economy of $100 million or more;

(2) It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) It will not cause 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.

For the same reasons, under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., I hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

The Administrator believes this proposed action is significant and thus merits public comment prior to a final decision. Therefore, the Administrator has established a 30-day public comment period.

This proposed action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

(Sec. 6, Noise Control Act of 1972, 42 U.S.C. 4905.)

Dated: November 22, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-32799 Filed 11-30-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 447

Medicare and Medicaid Programs; Prospective Reimbursement for Rural Health Clinic Services

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

ACTION: Proposed rule.

SUMMARY: These proposed regulations would provide a prospective payment method for Medicare and Medicaid reimbursement of independent rural health clinics (RHCs). Currently, both programs pay RHCs on an interim rate basis during each cost reporting period, and adjust their payments retroactively to reflect actual costs. Under the proposed regulations, payments will be made based on charges determined at the beginning of the reporting period, and there will be no year-end adjustment. These regulations are needed to replace existing interim regulations on payment of RHCs, and

are intended to provide RHCs with increased incentives to be more efficient and cost-effective in their operations.

This proposal replaces our proposed rule published on September 10, 1980 (45 FR 59734). As a result of comments, public hearings, and further analysis on that document, we have developed a new proposed rule that implements prospective reimbursement for RHC services through a simpler and more effective method.

DATE: To assure consideration, comments should be received by January 31, 1983.

ADDRESS: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

In commenting, please refer to BPP–167–P. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately three weeks after publication, in Room 309–G of the Department's office at 200 Independence Ave. SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Bernard Truffer, 301–597–1369.

SUPPLEMENTARY INFORMATION:

I. Background

A. Development of Program

Congress enacted the Rural Health Clinic (RHC) Services Act (Pub. L. 95–210, December 13, 1977) to address two major problems: The lack of access to primary medical care in rural communities, and the financial plight of rural facilities providing this care. In response to these problems, the Rural Health Clinic Services Act added RHC services as a new benefit under Part B of Medicare, and as a mandatory benefit of certain State Medicaid plans. The benefit included payment for physician services and for medical services provided by nurse practitioners and physician assistants in a rural health clinic. As of January 1982, 434 RHCs were participating in the program, three hundred and thirty-five of these clinics (77.5 percent) concentrated in only 15 States.

In FY 1983, we estimate that RHCs will receive about $8.65 million in Medicare and Medicaid payments, divided approximately equally between the two programs. On the average, a clinic receives approximately $19,000 from both programs combined. In relation to the amount of total benefit payments, Medicare administrative costs for the RHC program are high—approximately 30 percent of benefits. This is substantially higher than the proportion of similar costs for the rest of the Medicare program.

B. Current Payment Method

The Medicare reimbursement regulations for RHC services are contained in 42 CFR Part 405, Subpart X, and the Medicaid reimbursement regulations are located at 42 CFR 447.371.

Both Medicare and Medicaid reimburse RHCs that are a part of a provider of services (hospital, skilled nursing facility, or home health agency) on a reasonable cost basis, with a year-end cost settlement, according to reimbursement principles applicable to that provider under the regulations in 42 CFR Part 405, Subpart D. Currently, only about 5.4 percent (23 of 434 clinics as of January 1982) of all RHCs are provider-based.

Medicare currently reimburses independent (non-provider based) RHCs retrospectively also, based on the clinics' reasonable cost incurred in furnishing RHC services to Medicare beneficiaries, under principles specifically applicable to the clinics. Medicare regional intermediaries make interim payments to clinics based on an all-inclusive rate for each visit by a Medicare beneficiary.

For each clinic, the intermediary sets an interim rate of payment at the beginning of each reporting period, based on the clinic's estimated costs and estimated number of patient visits for the period. The intermediary pays the clinic 80 percent of the all-inclusive rate for each Medicare covered visit, if the patient has fully incurred the Medicare Part B deductible amount ($75 per year). At the end of each reporting period, the clinic must report to the intermediary its actual costs and the total number of visits for RHC services it actually furnished during the period. Based on this information, the intermediary calculates the amount due by multiplying the clinic's average cost per visit by the number of beneficiary visits, and subtracting the incurred deductible amounts. The intermediary compares the resulting amount with the interim payments made during the reporting period, and reconciles any underpayments or overpayments.

Medicaid reimburses independent RHCs for RHC services under a similar method. States that pay for RHC services use interim rates established by Medicare intermediaries subject to adjustment at the end of the reporting period based on actual costs and visits. However, Medicaid pays 100 percent of the all-inclusive rate (subject to State-imposed copayment requirements, if applicable).

The all-inclusive rate is subject to tests of reasonableness, developed by HCFA or the intermediary in accordance with 42 CFR 405.2428, and applied to both Medicare and Medicaid payments. The tests include screening guidelines intended to identify situations where costs will not be allowed without acceptable justification by the clinic, and limits on the amount of payment.

C. Basis and Purpose for Revising the Payment Method

Section 1833(a)(3) of the Social Security Act (added by Pub. L. 95–210) gives broad authority for the development of a payment method for RHCs under Medicare. Public Law 95.210 also added section 1902(a)(13)(F) to the Social Security Act (changed to section 1902(a)(13)(B) by the Omnibus Budget Reconciliation Act of 1981), relating Medicaid payment for RHC services to that under Medicare.

When the original RHC reimbursement regulations were developed under this statutory authority, there was little information available on the number, costs, or accounting capabilities of the clinics. We therefore decided to use a retrospective payment method based on established principles of reasonable cost. Through its end-of-year reconciliation, this method allowed us to adjust for excesses or deficiencies in setting the rate for interim payments. In this way, we avoided placing clinics at risk during their first years of dealing with Medicare and Medicaid. However, we also recognized that it had long-term disadvantages, and we announced in the preamble to the regulations (43 FR 8259; March 1, 1978) that we intended to replace retrospective cost reimbursement with a prospective reimbursement methodology.

D. Previous Notice of Proposed Rulemaking

On September 10, 1980, we published a Notice of Proposed Rulemaking (NPRM) regarding RHC reimbursement (45 FR 59734). The two major issues that were addressed in the development of

the NPRM were: (1) Developing a specific methodology for determining the prospective rate of payment, and (2) providing incentives to clinics to achieve and maintain cost-effective and efficient operations. We proposed that the prospective payment rate for each clinic be the lower of a target rate for all clinics in the State, or an individual clinic rate based on the particular clinic's base period costs and patient visits.

In response to the NPRM, we received written public comments from a total of 41 commenters. We also held three public meetings at which we received a number of questions and comments. The general reaction of both commenters and conference participants was overall support for the concept of prospective reimbursement for RHCs, but a belief that the specific proposal that we had set forth was unwieldy. The main concern was that, while the system was originally intended to be flexible and responsive to individual clinic circumstances, it had become too complex, would require recordkeeping and reporting beyond current RHC capabilities, and might create disincentives for participation by new clinics.

In light of these comments, we have developed a new proposal that we believe would be simple for the clinics and administratively less burdensome than both the current and the previously proposed system, and that would achieve the goals of a prospectively set payment system.

II. New Proposed Payment Method

A. Objectives

In developing a new method for prospective payment of RHCs, we attempted to ensure that the method would:

- Enable us to pay the proper Federal share of reasonable costs, under the statutory requirements imposed by Pub. L. 95–210;
- Provide an incentive for economical and efficient operation of the clinics;
- Be understandable and acceptable to the clinics (in view of their present capabilities in accounting, recordkeeping, and reporting); and
- Alleviate the problems of administration (and cost of administration) or interorganizational relations (among HCFA, States, intermediaries, carriers, and clinics) experienced under the present system.

B. General Description

We are proposing to base clinic-specific payments on cost-related charges, determined by establishing the relation of each RHC's costs to its customary charges for the services it furnishes to patients. (A customary charge is the uniform amount that a clinic charges in the majority of cases for a specific medical procedure or practice. In determining the customary charge, substandard charges for low-income patients are disregarded.) For each clinic, the percentage representing the ratio of total allowable costs to total charges would be determined by the Medicare fiscal intermediary at the beginning of each reporting period. The clinic would then bill the Medicare carrier and Medicaid fiscal agent using its schedule of customary charges. Program payments for a specific covered service would be determined by multiplying the customary charge by the cost/charge ratio for that clinic. This ratio would be recalculated annually. The carrier would determine the reasonableness of payments by comparing the prevailing charge screen (used generally under Medicare), for the specific service furnished, to the clinic's cost-related charge for that service.

We would have the cost/charge ratio for each clinic calculated by the same regional intermediaries that calculate rates and pay RHCs under the current payment method. However, there would be no annual cost settlement under the prospective method, and RHCs would be paid for each service on the basis of their cost-related charges. Therefore, we would be able to have the clinics send their bills to the Medicare carriers that process most other Part B claims. (Under the current system, intermediaries are responsible for both rate determination and bill processing for RHCs. The regulations refer to these fiscal agents as carriers, because RHCs furnish services under Part B of the Medicare program. However, to avoid confusion, the proposed regulations use the term "intermediary" when referring to the regional intermediaries responsible for rate calculations and the term "carrier" when referring to the local Medicare carriers responsible for bill processing.)

C. Specific Provisions

1. *Cost/Charge Ratio.* Instead of computing and imposing a centrally determined payment rate or schedule of rates, we would pay RHCs at rates determined for each clinic on the basis of that clinic's costs and charges. To do this, we propose to apply the ratio of each clinic's costs and charges to its schedule of customary charges for specific services instead of trying to identify the costs of furnishing each specific service.

Once a year, at the beginning of a clinic's reporting period, we would determine the clinic's cost/charge ratio (for aggregated costs and charges, not for each service). For the remainder of that reporting period, we would then automatically pay for a covered service the amount equal to 80 percent of the product of the customary charge and the clinic's cost/charge ratio.

The data components required for computing a clinic's cost/charge ratio are accurate figures for appropriate costs and charges for a representative time period. We considered the options available for these figures, and determined that the two main alternatives would be to base the ratio on the total costs and total charges for *all* services the clinic furnished, or on the costs and charges only for Medicare covered RHC services furnished, as defined in our regulations.

The use of cost and charge data specifically for RHC services would yield the most valid and accurate result on which to base payment for these services. However, the use of a ratio based on total costs and charges for all services would require simpler records and reports, and would be less burdensome for the clinics. Since many clinics offer few additional services, with little added cost, we believe that, in the vast majority of cases, the differences would be small enough so that a cost/charge ratio based on total costs would be sufficiently accurate. We propose, therefore, to compute each clinic's ratio based on total costs and charges, unless a clinic specifically believes it would be disadvantaged by this method, and requests to have its ratio computed on the basis of Medicare covered RHC services only. In this event, we would require the requesting clinic to provide adequate data to make the calculation.

2. *Determining the Cost Component of the Ratio.* We propose to compute the cost/charge ratio based on data from the RHC cost report for the immediately preceding reporting period. Depending on the clinic's option, we would use the total allowable cost of either rural health clinic services or all services furnished by the clinic in order to compute the ratio.

3. *Determining the Charge Component of the Ratio.* The charge component of the ratio calculation represents the total charges for services furnished during the previous reporting period, based on the clinic's customary charges. If the RHC has used a single consistent schedule of charges for the whole reporting period, then this figure is calculated simply by summing the customary charges for all the services furnished in that period. No further adjustments need be made. After

the cost/charge ratio is determined, the ratio would be applicable to services furnished during the upcoming period.

However, if the clinic has changed its schedule of customary charges during the immediately previous reporting period, we will make an adjustment so that the ratio would approximate the total charges that would have been made if the new charge schedule had been in effect for the entire previous reporting period. If this adjustment were not made, the cost/charge ratio would not yield accurate cost-related charges for prospective payment. To calculate the cost/charge ratio in this case, the intermediary would project what total charges would have been if the new schedule had been applied to all services furnished in the reporting period on which the ratio is based. This could be accomplished by simple proration, if the clinic had a relatively constant rate of utilization during the reporting period. For example, if a clinic had revised its charge schedule during the last three months of its reporting year, the charge component of the cost/charge ratio would be four times the amount of clinic charges during those months.

We expect, however, that clinic utilization rates would vary during the year. In most cases, it would be necessary for the intermediary to use a more sophisticated method for calculation of the ratio. For example, the intermediary could review a sample of clinic services (derived from patient logs, charge slips, or other billing documents) for a representative time period or periods throughout the year. On the basis of these documents, the intermediary would "price out" the services using the most recent charge schedule and then prorate the result over the entire period. The purpose of this procedure would be to obtain a more accurate projection of what total annual charges would have been, if the most charge schedule had been in effect for the entire period. In any event, we would expect the intermediary to review a clinic's particular situation to determine the appropriate basis for calculation of cost/charge ratio in its circumstances.

4. *Calculation of the Cost/Charge Ratio.* After the cost and charge components of the ratio have been established, the cost/charge ratio will be calculated by dividing the clinic's cost by its charges. Once established, the ratio will not be modified during a clinic's reporting period, even if the clinic changes its schedule of charges. Therefore, if the charge for a particular procedure is changed, the Medicare reimbusement rate will change accordingly. However, clinic reimbursement rates are subject to limitations described in section III. C. 5 below.

5. *Payment Limitations.* Under the proposal, we would apply two different limits on clinic payment rates. The first would limit increases in clinic cost-related charges to no more than the rate of increase in the Part B economic index for prevailing charges for physician's services. The second would limit payment for a particular service to the established Medicare prevailing charge screen for that service.

Since we do not propose to recalculate the cost/charge ratio during a reporting period, changes in a clinic's charge schedule will result in a proportional change in Medicare payments. However, during a reporting period, the reimbursement rate for a given procedure will not be permitted to increase by more than the rate of increase in the economic index in effect on the first day of the clinic's reporting period. This constraint will assure that payments to rural health clinic in a reporting period will not increase at a rate faster than reimbursement to physicians under Part B of Medicare.

We wish to make clear that we are not proposing to limit rates of increase in reimbursement by the economic index itself, but only by the rate of annual increase in the index. For example, on June 30, 1981, we published the index applicable to physicians' services for July 1, 1981 through June 30, 1982 (46 FR 33651). We explained there in detail the basis for the index and showed the components of its calculation. The new index for the 12-month period ending June 30, 1982, is 1.7903, which represents an increase of 7.96 percent over the previous year. In determining the maximum rate of increase in rates for RHC services, we would use the increase (1.0796), not the index itself, that is designed under the statute to be applied to prevailing charges in effect on June 30, 1973.

Because a clinic's reporting period may not coincide with the period for which the economic index is calculated (July 1-June 30), it is necessary to clarify how the rate of increase limit will be applied to clinics under the prospective payment system. We propose to limit increases in payment rates to clinics to the rate of increase in the economic index in effect on the first day of a clinic's reporting period. For example, if a clinic has a reporting period starting January 1, 1983, the rate of increase announced in July 1, 1982, would apply to the clinic's entire reporting period.

The second limit on payment would limit the maximum cost-related charge for a particular service to the established prevailing charge screen for that service if furnished by a general practitioner in the clinic locality. Because of the variation in charges an individual clinic makes for different services, a clinic could have the prevailing charge limit applied to the charges for some services, while others would still be under their respective limits.

Limiting RHC payments on the basis of physician prevailing charges would have several advantages. First, it would ensure that the program would pay no more for services furnished by an RHC than the maximum we would pay for similar services in other settings.

Second, this payment limitation would be more equitable than the current gross amount limit imposed under the retrospective payment method. Although some RHCs furnish only very basic services, others perform more varied and complicated procedures. Using prevailing charge screens would establish different limits for different types of services, recognizing the higher costs of many services offered by larger and more complex clinics.

We expect, however, that some small clinics may continue to have costs higher than local prevailing charges due to circumstances that they cannot control. We are therefore proposing to permit an exception to the prevailing charge limit in certain cases. Under an exception, we would then pay the clinic its cost-related charges, based on its cost/charge ratio, without applying these screens. We propose to grant an exception if the RHC provides adequate documentation that, under the prevailing charge limit, it cannot recover its cost, that it is reasonably staffed and efficiently operated considering the volume of services it furnishes, and it has no available means for reducing its costs below the limit.

Alternative Method of Calculating the Cost/Charge Ratio

We considered, but did not include in the regulations, an alternative method of calculating a clinic's cost/charge ratio and accounting for subsequent changes in the charge schedule. Under the alternative, the cost/charge ratio would be calculated as described in the proposed regulation, but the cost component of the ratio (that is, the clinic's cost in the previous year) would be inflated by the rate of increase in the economic index for physicians' services. When a clinic revised its charge schedule during a reporting period, the

cost/charge ratio would be recalculated using the revised charges. This procedure would have the effect of maintaining a relatively constant reimbursement rate per procedure, despite changes in the charge schedule. This alternative was not included in these regulations because of the additional administrative effort that would be required for the recalculation, and because it would not recognize the dynamic nature of clinics' charges.

6. *Productivity Screening Guidelines.* If this proposed prospective method were established, we would eliminate use of the current productivity screening guidelines for all clinics being paid prospectively. Under the current retrospective method, these guidelines are necessary to ensure an adequate concern for efficiency in clinics paid under a cost settlement process that reimburses for all allowable costs. However, we believe that prospective payment without retroactive adjustments will ensure the necessary consideration of appropriate staffing and productivity.

7. *Payment for Services Furnished at the Beginning of a New Reporting Period.* There will always be some delay between the end of a clinic's reporting period and the determination of the cost/charge ratio to be used in the period just beginning. This raises the question of how the payment rate will be determined for services furnished in the interim period. All independent clinics would be in this situation, both in the beginning of this proposed system, and in the beginning of each new reporting period thereafter.

We propose to allow clinics two options concerning payment for these services. The first is to defer billing until the ratio is set. In those cases in which the clinic expects to file its cost report promptly, and with little likelihood of major changes, we expect this to be the most frequently chosen option. Since most clinics have such a small proportion of Medicare and Medicaid payments in their total revenue, this should not create an insupportable burden or cash flow problem.

For clinics that do not accept this option, we would need to make interim payment arrangements in two different situations: first, at the beginning of the first reporting period in which prospective payment is implemented, when the clinic moves from one payment method to another; second, at the beginning of every subsequent reporting period:

In the first situation, we would pay the clinic for services furnished to beneficiaries on the basis of its all-inclusive rate, which had been used for interim payments under the retrospective method. This would result in paying the same amount for all covered encounters, regardless of the services furnished, during the interim period.

For its second and subsequent reporting periods under prospective reimbursement, we would continue to pay the RHC its cost-related charges based on its cost/charge ratio for the previous reporting period. This would result in an annual lag in implementing a revised cost/charge ratio. However, each ratio would still generally be applied over a period of approximately a year. Clinics that submit their cost reports promptly would be able to minimize this lag.

We would not make any retroactive adjustments to the payments made in either of the above cases, because we do not believe that the resulting level of payment would create problems great enough to justify the considerable effort of retrospectively reprocessing those bills. The clinics would have had the option of deferring payment until the ratio was determined, and we would consider that, by refusing that option, they had accepted the risk of the alternate.

8. *Payment to New Clinics.* For those clinics that are newly certified RHCs, the proposed regulations permit the intermediary some flexibility in calculating initial payment rates.

Many clinics would already have more than a year's operating experience before beginning participation in HCFA programs. In these cases, if a clinic could provide to the intermediary adequate cost and charge data for the year or accounting period immediately before program entry, a cost/charge ratio could be calculated and prospective reimbursement could begin immediately.

If the intermediary found that a newly participating clinic could not provide acceptable cost and charge data, either because of too little operating experience or because of inadequate records, we would require the clinic to estimate its first six months' costs and charges, and we would calculate its cost/charge ratio on the basis of this budget. After its first six months in the program, a new clinic would be required to report its actual costs and charges for that period. This would be the basis for a recalculated ratio that would be applied to charges for services for the remainder of that first reporting period. This six-month report could be waived by the intermediary if only a very small volume of services were involved or, since the date of initial participation may not correspond to the beginning of a clinic's fiscal year, if there were a very short time left until the end of the clinic's accounting period.

We do not intend to make provision for retroactive adjustment of payments based on the estimated cost/charge ratio. The clinic would not be at greater risk for these services than it would be for its charges to private-pay patients. The accuracy of its own estimates of its costs, as related to the realism of its customary charges, would be the determining factor of the adequacy of the clinic's payment program.

9. *Beneficiary Liability.* Under sections 1832, 1833, and 1861(aa) of the Social Security Act, Medicare beneficiaries are liable for the charges for clinic services not covered by Medicare, for an annual deductible amount, and for coinsurance equal to 20 percent of the clinic's charge for the covered services, as long as this is not in excess of the amount customarily charged for such items or services by the clinic.

This creates an issue regarding clinics that have cost-related charges higher than their customary charges (that is, their cost/charge ratio is greater than one). We had wished to propose that, under prospective reimbursement, beneficiary deductible and coinsurance liability be based on cost-related charges, subject to the payment limit. This would be the simplest situation for clinic bookkeeping.

However, in view of the statutory requirements that would preclude the clinic from collecting from the beneficiary more than 20 percent of its customary charge, we believe that beneficiary liability must be assessed on the basis of the lower of the cost-related or the clinic's customary charge for a specific item or service.

10. *Bad Debts.* Under Medicare, bad debts are the costs attributable to the amounts of deductible and coinsurance for which Medicare beneficiaries are liable, and which the clinic discovers to be uncollectible. Regulations at 42 CFR 405.420 specify that certain efforts must be made before beneficiary liabilities may be considered uncollectible.

Because the statutory provision on reasonable cost reimbursement specifically referenced in section 1833(a)(3) requires that the costs of furnishing services to beneficiaries not be borne by other persons (section 1861(v)(1)(A)(i)), we propose to pay for Medicare bad debts under the prospective reimbursement system. However, we have found no satisfactory or accurate method for including an adjustment for bad debts in prospective rate-setting.

Therefore, we proposed to require each clinic to prepare an itemized list of all specific non-collections for beneficiary deductible and copayment obligations related to covered services. We will pay for these Medicare bad debts in a separate lump sum at the end of the reporting period. Because a clinic's charges to beneficiaries for deductible and coinsurance amounts are related to the costs of the services, we will attribute the amounts the clinic can not collect from beneficiaries to uncollected deductible and coinsurance liabilities.

11. *Reporting Requirements.* Under this proposal, the reporting requirements for prospective payment would be reduced, compared to those for retrospective payment. We propose to develop a simple form to be submitted annually by the clinic to enable intermediaries to calculate the cost/charge ratio. However, we would require this annual report to be submitted within 60 days instead of 90 days after the end of the cost reporting period, in order to facilitate calculation of the new cost/charge ratio.

12. *Medicare Reimbursement Appeals.* Under these regulations, independent clinics would still be able to appeal payments under the retrospective method concerning whether the clinic received the amount to which it was entitled for the period; i.e., 80 percent of the allowable costs properly attributable to covered services furnished to Medicare beneficiaries. However, these provisions would become obsolete once the prospective system is fully implemented and all cost reports under the retrospective system are settled.

Under the prospective method, independent clinics would be able to request an administrative appeal for amounts in controversy over $1000. Such an appeal would concern whether the cost/charge ratio for a particular reporting period had been computed accurately by the intermediary, or whether an RHC had been denied an exception to the payment limit despite an adequate demonstration to HCFA of conditions meeting the requirements for such an exception. For amounts under $10,000, the clinic would make an appeal to the intermediary that received its cost reports and calculated its cost/charge ratio. Any adjustments would be made only on a prospective basis. (Carriers would only hear appeals from a beneficiary concerning denial of payment for a specific bill.) If the amount were $10,000 or more, hearings would he held by the Provider Reimbursement Review Board, as specified in 42 CFR Part 405, Subpart R. (We have decided to base appeal procedures on the same amounts as are used under Part A, because payments will be based on costs.)

13. *Change in Medicaid Reimbursement.* The proposed revisions to 42 CFR 447.371 of the Medicaid regulations generally follow the proposed changes in the Medicare regulations, in keeping with the intent of Congress expressed in the Rural Health Clinic Services Act and the accompanying legislative history to have the Medicaid and Medicare programs use the same methodology for payment of RHCs.

With respect to provider-based clinics, these proposed regulations retain the current requirement for payment to be made under the Medicare provider reimbursement principles in 42 CFR Part 405, Subpart D.

Under current regulations, the payment method a State may use for independent RHCs is determined by the range of services the clinic offers. If the clinic does not offer any ambulatory services other than "rural health clinic services" as defined in 42 CFR 440.20(b), the State must pay the clinic for the RHC services it furnishes at the same rate as Medicare. However, if the clinic offers both rural health clinic services and "other ambulatory services" (i.e., services to ambulatory patients that do not meet the definition of "rural health clinic services" but are otherwise covered under a particular State Medicaid plan, as provided in 42 CFR 440.20(c)), the State has three options for payment:

(1) Payment for all services on a cost basis by means of a single, all-inclusive rate per visit;

(2) Payment for RHC services at the Medicare rate per visit, and payment for other ambulatory services at the rates or charges set by the State for payment for the services when furnished by other facilities or by physicians not associated with a rural health clinic; and

(3) Payment for dental services at a separate, all-inclusive rate per visit, and payment for other services as provided in either option 1 or 2.

The proposed regulations would require State Medicaid programs to pay clinics for RHC services on the same prospective basis used by Medicare. State payment to clinics would be at 100 percent of the rate established by the Medicare intermediary, subject to any applicable State copayment requirements. Therefore, we would provide a State Medicaid agency with the schedules of cost-related charges for covered RHC services under Medicare for each RHC in the State.

However, we do not propose to limit the options available to a State agency for paying an RHC for services other than rural health clinic services. As long as the agency's payment mechanism for these other services was properly approved in the State plan, the agency could use the cost-related charge method, its own schedule of fees, or some other method to pay for non-RHC services.

This should be much simpler and less burdensome for States, improve payment of cross-over claims (claims for persons eligible under both programs), and facilitate identification of non-RHC services, such as family planning services, that are subject to different FFP rates.

Several States have expressed interest in using an RHC payment methodology other than the Medicare method. We are committed to provide States with the maximum degree of flexibility permitted by the statute to manage their Medicaid programs. While we believe that RHC reimbursement might be one area in which State alternatives would be appropriate, our regulations must be consistent with the statutory requirement that Medicare and Medicaid reimbursement on based on "the same tests of reasonableness". We have examined the statute and the legislative history and, while we do not believe that the use of alternative Medicaid methodologies is absolutely precluded, we have found no satisfactory approach under which an alternative State payment system could meet the statute's requirements.

We are interested in receiving comment from the States on the question of alternative Medicaid payment systems for RHCs. We would particularly invite specific comments from States desiring to use alternative methods as to how the alternatives meet the statutory requirements. We are also interested in recommended criteria which the Secretary could use to approve alternative methods. If, after examining the public comment, we find a satisfactory system for approval of State alternative plans, we will include provision for them in the final regulations.

III. Agreements Between the Secretary and Rural Health Clinics for Program Participation

As in the previous NPRM, we are proposing to revoke 42 CFR 405.2402(e), which provides that agreements between the Secretary and rural health clinics concerning participation in

Medicare have a term of one year, subject to renewal. (HCFA enters into these agreements under delegation from the Secretary.) Removal of this one-year provision would make these agreements open-ended.

Experience with time-limited agreements shows the major result to be a proliferation of paperwork. Also, time-limited agreements permit no flexibility in scheduling surveys and require State survey agencies to visit facilities at precise times. Similar time limits on processing and certification burden the regional offices.

The proposed regulations also would specifically authorize HCFA to approve a clinic's request to terminate its agreement retroactively if it has not actually been paid as an RHC. In some cases, a facility that has agreed to participate as an RHC finds that it furnishes so few RHC services to Medicare beneficiaries that complying with the reporting requirements it must meet to obtain payment for these services under the cost-based method in Subpart X would not be worthwhile. However, under our current rules, the facility could not claim normal Part B charge payments for these services if, when the services were furnished, it was participating as an RHC. Thus, unless retroactive withdrawal were allowed, the facility would not be able to recover the costs of its services.

We propose to allow retroactive withdrawals only for clinics that have not been paid as RHCs. If a clinic that has participated and received payment as an RHC wishes to terminate its agreement, it can do so only prospectively. To do otherwise could create legal and administrative problems for HCFA carriers and the intermediaries, since it would require recovery of amounts paid for services, and recalculation of the amounts due for the services.

IV. Impact Analysis

A. Executive Order 12291

We have determined that these proposed regulations would not result in an annual economic impact of $100 million or meet other threshold criteria of section 1(b) of the Order.

We estimate that the proposed regulations would increase the total level of reimbursement for RHC services by $550,000—from $8.65 million to approximately $9.2 million—in FY 1983. This projected increase in reimbursement is almost entirely attributable to elimination of the screening guideline for RHC physician and physician extender productivity.

The proposed payment method would also permit use of a billing process that entails less extensive claims processing. The amount of cost report review and audit currently performed by intermediaries would be reduced, saving the Medicare program an estimated $528,000 in administrative costs in FY 1983. This reduction would offset the projected increase in program reimbursement, thus minimizing the effect of the increase.

Since the estimated net cost of these proposed regulations is significantly below the $100 million threshold, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), that these regulations would not result in a significant impact on a substantial number of small entities.

As described above, the purpose of the proposal is to replace the reasonable cost payment method currently used by the Medicare and Medicaid programs for reimbursement to rural health clinics (RHCs) with a prospective payment method. The primary intent of the change is to provide a reimbursement system for these clinics which promotes efficient and cost-effective clinic operations. A second objective is to reduce the administrative burden on clinics and the health care financing programs.

These proposed regulations would affect the over 400 independent RHCs currently participating in the Medicare and Medicaid programs. The combined Medicare and Medicaid payment to these RHCs averages approximately $19,000 per year, or about 20 percent of an individual RHC's average total revenue per year. We estimate that the projected increase in total level of reimbursement for RHC services would result in an average impact of $2,000 per RHC. This potential impact is approximately 2 percent of the estimated total yearly revenues for RHCs noted above. We do not consider this to be a significant percentage for these RHCs.

The proposed prospective reimbursement method would also include reporting and recordkeeping requirements that are significant reductions from the present system. The proposed new billing procedures would enable clinics to bill the programs on a basis more compatible with their usual procedures, and would facilitate their recordkeeping process. Similarly, the simplification of the cost reporting process would minimize the amount of information to be collected and the detail in which this information would be displayed. We believe that clinic administrative costs and burden would be reduced by the use of new billing procedures and by the proposed reductions in the present reporting requirements. Thus, the impact on these small entities will not be significant and a regulatory flexibility analysis is not required.

V. Miscellaneous

A. Other Changes

In addition to the changes in the regulations text relating to the prospective method, we propose to reorder the existing material concerning the retrospective payment method at §§ 405.2425 through 405.2429, and to revise these regulations and those in § 447.371 for clarity. We are proposing these changes in order to make these regulations more easily understandable. The changes do not affect substantive policies and do not represent new regulatory requirements.

B. Clearance of Reporting Requirements

This proposed rule contains information collection requirements that are subject to Office of Management and Budget (OMB) review. As required by section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), we have submitted a copy of this proposed rule to OMB for review of these information collection requirements. These requirements are specified in §§ 405.2431, 405.2436, and 405.2437. There will be other specific information collection requirements which are not contained in this regulation, but which will derive from this regulation. We will obtain OMB approval of such requirements when we develop them.

C. Response to Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble in that rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals,

Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Part 447

Accounting, Clinics, Contracts (Agreements), Copayments, Drugs, Grant-in-Aid program—health, Health facilities, Health professions, Hospitals, Medicaid, Nursing homes, Payments for services: general, Payments: timely claims, Reimbursement, Rural areas.

42 CFR Chapter IV is amended as set forth below:

A. Part 405 is amended as set forth below:

1. The Table of Contents of Subpart X is revised by adding center headings; reprinting all section titles under the appropriate headings; adding new §§ 405.2421 and 405.2422; revising §§ 405.2425 through 405.2430; adding new §§ 405.2431 through 405.2437, 405.2440, and 405.2441;

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

* * * * *

Subpart X—Rural Health Clinic Services

General Provisions

405.2401 Scope and definitions.
405.2402 Basic requirements.
405.2403 Content and terms of the agreement with the Secretary.
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405.2410 Beneficiary entitlement and liability.
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Retrospective Payment Method

405.2425 All-inclusive rate.
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405.2429 Cost-related charge.
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405.2432 Bad debts.
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Reporting and Recordkeeping

405.2434 Recordkeeping.
405.2435 General reporting requirements.
405.2436 Reporting required for retrospective payment.
405.2437 Reporting required for prospective payment.

Appeals

405.2440 Beneficiary appeals.
405.2441 Clinic appeals.

Authority: Secs. 1102, 1833, 1861(aa), 1871, Social Security Act; 42 U.S.C. 1302, 1395, 1395x(aa), and 1395hh.

2. Subpart X is amended as set forth below.

a. A center heading is added before § 405.2401 as follows:

General Provisions

b. Section 405.2401 is amended by revising paragraph (b)(14) to read as follows:

§ 405.2401 Scope and definitions.

* * * * *

(b) *Definitions.* As used in subpart, unless the context indicates otherwise:

* * * * *

(14) "Reporting period" means a period of 12 consecutive months specified by the intermediary as the period for which a clinic must report its costs, charges, and utilization. The first and last reporting periods may be less than 12 months.

* * * * *

c. Section 405.2402 is amended by removing paragraph (e).

d. Section 405.2404 is amended by changing the words "Secretary", "the Secretary", and "he" to "HCFA" throughout, and by adding paragraph (a)(2)(iii). As amended, § 405.2404 is set out for the convenience of the reader.

§ 405.2404 Terminations of agreements.

(a) *Termination by rural health clinic.* (1) *Notice to HCFA.* If the clinic wishes to terminate its agreement it shall file with HCFA a written notice stating the intended effective date of termination.

(2) *Action by HCFA.* (i) HCFA may approve the date proposed by the clinic, or set a different date no later than 6 months after the date of the clinic's notice.

(ii) HCFA may approve a date which is less than 6 months after the date of notice if HCFA determines that termination on that date would not:

(A) Unduly disrupt the furnishing of services to the community serviced by the clinic; or

(B) Otherwise interfere with the effective and efficient administration of the Medicare program.

(iii) HCFA may approve a date that is the same as the date on which the clinic's agreement was first effective if HCFA determines the clinic has not received any Medicare payments for rural health clinic services. If HCFA determines that the clinic has received Medicare payments for rual health clinic services, HCFA will not approve a date earlier than the date of the clinic's notice to HCFA.

(3) *Cessation of business.* If a clinic ceases to furnish services to the community, that shall be deemed to be a voluntary termination of the agreement by the clinic, effective on the last day of business.

(b) *Termination by HCFA.* (1) *Cause for termination.* HCFA may terminate an agreement if HCFA determines that the rural health clinic:

(i) No longer meets the conditions for certification under Part 481 of this chapter; or

(ii) Is not in substantial compliance with the provisions of the agreement, the requirements of this subpart, any other applicable regulations of this part, or any applicable provisions of title XVIII of the Act; or

(iii) Has undergone a change of ownership.

(2) *Notice of termination.*. HCFA will give notice of termination to the rural health clinic at least 15 days before the effective date stated in the notice.

(3) *Appeal by the rural health clinic.* A rural health clinic may appeal the termination of its agreement in accordance with the provisions set forth in Subpart O of this part.

(c) *Effective of termination.* Payment will not be available for rural health clinic services furnished on or after the effective date of termination.

(d) *Notice to the public.* Prompt notice of the date and effect of termination shall be given to the public, through publication in local newspapers:

(1) By the clinic, after HCFA has approved or set a termination date; or

(2) By HCFA, when HCFA has terminated the agreement.

(e) *Conditions for reinstatement after termination of agreement by HCFA.* When an agreement with a rural health clinic is terminated by HCFA, the rural health clinic may not file another agreement to participate in the Medicare program unless the HCFA:

(1) Finds that the reason for the termination of the prior agreement has been removed; and

(2) Is assured that the reason for the termination will not recur.

(e) A center heading is added between §§ 405.2410 and 405.2411 as follows:

Benefits

f. New §§ 405.2421 and 405.2422 are added; §§ 405.2425 through 405.2430 are revised; new §§ 405.2431 through 405.2437, 405.2440, and 405.2441 are added; and center headings are added before §§ 405.2421, 405.2425, 405.2429, 405.2434, and 405.2440, to read as follows:

Reimbursement

General Rules

§ 405.2421 Payment for rural health clinic services.

(a) *Payment to provider clinics.*

The intermediary will pay for rural health clinic services furnished by a provider clinic in accordance with the provider reimbursement principles in Subpart D of this part. A provider clinic is one that is—

(1) An integral and subordinate part of a hospital, skilled nursing facility or home health agency participating in Medicare (that is, a provider of services); and

(2) Operated with other departments of the provider under common licensure, governance, and professional supervision.

(b) *Payment to independent clinics.*

Rural health clinic services furnished by all other clinics ("independent clinics") will be reimbursed—

(1) Under the retrospective payment method described in §§ 405.2425 through 405.2428, for reporting periods beginning before [the effective date of these regulations]; and

(2) Under the prospective payment method described in §§ 405.2429 through 405.2433, for reporting periods beginning on or after [the effective date of these regulations].

(c) *Amount of payment: retrospective method.*

The intermediary will determine the amount payable for each visit for covered rural health clinic services as follows:

(1) If the beneficiary has incurred the full deductible before the visit, the intermediary will pay the clinic 80 percent of the all-inclusive rate under the retrospective method.

(2) If the beneficiary has not fully incurred the deductible before the visit, and the amount of the clinic's reasonable customary charges that is applied to the deductible is less than the all-inclusive rate, the intermediary will subtract the amount applied to the deductible from the all-inclusive rate, and will pay the clinic 80 percent of the remainder, if any.

(3) If the beneficiary has not fully incurred the deductible before the visit, and the amount of the clinic's reasonable customary charges that is applied to the deductible is equal to or greater than the all-inclusive rate, the intermediary will make no payment to the clinic.

(d) *Amount of payment: prospective method.*

The carrier will determine the amount payable for covered rural health clinic services as follows:

(1) If the beneficiary has incurred the full deductible, the carrier will pay the clinic 80 percent of the cost-related charge under the prospective method.

(2) If the beneficiary has not fully incurred the deductible, the carrier will substract the amount applied to the deductible from the cost-related charge, and will pay the clinic 80 percent of the remainder, if any.

(e) *Procedures required to receive payment.*

In order to receive payment, the clinic must follow the procedures in § 405.250–2 and general instructions issued by HCFA.

§ 405.2422 Reimbursement principles.

(a) *Applicablity of general Medicare principles.* In detemining whether a specific type or item of cost, such as interest, depreciation, bad debts or owners's compensation, is allowable for purposes of calculation of all-inclusive rates or cost-related charges and payment under either the retrospective or prospective payment methods, the intermediary will follow the provider reimbursement principles set forth in Subpart D of this part, as applicable.

(b) *Allowable rural health clinic costs.* The intermediary will include the following types and items of cost in allowable costs to the extent that they are reasonable:

(1) Compensation for the services of physicians, physician assistants, nurse practitioners, nurse midwives, specialized nurse practitioners and visting nurses employed by the clinic.

(2) Compensatiion for the duties that a supervising physician is required to perform under the agreement specified in § 481.8 of this chapter.

(3) Costs of services and supplies incident to the services of a physician, physician assistant, nurse practitioner, nurse midwife or specialized nurse practitioner.

(4) Overhead costs, including clinic administration, costs applicable to use and maintenance of the clinic facility, and depreciation costs.

(5) Cost of services purchased by the clinic.

(c) *Tests of reasonableness for rural health clinic cost and utilization.*

(1) HCFA may establish tests of reasonableness authorized by sections 1833(a) and 1861(v)(1)(A) of the Act with respect to direct or indirect overall costs, costs of specific items and services, or costs of groups of items and services. Those tests include, but are not limited to, screening guidelines and payment limitations. The intermediary, acting under general instructions issued by HCFA, also may establish tests of reasonableness and screening guidelines.

(2) HCFA may set limits on payments for rural health clinic services, on the basis of amounts estimated to be reasonable for the provision of such services. Limits established under this provision will be published in a **Federal Register** notice.

Retrospective Payment Method

§ 405.2425 All-inclusive rate.

(a) *Principle.* Payments under the retrospective method are based on an all-inclusive rate established for each clinic at the beginning of the reporting period.

(b) *Determination of all-inclusive rate.*

(1) The rate to be paid for the reporting period will be determined by dividing the estimated total allowable costs by estimated total visits for rural health clinic services.

The intermediary may consider prior period costs, visits, and other relevant factors in determining these estimates.

(2) The rate determination will be subject to any tests of reasonableness that may be established in accordance with § 405.2424.

(c) *Adjustment of rate.*

(1) The intermediary will, during each reporting period, periodically review the rate to assure that payments approximate actual allowable costs and visits for rural health clinic services, and will adjust it if:

(i) There is a significant change in the utilization of clinic services;

(ii) Actual allowable costs vary materially from the clinic's estimated allowable costs; or

(iii) Other circumstances arise which warrant an adjustment.

(2) The clinic may request the intermediary to review the rate to determine whether adjustment is appropriate.

§ 405.2426 Annual reconciliation.

(a) *Purpose of annual reconciliation.* Payments made under a retrospective system to a rural health clinic during a reporting period will be subject to

reconciliation after the end of the period. The purpose of reconciliation is to assure that those payments do not exceed or fall short of 80 percent of the allowable costs attributable to cover services furnished to Medicare beneficiaries during that period, less applicable deductible amounts.

(b) *Calculation of reconciliation.* (1) The total reimbursement amount due the clinic for covered services furnished to Medicare beneficiaries will be based on the annual report required under § 405.2436 and will be calculated by the intermediary as follows:

(i) The average cost per visit will be calculated by dividing the total allowable cost incurred for the reporting period by total visits for rural health clinic services furnished during the period. The average cost per visit will be subject to tests of reasonableness that HCFA may establish in accordance with this subpart.

(ii) The total cost of rural health clinic services furnished to Medicare beneficiaries will be calculated by multiplying the average cost per visit by the number of visits for covered rural health clinic services by beneficiaries.

(iii) The total reimbursement due the clinic will be 80 percent of the amount calculated by subtracting the amount of deductible incurred by beneficiaries, that is attributable to rural health clinic services, from the cost of these services.

§ 405.2427 Notice of program reimbursement.

After reviewing the clinic's report and audit, as necessary, the intermediary will send written notice to the clinic of—

(a) The intermediary's determinations under § 405.2426 of the total amount due for the reporting period; and

(b) The clinic's right to have the determination reviewed at a hearing under § 405.2441.

§ 405.2428 Payment of reconciliation amount.

(a) *Underpayments.* If the total reimbursement due the clinic exceeds the payments made for the reporting period, the intermediary will make a lump-sum payment to the clinic for the difference.

(b) *Overpayments.* (1) If the total payments made to a clinic for the reporting period exceed the total reimbursement due the clinic for the period, the intermediary will collect the difference through a lump-sum refund, through offset against subsequent payments, or a combination of offset and partial refund.

The intermediary will select the collection method or methods that, in its judgment, will result in collection of the difference within the period specified in paragraph (b)(2) of this section.

(2) The intermediary will collect the difference from the clinic within one year of the date of the notice of program reimbursement, unless it determines that a longer period is justified. Any longer period must be based on collection of the difference as soon as possible while minimizing hardship to the clinic.

Prospective Payment Method

§ 405.2429. Cost-related charge.

(a) *Principle.* Under the prospective payment method, the clinic's carrier will pay a rural health clinic for each covered rural health clinic service furnished to a beneficiary on the basis of the cost-related charge for that service.

(b) *Determination of the cost-related charge.* (1) The cost-related charge for a covered rural health clinic service equals the clinic's customary charge for that service multiplied by the cost/charge ratio for that clinic. As used in this part, the customary charge means the uniform amount which the individual physician or other person charges in the majority of cases for a specific medical procedure or service. In determining such uniform amount, token charges for charity patients and substandard charges for welfare and other low income patients are to be excluded.

(2) The cost/charge ratio equals the total cost of the clinic services furnished in the previous cost reporting period divided by the total charges for clinic services furnished in the previous reporting period.

(3) At the beginning of each reporting period, the intermediary will compute the cost/charge ratio for each clinic in accordance with paragraph (c) of this section.

(c) *Computing the cost/charge ratio.* The intermediary will compute the cost/charge ratio for a clinic based on the total costs and charges for all services furnished by the clinic, unless—

(1) The clinic requests in writing, before the beginning of its cost reporting period, that its ratio be based only on the costs and charges of rural health clinic services as described in § 405.2411, and provides the intermediary with adequate data to make this computation; or

(2) A newly participating clinic cannot provide adequate cost and charge data to the carrier, either because of a short period of operation or because the intermediary finds the clinic's records inadequate to compute a cost/charge ratio. In this case, the intermediary will compute the ratio based on estimates furnished by the clinic.

(d) *Determining costs for the previous reporting period.* The intermediary will compute the projected total cost of clinic services furnished in the previous reporting period as follows:

(1) The intermediary will determine allowable costs (either for all services or for rural health clinic services only, as appropriate under paragraph (c) of this section) for the previous reporting period under the reimbursement principles set forth in § 405.2422.

(2) If a newly participating clinic cannot provide adequate data for the intermediary to determine allowable costs for its previous year of operation, it must submit to the intermediary an estimate of its costs for the first six months of operation under the program.

(e) *Determining charges for the previous reporting period.* The intermediary will compute the total charges for services (either all services or only rural health clinic services) furnished during the previous reporting period based on the clinic's customary charges.

(1) If the clinic used one schedule of charges in determining charges for the appropriate services during the previous reporting period, then the total charges are computed by summing the customary charges for those services furnished in that period.

(2) If the clinic used more than one schedule of charges in determining charges for services during the previous reporting period, then the total charges are estimated by computing total charges for services furnished during that reporting period based on the schedule in effect on the last day of the reporting period. This estimate may be based on a sample of the frequency of services furnished by the clinic.

(3) If a newly participating clinic cannot provide adequate charge data for the carrier to determine its total charges for its previous year of operation, it must submit to the intermediary an estimate of its charges for the first six months of operation under the program.

(f) *Revising the service basis of the ratio.* A clinic that has used the costs for only its rural health clinic services for establishing a cost/charge ratio must continue to do so for later reporting periods unless—

(1) The clinic submits a written request to the intermediary before the beginning of the reporting period to use the costs of all clinic services for computing the ratio; or

(2) The intermediary determines that the cost and charge data on rural health clinic services submitted by the clinic are not adequate to compute the cost/charge ratio.

(g) *Revising customary charges.* For purposes of Medicare reimbursement, a rural health clinic may revise its schedule of charges for services furnished to patients after it submits its new schedule of charges to the carrier.

§ 405.2430 Payment for services furnished at the beginning of the reporting period.

Since there will always be some delay between the end of a clinic's reporting period and the determination of the cost/charge ratio to be used in the following reporting period, the carrier will pay for services furnished during the interval as follows:

(a) A clinic may defer billing the carrier and the beneficiary until the new cost/charge ratio and the resulting schedule of cost-related charges are determined.

(b) For the clinic's first reporting period beginning after [the effective date of this regulation], a clinic that elects not to defer billing under paragraph (a) of this section will be paid the all-inclusive rate effective on the last day of the previous reporting period.

(c) For the second and subsequent reporting periods, a clinic that elects not to defer billing under paragraph (a) of this section will be paid the cost-related charges established for the previous reporting period.

§ 405.2431 Payment limit.

(a) Except as provided in paragraph (a)(2) of this section, the cost-related charge for a covered rural health clinic service may not exceed the prevailing charge for the service, as determined by the carrier.

(1) For purposes of this limit on payment, all rural health clinic services, including the services described in §§ 405.2413, 405.2414, and 405.2415, will be considered physicians' services. The carrier will determine the prevailing charge for these services in accordance with §405.504.

(2) HCFA may provide an exception to this payment limit for any clinic that provides adequate documentation that:

(i) The clinic cannot recover its costs under the limit;

(ii) The clinic is reasonably staffed and efficiently operated, in relation to the utilization it may reasonably expect; and

(3) The clinic's costs for services exceed the payment limit due to factors beyond the clinic's control.

(b) A clinic may modify its schedule of charges at any time during the reporting period. However, the rate of increase in a clinic's cost-related charge for an item or service for a reporting period will be limited to the annual rate of increase for physicians' services (as described in § 405.504) in effect for the first day of the reporting period.

§ 405.2432 Payment of bad debts.

(a) HCFA will reimburse each clinic its allowable Medicare bad debts in a single lump sum at the end of the clinic's cost reporting period.

(b) A clinic must attempt to collect deductible and coinsurance amounts owed by beneficiaries before requesting reimbursement from HCFA for uncollectible amounts. Regulations at § 405.420 specify the efforts clinics must make.

(c) A clinic must request reimbursement for uncollectible deductible and coinsurance amounts owed by beneficiaries by submitting an itemized list of all specific non-collections related to covered services.

§ 405.2433 Notices to clinics.

(a) *Content of notice.* The intermediary will send the clinic written notice of—

(1) Its determination or recalculation under §405.2429 of a cost/charge ratio for the clinic;

(2) Its determination regarding the clinic's request for an exception to the payment limit under § 405.2431.

(b) *Time of notice.* The intermediary will send notice to the clinic within ten days of the date it makes any of the determinations described in paragraph (a) of this section.

(c) *Appeal rights.* In each notice, the intermediary will inform the clinic of its right to a hearing under § 405.2441 if it is dissatisfied with its reimbursement, and the amount in dispute is at least $1000.

Recordkeeping and Reporting

§ 405.2434 Recordkeeping.

(a) *Maintenance and availability of records.* The rural health clinic must:

(1) Maintain adequate financial and statistical records, in the form and containing the data required by HCFA to allow the intermediary and the carrier to determine payment for covered services furnished to Medicare beneficiaries in accordance with this subpart;

(2) Make the records available for verification and audit by HHS or the General Accounting Office; and

(3) Maintain financial data on an accrual basis, unless it is part of a governmental institution that uses a cash basis of accounting. In the latter case, appropriate depreciation on capital assets will be allowable rather than the expenditure for the capital asset.

(b) *Adequacy of records.* (1) The intermediary may suspend reimbursement if it determines that the clinic does not maintain records that provide an adequate basis to determine payments under Medicare.

(2) The suspension will continue until the clinic demonstrates to the intermediary's satisfaction that it does and will continue to maintain adequate records.

§ 405.2435 General reporting requirements.

Each clinic must submit reports required in accordance with its method of reimbursement as specified in §§ 405.2436 and 405.2437.

(a) *Late reports.* If the clinic does not submit an adequate annual report on time, the intermediary may reduce or suspend payments to preclude excess payments to the clinic.

(b) *Inadequate reports.* If the clinic does not furnish a report or furnishes a report that is inadequate for the intermediary to make a determination of program payment, HCFA may deem all payments for the reporting period to be overpayments.

(c) *Postponement of the date.* For good cause shown by the clinic, the intermediary may, with HCFA's approval, grant a postponement of the due date for the annual report. Except under unusual circumstances, the postponement may not exceed 30 days.

§ 405.2436 Reporting required for retrospective payment.

(a) *Initial report.* At the beginning of its initial reporting period, the clinic must submit to the intermediary an estimate of budgeted costs and visits for rural health clinic services for the reporting period, in the form required by HCFA, and such other information as HCFA may require to establish the payment rate.

(b) *Annual report.* Within 90 days after the end of its reporting period, the clinic must submit to the intermediary in the form required by HCFA, a report of—

(1) Its operations, including the costs actually incurred for the period and the actual number of visits for rural health clinic services furnished during the period; and

(2) The estimated costs and estimated visits for rural health clinic services for the succeeding reporting period, and such other information as HCFA may require to establish the payment rate.

(c) *Termination of agreement or change of ownership.* A clinic that voluntarily or involuntarily ceases to participate in the Medicare program or experiences a change in ownership must submit the report within 45 days following the effective date of the

termination of agreement or change of ownership.

§ 405.2437 Reporting required for prospective payment.

(a) *Annual report.* Within 60 days after the end of its reporting period, the clinic must submit to the intermediary, in the form and detail required by HCFA, a report of—

(1) Its operations, including the costs actually incurred for the period for all services, and the charges for all services furnished during the period; and

(2) Such other information as HCFA may require to establish the payment rates.

(b) *Initial reporting period of new clinics.* (1) Except as provided in paragraph (b)(2) of this section, a clinic newly participating in the program must submit to the intermediary cost and charge data for its year of operation immediately before entering the program.

(2) If the clinic cannot provide adequate cost and charge data for an entire year of prior operation, it must submit—

(i) An estimate of budgeted costs and charges for services expected to be furnished for the first 6 months of the reporting period; and

(ii) Within 30 days after the end of its initial 6 months in the program, a report, in the form and detail required by HCFA, of its actual costs incurred during this period, and its total patient charges. The intermediary may waive the initial 6-month report for good cause, such as a small amount of Medicare reimbursement, or a short time remaining before the end of the initial reporting period.

(c) *Change in charge schedule.* If a clinic wishes to change its charge schedule for rural health clinic services furnished to Medicare beneficiaries during a reporting period, it must submit to the carrier the proposed new schedule.

(d) *Bad debts.* In order to receive reimbursement for Medicare bad debts under § 405.2432, a clinic must submit an itemized list of specific uncollectible beneficiary obligations at the end of each cost reporting period.

(e) *Exception to payment limit.* In order to receive an exception to the payment limit under § 405.2431, the clinic must submit such information as the intermediary may require in order to determine if the criteria in § 405.2431(a)(2) are met.

Appeals

§ 405.2440 Beneficiary appeals.

A beneficiary may request a hearing by the carrier (subject to the procedures and conditions set forth in Subpart H of this part) if—

(a) The beneficiary is dissatisfied with a carrier's determination denying a request for payment made on his or her behalf by a rural health clinic; or

(b) The beneficiary is dissatisfied with the amount of payment; or

(c) The beneficiary believes the request for payment is not being acted upon with reasonable promptness.

§ 405.2441 Clinic appeals.

(a) *Reimbursement appeals of provider clinics.*

(1) If a provider clinic is dissatisfied with the payment received for covered services furnished during a reporting period, and disputes an amount of at least $1,000, the provider that operates the clinic may, after the end of the period, request a hearing.

(2) The hearing will be held by the intermediary or the Provider Reimbursement Review Board as appropriate, subject to the procedures set forth in Subpart R of this part for intermediary and Provider Reimbursement Review Board hearings.

(b) *Reimbursement appeals of independent clinics.*

(1) If an independent rural health clinic is dissatisfied with the payment received for covered services furnished during a reporting period and the amount in controversy is at least $1,000, the clinic may, request a hearing.

(2) Notwithstanding any contrary provision in Subpart R of this part, the hearing will be before the intermediary (if the amount in dispute is less than $10,000) or the Provider Reimbursement Review Board (if the amount if $10,000 or more), and will be conducted in accordance with the procedures set forth in Subpart R of this part. However, § 405.1877 dealing with judicial review does not apply to these appeals.

(3) A hearing for a clinic paid under the retrospective method (§§ 405.2425 through 405.2428) concerns whether the clinic has received the amount to which it is entitled for the period under this subpart.

(4) A hearing for a clinic paid under the prospective method (§§ 405.2429 through 405.2433) concerns one or more of the following issues:

(i) Whether the cost/charge ratio computed for the period under § 405.2429 was accurate based on the facts available to the intermediary when it was computed; or

(ii) Whether the clinic had adequately demonstrated to HCFA that it is entitled to an exception to the payment limit under § 405.2431.

(5) A request for a hearing by a clinic made under the prospective method must be made within 90 days of notification of: (i) The new cost/charge ratio, or (ii) Denial of an exception to the prevailing charge limit. Any adjustment will be made only on a prospective basis.

PART 447—[AMENDED]

B. In Part 447, Subpart C, the authority citation and § 447.371 are revised to read as follows:

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

Authority: Secs. 1102, 1902(a)(13)(B), and 1905 of the Social Security Act; (42 U.S.C. 1302, 1396a(a)(13)(B), and 1396d).

2. Section 447.371 is revised to read as follows:

§ 447.371 Services furnished by rural health clinics.

(a) *Basic requirement.* The agency must pay for rural health clinic services, as defined in § 440.20(b) of this subchapter, and for other ambulatory services furnished by a rural health clinic, as defined in § 440.20(c) of this subchapter, as set forth in this section.

(b) *Payment to provider clinics.* The agency must pay for services furnished by a clinic in accordance with the Medicare provider reimbursement principles in Part 405, Subpart D, of this chapter if—

(1) The clinic is an integral and subordinate part of a hospital, skilled nursing facility, or home health agency participating in Medicare, (i.e., a Medicare provider); and

(2) The clinic is operated with other departments of the provider under common licensure, governance, and professional supervision.

(c) *Payment to independent clinics that furnish only rural health clinic services.* The agency must pay all other clinics ("independent clinics") that furnish only rural health clinic services by one of the following methods, as appropriate.

(1) *Retrospective method.* The agency must pay independent clinics for rural health clinic services furnished in reporting periods beginning before [the effective date of this regulation] at 100 percent of the all-inclusive rate determined by the Medicare intermediary under § 405.2425 of this chapter.

(2) *Propsective method.* The agency must pay independent clinics for rural health clinic services furnished in reporting periods beginning on or after [the effective date of this regulation] at 100 percent of the cost-related charges determined by the Medicare

intermediary under § 405.2429 of this chapter.

(d) *Payment to independent clinics that furnish other ambulatory services or dental services.* The agency must pay independent rural health clinics that furnish other ambulatory services or dental services, or both, in addition to rural health clinic services, by an appropriate method in accordance with the following requirements.

(1) *Services furnished in reporting periods beginning before [the effective date of these regulations].* The agency must pay independent clinics for covered services furnished in reporting periods beginning before [the effective date of these regulations] by one of the following methods:

(i) The agency may pay for other ambulatory services and rural health clinic services at a single rate per visit that is based on the cost of all services furnished by the clinic. The rate must be determined by a Medicare intermediary under § 405.2425 of this chapter.

(ii) The agency may pay for other ambulatory services at a rate set for each service by the agency. The rate must not exceed the upper limits in this subpart. The agency must pay for rural health clinic services at the Medicaid reimbursement rate per visit, as specified in § 405.2425 of this chapter.

(iii) The agency may pay for dental services at a rate per visit that is based on the cost of dental services furnished by the clinic. The rate must be determined by a Medicare intermediary under § 405.2425 of this chapter. The agency must pay for ambulatory services other than dental services under paragraph (d)(2) (i) or (ii) of this section.

(2) *Services furnished in reporting periods beginning on or after [the effective date of these regulations].*

(i) The agency must pay independent clinics for rural health clinic services at 100 percent of the cost-related charges determined by the Medicare intermediary under § 405.2429 of this chapter.

(ii) The agency may pay independent clinics for ambulatory, dental, and any other covered medical services as specified by the approved State plan.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance Program; 13.761 Medical Assistance Program)

Dated: July 30, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: August 27, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-32266 Filed 11-26-82; 3:31 pm]

BILLING CODE 4120-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 21126-236]

Tanner Crab Off Alaska

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of proposed season adjustment.

SUMMARY: The Secretary of Commerce proposes to change the opening dates of the Tanner crab fishing seasons in the fishery conservation zone in the South Peninsula and Chignik Districts of Registration Area J. The proposed changes, which would be consistent with those implemented by the State of Alaska, are necessary to allow Tanner crab fishing during periods when meat content of the crab is more fully developed and of better quality. This action would promote conservation of Tanner crab stocks and more optimal use of harvested Tanner crab. This action would also provide for coordinated State-Federal management of a Tanner crab fishery that is conducted simultaneously in State and Federal waters.

DATE: Comments on the proposed season opening dates must be submitted on or before December 16, 1982.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Services, P.O. Box 1668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Robert W. McVey, 907-586-7221.

SUPPLEMENTARY INFORMATION: The fishery management plan for the Commercial Tanner Crab Fishery off the Coast of Alaska provides for adjustments of season and area openings and closures by field order. Implementing rules at 50 CFR Part 671 specify at § 671.27(b) that these orders will be issued by the Secretary of Commerce under criteria set out in that section.

In March of 1982 the Alaska Board of Fisheries (Board) adopted changes to Tanner crab fishing seasons in both the South Peninsula and Chignik Districts of Registration Area J by changing the opening date in each district from 12:00 noon, December 15, to 12:00 noon, February 10. The Board took this action at a joint meeting of the Board and the North Pacific Fishery Management Council in response to requests from the fishing industry to delay the fishing season for Tanner crab until such time when the meat content of Tanner crab would be more fully developed. Whereas female Tanner crabs cease growing when they become sexually mature, male Tanner crabs continue to grow beyond the age of sexual maturity. To accommodate growth inside a rigid shell (exoskeleton), Tanner crabs shed their exoskeletons by a process called molting. Until they molt, muscle fiber (meat) continues to develop inside their existing exoskeletons, becoming larger and more firm. Harvesting prior to molting allows the recovery of a larger quantity of higher quality meat from each crab.

Fishing for Tanner crab usually proceeds until a guideline harvest level is achieved, unless stock conditions indicate insufficient numbers of crab are present to achieve that level. The guideline harvest levels are expressed in pounds, so the harvest of heavier crab should result in the mortality of smaller numbers of crab to achieve the guideline harvest levels. Delaying the season, therefore, is a conservation measure that allows the harvest of fewer crab to obtain an equal amount of meat. It will also lessen the chance of incidentally catching king crab when out of season (the king crab fishery currently is closed in the Chignik and South Peninsula Tanner crab districts).

Fishing for Tanner crab normally is conducted simultaneously in State and Federal waters on homogenous stocks. State and Federal enforcement conflicts would be likely if the State and Federal fishing seasons were to differ.

This field order—

(1) Would establish a coordinated State-Federal conservation measure that allows the harvest of fewer crabs to obtain the guideline harvest levels;

(2) Would allow fishing for Tanner crab during a period when meat recovery would be higher and of better quality; and

(3) Would alleviate enforcement problems that could arise if Federal seasons differed from State of Alaska seasons.

For these reasons the opening dates for both the Chignik and South Peninsula Districts are proposed to be changed from 12:00 noon, December 15, 1982 to 12:00 noon February 10, 1983. Closing dates remain unchanged. This proposed field order would expire on October 31, 1983.

The effective date of the field order providing these new season opening dates will be announced in a subsequent notice in the **Federal Register**. Under 50 CFR 671.27(b)(4), public comments on this notice may be submitted to the Regional Director at the address stated above until December 16, 1982.

Other Matters

This action is taken under the authority of regulations specified at 50 CFR 671.27, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 671

Fish, Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: November 29, 1982.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 82-32904 Filed 11-29-82; 2:24 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 47, No. 231
Wednesday, December 1, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 26, 1982.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s) if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Comments and questions about the items in the listing should be directed to the agency person named at the end of each entry. If you anticipate commenting on a form but find that preparation time will prevent you from submitting comments promptly, you should advise the agency person of your intent as early as possible.

Copies of the proposed forms and supporting documents may be obtained from: Richard J. Schrimper, Statistical Clearance Officer, (202) 447-6201.

New

• Forest Service
Forest Industry Survey of California and Oregon
Nonrecurring
Businesses or other institutions: 600 responses; 300 hours; not applicable under 3504(h)
James Howard (503) 231-2122

• Food and Nutrition Service
Oklahoma Indians Food Distribution Program Regulations—Recordkeeping
On occasion, monthly, quarterly, annually
Individuals or households and state or local governments: 43,856 responses; 7,214 hours; not applicable under 3504(h)
Robert Beard (703) 756-3660

• Food and Nutrition Service
Oklahoma Indians Food Distribution Program Regulations—Reporting
On occasion, quarterly, annually
Individuals or households and state or local governments: 81,345 responses; 19,541 hours; not applicable under 3504(h)
Robert Beard (703) 756-3660

• Food and Nutrition Service
Oklahoma Indians Food Distribution Program Regulations—Applications
On occasion
Individuals or households and state or local governments: 21,600 responses; 10,800 hours; not applicable under 3504(h)
Robert Beard (703) 756-3660

Extension

• Agricultural Marketing Service
Almonds Grown in California—Marketing Order 981
On occasion, monthly, annually, biennially
Businesses or other institutions: 5,814 responses; 17,251 hours; not applicable under 3504(h)
Robert R. Boersma (202) 447-2256

Richard J. Schrimper,
Statistical Clearance Officer.

[FR Doc. 82-32738 Filed 11-30-82; 8:45 am]
BILLING CODE 3410-01-M

Federal Grain Inspection Service

Renewals of Designation of Minnesota Department of Agriculture (MN) and Mississippi Department of Agriculture and Commerce (MS)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the renewals of designation of the Minnesota Department of Agriculture (Minnesota) and Mississippi Department of Agriculture and Commerce (Mississippi) as official agencies responsible for providing inspection and weighing services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act).

EFFECTIVE DATE: January 1, 1983.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2405 Auditors Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512-1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

The July 1, 1982, issue of the **Federal Register** (47 FR 28720) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Minnesota and Mississippi's designations would terminate on December 31, 1982, and requesting applications for designation as the agency to provide official inspection, official weighing, and supervision of weighing services within each specified assigned area. Applications were to be postmarked by August 2, 1982.

FGIS announced the names of the applicants for designation for each agency and requested comments on same in the September 1, 1982, issue of the **Federal Register** (47 FR 38564). Comments were to be postmarked by October 18, 1982. No comments were received regarding the renewals of designation of Minnesota and Mississippi (the only applicants for each respective designation) as official agencies.

After considering all available information in relation to the criteria for designation in Section 7(f)(1)(A) of the Act, and in accordance with Section 7(f)(1)(B), it has been determined that Minnesota and Mississippi are able to provide official services in the geographic area for which their designations are being renewed. Each assigned area is the entire geographic area as described in the July 1 issue of the **Federal Register.**

Effective January 1, 1983, and terminating December 31, 1985, the responsibility for providing official inspection, official weighing, and supervision of weighing services in each geographic area as specified above will be assigned to Minnesota and Mississippi, respectively.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection and where the agency and one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the agencies will provide official services not requiring a licensed inspector to all locations within their geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of the specified service points. Interested persons may also obtain a list of the specified service points by contacting the agencies at the following addresses:

Minnesota Department of Agriculture, 316 Grain Exchange Building, Minneapolis, MN 55415

Mississippi Department of Agriculture and Commerce, P.O. Box 1609, Jackson, MS 39205

(Sec. 8, Sec 9, Pub. L. 94–582, 90 Stat. 2873, 2875 (7 U.S.C. 79, 79a))

Dated: November 22, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82–32472 Filed 11–30–82; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Applicants for Designation in the Areas Currently Assigned to Evansville Grain Inspection (IN), Quincy Grain Inspection and Weighing (IL), and Winchester Grain Inspection (IN)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for designation as the official agency in the areas currently assigned to Evansville Grain Inspection, Quincy Grain Inspection and Weighing, and Winchester Grain Inspection. The designations terminate March 31, 1983.

DATE: Comments to be postmarked on or before January 17, 1983.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Regulations and Directives Management Staff, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1642, South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–0231.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

The October 1, 1982, issue of the **Federal Register** (47 FR 43537) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to the official agencies. Applications were to be postmarked by November 1, 1982.

Evansville Grain Inspection requested designation for all of the geographic area currently assigned to that Agency. Evansville applied for a renewal of designation for a 3-year period. Southern Illinois Grain Inspection Service, Inc., P.O., Box 3099, Fairview Heights, Illinois 62208, a second applicant, requested designation for Daviess, Dubois, Gibson, and Knox (except the area west of U.S. Route 41(150) from Sullivan County south to U.S. Route 50) Counties in Indiana. If designated, this action would result in an amendment to their presently assigned geographic area in accordance with § 800.207 of the regulations under the Act.

Quincy Grain Inspection and Weighing, the only applicant, requested designation for all of the geographic area currently assigned to that Agency. Winchester Grain Inspection, the only applicant, requested designation for all of the geographic area currently assigned to that Agency. Quincy and Winchester each applied for a renewal of designation for a 3-year period.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their views and comments concerning the applicants for designation. All comments must be submitted to the Regulations and Directives Management Staff, specified in the address section of this notice, and postmarked not later than January 17, 1983.

Consideration will be given to comments filed and to other information available before a final decision is made with respect to this matter. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: November 22, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82–32473 Filed 11–30–82; 8:45 am]

BILLING CODE 3410-EN-M

Request for Applicants for Designation to Perform Official Services in the Geographic Areas Currently Assigned to Cedar Rapids Grain Service, Inc. (IA), Champaign-Danville Grain Inspection Departments, Inc. (IL), and Springfield Grain Inspection Department (IL)

AGENCY: Federal Grain Inspection Service USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), designations of official agencies shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures provided in the Act. This notice announces that the designations of three agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, who are interested in being designated as official agencies to conduct official services in the geographic areas currently assigned to each of the specified agencies. The three official agencies are Cedar Rapids Grain Service, Inc., Champaign-Danville Grain Inspection Departments, Inc., and Springfield Grain Inspection Department.

DATE: Applications to be postmarked on or before January 3, 1983.

ADDRESS: James R Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Dapartment of Agriculture, 1400 Independence Avenue, SW., Room 2405 Auditors Building, Washington, DC 20250. All applications submitted pursuant to this notice will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, Telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

Section 7(f)(1) of the Act (7 U.S.C. 71 *et seq.*, at 79(f)(1)), specifies that the Administrator of the Federal Grain Inspection Service is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official inspection services after a determination is made that the applicant is better able than any other applicant to provide official inspection services in an assigned geographic area.

Cedar Rapids Grain Service, Inc. (Cedar Rapids), 1120 2nd Street, S. E., Cedar Rapids, Iowa 52401, was designated as an official agency under the Act for the performance of official inspection functions on September 15, 1978. Champaign-Danville Grain Inspection Departments, Inc. (Champaign-Danville), 527 East Main Street, Danville, Illinois 61832, was designated as an official agency under the Act for the performance of official inspection functions on September 15, 1978. Springfield Grain Inspection Department (Springfield), 1301 North Fifteenth Street, Springfield Illinois 62702, was designated as an official agency under the Act for the performance of official inspection functions on September 11, 1978.

The agencies' designations will terminate on May 31, 1983. This date reflects administrative extensions of official agency designations as discussed in the July 16, 1979, issue of the **Federal Register** (44 FR 41275). Section 7(g)(1) of the Act states generally that designations of official agencies shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Cedar Rapids in Iowa, pursuant to Section 7(f)(2) of the Act, and which is the geographic area that may be assigned to the applicant selected for designation is the following:

Bounded: on the North by the northern Blackhawk County line; the northern and eastern Buchanan County lines; the northern Linn County line; the northern Jones County line;

Bounded: on the East by the eastern Jones County line; the eastern Cedar County line south of State Route 130;

Bounded: on the South by State Route 130 west to State Route 38; State Route 38 south to Intersate 80; Interstate 80 west to U.S. Route 63; and

Bounded: on the West by U.S. Route 63 north to State Route 8; State Route 8 east to State Route 21; State Route 21 north to D38; D38 east to State Route 297; State Route 297 north to V49; V49 north to Blackhawk County.

The geographic area presently assigned to Champaign-Danville in Illinois and Indiana, pursuant to Section 7(f)(2) of the Act, and which is the geographic area that may be assigned to the applicant selected for designation is the following:

Bounded: on the North by the Iroquois County line east to Illinois State Route 1; Illinois State Route 1 south to U.S. Route 24; U.S. Route 24 east into Indiana, to U.S. Route 41;

Bounded: on the East by U.S. Route 41 south to the southern Fountain County line; the Fountain County line west to Vermilion County (in Indiana); the eastern Vermilion County line south to U.S. Route 36;

Bounded: on the South by U.S. Route 36 west into Illinois, to the Douglas County line; the eastern Douglas and Coles County lines; the southern Coles County line; and

Bounded: on the West by the western Coles and Douglas County lines; the western Champaign County line north to Interstate 72; Interstate 72 southwest to the Piatt County line; the western Piatt County line; the southern McLean County line west to a point 10 miles west of the western Champaign County line; a straight line running north and south from this point north to U.S. Route 136; U.S. Route 136 east to Interstate 57; Interstate 57 north to the Champaign County line; the northern Champaign County line; the western Vermilion County (in Illinois) and Iroquois County lines.

The following locations, in Illinois, outside of the foregoing contiguous geographic area, are presently assigned to Champaign-Danville and are part of the geographic area that may be assigned to the applicant selected for designation:

1. Moultrie Grain Association, Cadwell, Moultrie County;
2. Tabor and Company, Weedman Grain Company, and Pacific Grain Company, Farmer City, DeWitt County;
3. Moultrie Grain Association, Lovington, Moultrie County;
4. Monticello Grain Company, Monticello, Piatt County;
5. Gillespie Grain Company, Pittwood, Iroquois County.

Exceptions to the described geographic area are the following locations situated inside Champaign-Danville's area which have been and will continue to be serviced by the following official agencies:

Paris Illinois Grain Inspection:

1. Cargill, Inc., Dana, Vermilion County, Indiana;
2. Tabor Grain Company, Newman, Douglas County, Illinois
3. Miller Grain Company, Oakland, Coles County, Illinois.

Schneider Inspection Service, Inc.,

1. Tidewater Grain Company, Ford Iroquois Supply and Service, and Summer Elevator, Sheldon, Iroquois County, Illinois.

Titus Grain Inspection, Inc.:

1. Boswell Grain Company, Boswell, Benton County, Indiana;
2. Dunn Grain, Dunn, Benton County, Indiana;
3. York Richland Grain Elevator, Inc., Earl Park, Benton County, Indiana;
4. Raub Grain Company, Raub, Benton County, Raub, Indiana.

The geographic area presently assigned to Springfield in Illinois, pursuant to Section 7(f)(2) of the Act, and which is the geographic area that may be assigned to the applicant selected for designation is the following:

Bounded: on the North by the northern Schuyler, Cass, and Menard County lines; the western Logan County line north to State Route 10; State Route 10 east to the west side of Beason;

Bounded: on the East by a straight line from the west side of Beason southwest to Elkhart on Interstate 55; a straight line from Elkhart southeast to Stonington on State Route 48; a straight line from Stonington southwest to Irving on State Route 16;

Bounded: on the South by State Route 16 west to Interstate 55; a straight line from the junction of Interstate 55 and State Route 16 northwest to the junction of State Route 111 and the Morgan County line; the Southern Morgan and Scott County line; and

Bounded: on the West by the western Scott, Morgan, Cass, and Schuyler County lines.

The following locations, in Illinois, outside of the foregoing contiguous geographic area, are presently assigned to Springfield and are part of the geographic area that may be assigned to the applicant selected for designation:

1. Chestervale Elevator Company, Chestervale, Logan County;
2. Pillsbury Co., Florence, Pike County;
3. East Lincoln Farmers Grain Co., Lincoln, Logan County;
4. OK Grain Company, Litchfield, Montgomery County;
5. Stonington Coop Grain Company, Stonington, Christian County.

Interested parties, including Cedar Rapids, Champaign-Danville, and

Springfield, are hereby given opportunity to apply for designation as the official agency to perform the official services in each geographic area, as specified above, under the provisions of Section 7(f) of the Act and § 800.196(b) of the regulations issued thereunder. Designations in each specified geographic area are for the period beginning June 1, 1983, and terminating May 31, 1986. Parties wishing to apply for these designations should contact the Regulatory Branch, Compliance Division, at the address listed above for appropriate forms and information. Applications must be postmarked not later than January 3, 1983 to be eligible for consideration.

In making a determination as to which applicant will be designated to provide official services in the geographic areas, consideration will be given to applications submitted and other available information.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873, (7 U.S.C. 79))

Dated: November 22, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82–32474 Filed 11–30–82; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Applicant for An Official Agency Designation in the South Texas (TX) Area

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for designation to provide official inspection services in a geographic area located in South Texas.

DATE: Comments to be postmarked on or before January 3, 1983 (30 days after publication).

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Regulations and Directives Management Staff, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1642, South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–0231.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

The October 1, 1982, issue of the **Federal Register** (47 FR 43538) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official inspection services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in a geographic area located in South Texas. Applications were to be postmarked by November 1, 1982.

The only qualified applicant requesting designation for all of the geographic area available for assignment is Mr. William Hardin, P.O. Box 444, Galena Park, Texas 77546, who proposes to establish an official agency. Another application was received, however, the applicant was deemed not qualified.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their views and comments concerning the applicant for designation. All comments must be submitted to the Regulations and Directives Management Staff, specified in the address section of this notice, and postmarked not later than January 3, 1983. A 30-day comment period is deemed adequate because of the need to designate an official agency in this area as quickly as possible.

Consideration will be given to comments filed and to other information available before a final decision is made with respect to this matter. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: November 15, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82–32475 Filed 11–30–82; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Promotion Subcommittee of the President's Export Council; Open Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The President's Export Council was initially established by Executive Order 11753 of December 20, 1973. The Council was reconstituted by Executive Order 12131 of May 4, 1979, and continued by Executive Order 12258 of December 31, 1980. The Council's purpose is to advise the President on matters relating to United States export trade. The Export Promotion Subcommittee was formed by the Council to study ways to promote U.S. export trade.

Time and place: December 15, 1982, from 9:30 a.m.–12:00 p.m. The meeting will be held in Room 4830 at the Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Agenda:

9:30–9:45 a.m., Introductory Remarks
9:45–10:15 a.m., State-by-State Development Export Goals—Review of Draft Paper and Discussion
10:15–10:30 a.m., Government Programs and Current Issues
10:30–10:50 a.m., Update on Promotion of Coal Exports
10:50–11:30 a.m., Discussion of Recommendation for Foreign Commercial Services
11:30–11:45 a.m., Review of Legislative Agenda and Other Subcommittee Business
11:45–12:00 noon, Concluding Remarks

Public Participation: The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

For Further Information or Copies of the Minutes Contact: Elisabeth Maatsch, Room 3213, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 377–1125.

Dated: November 24, 1982.

Henry Misisco,

Acting Director, Office of Policy and Coordination.

[FR Doc. 82–32808 Filed 11–30–82; 8:45 am]

BILLING CODE 3510–25–M

Steel Wire Rope From South Africa; Suspension of Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Suspension of Investigation.

SUMMARY: The Department of Commerce has decided to suspend the countervailing duty investigation involving steel wire rope from South Africa. The basis for the suspension is an agreement by Haggie Limited, the only known South African manufacturer and exporter of steel wire rope, to

renounce all benefits which we preliminarily found to be bounties or grants on exports of the subject merchandise to the United States.

DATES: Effective date: December 1, 1982.

FOR FURTHER INFORMATION CONTACT: Paul J. Thran, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377–1766.

SUPPLEMENTARY INFORMATION: On June 14, 1982, we received a petition from counsel for the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, on behalf of the U.S. industry producing steel wire rope. The petition alleged that manufacturers, producers, or exporters in South Africa of steel wire rope receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. We found the petition sufficient, and on July 2, 1982, we initiated a countervailing duty investigation (47 FR 29867).

We presented a questionnaire concerning the allegations to the government of South Africa. On August 26, 1982, we received a response to the questionnaire.

On September 3, 1982, we preliminarily determined that the government of South Africa is providing bounties or grants to manufacturers, producers, and exporters of steel wire rope under three export programs. The programs preliminarily found to be countervailable were the railroad rate differential; the Export Incentive Programs, categories B, and D; and the Iron/Steel Export Promotion Scheme.

Notice of the affirmative preliminary countervailing duty determination was published in the **Federal Register** on September 7, 1982 (47 FR 40203). We directed the U.S. Customs Service to suspend liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise on or after September 7, 1982, and to require a cash deposit or the posting of a bond in the amount of 21.75 percent of the f.o.b. value of the merchandise.

Counsel for Haggie Limited proposed entering into a suspension agreement pursuant to section 704 of the Tariff Act of 1930, as amended (19 U.S.C. 1671c), and § 355.31 of the Commerce Regulations (19 CFR 355.31). On October 18, 1982, Haggie Limited and the Department of Commerce initialed a proposed suspension agreement, which was based upon Haggie's agreement to eliminate completely all benefits which we preliminarily found to be bounties or grants on exports of the subject merchandise to the United States.

On October 18, 1982, we provided copies of the proposed suspension agreement between Haggie Limited and the Department of Commerce to the petitioner and to other parties to the proceeding and consulted with them on it.

Petitioner's Comments

Comment 1

Counsel for the petitioner contends that the suspension agreement, in order to be monitored effectively, should include a clause that all containers of steel wire rope from South Africa be clearly marked as South African in origin.

DOC Position

Section 304 of the Act (19 U.S.C.1304) and part 134 of the Customs Regulations (19 CFR Part 134) govern the marking of imported containers and articles and grant the authority to enforce these country of origin marking requirements to the U.S. Customs Service. Since this is already a requirement of Federal law, and since our investigation has failed to reveal any marking discrepancy, the requested provision has not been included.

Comment 2

Counsel for the petitioner contends that the agreement does not contain a sufficient explanation of what information Haggie Limited must supply to the Department in order to show compliance with the agreement.

OC Position

Haggie Limited agrees to supply to the Department such information as the Department deems necessary to demonstrate that it is in full compliance with this agreement. Furthermore, Haggie Limited agrees to undertake the obligation to report to the Department within 15 days of the beginning of each calendar quarter (April, July, October, January) the volume of steel wire rope it has exported to the United States. The petitioner will receive copies of all requests for information that the Department makes for monitoring the agreement. The petitioner will be able, at that time, to object to any insufficiency in the request.

Comment 3

Counsel for the petitioner contends that the agreement is insufficient as it monitors only "subject imports" and not "all production of steel wire rope by Haggie."

DOC Position

Haggie Limited's cost accounting system can distinguish between exports to the United States and other wire rope production. The Department can verify that exports destined for the United States do not receive bounties or grants.

Respondent's Comment

Comment

Counsel for the Haggie Limited contends that the respondent does not manufacture, produce, or export one of the products under investigation, stainless steel wire rope. This merchandise is currently provided for under item number 642.1400 of the *Tariff Schedules of the United States Annotated.*

DOC Position

The Department has consulted with the petitioner, and the petitioner has agreed to the exclusion of this merchandise from the investigation.

Suspension of Investigation

We have determined that the agreement eliminates the bounties or grants completely with respect to the subject merchandise exported directly or indirectly to the United States, can be monitored effectively, and is in the public interest. Therefore, we find that the criteria for suspension of an investigation pursuant to section 704 of the Act have been met. The terms and conditions of the agreement are set forth in Annex 1 to this notice.

Pursuant to section 704(f)(2)(A) of the Act, the suspension of liquidation of entries, or withdrawals from warehouse, for consumption of steel wire rope from South Africa effective September 7, 1982, as directed in the preliminary affirmative countervailing duty determination, is hereby terminated. Any cash deposits on entries of steel wire rope from South Africa pursuant to that suspension of liquidation shall be refunded and any bonds posted shall be released.

The Department intends to conduct an administrative review within twelve months of the publication of this suspension as provided in section 751 of the Act.

Notwithstanding the suspension agreement, the Department will continue the investigation if we receive such a request in accordance with section 704(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 704(f)(1)(A) of the Act.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

November 22, 1982.

Annex I—Suspension Agreement on Steel Wire Rope From South Africa

Suspension Agreement; Steel Wire Rope from South Africa

Pursuant to the provisions of section 704 of the Tariff Act of 1930 (the Act) and section 355.31 of the Commerce Regulations, the United States Department of Commerce (the Department) enters into the following suspension agreement with Haggie Limited, Head Office, Lower Germiston Road, Jupiter, Johannesburg 2093, South Africa. On the basis of this agreement, the Department shall suspend its countervailing duty investigation with respect to steel wire rope from South Africa initiated on July 2, 1982 (47 FR 29867) in accordance with the terms and provisions set forth below:

A. *Product Coverage.* The suspension agreement is applicable to all steel wire rope manufactured by Haggie Limited in South Africa and directly or indirectly exported to the United States (hereinafter referred to as the subject product). The term "steel wire rope" covers ropes, cables, and cordage, other than wire strand, made of steel wire, other than brass plated wire, whether or not cut to length, and not fitted with hooks, swivels, clamps, clips, thimbles, sockets or other fittings, or made up into slings, cargo nets, or similar articles and not covered with textile or other nonmetallic material, currently provided for in items 642.1200, 642.1610, and 642.1650 of the *Tariff Schedules of the United States Annotated.*

B. *Basis of the Agreement.* 1. Haggie Limited is the only known manufacturer and exporter of the subject product. Haggie Limited voluntarily agrees not to apply for or receive any benefits for railroad freight rates for export from the South African Transport Service, the Export Incentive Programs administered by the South African Department of Industries, Commerce & Tourism, and the Iron/Steel Export Promotion Scheme on exports of the subject product. Specifically:

(a) Haggie Limited is paying and will continue to pay the domestic railroad rate on the subject product described in paragraph A above, for all shipments destined for the United States leaving Haggie Limited's factory on or after April 1, 1982.

(b) Haggie Limited will not apply for or receive the tax credit allowed on the value-added component of the subject product for all shipments entering the United States, or withdrawn from warehouse, for consumption on or after April 30, 1983.

(c) Effective April 1, 1982, the Finance Charges Aid Scheme has been terminated by the Republic of South Africa. Haggie Limited will not apply for or receive benefits under this program if it is reinstated.

(d) Haggie Limited will not apply for or receive a tax deduction on market development expenses under the Export Marketing Assistance Program with respect to shipments of the subject product entering the United States, or withdrawn from warehouse, for comsumption on or after April 30, 1983.

(e) Haggie Limited will not participate in the Iron/Steel Export Promotion Scheme with respect to shipments of the subject product entering the United States, or withdrawn from warehouse, for consumption on or after April 30, 1983.

Renunciation of the receipt of these benefits does not constitute an admission by Haggie Limited that such benefits are bounties grants or subsidies within the meaning of the U.S. countervailing duty law or any other U.S. law.

Haggie Limited certifies that no new benefits will be applied for or received for the subject product as a substitute for any benefits eliminated by this agreement.

2. In accordance with the provisions of the Act and applicable regulations, this agreement applies to the product described in Paragraph A which is produced in South Africa and exported directly or indirectly to the United States.

3. Haggie Limited agrees that during the six-month period following the effective date of the suspension of the investigation the quantity of the subject product exported directly or indirectly to the United States from South Africa, will not exceed the quantity of such exports during the six-month period of January through June, 1982.

4. The Department will monitor all exports of the subject product to the United States during the six-month period following the effective date of the suspension of the investigation to ensure that consumption of the subject product exported does not exceed the quantity exported during the period January through June, 1982. Exports in excess of this quantity will constitute a violation of the agreement pursuant to section 704(i) of the Act.

C. *Monitoring.* Haggie Limited agrees to supply to the Department such information as the Department deems necessary to demonstrate that it is in full compliance with this agreement. Haggie Limted will notify the Department if it: (1) Transships the subject product through third countries; (2) alters its position with respect to any terms of the agreement; or (3) applies for or receives directly or indirectly the benefits of the programs described in Paragraph B for the manufacture of the subject products exported to the United States.

Furthermore, Haggie Limited agrees to undertake the obligation to report to the Department within 15 days of the beginning of each calendar quarter (April, July, October, January) the volume of steel wire rope it has exported to the United States. Haggie Limited also agrees to permit such verification and data collection as deemed necessary by the Department in order to monitor this agreement. The Department shall request such information and perform such verifications periodically pursuant to administrative reviews conducted under section 751 of the Act.

D. *Violation of the Agreement.* If the Department determines that the agreement is being or has been violated or no longer meets the requirements of section 704(b) or (d) of the Act, then the provisions of section 704(i) shall apply.

Signed on this 22d day of November, 1982.

for Haggie Limited.

By Larry E. Klayman,

Special Counsel, Haggie Limited.

I have determined that the provisions of Paragraph B completely eliminate the bounties or grants being provided in the Republic of South Africa with respect to steel wire rope exported directly or indirectly to the United States and that the provisions of Paragraph C ensure that this agreement can be monitored effectively pursuant to section 704(d) of the Act. Furthermore, I have determined that this agreement meets the requirements of section 704(b) of the Act and is in the public interest as required in section 704(d) of the Act.

U.S. Department of Commerce.

By Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-32736 Filed 11-30-82; 8:45 am]

BILLING CODE 3510-25-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 AM and 5:00 PM in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00278. Applicant: Cornell University, Ithaca, N.Y. 14853. Instrument: Electron Microscope, Model H-800-1 and Accessories. Manufacturer: Hitachi, Limited, Japan. Intended use of instrument: See Notice on page 36685 in the **Federal Register** of August 23, 1982. Instrument ordered: April 9, 1982.

Docket No. 82-00280. Applicant: The Bryn Mawr Hospital, Bryn Mawr Avenue and Haverford Avenue, Bryn Mawr, Pennsylvania 19010. Instrument: Electron Microscope, EM-10CA with 46°

Goniometer. Manufacturer: Carl Zeiss, Incorporated, West Germany. Intended use of instrument: See Notice on page 39545 in the **Federal Register** of September 8, 1982. Application received by Commissioner of Customs: July 16, 1982.

Docket No. 82–00309. Applicant: Illinois Masonic Medical Center, 836 West Wellington Avenue, Chicago, Illinois 60657. Instrument: Electron Microscope, EM 109 Complete with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of instrument: See Notice on page 49054 in the **Federal Register** of October 29, 1982. Instrument ordered: March 30, 1982

Docket No. 82–00312. Applicant: The New York Blood Center, 310 East 67th Street, New York 10021. Instrument: Electron Microscope, Model EM–410. Manufacturer: Philips Electronic Instrument, NVD, The Netherlands. Intended use of instrument: See Notice on page 41797 in the **Federal Register** of September 22, 1982. Instrument ordered: April 5, 1982.

Docket No. 82–00319. Applicant: University of Hawaii, Department of Oceanography, Honolulu, HI 96822. Instrument: Electron Microscope, Model H–600–2 and Attachments. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use of instruments: See Notice on page 41798 in the **Federal Register** of September 22, 1982. Application received by Commissioner of Customs: July 30, 1982.

Docket No. 82–00321. Applicant: State University of New York, Downstate Medical Center, 450 Clarkson Avenue, Brooklyn, New York 11203. Instrument: Transmission Electron Microscope, Model EM 10CR and STEM. Manufacturer: Carl Zeiss, West Germany. Intended use of instrument: See Notice on page 41798 in the **Federal Register** of September 22, 1982. Application received by Commissioner of Customs: August 2, 1982.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument to which the foregoing applications relate is a conventional transmission electron microscope (CTEM). The description of the intended research and/or educational use of each instrument establishes the fact that a comparable CTEM is pertinent to the purposes for which each is intended to be used. We know of no CTEM which was being manufactured in the United States either at the time of order of each instrument described above or at the time of receipt of application by the U.S. Customs Service.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign instruments to which the foregoing applications relate, for such purposes as these instruments are intended to be used, which was being manufactured in the United States either at the time of order or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82–32831 Filed 11–30–82; 8:45 am]

BILLING CODE 3510–25–M

National Aeronautics and Space Administration; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82–00217. Applicant: National Aeronautics and Space Administration, Mail Code HWD–2/ Atkinson, Washington, D.C. 20546. Instrument: Low Temperature Droplet Sizing Instrument (Light Scattering Probe). Manufacturer: Institute for Steam and Gas Turbines, West Germany. Intended use of instrument: See Notice on page 29581 in the **Federal Register** of July 7, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a particle size range of 5 to 300 millimicrons with a particle concentration of 10^6–10^{12} per cubic meter. The National Bureau of Standards advises in its memorandum dated October 18, 1982 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82–32828 Filed 11–30–82; 8:45 am]

BILLING CODE 3510–25–M

North Carolina State University; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82–00249. Applicant: North Carolina State University, Purchasing Department, Box 5935, Raleigh, NC 27650. Instrument: (6) Tube Solarimeters, Type TSL, with (3) 5m Cable Millivolt Integrators, Type MVI. Manufacturer: Delta T Services, United Kingdom. Intended use of instrument: See Notice on page 33527 in the **Federal Register** of August 3, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is

being manufactured in the United States.

Reasons: The foreign instrument provides spatial averaging of the irradiance among plants. The National Bureau of Standards advises in its memorandum dated October 18, 1982 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Programs No. 11.105, Importation of Duty-Free Educational and Scientific Materials

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-32830 Filed 11-30-82; 8:45 am]

BILLING CODE 3510-25-M

University of California; Decision on Application for Duty-free Entry of Scientific Instrument

The following is a decision on an application of duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00122. Applicant: University of California, 3rd and Parnassus Avenues, San Francisco, CA 94143. Instrument: Type U4 with Accessories. Manufacturer: ALVAR Electronic, Incorporated, France. Intended use of instrument: See Notice on page 39545 in the **Federal Register** of September 8, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a variable gate width and resulting improved signal to noise ratio. The Department of Health and Human Services advises in its memorandum dated June 10, 1982 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument of apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc 82-32833 Filed 11-30-82; 8:45 am]

BILLING CODE 3510-25-M

University of Chicago; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 am and 5 pm in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00238. Applicant: University of Chicago, Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Instrument: Klystron Tube. Manufacturer: Thomson—CSF, France. Intended use of instrument: See Notice on page 30536 in the **Federal Register** of July 14, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this intrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a repetition rate of 1882 pulses per second at 16 megawatts. The National Bureau of Standards advises in its memorandum dated September 24, 1982 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument of apparatus or equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or appartus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-32832 Filed 11-30-82; 8:45 am]

BILLING CODE 3510-25-M

University of Toledo; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00246. Applicant: The University of Toledo, 2801 W. Bancroft Street, Toledo, Ohio 43606. Instrument: Electron Monochromator and Analyzer. Manufacturer: Prof. W. McConkey, Department of Physics, University of Windsor, Canada. Intended use of instrument: See Notice on page 32181 in the **Federal Register** of July 20, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument generates a highly monochromatic electron beam providing an energy spread of ten million electron volts. The

National Bureau of Standards advises in its memorandum dated October 18, 1982 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-32827 Filed 11-30-82; 8:45 am]

BILLING CODE 3510-25-M

Yale University: Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5: 00 PM in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00236. Applicant: Yale University, 272 Whitney Avenue, P. O. Box 6666, New Haven, CT 06511. Instrument: NMR Control Unit-Magnetic Spectrograph. Manufacturer: ANAC, Incorporated, New Zealand. Intended use of Instrument: See Notice on page 30538 in the Federal Register of July 14, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a magnetic field uniformity within one part in 2000 at all points away from the field region for fields between 5,000 and 14,000 Gauss for the integrated system. The National Bureau of Standards advises in its memorandum dated October 18, 1982 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic manufacturer willing and able to provide a domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa.

Director, Statutory Import Programs Staff.

[FR Doc. 82-32829 Filed 11-30-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name: Dr. Bruce Mate.

b. Address: Oregon State University, Marine Science Center, Newport, Oregon 97365.

2. Type of Permit: Scientific Research/ Scientific Purposes.

3. Name and Number of Animals: Gray Whale (Eschrictius robustus), 1,510.

4. Type of Take: Potential harassment 1500, Radio tag 10.

5. Location of Activity: Eastern North Pacific Ocean.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731;

Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way, N.E., BIN C15700, Seattle, Washington 98115; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: November 26, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-32815 Filed 11-30-82; 8:45 am]

BILLING CODE 3510-22-M

[Docket No. 2119-234]

Pacific Coast Groundfish Fishery; Consideration of Experimental Fishing Permits

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of consideration of experimental fishing permits.

SUMMARY: This notice announces that applications for experimental fishing permits to harvest groundfish with set nets in the fishery conservation zone north of 38° N. latitude (3-200 nautical miles from shore) off Washington, Oregon, and California in 1983 will be considered in January 1983 for approval or disapproval. If granted, an experimental fishing permit allows a fishery which otherwise would be prohibited by Federal regulation.

Depending on the number of applications received, it may be necessary to limit the number of permits issued. Factors to be considered in the decision to issue a permit[s] are included.

DATE: Applications received by December 15, 1982, will be considered in January 1983.

ADDRESSES: Send applications to H. A. Larkins, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700 Seattle, Washington 98115.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, 206–527–6150.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved by the Secretary of Commerce on January 4, 1982. The FMP specifies that experimental fishery permits (EFPs) may be issued to authorize fishing which otherwise would be prohibited. The use of set nets to fish for groundfish in the fishery conservation zone (FCZ) north of 38° N. latitude is prohibited by Federal regulations implementing the FMP at 50 CFR 663.26(c), published at 47 FR 43979. Procedures for application and issuance of EFPs appear in the Federal regulations implementing the FMP at 50 CFR 663.10, published at 47 FR 43977. The purpose of allowing set-net fishing for groundfish in the ocean is to collect data on the size and species composition of catches taken at various locations and times, possibly using differing gear and methods. A limited number of permits may be issued. If any permits are issued, the number will be designed to sample biologically and geographically diverse areas off each of the three States while minimizing the impact on incidentally-caught species and reducing the potential for gear conflicts with existing fisheries.

It is anticipated that several applications to fish for groundfish with set nets in 1983 will be received. It is possible that none or only a few of them will be approved. If more applications are received than can or should be approved, selection will be based on the applicant's experience in fishing with set nets or fishing for groundfish, the requested State waters the applicant wishes to fish off and the likelihood of compliance with the conditions of an EFP. Selection among equally qualified applicants will be made randomly. Applications received by December 15, 1982, will be reviewed at the Pacific Fishery Management Council meeting, January 13–14 in Portland, Oregon.

Note.—Applications considered at the January meeting may be the only ones considered to allow set-net fishing in the FCZ for groundfish in 1983.

(16 U.S.C. 1801 et seq.)

Dated: November 24, 1982.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 82–32825 Filed 11–30–82; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council's Surf Clam and Ocean Quahog Subpanel; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265), has established a Surf Clam and Ocean Quahog Subpanel which will meet to discuss alternatives for Amendment #4 to the Surf Clam and Ocean Quahog Fishery Management Plan.

DATES: The public meeting will convene on Friday, December 17, 1982, at approximately 10 a.m., and will adjourn at approximately 4 p.m., and may be lengthened of shortened depending upon progress on the agenda. The meeting will take place at the Sheraton Inn, Route 13, Dover, Delaware.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, Room 2115—Federal Building, 300 South New Street, Dover, Delaware 19901, Telephone: (302) 674–2331.

Dated: November 30, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82–32995 Filed 11–30–82; 12:15 pm]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Levels for Certain Cotton, Wool, and Man-Made Fiber Textile Products From the Republic of Korea

November 26, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing by the application of swing the import restraint levels established for Categories 333/334/335, 338/339, 340, 341, 347/348, 433/434, 440, 444, 445/446, 633/634/635, 638/639, 641, 643, 648, and 659pt. produced or manufactured in the Republic of Korea and exported during the agreement year which began on January 1, 1982.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654)).

SUMMARY: The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea provides, among other things, for percentage increases in certain category ceilings during the agreement year (swing). At the request of the Government of the Republic of Korea, swing is being applied to the levels of restraint established for Categories 333/334/335, 338/339, 340, 341, 347/348, 433/434, 440, 444, 445/446, 63/634/635, 638/639, 641, 643, 648, and 659pt.

EFFECTIVE DATE: December 2, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On December 18, 1981, there was published in the **Federal Register** (46 F.R. 61692) a letter dated December 14, 1981 from Chairman, Committee for the Implementation of Textile Agreements, to the Commissioner of Customs, which established levels of restraint for cotton, wool, and man-made fiber textile products in certain specified categories, including Categories 333/334/335, 338/339, 340, 341, 347/348, 433/434, 440, 444, 445/446, 633/634/635, 638/639, 641, 643, and 659 pt., produced or manufactured in the Republic of Korea, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1982 and extends through December 31, 1982. On July 1, 1982 a further letter dated June 25, 1982 was published in the **Federal Register** (47 FR 28730), which directed the Commissioner of Customs to control imports in Category 648 during the same twelve-month period.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the levels of restraint for all of the foregoing categories during the

agreement year which began on January 1, 1982.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 26, 1982.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: On December 14, 1981, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of cotton, wool, and man-made fiber textiles products in certain specific categories, produced or manufactured in the Repulic of Korea snd exported to the United States during the agreement year which began on January 1, 1982, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 23, 1978, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on December 2, 1982 and for the twelve-month period beginning on January 1, 1982 and extending through December 31, 1982, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products in Categories 333/334/335, 338/339, 340, 341, 347/348, 433/434/, 440, 444, 445/446, 633/634/635, 638/639, 641, 643, 648, and 659pt., in excess of the following adjusted levels of restraint:

Category	Adjusted 12-month level of restraint [1]
333/334/335	105,380 dozen of which not more than 59,400 dozen shall be in Category 333/334 and not more than 60,654 dozen shall be in Category 335.
338/339	569,078 dozen.
340	184,266 dozen.
341	114,797 dozen.
347/348	274,694 dozen of which not more than 195,804 dozen shall be in Category 347 and not more than 150,804 dozen shall be in Category 348.
433/434	17,613 dozen of which not more than 13,447 dozen shall be in Category 433 and not more than 6,896 dozen shall be in Category 434.
440	217,443 dozen.
444	4,121 dozen.
445/446	53,198 dozen.
633/634/635	1,423,866 dozen of which not more than 179,856 dozen shall be in Category 633; not more than 828,530 dozen shall be in Category 634, and not more than 629,060 dozen shall be in Category 635.
638/639	5,670,912 dozen.
641	1,050,780 dozen.
643	62,219 dozen.
648	324,813 dozen.
659 pt. [2]	2,411,858 pounds.

[1] The levels of restraint have not been adjusted to account for any imports after December 31, 1981.
[2] In Category 659, only T.S.U.S.A. numbers 703.0500, 703.1000, and 703.1515.

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea, which provide, in part, that: (1) within the aggregate and applicable group limits, specific levels of restraint may be adjusted by designated percentages; (2) these same levels may be adjusted for carryovers and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

The actions taken with respect to the Government of Republic of Korea and with respect to imports of cotton, wool, and man-made fiber textile products from Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-32836 Filed 11-30-82; 8:45 am]

BILLING CODE 3510-25-M

Adjusting the Import Restraint Level for Certain Cotton Apparel Products From the Philippines

November 26, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing from 219,328 dozen to 231.044 dozen by the application of carryforward the level of restraint established for women's cotton trousers in Category 348 pt., produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1982.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 [47 FR 20654]).

SUMMARY: By an exchange of notes dated November 24, 1982 the Governments of the United States and the Republic of the Philippines have further amended the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 22 and 24, 1978, as amended, to permit the use of carryforward. Accordingly, at the request of the Government of the Republic of the Philippines, carryforward is being applied to the level of restraint for Category 348 pt. Carryforward used in 1982 will be deducted from the 1983 level for this category.

EFFECTIVE DATE: November 26, 1982.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On December 18, 1981, there was published in the **Federal Register** [46 FR 61688] a letter dated December 14, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certian specified categories of cotton, wool, and man-made fiber textile products, including Categoy 348 pt., produced or manufactured in the Philippines, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1982 and extends through December 31, 1982. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements, in accordance with the terms of the bilateral agreement, as further amended, and at the request of the Government of the Republic of the Philippines, directs the Commissioner of Customs to increase the previously established level of restraint for Category 348 pt. to 231,044 dozen. This level reflects a reducito of 15,000 dozen of carryforward used in 1981.

Walter C. Lenahan

Chairman, Committee for the Implementation of Textile Agreements.

November 26, 1982.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: On December 14, 1981, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, during the twelve-month period beginning on January 1, 1982 and extending through December 31, 1982 of cotton, wool, and man-made fiber textile products in certain specified categories, produced or manufactured in the Philippines, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 22 and 24, 1978, as amended, between the Governments of the United States and the Republic of the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to increase, effective on November 26, 1982, the level of restraint previously established for cotton textile products in Category 348 pt.[2] to 231,044 dozen.[3]

The actions taken with respect to the Government of the Republic of the Philippines and with respect to imports of cotton textile products from the Philippines have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,
Walter C. Lenahan,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-32835 Filed 11-30-82; 8:45 am]
BILLING CODE 3510-25-M

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 22 and 24, 1978, as amended, between the Governments of the United States and Republic of the Philippines which provide that administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] In Category 348, all T.S.U.S.A. numbers except 383.0611, 383.0616, 383.2836, 383.4749, 383.4755, 383.4759, and 383.4763.

[3] The level of restraint has not been adjusted to reflect any imports after December 31, 1981.

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Proposed Moline Local Flood Protection Project, Mississippi River, Moline, Ill.; Intent To Prepare Draft Supplement to the Final Environmental Impact Statement

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Supplement to the Final Environmental Impact Statement (FEIS).

SUMMARY:

1. *Description of Action.* The original FEIS for the Moline Flood Protection project was completed in June 1975 and filed with the Council on Environmental Quality on 15 January 1979. Due to gaps in Federal funding, project construction was delayed. Federal funding has become available for 1983, making possible the continuation of planning for the Moline Flood Protection project. The action involves building a system of interconnected levees and floodwalls along the Mississippi River at Moline, Illinois, for protection against the 200-year flood. The 200-year flood has a 0.5 percent chance of occurring in any given year. In considering the best interests of the local citizenry, riverfront occupants, environmental concerns, and economic conditions, substantial changes are needed in the flood protection law.

The revised project calls for differing lengths of levees, floodwalls, and levee floodwall combinations along the Mississippi River. The proposed structure is to extend from the vicinity of the Iowa-Illinois Gas and Electric Company hydroelectric plant to a location near 34th Street in Moline, Illinois. The embankments and floodwalls are designed to protect residential, commercial, municipal, and industrial areas along a 2.9-mile length of shoreline. Approximately 120,000 cubic yards of bottom silt and sediment will be removed from the river, while approximately 190,000 cubic yards of impervious clay fill, 140,000 cubic yards of sand fill, and 38,000 cubic yards of riprap and bedding stone will be needed to construct the levee.

2. *Alternatives to the Proposed Action.* A complete discussion of nonstructural and structural alternatives can be found in the original FEIS dated June 1975.

a. *Construction of Project as Originally Designed.* Original project design consisted of about 3.4 miles of earthen levees and floodwalls designed for protection against the occurrence of the 200-year flood. The embankment was to extend from 34th Street in Moline to the city's western boundary with Rock Island, Illinois. In addition, the plan called for a levee to extend from the Moline shore in the vicinity of the Iowa-Illinois Gas and Electric Company hydroelectric plant along the northwest shore of Sylvan Island to the vicinity of the Rock Island Arsenal hydroelectric plant. Improvements to the two hydroelectric plants were also required to assure that they remained stable during the design flood. The project plans included three stormwater pumping plants and associated interior drainage facilities. The ratio of average annual benefits to average annual construction, operation, and maintenance costs was 1.3 to 1.0.

b. *Revised Project Design Alternative.* The proposed plan, subject of a revised General Design Memorandum, combines the most current combination of citizen, environmental, and riverfront concerns and present-day economic conditions. Changes are being made which will reduce the length of the levee-floodwall system achieve greater compatibility with riverfront commercial interests, lessen the impact on the environment, and still provide flood control measures important to the safety, health, and well-being of the citizens of Moline.

3. *Public Involvement.* Copies of the draft and final Environmental Impact Statements were distributed to Federal, State, and local government agencies, and private groups and individuals for review and comment. Public meetings were held in September 1974 and April 1975 to give concerned parties an opportunity to express their views. The draft supplement to the FEIS will be sent to Federal, State, and local government agencies as well as private groups and individuals for their comments and views. Coordination is being maintained between the Rock Island District, Corps of Engineers, and interested agencies and parties during preparation of the draft supplement. All interested parties may become involved by writing to the District address below.

4. *Particular Elements to be Included in the Draft Supplement to the FEIS.* The supplement will address areas which are affected by design changes and additional cultural and environmental information. This report is concerned with the following Federal policies: National Historic Preservation Act, 16 U.S.C. 470a, et seq.; Endangered Species Act, 16 U.S.C. 1531, et seq.; Fish and Wldlife Coordination Act, 16 U.S.C. 661, et seq.; National Environmental Policy Act, 42 U.S.C. 4321, et seq.; Rivers and Harbors Act, 33 U.S.C. 403, et seq.; Clean Water Act (Federal Water

Pollution Control Act), 33 U.S.C. 1251, et seq.; along with Executive Order 11988, Flood Plain Management, 24 May 1977; Executive Order 11990, Protection of Wetlands, 24 May 1977; and CEQ Memorandum of 1 August 1980: Analysis of Impacts on Prime or Unique Agricultural Lands in Implementing the National Environmental Policy Act. In compliance with the Clean Water Act, a Section 404(b)(1) Evaluation Report is being prepared. Appropriate public notices will be issued.

5. *Estimated Release Date.* The Draft Supplement to the FEIS is scheduled to be released to the public in March 1983.

ADDRESS: Questions about the proposed action and the Supplement to the FEIS should be directed to: Bernard P. Slofer, Colonel, Corps of Engineers, District Engineer, U.S. Army Engineer District, Rock Island, Clock Tower Building, Rock Island, Illinois 61201.

Dated: November 22, 1982.

Bernard P. Slofer,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 82-32746 Filed 11-30-82; 8:45 am]

BILLING CODE 3710-HV-M

Department of the Navy

Privacy Act of 1974; Report of an Altered System of Records

AGENCY: Department of the Navy (DON), Defense.

ACTION: Alteration of one system of records notice.

SUMMARY: The Department of the Navy proposes to alter one system of records to its inventory of systems of records subject to the Privacy Act of 1974.

DATES: The proposed action will be effective without further notice on January 3, 1983, unless comments are received which would result in a contrary determination.

ADDRESS: Any comments, to include written data, views or arguments concerning the action proposed should be addressed to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (Op-09B1P), Department of the Navy, The Pentagon, Washington, DC 20350. Telephone: (202) 694-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy inventory of systems of records notices as prescribed by the Privacy Act have been published in the Federal Register at:

FR Doc. 81-674 (47 FR 2574) January 18, 1982
FR Doc. 81-9204 (47 FR 14944) April 7, 1982
FR Doc. 82-9844 (47 FR 15636) April 12, 1982
FR Doc. 82-12593 (47 FR 20018) May 10, 1982
FR Doc. 82-15596 (47 FR 25041) June 9, 1982
FR Doc. 82-23533 (47 FR 37948) August 27, 1982

The Navy submitted an altered system report for this system under the provisions of 5 U.S.C. 552a(o) on October 15, 1982.

November 23, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer Department of Defense.

N04385-1

System name

Investigatory (Fraud) System (47 FR 2671) January 18, 1982

Changes

Categories of individuals covered by the system

Delete the entire entry and substitute with the following: "Individuals alleged, suspected, convicted or otherwise involved in areas of possible criminal or administrative misconduct including, but not limited to, fraud, theft of government property, conflict of interest, violation of the standards of conduct, or other violations of law or regulation pertaining to procurement, disposal and related matters within the cognizance of CNM."

Categories of records in the system

In line 2, delete the words ". . . report summaries . . ." and substitute with the phrase: ". . . reports and other investigative/intelligence information." In lines 4, 5, and 6, delete the phrase: ". . . containing only the name and file number. It is used for report retrieval purposes." In line 7, delete the word, "Pertinent."

Authority for maintenance of the system

Delete the entire entry and substitute with the following: "10 U.S.C. 5013".

Routine uses of records maintained in the system, including categories of users and the purposes of such uses

Delete the entire entry and substitute with the following: "To disseminate information on procurement and disposal fraud and related matters to officials within the Department of Defense, federal, state, or local law enforcement agencies or Inspectors General, when under their juducial or administrative cognizance. To base requests for official investigations, inquiries and to request reports of final action taken. Internal users are subordinate officials to the CNM, CNO, SECNAV, and ASN. Documents and/or information may be furnished to Department of Justice or other appropriate agencies to be used in judicial or administrative actions. Reports are also used in connection with debarment/suspension actions and required notification of federal, state, and local agencies."

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system

Storage

At the end of the entry, add the phrase: ". . . magnetic tape/discs."

Retrievability

Delete the entire entry and substitute with the following: "By subject name, SSN, case name, case number, type of crime and other case fields."

Safeguards

In line 3, delete the word ". . . bar . . ." In line 7, delete the word ". . . security . . ." and substitute with the word: ". . . non-duty . . ."

Retention and disposal

Delete the entire entry and substitute with the following: "Files are maintained within NAVMAT spaces for two years after final action is taken and subsequently stored indefinitely with the Federal Archives."

System manager(s) and address

In line 2, add the word: "Assistant . . ." at the begginning of the entry. In line 3, delete the phrase: "NAVMAT 09G1 . . ." In line 4, delete the number: ". . . 422 . . ." and substitute with the number: ". . . 678 . . ."

Notification procedure

Delete the entire entry and substitute with the following: "Written requests should be addressed to the system manager, giving full name, address, and either an SSN or date and place of birth. Writter requests must be notarized. Individuals may visit the system manager between the hours of 0900-1500, Monday-Friday and must show proof of identity consisting of ID containing photograph."

Record source categories

Delete the entire entry and substitute with the following: "Individuals, investigative, judicial and administrative reports, and complainants."

NO4385-1

SYSTEM NAME

Investigatory (Fraud) System

SYSTEM LOCATION

Chief of Naval Material, Navy Department, Washington, DC 20360/

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

Individuals alleged, suspected, convicted or otherwise involved in areas of possible criminal or administrative misconduct including, but not limited to, fraud, theft of government property conflict of interest, violation of the standards of conduct, or other violations of law or regulation pertaining to procurement, disposal and related matters within the cognizance of CNM.

CATEGORIES OF RECORDS IN THE SYSTEM

Administrative memoranda; investigative reports and other investigative/intelligence information; reports of disciplinary action taken; card index file; public court records.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM

10 U.S.C. 5013

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

To disseminate information on procurement and disposal fraud and related matters to officials within the Department of Defense, federal, state, or local law enforcement agencies or Inspectors General, when under their judicial or administrative cognizance. To base requests for official investigations, inquiries and to request reports of final action taken. Internal users are subordinate officials to the CNM, CNO, SECNAV, and ASN. Documents and/or information may be furnished to Department of Justice or other appropriate agencies to be used in judicial or administrative actions. Reports are also used in connection with debarment/suspension actions and required notification of federal, state, and local agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE

File folders, index cards, magnetic tape/discs.

RETRIEVABILITY

By subject name, SSN, case name, case number, type of crime and other case fields.

SAFEGUARDS

Access is limited to MAT-09G personnel. Files are stored in a locked cabinet. The area is sight controlled during normal work hours and locked during non-duty hours. Building access is controlled during non-duty hours by a Security Force, which also conducts roving patrols of the building. There is no possibility that the computer can be accessed from outside the controlled area.

RETENTION AND DISPOSAL

Files are maintained within NAVMAT spaces for two years after final action is taken and subsequently stored indefinitely with the Federal Archives.

SYSTEM MANAGER(S) AND ADDRESS

Chief of Naval Material, Deputy Assistant Inspector General (Investigations), CP #5, Room 678, Washington, DC 20360.

NOTIFICATION PROCEDURE

Written requests should be addressed to the system manager, giving full name, address, and either an SSN or date and place of birth. Written requests must be notarized. Individuals may visit the system manager between the hours of 0900–1500, Monday–Friday and must show proof of identity consisting of ID containing photograph.

RECORD ACCESS PROCEDURES

The agency's rules for access to records may be obtained from the system manager.

RECORD SOURCE CATEGORIES

Individuals, investigative, judicial and administrative reports, and complainants.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT

None.

[FR Doc. 82-32787 Filed 11-30-82; 8:45 am]
BILLING CODE 3810-01-M

Office of the Secretary

Privacy Act of 1974; Amendment to a System Notice

AGENCY: Office of the Secretary, Defense.

ACTION: Amendment to a system notice.

SUMMARY: The Office of the Secretary of Defense proposes to amend a notice for a system of records subject to the Privacy Act of 1974. The system as amended is set forth below.

DATE: This action shall be effective January 3, 1983, unless comments are received which result in a contrary determination.

ADDRESS: Comments may be submitted to the system manager identified in the system notices.

FOR FURTHER INFORMATION CONTACT: Mrs. Norma Cook, Records Management Division, Washington, Headquarters Services, The Pentagon, Washington, D.C. 20301; telephone: 202/695-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense inventory of records subject to the Privacy Act of 1974, Title 5, United States Code Section 552a (Pub. L. 93-579; 88 Stat. 1896, *et seq.*) appeared in the **Federal Register** at:

FR Doc. 82-674 (47 FR 2544) January 16, 1982
FR Doc. 82-3756 (47 FR 6462) February 12, 1982
FR Doc. 82-21537 (47 FR 34441) August 9, 1982
FR Doc. 82-23920 (47 FR 38574) September 1, 1982
FR Doc. 82-25638 (47 FR 41156) September 17, 1982
FR Doc. 82-25636 (47 FR 41162) September 17, 1982
FR Doc. 82-27105 (47 FR 43416) October 1, 1982
FR Doc. 82-28515 (47 FR 46355) October 18, 1982
FR Doc. 82-28509 (47 FR 46353) October 16, 1982

An altered system report as required by 5 U.S.C. 552a(o) was submitted on October 25, 1982.

M. S. Healy,
OSD Federal Register Liaison Officer Department of Defense.
(November 24, 1982.

DATSD 03

System name:

Files of Personnel Evaluated for Non-Career Employment in DoD (47 FR 2544. January 18, 1982).

Changes:

System location:

Delete entry under above heading and insert:

"Primary location—Air Force Data Services Center, Room 3A-1066, The Pentagon, Washington, D.C. 20330.

Hardcopy located at Office of the Assistant to the Secretary and Deputy Secretary of Defense, Washington, D.C. 20301."

Categories of individuals covered by the system:

Delete entry under above heading and insert:

"Active and inactive employees/candidates employed/seeking non-career positions in DoD, including consultants and committee members.

Routine uses (disclosure) of records maintained in the system including categories of users, uses, and purposes of such uses:

Delete caption and insert:

Purpose(s):

Files are collected to evaluate qualifications of individuals seeking or who have been recommended for non-career positions within DoD. Records are used in searching for qualified candidates for forthcoming vacant positions. Files are reviewed by authorized personnel within the immediate Office of the Secretary of Defense. Files of individual candidates are sent to presidential personnel for clearance. Records are used to track consultancy or memberships, home and business address, particular expertise, and entry/exit date.

External users, uses, and purposes:

Delete caption and insert:

"Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

See Office of the Secretary of Defense (OSD) blanket routines uses at the head of this component's published system notices."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Add at end of sentence, ", computer disks, and computer paper printouts."

Retrievability:

Delete entry under above heading, and insert:

"Information accessed by last name of individual.

Individual user codes and passwords required to access information stored in computer."

Safeguards:

Delete entry under above heading, and insert:

"Building employs security guards. Sensitive manually stored data kept in locked cabinets or safes and may be accessed only by authorized personnel. Computer stored data is kept in a secure computer facility and may be accessed only by authorized, properly trained personnel who have access codes and passwords."

Retention and disposal:

Delete second paragraph.

System manager(s) and address:

Delete entry under above heading, and insert:

"Ms. Marybel Batjer, Office of Assistant to the Secretary and Deputy Secretary of Defense, Room 3E–941, the Pentagon, Washington, D.C. 20301.

Notification procedure:

First paragraph, second line, delete "Special."

Also, fourth line, delete "Special."

Record access procedures:

Delete entry under above heading, and insert:

"Procedures for gaining access by an individual may be obtained from the following: Office of the Assistant to the Secretary and Deputy Secretary of Defense, Room 3E941, The Pentagon, Washington, D.C. 20301, Telephone: 202–697–7968."

Contesting record procedures:

Delete entry under above heading, and insert:

"The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81."

Record source categories:

Delete entry under above heading, and insert:

"Files are originated in the Office of the Assistant to the Secretary and Deputy Secretary of Defense, with information that has been referred by others or applicants for non-career positions."

DATSD 03

SYSTEM NAME:

Files of Personnel Evaluated for Non-Career Employment in DoD.

SYSTEM LOCATION:

Primary Location—Air Force Data Services Center, Room 3A–1066, The Pentagon, Washington, D.C. 20330.

Hardcopy located at Office of the Assistant to the Secretary and Deputy Secretary of Defense, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active and inactive employees/candidates employed/seeking non-career positions in DoD, including consultants and committee members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel files consist of resumes, forwarding correspondence between internal offices within DoD transmittal correspondence from individuals, industry, other departments and agencies, and the Executive/Legislative Branch of the Federal Government. Correspondence consists of requests for employment or recommendations of others for employment for non-career positions, and memoranda confirming telephonic queries.

Card files consist of DoD consultants or members of committees, home and business addresses, and approval dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10, US Code, Section 133.

PURPOSE(S):

Files are collected to evaluate qualifications of individuals seeking or who have been recommended for non-career positions within DoD. Records are used in searching for qualified candidates for forthcoming vacant positions. Files are reviewed by authorized personnel within the immediate Office of the Secretary of Defense. Files of individual candidates are sent to presidential personnel for clearance. Records are used to track consultancy or memberships, home and business addresses, particular expertise, and entry/exit date.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Office of the Secretary of Defense (OSD) blanket routine uses at the head of this component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; cards in card files, computer disks, and computer paper printouts.

RETRIEVABILITY:

Information accessed by last name of individual.

Individual user codes and passwords required to access information stored in computer.

SAFEGUARDS:

Building employs security guards. Sensitive manually stored data kept in locked cabinets or safes and may be accessed only by authorized personnel. Computer stored data is kept in a secure computer facility and may be accessed only by authorized, properly trained personnel who have access codes and passwords.

RETENTION AND DISPOSAL:

Active files are retained as long as an individual is employed within DoD. Inactive files are screened upon termination of employment with DoD to determine their retention value for possible future non-career employment, i.e., some files are destroyed upon

termination of employment while other files may be retained for an indefinite period depending on the background and experience of individual.

SYSTEM MANAGER(S) AND ADDRESS:

Ms Marybel Batjer, Office of Assistant to the Secretary and Deputy Secretary of Defense, Room 3E941, The Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the Office of the Assistant to the Secretary and Deputy Secretary of Defense, Washington, D.C. 20301. Visits are limited to the Office of the Assistant to the Secretary and Deputy Secretary of Defense.

Written requests for information should contain the full name of the individual and social security number.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, building access identification card, etc.

RECORD ACCESS PROCEDURES:

Procedures for gaining access by an individual may be obtained from the following: Office of the Assistant to the Secretary and Deputy Secretary of Defense, Room 3E941, The Pentagon, Washington, D.C. 20301 Telephone: 202–697–7968.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Files are originated in the Office of the Assistant to the Secretary and Deputy Secretary of Defense, with information that has been referred by others or applicants for non-career positions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82–32786 Filed 11–30–82; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board; Notice of Advisory Committee Meeting

The Defense Science Board Task Force on Close Air Support will meet in closed session on 4–5 January 1983 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on 4–5 January 1983 The Task Force will consider the potential for improving our capability to achieve sustained effectiveness of close air support in the future air-land battles.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. I (1976)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c) (1) (1976), and that accordingly these meetings will be closed to the public.

M. S. Healy,

OSD Federal Register, Liaison Officer, Washington Headquarters Service, Department of Defense.

November 24, 1982.

[FR Doc. 82–32761 Filed 11–30–82; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

National Institute of Handicapped Research; Funding

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priorities for Research and Training Centers for Fiscal Year 1983.

SUMMARY: The Secretary of Education proposes funding priorities for research activities to be supported by the National Institute of Handicapped Research (NIHR) in Fiscal Year 1983. NIHR is required under the Rehabilitation Act of 1973, as amended, to develop a long-range research plan which identifies rehabilitation research that needs to be conducted and to determine funding priorities which will facilitate the support of these activities within available resources. These proposed priorities are derived from the NIHR Long-Range Plan and are articulated within the goals, objectives, and research activities specified in the Plan. NIHR final regulations (46 FR 45300, September 10, 1981) authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 351.32).

Authority for the research program of NIHR is contained in Section 204 of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602.

Under this program, awards are issued to public and private agencies and organizations, including institutions of higher education. NIHR is permitted to make awards for periods up to 60 months.

The purpose of the awards is for planning and conducting research, demonstrations, and related activities. These activities have a direct bearing on the development of methods, procedures, and devices to assist in the provision of vocational and other rehabilitation services to handicapped individuals, especially those with the most severe handicaps.

NIHR invites public comment on the merits of the proposed priorities including suggested modifications to the proposed priorities. This Notice does not solicit application proposals or concept papers. The final priorities will be selected on the basis of public comment, the availability of funds, and any other relevant Departmental considerations. These final priorities will be announced in the form of an Application Notice in the **Federal Register**. That notice will solicit grant applications and set the closing date. The publication of these proposed priorities does not bind the United States Department of Education to fund projects in any or all of these areas.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before January 3, 1983.

ADDRESS: All written comments and suggestions should be sent to Betty Jo Berland, National Institute of Handicapped Research, Department of Education, Room 3511, 400 Maryland Avenue, SW., Washington, D.C. 20202.

FURTHER INFORMATION: For further information contact Betty Jo Berland, National Institute of Handicapped Research, Department of Education, Room 3511, Switzer Office Building, 330 C Street, SW., Washington, D.C. 20202. Telephone: (202) 472–6551 or TTY for the Deaf (202) 472–4217.

SUPPLEMENTARY INFORMATION: The following proposed priorities represent areas in which the Secretary has previously established priorities for handicapped research. These priorities were announced for funding in fiscal 1982 but the response to the Application Notice was not satisfactory. None of the proposals received was deemed suitable for funding by the NIHR. Because it was expected that Centers in these areas would be funded in 1982, they were neither proposed nor selected as priorities for fiscal year 1983 in NIHR's earlier announcements. (47 FR 21567, May 19, 1982; 47 FR 37268, August 25, 1982). However, the Secretary continues to believe that these are important areas in which NIHR should support research, because of the prevalence of disability and inadequacy of services in the selected areas. Thus, these priorities are being reproposed. Proposed funding

priorities for Research and Training Centers are:

Improving Rehabilitation services for handicapped persons in the Pacific Basin, including the U.S. Territories, American Samoa, Guam, and all of the islands of Hawaii.

The Center to be funded must investigate, develop and test innovative methods in the delivery of appropriate rehabilitation services in remote geographic locations.

This will require an assessment of need based on the collection and analysis of reliable data on the incidence and prevalence of disability, and the development of methods for identifying, locating and gaining access to and for handicapped individuals. Such a Center must also develop methods for the involvement of existing professional and paraprofessional personnel, utilizing innovative training and referral methods to assure that the most appropriate and cost-effective systems are developed for the delivery of rehabilitation services.

The Center must demonstrate through affiliation and involvement with all agencies authorized and required to provide rehabilitation services in these areas that the successful results of research will be adopted and utilized by those agencies in the provision of appropriate and coordinated rehabilitation and related services to meet the unique rehabilitation needs of handicapped individuals in the Pacific Basin.

Improving Rehabilitation for Native Americans.

While the prevalence of disabling conditions among Native Americans is generally acknowledged to be high, it is apparent that Native Americans are often isolated from rehabilitation services by linguistic, cultural, attitudinal, and geographic barriers which may not be evident to either the disabled person or the service agency. Research is needed to assess the need for rehabilitation services and the unique service delivery problems experienced by disabled Native Americans of all ages and by the service delivery system. The proposed Research and Training Center must determine the incidence and prevalence of disability among Native Americans and identify related factors such as demographic characteristics, vocational history, geographic distribution, and type of service system contacts. Culturally sensitive methods must be developed to assess client potential and rehabilitation needs and to develop appropriate rehabilitation and training approaches to meet those needs. The Center must also develop methods to evaluate the perceived barriers to appropriate service delivery and design and test improved models of service delivery.

Such a Center should plan to involve Native American organizations and individuals in various capacities in all facets of the development and operation of the Center. It is also important that such a Center form a network of linkages with the various service delivery systems which relate to Native Americans, including Federal, regional, tribal, State, local, and private agencies in order to demonstrate methods of diffusing findings and utilizing existing resources to improve services.

Such a Center must provide training to rehabilitation service providers, researchers, and managers/policymakers to increase their sensitivity to the unique rehabilitation needs of Native Americans and their awareness of innovative methods to meet these needs. This training should involve collaborative sponsorship with other Research and Training Centers, as well as with public, private, and tribal rehabilitation, health, and human services agencies.

The Center is expected to develop materials to enhance consumer and public education on rehabilitation needs of disabled Native Americans for use by disabled Native Americans and others.

All new research instruments, service delivery models, training packages, and educational materials should be appropriately tested and validated.

(Catalog of Federal Domestic Assistance Number 84.133, National Institute of Handicapped Research)

Dated: November 24, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82-32789 Filed 11-30-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council; Chemical Task Group of the Committee on Enhanced Oil Recovery; Notice of Meeting

Notice is hereby given that the Chemical Task Group of the Committee on Enhanced Oil Recovery will meet in December 1982. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Enhanced Oil Recovery will investigate the technical and economic aspects of increasing the Nation's petroleum production through enhanced oil recovery. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Chemical Task Group meeting follows:

The Chemical Task Group will hold its first meeting on Thursday, December 9, 1982, starting at 10:00 a.m. in Room 127, Phillips Petroleum Company, Research Forum, Bartlesville, Okla.

The tentative agenda for the Chemical Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discuss the scope of the overall study.
3. Discuss the study assignment of the Chemical Task Group.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Chemical Task Group is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Chemical Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform G. J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353-3032, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on November 24, 1982.

Donald L. Bauer,

Principal Deputy Assistant Secretary for Fossil Energy.

[FR Doc. 82-32715 Filed 11-30-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 2307-000, et al.]

Alaska Electric Light & Power Co., et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. *Type of Application:* Amendment of License.

b. *Project No:* 2307–000.

c. *Date Filed:* July 12, 1982.

d. *Applicant:* Alaska Electric Light and Power Company.

e. *Name of Project:* Salmon Creek Project.

f. *Location:* On Salmon Creek in the City and Borough of Juneau, Alaska.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Contact Person:* Mr. Felix Toner, Toner and Nordling, Box 570, Juneau, Alaska 99802.

i. *Comment Date:* January 17, 1983.

j. *Description of Project:* The powerhouse at the existing Lower Salmon Creek Development has been out of operation for six years, due to the deterioration of the wooden flume and steel penstocks. The Licensee requests Commission authorization to: (a) replace the existing 4-foot by 5-foot, 9,876-foot-long timber flume and 1,625-foot-long penstock system with a 10,800-foot-long, 42-inch-diameter buried penstock; (b) replace the existing timber headwork at the Upper Powerhouse with a concrete headwork; and (c) construct a 10,800-foot-long access road extending from the Lower Powerhouse to the Upper Powerhouse along the alignment of an existing tramway.

k. This notice also consists of the following standard paragraphs: B, C and D2.

2a. *Type of Application:* Application for license (over 5 MW).

b. *Project No:* 2828–001.

c. *Date Filed:* February 19, 1982.

d. *Applicant:* City of Redding.

e. *Name of Project:* Lake Redding Power Project.

f. *Location:* On Sacramento River, in Shasta County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Contact Person:* Mr. Wm. Brickwood, City Manager, City of Redding, 760 Parkview, Redding, California 96001.

i. *Comment Date:* January 27, 1983.

j. *Project Description:* The proposed project would consist of: (1) a new 27-foot-high by 500-foot-long reinforced concrete dam replacing the existing Anderson Cottonwood Irrigation District's (ACID) 18-foot-high by 454-foot-long dam; (2) an intake channel leading to; (3) a powerhouse to contain three Kaplan-type, turbine-generating units with a total rated capacity of 15 MW; (4) a 140-foot-long vertical-slot, baffle-type fishladder having 14 steps and 13 compartments, 8 feet wide by 10 feet long; (5) a switchyard; (6) a 310-foot-long reinforced concrete culvert to connect Lake Redding to the existing ACID canal; (7) a 350-foot-long, 115-kV tap line to connect to an existing City of Redding transmission line; and (8) a 2,300-foot-long, 12-foot-wide access road. With the replacement dam, Lake Redding will have a maximum normal water surface elevation of 492.0 feet. The Applicant has not proposed any recreational facilities in the vicinity of the project. Total cost of the project is estimated to be about $75 million. No lands of the U.S. would be within the proposed project boundary. The license application was filed as a result of preliminary permit issued for this project.

k. *Purpose of Project:* The Applicant has proposed to sell the project output to the Western Area Power Authority up to early 1990's. Thence the City of Redding would use the output to meet its electric needs in the area.

l. This notice also consists of the following standard paragraphs: A2, B, and C.

3a. *Type of Application:* Major License (Less than 5 MW).

b. *Project No:* 3470–001.

c. *Date Filed:* July 30, 1982.

d. *Applicant:* The Tumalo Irrigation District.

e. *Name of Project:* Bend Canal Hydroelectric Project.

f. *Location:* On Deschutes River, in Deschutes County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Contact Person:* Mr. Donald L. Walker, Tumalo Irrigation District, 64697 Cook Avenue, Bend, Oregon 97701, with a copy to: Mr. Peter D. Binney, CH2M Hill, 200 S.W. Market Street, Portland, Oregon 97201.

i. *Comment Date:* February 3, 1983.

j. *Description of Project:* The proposed run-of-the-river project would consist of: (1) the existing Applicant's 10-foot-high by 258-foot-long Bend Diversion Dam at river-mile 165.8 creating a pool with a surface area of 10.1 acres and storage capacity of 50.5 acre-feet; (2) the existing applicant's 3-mile-long Bend Feed Canal; (3) a 54-inch-diameter, 500-foot-long steel penstock; (4) a powerhouse to contain one Francis-type, turbine-generating unit with a rated capacity of 2 MW under a head of 180 feet; (5) 0.75-mile-long, 12.5-kV transmission line; and (6) appurtenant facilities. During a year of average stream flow, the project would produce 9.6 million kwhs. The project operation would not change the maximum surface area or surface elevation of the reservoir created by the Bend Diversion Dam. The project would operate during non-irrigation season. No land of the U.S. would be impacted by the project. The license application was filed as a result of a preliminary permit for the project.

k. This notice also consists of the following standard paragraphs: D1, A2, B, and C.

4a. *Type of Application:* Preliminary Permit.

b. *Project No:* 6690–000.

c. *Date Filed:* September 20, 1982.

d. *Applicant:* Oconto Electric Power and Light Cooperative.

e. *Name of Project:* Chute Pond Dam Project.

f. *Location:* North Branch of Oconto River, Oconto County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Contact Person:* Stuart G. Walesh, Donohue and Associates, 600 Larry Court, Waukesha, Wisconsin 53186.

i. *Comment Date:* February 7, 1983.

j. *Description of Project:* The proposed project would consist of: (a) the existing Chute Pond Dam, with an approximate overall length of 711 feet; (b) an existing 770-acre reservoir with a gross storage capacity of 2,800 acre-feet at normal maximum surface elevation 870 feet NGVD; (c) a proposed 6-mile-long 12,470-volt transmission line; (d) a proposed powerhouse with an installed generating capacity of 225 kW; and (e) appurtenant facilities. The Applicant estimates the average annual energy generation to be 1,060 MWh. The Applicant also estimated that the project will utilize approximately 14 acres within the Nicolet National Forest.

k. *Purpose of Project:* The Applicant proposes to utilize all of the power generated by the project to serve the utility's customers.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B and C.

m. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set, it will be presumed to have no comments.

5a. *Type of Application:* Preliminary Permit.

b. *Project No:* 6742–000.

c. *Date Filed:* October 4, 1982.

d. *Applicant:* Duane J. Bitton.

e. *Name of Project:* Bitton.

f. *Location:* Bear River, Caribou County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Contact Person:* Duane J. Bitton, Star Route, Box 340, Grace, Idaho 83241.

i. *Comment Date:* February 7, 1983.

j. *Description of Project:* The proposed project would be located on U.S. lands

administered by the Bureau of Land Management and would consist of: (1) a proposed 360-foot-long, 35-foot-high, earth and rockfill dam to be owned by the Applicant; (2) a proposed 90 acre reservoir with a storage capacity of 900 acre-feet; (3) a proposed concrete intake structure with gate and trashrack; (4) a proposed 100-foot-long, 10-foot-diameter penstock; (5) a proposed powerhouse containing 2 turbine/generator units rated at 2,370 kW and 715 kW; (6) a proposed 3,500-foot-long, 46-kV transmission line; and (7) appurtenant facilities. The estimated average annual generation would be 12,100 MWh.

k. *Purpose of Project:* Project energy would be sold to the Utah Power & Light Company.

l. This notice also consists of the following standard paragraphs; A4b, A4c, A4d, B and C.

m. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set above, it will be presumed to have no comments.

n. *Proposed Scope of Studies under Permit:* A preliminary permit if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Applicant's work plan for new dam construction includes topographic and geologic mapping, exploratory drilling, location of material sources, foundation testing, and material testing. These investigations will be conducted in the immediate vicinity of the dam and will not significantly disturb lands or water. Extensive test pitting and exploratory excavations will be postponed until a license is obtained. No new roads will be required to conduct the study. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $300,000.

6a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P-6752-000.

c. *Date Filed:* October 4, 1982.

d. *Applicant:* New Hampshire Water Resources Board.

e. *Name of Project:* Avery Dam Project.

f. *Location:* Winnipesankee River, in Belknap County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—(825(r).

h. *Contact Person:* Delbert F. Downing, Chairman, New Hampshire Water Resources Board, 37 Pleasant Street, Concord, New Hampshire 03301.

i. *Comment Date:* February 3, 1983.

j. *Description of Project:* The proposed run-of-river project would consist of: (1) the existing 114-foot-long and 20-foot-high timber, stone, and concrete Avery Dam, owned by the Applicant; (2) Opechee Lake, which has a storage capacity of 89,000 acre-feet; (3) an existing 10-foot-wide and 40-foot-long open-channel; (4) an existing powerhouse with a new turbine-generator unit with a rated capacity of 100 kW; and (5) other appurtenances.

k. *Purpose of Project.* Project energy would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 3 years during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

7a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P-6767-000.

c. *Date Filed:* October 12, 1982.

d. *Applicant:* AETA Corporation.

e. *Name of Project:* Collinsville Project.

f. *Location:* West Branch of the Farmington River in Hartford and Litchfield Counties, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Contact Person:* David B. Master, Vice President, AETA Corporation, 117 Silver Street, Dover, New Hampshire 03820.

i. *Comment Date:* February 3, 1983.

j. *Description of Project:* The proposed project would consist of: (1) the 350-foot-long and 18-foot high Upper Collins Dam, impounding a reservoir with a storage capacity of about 200 acre-feet; (2) a 50-foot-long channel; (3) a powerhouse with new turbine-generator units with an installed capacity of 1,700 kW; (4) the 350-foot-long and 20-foot-high Lower Collins Dam, impounding a reservoir with a storage capacity of about 100 acre-feet; (5) a 750-foot-long canal; (6) a powerhouse with new turbine-generator units with an installed capacity of 1,400 kW; and (7) other appurtenances. Applicant estimates an average annual generation of 10,000,000 kWh.

In the alternative, Applicant would construct a two-dam pumped-storage project, combined with the Nepaug Reservoir, located a quarter-mile from the Collins Dams.

Existing facilities are owned by the Connecticut Department of Environmental Protection.

k. *Purpose of Project:* Project energy would be sold to the Hartford Electric Light Company.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 3 years during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

8a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 6801-000.

c. *Date Filed:* October 26, 1982.

d. *Applicant:* Farmer Irrigation District.

e. *Name of Project:* FID Project #3.

f. *Location:* Low Line Ditch in Hood River County, Oregon.

g. *Filed Pursuant to:* 16 U.S.C. 823(a).

h. *Contact Person:* Mr. Ladd Henderson, Farmers Irrigation District, 1185 Tucker Road, Hood River, Oregon 97031, with a copy to: Mr. Jay R. Bingham, Bingham Engineering, 165 Wright Brothers Drive, Salt Lake City, Utah 84116.

i. *Comment Date:* January 10, 1983.

j. *Description of Project:* The proposed project would consist of: (1) a diversion structure in the Low Line Ditch; (2) a 30-inch-diameter, 21,500-foot-long penstock; and (3) a powerhouse to contain a turbine-generating unit with a rated capacity of 1.65 MW operating under a head of 646 feet.

k. This notice also consists of the following standard paragraphs: B, C, and D3b.

9a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 6804–000.

c. *Date Filed:* October 28, 1982.

d. *Applicant:* General Energy Development, Inc.

e. *Name of Project:* Downing Creek.

f. *Location:* Linn County, Oregon; Downing Creek within the Willamette National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Contact Person:* Mr. Carl Rounds, President, GED, Inc., 1885 West Washington Avenue, Stayton, Oregon 97383.

i. *Comment Date:* February 3, 1983.

j. *Description of Project:* The proposed project would consist of: (1) a 6-foot-high, 30-foot-long diversion structure; (2) a 36-inch-diameter, 5,980-foot-long penstock; (3) a powerhouse to contain a single generating unit with a rated capacity of 3,277 kW, operating under a head of 807 feet; and (4) a 15,235-foot-long transmission line. Applicant estimates that the average annual generation would be 15,786,000 kWh.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months to study the feasibility of constructing and operating the project. The estimated cost for conducting these studies is $83,000. No new access roads will be needed to conduct these studies.

k. *Purpose of Project:* Project power will be sold to either Pacific Power and Light Company or Bonneville Power Administration.

l. This notice also consists of the following standard paragraphs: A4b, A4c, A4d, B, C and D2.

10a. *Type of Application:* Exemption of a Small Conduit Hydroelectric Facility.

b. *Project No:* 6805–000.

c. *Date Filed:* October 28, 1982.

d. *Applicant:* Glenn-Colusa Irrigation District.

e. *Name of Project:* Stovall #1 Hydroelectric Project.

f. *Location:* On the Glenn-Colusa Canal owned and operated by the Applicant (water leaving the powerhouse will discharge directly into an irrigation canal) near the town of Williams, in Colusa County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 823(a).

h. *Contact Person:* Mr. Robert D. Clark, Manager and Secretary, Glenn-Colusa Irrigation District, 344 East Laurel Street, Willows, California 95988.

i. *Comment Date:* January 15, 1983.

j. *Description of Project:* The proposed project would consist of: (1) two existing inlet structures; (2) two 4-foot-diameter, 47-foot-long pipeline-penstock systems; (3) two outdoor generating units with a combined rated capacity of 120 kW, operating under a head of 14 feet; and (4) appurtenant facilities. The estimated average annual energy output is 433,000 kWh.

k. This notice also consists of the following standard paragraphs: B, C and D3b.

11a. *Type of Application:* Preliminary Permit.

b. *Project No:* 6809–000.

c. *Date Filed:* November 1, 1982.

d. *Applicant:* Douglas Mendenhall.

e. *Name of Project:* Oxbow Water Power Project.

f. *Location:* Salmon River, near Cottonwood, partly within Bureau of Land Management land, Idaho County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Contact Person:* Mr. Douglas Mendenhall, P.O. Box 322, Lucile, Idaho 83542.

i. *Comment Date:* February 7, 1983.

j. *Description of Project:* The proposed project would consist of: (1) an inlet structure; (2) a 10-foot-diameter, 5,500-foot-long power tunnel; (3) a powerhouse with a total installed capacity of 4,988 kW; and (4) a 3-mile-long transmission line to connect to an existing 138-kV Clearwater Power Cooperative transmission line.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 24 month permit to study the feasibility of constructing and operating the project. The Applicant estimates that the average annual energy generation would be 40.1 GWh and would be sold to the Idaho Power Company under PURPA.

K. This notice also consists of the following standard paragraphs: A4(a), A4(c), B, C & D2.

12a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 6810–000.

c. *Date Filed:* November 1, 1982.

d. *Applicant:* Douglas Mendenhall.

e. *Name of Project:* Salmon River.

f. *Location:* Salmon River, near Town of Lucile, Idaho County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Contact Person:* D. Michael Preston, J–U–B Engineers, Inc., 250 South Beechwood Avenue, Boise, Idaho 83709.

i. *Comment Date:* February 7, 1983.

j. *Description of Project:* The proposed project would consist of: (1) a concrete inlet structure on the west bank; (2) a 13,000-foot-long, 10-foot-diameter tunnel, or a combination 15,400-foot-long tunnel and canal; (3) a powerhouse containing four generating units, each rated at 1,250 kW; (4) a tailrace; and (5) a 2,000-foot-long transmission line. The average annual energy generation is estimated to be 42 million kWh.

Applicant seeks issuance of a preliminary permit for a term of 24 months, during which time it would conduct engineering, economic, environmental, and feasibility studies, and prepare an FERC license application. No new roads would be required to conduct the studies. The cost of the work under the permit would be $60,000.

k. This notice also consists of the following standard paragraphs: A4(b), A4(c), A4(d), B, C, D2.

13a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 6811–000.

c. *Date Filed:* November 1, 1982.

d. *Applicant:* Douglas Mendenhall.

e. *Name of Project:* Riggins.

f. *Location:* Salmon River, near Town of Riggins, Idaho County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Contact Person:* D. Michael Preston, J–U–B Engineers, Inc., 250 South Beechwood Avenue, Boise, Idaho 83709.

i. *Comment Date:* February 7, 1983.

j. *Description of Project:* The proposed project would consist of: (1) a concrete inlet structure on the north bank of the river; (2) a 7,000-foot-long, 10-foot-diameter tunnel; (3) a penstock; (4) a powerhouse containing four generating units, each rated at 1,295 kW; (5) a tailrace; and (6) a 300-foot-long transmission line. The average annual energy generation is estimated to be 43.1 million kWh.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time it would conduct engineering, economic, environmental, and feasibility studies, and prepare an FERC license application. No new roads would be required to conduct the studies. The cost of the work under the permit would be $60,000.

k. This notice also consists of the following standard paragraphs: A4b, A4c, A4d, B, C, D2.

14a. *Type of Application:* Application for Preliminary Permit.

b. *Project No:* 6831–000.

c. *Date Filed:* November 5, 1982.

d. *Applicant:* Riverside Power Company, Inc.

e. *Name of Project:* Boulder Rapids Power Project.

f. *Location:* on the Snake River in Twin Falls and Gooding Counties, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Contact Person:* Mr. Rober Jones, President, Riverside Power Company, Inc., 1766 Addison Avenue East, Twin Falls, Idaho 83301.

i. *Comment Date:* January 31, 1983.

j. *Description of Project:* The proposed project would consist of: (1) a 4 to 5-foot-high diversion structure; (2) a 1,100-foot-long concrete lined power canal; (3) a power house containing generating units with total rated capacity of 8,000 kW; and (4) appurtenant facilities. The project's estimated annual generation of 37 million kWh would be sold to Idaho Power Company.

A preliminary permit if issued, does not authorize construction. Applicant has requested a 36-month preliminary permit to conduct feasibility studies and prepare an FERC license application.

k. This notice also consists of the following standard paragraphs: A4b, A4c, A4d, B, C, & D2.

15a. *Type of Application:* Application for Preliminary Permit.

b. *Project No:* 6834–000.

c. *Date Filed:* November 8, 1982.

d. *Applicant:* Empire Power Company.

e. *Name of Project:* Empire Water Power Project.

f. *Location:* on the Snake River in Twin Falls and Gooding Counties, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Contact Person:* Mr. John E. Priester, Priester Engineering and Land Surveying, Route #3, Buhl, Idaho 83316.

i. *Comment Date:* January 31, 1983.

j. *Description of Project:* The proposed project would consist of: (1) an intake structure within the north or south bank of the Snake River; (2) a 1,300-foot-long diversion channel; (3) a powerhouse containing generating units with a total rated capacity of 6 MW; and (4) appurtenant facilities. The project's estimated 50.4 million kWh of annual energy would be sold to Idaho Power Company.

A preliminary permit if issued, does not authorize construction. Applicant has requested a 36-month preliminary permit to conduct feasibility studies and prepare an FERC license application.

k. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, & D2.

16a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 6842–000.

c. *Date Filed:* November 12, 1982.

d. *Applicant:* City of Aberdeen.

e. *Name of Project:* Wynoochee River Water Power Project.

f. *Location:* On the Wynoochee River in Grays Harbor County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Contact Person:* The Honorable Jack Durney, Mayor of City of Aberdeen, 200 East Market Street, Aberdeen, Washington 98250.

i. *Comment Date:* February 7, 1983.

j. *Competing Application:* Project No. 6547–000 Date Filed: July 20, 1982.

k. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' Wynoochee Dam and Reservoir and would consist of: (1) a multi-level intake structure on the back face of the dam; (2) a 150-foot-long tunnel; (3) an underground powerhouse containing two generating units with combined rated capacity of 10 MW; and (4) appurtenant facilities.

Issuance of a preliminary permit does not authorize any construction. Applicant has requested a 36-month-permit to conduct feasibility studies and prepare an FERC license application. The estimated 43 million kWh of annual generation would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A3, D2, B & C.

17a. *Type of Application:* Preliminary Permit.

b. *Project No.: 6838–000.*

c. *Date Filed:* November 10, 1982.

d. *Applicant:* Mount Gilead Power Company.

e. *Name of Project:* Mount Gilead Hydroelectric Power Project.

f. *Location:* Mount Gilead, Stanly County, North Carolina on the Pee Dee River.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r).

h. *Contact Person:* Harry S. D. Adams, Manager, Hydro Resources, P.O. Box 50, One Jefferson Square, Boise, Idaho 83728.

i. *Comment Date:* February 4, 1983.

j. *Description of Project:* The proposed project would consist of: (1) a proposed 30-foot high and 800-foot long earthen dam; (2) a reservoir with an estimated storage capacity of 3,402 acre-feet; (3) a new powerhouse with an installed capacity of 7,750 kW; (4) a proposed tailrace; (5) a new transmission line approximately one mile long; and (6) appurtenant facilities. Applicant estimates that average annual generation would be 40.2 GWh. All power generated would be sold to a local utility company.

k. This notice also consists of the following standard paragraphs: A4b, A4c, A4d, B and C.

l. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set, it will be presumed to have no comments.

Competing Applications

A1. Exemptions for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1982). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d).

A2. Applications for License—Anyone desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either the competing application itself (see 18 CFR 4.33 (a) and (d), and Part 16, where applicable) or a notice of intent (see 18 CFR 4.33 (b) and (c)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or §§ 4.101 to 4.104 (1982).

A3. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for license, exemption or preliminary permit, or notices of intent to file competing applications, will be accepted for filing in response to this notice (see 18 CFR 4.30 to 4.33 or §§ 4.101 to 4.104 (1982), as appropriate). Any application for license or exemption from licensing, or notice of intent to file a license or an exemption application, must be filed in accordance with the Commission's regulations (see 18 CFR 4.30 to 4.33 or §§ 4.101 to 4.104 (1982), as appropriate).

Preliminary Permits

A4a. Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30-days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A4b. No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or there are proposed to be major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application (see 18 CFR 4.30 to 4.33 (1982)).

A4c. The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before the specified comment date for the particular application. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see 18 CFR 4.30 to 4.33 or §§ 4.101 to 4.104 (1982), as appropriate).

A4d. Submission of a timely notice of intent to file an application for preliminary permit allows an interested person to file an acceptable competing application for preliminary permit no later than 60 days after the specified comment date for the particular application.

B. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §§ 385.210, .211, .214 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments

D1. License applications (5 MW or less capacity)—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. Preliminary permit applications—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Exemption applications (5 MW or less capacity)—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Act, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency noes not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Exemption applications (Conduit)—The U.S. fish and Wildlife Service, The National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 26, 1982.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-32826 Filed 11-30-82; 8:45 am]

BILLING CODE 6717-01-M

Office of the Secretary

Peaceful and Civil Uses of Atomic Energy; Proposed Subsequent Arrangements; European Atomic Energy Community (EURATOM) and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

These subsequent arrangements would give approval, which must be obtained under the above mentioned agreements, for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: from Japan to the United Kingdom (British Nuclear Fuels, Ltd.) for the purpose of reprocessing, 244 irradiated fuel assemblies, containing 42,000 kilograms of uranium, enriched to 1.12% in U-235, and 470 kilograms of plutonium from the Tsurga and Tokai No. 2 Power Stations, and 2,150 irradiated fuel elements from the Tokai No. 1 Power Station, containing 24,400 kilograms of uranium with 0.5% U-235, and 50.4 kilograms of plutonium. These subsequent arrangements are designated as RTD/EU(JA)-53 and RTD/EU(JA)-54, respectively.

The Department of Energy has received letters of assurance from the Government of Japan that the recovered uranium and plutonium will be stored in the United Kingdom, and will not be transferred from the United Kingdom, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: November 24, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82-32712 Filed 11-30-82; 8:45 am]

BILLING CODE 6450-01-M

Peaceful and Civil Uses of Atomic Energy; Proposed Subsequent Arrangement; European Atomic Energy Community (EURATOM) and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above mentioned agreements, for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: From Japan to the United Kingdom (British Nuclear Fuels, Ltd.) for the purpose of reprocessing, 658 irradiated fuel bundles, containing 122,208 kilograms of uranium, enriched to 1.22% in U-235, and 1,058 kilograms of plutonium from the Fukushima No. 1 Nuclear Power Station, Units Nos. 1, 2, 3, 4, 5, and 6. This subsequent arrangement is designed as RTD/EU(JA)-52.

The Department of Energy has received letters of assurance from the Government of Japan that the recovered uranium and plutonium will be stored in the United Kingdom, and will not be transferred from the United Kingdom, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: November 24, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82-32713 Filed 11-30-82; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; European Atomic Energy Community and Japan; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above mentioned agreements, for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: from Japan to France (the Compagnie Generale des Matieres Nucleaires—COGEMA) for the purpose of reprocessing, 240 irradiated fuel assemblies, containing 107,500 kilograms of uranium, enriched to 1.04% in U-235, and 951 kilograms of plutonium from the Mihama No. 3, Takahama 1 and 2, and the Ohi 1 and 2 nuclear power plants.

This subsequent arrangement is designated as RTD/EU(JA)-55.

The Department of Energy has received letters of assurance from the Government of Japan that the recovered uranium and plutonium will be stored in France, and will not be transferred from France, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: November 24, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82-32714 Filed 11-30-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-240023; PH-FRL 2252-3]

State Registration of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from 39 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register.**

DATE: The last entry for each item is the date the State registration of the product beame effective.

FOR FURTHER INFORMATION CONTACT: Mary Waller, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 716E, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7700).

SUPPLEMENTARY INFORMATION: The registrations listed below were issued by the States before or during May 1982. All were received by EPA during May 1982. Receipts by EPA of state registrations will be published periodically. Except as indicated by (CUP) in one of the registrations listed below, there is no changed use pattern involved in any of these registrations.

Alabama

EPA SLN No. AL 82 0020. Dow Chemical USA. Registration is for Dowfume W-85 High-Strength Soil Fumigant, to be used on peanuts as an at-plant application to control nematodes including root-knot. May 11, 1982.

EPA SLN No. AL 82 0021. Dow Chemical USA. Registration is for Dowfume W-90 High-Strength Soil Fumigant, to be used on peanuts as an at-plant application to control nematodes including root-knot. May 11, 1982.

EPA SLN No. AL 82 0022. Dow Chemical USA. Registration is for Dowfume W-100 High-Strength Soil Fumigant, to be used on peanuts as an at-plant application to control nematodes including root-knot. May 11, 1982.

EPA SLN No. AL 82 0023. Olin Corp. Registration is for Terraclor 2N EC, to be used on peanuts to control southern blight. May 13, 1982.

EPA SLN No. AL 82 0024. Rohm and Haas Co. Registration is for Dithane M-45, to be used on wheat to control wheat rust. May 13, 1982.

EPA SLN No. AL 82 0025. Fairfield American Corp. Registration is for Permanone Tick Repellent, to be used on outer clothing to control ticks, chiggers, and mosquitoes. May 13, 1982.

EPA SLN No. AL 82 0026. Dow Chemical USA. Registration is for Lorsban 15G, to be used on soybeans to control larvae of lesser cornstalk borers. May 24, 1982.

Arizona

EPA SLN No. AZ 82 0009. Arizona Agrochemical Co. Registration is for Roudup Herbicide, to be used on jojoba (*Simmondsia chinensis*) to control Bermuda grass and Johnson grass. May 21, 1982.

Arkansas

EPA SLN No. AR 82 0013. American Cyanamid Co. Registration is for Cythion Insecticide and Malathion ULV Concentrate, to be used on cotton to control boll weevils. May 28, 1982.

EPA SLN No. AR 82 0014. BFC Chemicals, Inc. Registration is for Tank Mix of Attac 6 or Attac 8 with Basagran, to be used on soybeans to control sicklepods and broadleaf weeds. May 28, 1982.

EPA SLN No. AR 82 0015. Mobay Chemical Corp. Registration is for Furadan 10 GR, to be used on soybeans to control nematodes. May 28, 1982.

EPA SLN No. AR 82 0016. Mobay Chemical Corp. Registration is for Furadan 4 FL, to be usd on soybeans to control nematodes and Mexican bean beetles. May 28. 1982.

EPA SLN No. AR 82 0017. Philips Roxane, Inc. Registration is for Anchor Permectrin 25% WP Long Lasting Barn and Premise Fly Spray, to be used in livestock and poultry premises to control house flies, face flies, stable flies, and false stable flies. May 28, 1982.

EPA SLN No. AR 82 0018. Philips Roxane, Inc. Registration is for Bio-Ceutic Overtime 25% WP Long Acting Livestock Premise Insecticide, to be used in livestock and poultry premises to control house flies, face flies, stable flies, and false stable flies. May 28, 1982.

EPA SLN No. AR 82 0019. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used on soybeans to control red rice. May 28, 1982.

EPA SLN No. AR 82 0020. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used on soybeans to control Cockleburs and morning glories. May 28, 1982.

EPA SLN No. AR 82 0021. ICI Americas Inc. Registration is for Ambush 4E, to be used on cotton to control boll weevils, tobacco budworms, cabbage loopers, bollworms, lygus bugs, aphids, and whiteflies. May 28, 1982.

EPA SLN No. AR 82 0022. Diamond Shamrock Corp. Registration is for Ectrin Insecticide 10 Water Dispersible Liquid, to be used as a livestock and premise spray to control flies, lice, and ticks. May 28, 1982.

EPA SLN No. AR 82 0023. E.I. du Pont de Nemours and Co. Registration is for Du Pont Lexone DF Weed Killer, to be used as a directed postemergence spray on soybeans to control weeds. May 28, 1982.

EPA SLN No. AR 82 0024. Pennwalt Corp. Registration is for Knox Out 2FM Insecticide, to be used on lawns and other recreation areas to control fire ants. May 28, 1982.

EPA SLN No. AR 82 0025. Merck and Co., Inc. Registration is for Mertect 340-F Fungicide, to be used on soybeans grown for seed purposes to control pod

and stem blight, anthracnose, brown spot, frog eye leaf spot, and purple seed stain. May 28, 1982.

California

EPA SLN No. AR 82 0015. Stoller Chemical Co., Inc. Registration is for Top Cop with Sulfur, to be used on walnuts to control blight. May 25, 1982.

EPA SLN No. AR 82 0020. Philips Roxane, Inc. Registration is for Anchor Permectrin 10% EC, to be used in livestock and poultry premises to control house flies, face flies, stable flies, and false stable flies. May 4, 1982.

EPA SLN No. AR 82 0021. Philips Roxane, Inc. Registration is for Bio-Ceutic Overtime Long Acting Livestock Premise Insecticide, to be used in livestock and poultry premises to control house flies, face flies, stable flies, and false stable flies. May 4. 1982.

EPA SLN No. AR 82 0027. E.I. du Pont de Nemours and Co. Registration is for Du Pont Vydate L Insecticide/ Nematicide to be used on citrus to control citrus nematodes. May 10, 1982.

EPA SLN No. AR 82 0029. Consolidated Factors. Registration is for Methyl Bromide 100, to be used on raspberries to be exported to Japan to control thrips and mites. May 11, 1982.

EPA SLN No. CA 82 0031. Imperial County Department of Agriculture. Registration is for Azodrin 5, to be used on Bermuda grass grown for seed to control Banks grass mites. May 17, 1982.

EPA SLN No. AR 82 0032. Shell Chemical Co. Registration is for Pydrin Insecticide 2.4 EC, to be used on tomatoes to control tomato pinworms and tomato fruitworms. May 17, 1982.

EPA SLN No. AR 82 0033. Ciba-Geigy Corp. Registration is for Ridomil 2E, to be used on nonbearing avocado trees to control root rot. May 13, 1982.

EPA SLN No. AR 82 0034. Wilbur-Ellis Co. Registration is for Golden-Dew, to be used on sugar beets to control powdery mildew. May 19, 1982.

EPA SLN No. AR 82 0035. Vineland Chemical Co. Registration is for Weed-Hoe 108, to be used on cotton to control emerged nutsedge. May 19, 1982.

Connecticut

EPA SLN No. AR 82 0006. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used on alfalfa as a weed control between cuttings. May 3, 1982.

Delaware

EPA SLN No. DE 82 0008. Mobay Chemical Corp. Registration is for Furadan 10 GR, to be used on sweet corn at planting to control flea beetles, northern corn rootworms, and nematodes. May 3, 1982.

EPA SLN No. DE 82 0009. Mobay Chemical Corp. Registration is for Furadan 4 FL, to be used on sweet corn to control second generation European corn borers. May 3, 1982.

Florida

EPA SLN No. FL 82 0023. O.M. Scott and Sons. Registration is for Progrow Ornamental Herbicide II, to be used on container- and field-grown ornamentals to control weeds. May 4, 1982.

EPA SLN No. FL 82 0024. B and W Quality Growers, Inc. Registration is for D.Z.N. Diazinon 50W, to be used on watercress to control cyclamen mites. May 4, 1982.

EPA SLN No. FL 82 0025. FMC Corp. Registration is for Furadan 10 GR, to be used on young southern pine plantations and pines planted for Christmas trees to control Nantucket pine tip moths. May 4, 1982.

EPA SLN No. FL 82 0026. Sandoz Inc. Registration is for Solicam 80 WP, to be used on nonbearing citrus to control grass and broadleaf weeds. May 21, 1982.

EPA SLN No. FL 82 0027. Dow Chemical USA. Registration is for Lorsban 4E Insecticide, to be used on grain sorghum to control corn earworms, fall armyworms, and lesser cornstalk borers. May 21, 1982.

EPA SLN No. FL 82 0028. Monsanto Co. Registration is for Roundup, to be used on citrus and non-crop areas to control annual weeds and Vasey grass. May 24, 1982.

EPA SLN No. FL 82 0029. Dow Chemical USA. Registration is for Lorsban 15G GR Insecticide, to be used on soybeans to control larvae of lesser cornstalk borers. May 24, 1982.

EPA SLN No. FL 82 0030. Dow Chemical USA. Registration is for Lorsban 15G GR Insecticide, to be used on sorghum to control larvae of lesser cornstalk borers. May 24, 1982.

Georgia

EPA SLN No. GA 82 0007. Red Panther Chemical Co. Registration is for Red Panther Ethylene Dibromide 90, to be used on soybeans to control nematodes including lance, root-knot, spiral, and sting. April 7, 1982.

EPA SLN No. GA 0010. Great Lakes Chemical Corp. Registration is for Soilbrom-90 and Soilbrom-90EC, to be used on cotton at planting to control nematodes. April 23, 1982.

Hawaii

DPA SLN No. HI 82 0001. E.I. du Pont de Nemours and Co. Registration is for Du Pont Vydate L Insecticide/ Nematicide, to be used on ginger root to control root-knot, sting, lesion, and burrowing nematodes. May 14, 1982.

Idaho

EPA SLN No. ID 82 0011. Mobay Chemical Corp. Registration is for Sencor DF/Sencor Sprayule, to be used on lentils to control broadleaf weeds. May 5, 1982.

EPA SLN No. ID 82 0012. Mobay Chemical Corp. Registration is for Sencor 4, to be used on lentils to control broadleaf weeds. May 5, 1982.

Illinois

EPA SLN No. IL 82 0005. Pfizer Inc. Registration is for Mycoshield Brand of Agricultural Terramycin, to be used on Toronto creeping bentgrass to control bacterial wilt. May 18, 1982.

EPA SLN No. IL 82 0006. Shell Chemical Co. Registration is for Shell Bladex 82W Herbicide, to be used on field corn to control annual grasses and broadleaf weeds. May 25, 1982.

EPA SLN No. Il 82 0007. Shell Chemical Co. Registration is for Shell Bladex 4L Herbicide, to be used on field corn to control annual grasses and broadleaf weeds. May 25, 1982.

Indiana

EPA SLN No. IN 82 0009. Pfizer Inc. Registration is for Mycoshield Brand of Agricultural Terramycin, to be used on Toronto creeping bentgrass to control bacterial wilt. April 6, 1982.

EPA SLN No. IN 82 0010. Monsanto Co. Registration is for Roundup, to be used on apples to control annual and perennial weeds. April 9, 1982.

Iowa

EPA SLN No. IA 82 0002. E.I. du Pont de Nemours and Co. Registration is for Du Pont Benlate Fungicide, to be used on soybeans to control *Diaporthe* pod and stem blight and purple seed stain. May 19. 1982.

EPA SLN No. IA 82 0003. Merck and Co., Inc. Registration is for Mertect 340-F Fungicide, to be used on soybeans to control pod and stem blight, anthracnose, brown spot, frog eye leaf spot, and purple seed stain. May 19, 1982.

Kansas

EPA SLN No. KS 82 0007. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used on grain sorghum to control broadleaf weeds and grasses. May 3, 1982.

EPA SLN No. KS 82 0008. Platte Chemical Co. Registration is for Clean Crop Butyl 6 Ester Weed Killer, to be used on small grains (spring seeded

barley, oats, wheat, and fall seeded rye and wheat, corn and sorghum) as a weed killer. May 10, 1982.

EPA SLN No. KS 82 0009. American Hoechst Corp. Registration is for Hoelon 3EC Herbicide, to be used on soybeans for postemergence control of volunteer corn and annual grasses. May 24, 1982.

Louisiana

EPA SLN No. LA 82 0016. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used on soybeans to control red rice. May 6, 1982.

EPA SLN No. LA 82 0017. E. I. du Pont de Nemours and Co. Registration is for Du Pont Benlate Fungicide, to be used on soybeans for suppression of aerial blight. May 25, 1982.

Michigan

EPA SLN No. MI 82 0015. Bell Laboratories, Inc. Registration is for P.C.Q. Rat and Mouse Bait, to be used on orchards and groves to control meadow mice, pine mice, voles, and thirteen-lined ground squirrels. May 4, 1982.

Mississippi

EPA SLN No. MS 82 0012. Dow Chemical USA. Registration is for Dowfume W–100, to be used as an at-plant application on cotton to control nematodes. April 2, 1982.

EPA SLN No. MS 82 0016. Mobay Chemical Corp. Registration is for Furadan 10 GR, to be used on soybeans to control nematodes at planting time. May 11, 1982.

EPA SLN No. MS 82 0017. Mobay Chemical Corp. Registration is for Furadan 4 FL, to be used on soybeans to control nematodes and Mexican bean beetles (larvae). May 11, 1982.

EPA SLN No. MS 82 0018. Thompson-Hayward Chemical Co. Registration is for Freestyle Calcium Hypochlorite GR 65%, to be used in fish hatchery ponds to control scavenger fish. May 14, 1982.

EPA SLN No. MS 82 0019. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide (or +2,4-DB), to be used on soybeans to control red rice. May 17, 1982.

EPA SLN No. MS 82 0020. FMC Corp. Registration is for Furadan 4 FL, to be used on grain sorghum to control chinch bugs. May 20, 1982.

EPA SLN No. MS 82 0021. Valley Chemical Co. Registration is for Val-Drop 3, to be used as a vetch harvest aid to desiccate trashy weeds and the mature crop. May 31 1982.

Missouri

EPA SLN No. MO 82 0015. Bell Laboratories, Inc. Registration is for P.C.Q. Rat and Mouse Bait, to be used on orchards and groves to control meadow and pine mice and voles. May 12, 1982.

EPA SLN No. MO 82 0016. Mobay Chemical Corp. Registration is for Furadan 10 GR, to be used on soybeans at planting time to control nematodes. May 13, 1982.

EPA SLN No. MO 82 0017. Mobay Chemical Corp. Registration is for Furadan 4 FL, to be used on soybeans to control nematodes and Mexican bean beetles (larvae). May 13, 1982.

Montana

EPA SLN No. MT 82 0008. Ciba-Geigy Corp. Registration is for Igran 80W Herbicide, to be used on winter wheat to control bedstraw, red sandspurry, and other specified species. May 24, 1982.

Nebraska

EPA SLN No. NE 82 0011. Mobay Chemical Corp. Registration is for Oftanol 5% GR, to be used on turf grasses to control white grub larvae. May 26, 1982.

EPA SLN No. NE 82 0013. Magna Corp. Registration is for Magnacide H, to be used on irrigation canals for the control of submersed and floating weeds and algae. May 19 1982.

EPA SLN No. NE 82 0014. American Hoechst Corp. Registration is for Hoelon 3EC Herbicide, to be used on soybeans for postemergence control of volunteer corn and annual grasses. May 19, 1982.

EPA SLN No. NE 82 0015. Chevron Chemical Co. Registration is for Orthene 75S Soluble Powder, to be used on field borders, fencerows, roadsides, ditch banks, and borrow pits to control grasshoppers. May 19, 1982.

EPA SLN No. NE 82 0016. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used on grain sorghum for desiccation and residual control of annual broadleaf weeds. May 27, 1982.

EPA SLN No. NE 82 0017. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used during the fallow period of a wheat-fallow-wheat rotation for weed control. May 27, 1982.

Nevada

EPA SLN No. NV 82 0002. FMC Corp. Registration is for Furadan 4 FL, to be used on alfalfa to control blue alfalfa aphids. April 7, 1982.

EPA SLN No. NV 82 0006. Mobay Chemical Corp. Registration is for Furadan 10 GR, to be used on garlic to control onion maggots. April 7, 1982.

EPA SLN No. NV 82 0007. Mobay Chemical Corp. Registration is for Furadan 4 FL, to be used on alfalfa to control blue alfalfa aphids, April 7, 1982.

New Jersey

EPA SLN No. NJ 82 0008. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used on alfalfa as a weed control between cuttings. May 3, 1982.

EPA SLN No. NJ 82 0009. Penick Corp. Registration is for SBP-1382/Piperonyl Butoxide Insecticide Mosquito Fogger 18% + 54% Formula II, to be used as a fogger to control mosquitoes. May 18, 1982.

New Mexico

EPA SLN No. NM 82 0012. Pennwalt Corp. Registration is for Penncap-E Insecticide, to be used on sorghum to control greenbugs. May 5, 1982.

EPA SLN No. NM 82 0014. Chevron Chemical Co. Registration is for Orthene Specialty Concentrate, to be used on rangelands to control black grass bugs. May 25, 1982.

New York

EPA SLN No. NY 82 0092. FMC Corp. Registration is for Furadan 4 FL, to be used on sweet corn to control corn borers. May 7, 1982.

North Carolina

EPA SLN No. NC 82 0014. BFC Chemicals, Inc. Registration is for a tank mix of Attac 6 or Attac 8 with Blazer Herbicide, to be used on soybeans to control sicklepod and other broadleaf weeds. May 6, 1982.

EPA SLN No. NC 82 0015. Shell Chemical Co. Registration is for Bladex 4L Herbicide, to be used on corn to control grasses and broadleaf weeds. May 10, 1982.

EPA SLN No. NC 82 0016. Setre Chemical Co. Registration is for Setre III Liquid, to be used on soybeans to treat seeds in planter boxes to control certain seed and soil-borne seedling diseases. May 17, 1982.

EPA SLN No. NC 82 0017. Vertac Chemical Corp. Registration is for Vertac Premerge 3 Dinitroamine Herbicide, to be used on Bohemian chili peppers to control weeds. May 19, 1982.

EPA SLN No. NC 82 0018. BFC Chemicals, Inc. Registration is for a tank mix of Attac 6 or Attac 8, with Basagran, to be used on soybeans to control sicklepods and other broadleaf weeds. May 19, 1982.

North Dakota

EPA SLN No. ND 82 0009. PBI/Gordon Corp. Registration is for Gordon's Aero-Spray 4-D, to be used on wheat, barley,

and rye to control broadleaf weeds. May 3, 1982.

EPA SLN No. ND 82 0010. American Hoechst Corp. Registration is for Hoelon 3EC Herbicide, to be used on soybeans for postemergence control of volunteer corn and annual grasses. May 21, 1982.

Ohio

EPA SLN No. OH 82 0012. Philips Roxane, Inc. Registration is for Anchor Permectrin II 10% E. C. Long Lasting Livestock and Premise Spray, to be used on livestock, cats, dogs, and poultry and their premises to control flies, cockroaches, mites, mosquitoes, and ticks. May 13, 1982.

EPA SLN No. OH 82 0013. Philips Roxane, Inc. Registration is for Bio-Ceutic Overtime L/P Long Acting Livestock and Premise Insecticide, to be used on livestock, cats, dogs, and poultry and their premises to control flies, cockroaches, mites, mosquitoes, and ticks. May 13, 1982.

Oklahoma

EPA SLN No. OK 82 0016. Ciba-Geigy Corp. Registration is for Igran 80W Herbicide, to be used on winter wheat after harvest for weed control during idle season, until fall planting to winter wheat. May 11, 1982.

Oregon

EPA SLN No. OR 82 0041. Wilbur-Ellis Co. Registration is for Scram 42-S, to be used on strawberries to control gray mold (*Botrytis*). May 3, 1982.

EPA SLN No. OR 82 0043. Platte Chemical Co. Registration is for Clean Crop Dimethoate 267 EC, to be used on cherries to control the cherry fruit fly. May 5, 1982.

EPA SLN No. OR 82 0044. Wilbur-Ellis Co. Registration is for Red-Top Dimethoate 2.67 EC, to be used on cherries to control the cherry fruit fly. May 7, 1982.

EPA SLN No. OR 82 0045. Occidental Chemical Co. Registration is for Dimethoate 2.67 EC, to be used on cherries to control the cherry fruit fly. May 11, 1982.

EPA SLN No; OR 82 0046. E. I. du Pont de Nemours and Co. Registration is for Du Pont Benlate Fungicide, to be used on *Brassica* crops to control the seed-borne blackleg. May 12, 1982.

EPA SLN No. OR 82 0047. T.H. Agriculture and Nutrition Co., Inc. Registration is for De-Fend E-267 Insecticide, to be used on cherries to control the western cherry fruit fly. May 25, 1982.

EPA SLN No. OR 82 0048. Mobay Chemical Corp. Registration is for Oftanol 5% GR, to be used on turf grasses to control white grub larvae, hyperodes weevils, billbugs, chinch bugs, and sod webworm larvae. May 25, 1982.

EPA SLN No. OR 82 0049. Union Carbide Agricultural Products Co., Inc. Registration is for Temik 15% GR Aldicarb Pesticide, to be used on dry beans (except black-eyes) to control lygus bugs and mites. May 25, 1982.

Pennsylvania

EPA SLN No. PA 82 0016. Bell Laboratories, Inc. Registration is for P.C.Q. Rat and Mouse Bait, to be used on orchards and groves to control meadow and pine mice and voles. May 27, 1982.

South Carolina

EPA SLN No. SC 82 0005. Dow Chemical USA. Registration is for Dowfume W-100, to be used as an at-plant application on peanuts to control nematodes including root-knot, lesion, sting, and ring. April 2, 1982.

EPN SLN No. SC 82 0006. Dow Chemical USA. Registration is for Dowfume W-90, to be used as an at-plant application on peanuts to control nematodes including root-knot, lesion, sting, and ring. April 2, 1982.

EPA SLN No. SC 82 0007. Dow Chemical USA. Registration is for Dowfume W-85, to be used as an at-plant application on peanuts to control nematodes including root-knot, lesion, sting, and ring. April 2, 1982.

EPA SLN No. SC 82 0012. Sandoz, Inc. Registration is for Solicam 80 WP, to be used on peach orchards and non-bearing pecan orchards to control or suppress grasses and broadleaf weeds. May 17, 1982.

EPA SLN No. SC 82 0016. Chevron Chemical Co. Registration is for Ortho-Paraquat CL, to be used on tomatoes for crop destruction (staked tomatoes grown in plastic mulch-covered row culture only). May 10, 1982.

Tennessee

EPA SLN No. TN 82 0012. Mobay Chemical Corp. Registration is for Furadan 10 GR, to be used on soybeans at planting time to control nematodes. May 7, 1982.

EPA SLN No. TN 82 0013. Mobay Chemical Corp. Registration is for Furadan 4 FL, to be used on soybeans to control nematodes and Mexican bean beetles (larvae). May 7, 1982.

EPA SLN No. TN 82 0014. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used on alfalfa between cuttings to control weeds. May 18, 1982.

EPA SLN No. TN 82 0015. Chevron Chemical Co. Registration is for Orthocide 50 Wettable, to be used on pine seedlings as a post-planting treatment for damping off and root rot. May 19, 1982.

EPA SLN No. TN 82 0016. Mobay Chemical Corp. Registration is for Oftanol 5% GR, to be used on turf grasses to control white grub larvae. May 24, 1982.

Texas

EPA SLN No. TX 82 0020. Green Light Co. Registration is for Green Light Fire Ant Killer, to be used on fire ant mounds and fire ant-infested nursery stock to control fire ants. May 5, 1982.

EPA SLN No. TX 82 0021. Dow Chemical USA. Registration is for Lorsban 15G Insecticide, to be used on sorghum to control larval of corn rootworms. May 19, 1982.

EPA SLN No. TX 82 0022. Abbott Laboratories. Registration is for Dipel 4L Biological Insecticide Emulsifiable Suspension, to be used on grain sorghum to control sorghum headworms. May 19, 1982.

EPA SLN No. TX 82 0023. Monsanto Co. Registration is for Roundup, to be used on grain sorghum to control weeds. May 20, 1982.

EPA SLN No. TX 82 024. Pennwalt Corp. Registration is for Penncap-M Insecticide, to be used on cotton to control boll weevils. May 21, 1982.

EPA SLN No. TX 82 0025. E. I. du Pont de Nemours and Co. Registration is for Du Pont Lannate L Insecticide, to be used on cotton to control bollworms and tobacco budworms. May 21, 1982.

EPA SLN No. TX 82 0026. Elanco Products Co. Registration is for Treflan EC, to be used on cotton to control weeds. May 26, 1982.

EPA SLN No. TX 82 0027. Elanco Products Co. Registration is for Treflan Pro-5, to be used on cotton to control weeds. May 26, 1982.

Utah

EPA SLN No. UT 82 0005. V.R.E. Inc. Registration is for CPF, to be used in latex paint (exterior use only) to control insects. May 26, 1982.

Vermont

EPA SLN No. VT 82 0003. E. I. du Pont de Nemours and Co. Registration is for Du Pont Vydate L Insecticide/Nematicide, to be used on apples for control of spotted tentiform leafminers and suppression of the European red mite. May 7, 1982.

EPA SLN No. VT 82 0004. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used on alfalfa as a weed control between cuttings. May 7, 1982.

Virginia

EPA SLN No. VT 82 0020. Rohm and Haas Co. Registration is for Blazer 2S Herbicide, to be used on soybeans to control postemergence weeds. May 4, 1982.

EPA SLN No. VA 82 0021. Fairfield American Corp. Registration is for Permanone Tick Repellent, to be used as a clothing treatment for personal protection from ticks, chiggers, and mosquitoes. May 6, 1982.

EPA SLN No. VA 82 0022. Philips Roxane, Inc. Registration is for Anchor Permectrim 25% WP Long Lasting Barn and Premise Fly Spray, to be used in livestock and poultry premises to control house flies, face flies, stable flies, and false stable flies. May 14, 1982.

EPA SLN No. VA 82 0023. Philips Roxane, Inc. Registration is for Bioceutic Overtime 25% WP Long Acting Livestock Premise Insecticide, to be used on livestock and poultry premises to control house flies, face flies, stable flies, and false stable flies. May 14, 1982.

Washington

EPA SLN No. WA 82 0025. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used on winter wheat for suppression and control of volunteer rye and downy brome. May 3, 1982.

EPA SLN No. WA 82 0026. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used on alfalfa and clover for desiccation of ryegrass, bluegrass, downy brome, dog fennel, chickweed, and tansy mustard. May 3, 1982.

EPA SLN No. WA 82 0027. ICI Americas Inc. Registration is for a tank mix of Gramoxone Paraquat Herbicide and Sencor 50% WP, to be used on wheat in wheat-fallow-wheat rotation to control weeds. May 3, 1982.

EPA SLN No. WA 82 0028. ICI Americas Inc. Registration is for a tank mix of Gramoxone Paraquat Herbicide and Sencor 4 FL, to be used on wheat in wheat-fallow-wheat rotation to control weeds. May 3, 1982.

EPA SLN No. WA 82 0029. ICI Americas Inc. Registration is for a tank mix of Gramoxone Paraquat Herbicide and Sencor DF or Sencor 75% Sprayule, to be used on wheat in wheat-fallow-wheat rotation to control weeds. May 3, 1982.

EPA SLN No. WA 82 0036. Velsicol Chemical Corp. Registration is for Ramik Brown, to be used in conifer regeneration management for control of meadow voles. May 7, 1982.

EPA SLN No. WA 82 0037. E.I. du Pont De Nemours and Co. Registration is for Du Pont Benlate Fungicide, to be used on *Brassica* crops to control seed-borne blackleg. May 14, 1982.

EPA SLN No. WA 82 0038. Pfizer Inc. Registration is for Mycoshield Brand of Agricultural Terramycin, to be used on pears to control fire blight. May 10, 1982.

EPA SLN No. WA 82 0039. FMC Corp. Registration is for Dimethoate 267, to be used on cherries to control the cherry fruit fly. May 12, 1982.

EPA SLN No. WA 82 0040. T.H. Agriculture and Nutrition Co., Inc. Registration is for De-Fend E-267 Insecticide to be used on cherries to control the western cherry fruit fly. May 14, 1982.

EPA SLN No. WA 82 0041. FMC Corp. Registration is for Furadan 4 FL, to be used on grapes to control the black vine weevil. May 28, 1982.

West Virginia

EPA SLN No. WV 82 0003. E.I. du Pont de Nemours and Co. Registration is for Du Pont Sinbar Weed Killer, to be used on alfalfa to control weeds. May 6, 1982.

EPA SLN No. WV 82 0004. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used on alfalfa for weed control between cuttings. May 25, 1982.

EPA SLN No. WV 82 0005. Bell Laboratories, Inc. Registration is for P.C.Q. Rat and Mouse Bait, to be used on orchards and groves to control meadow and pine mice and voles. May 12, 1982.

EPA SLN No. WV 82 0006. FMC Corp. Registration is for Furadan 10 GR, to be used on sweet corn to control flea beetles, northern corn rootworms, and nematodes. May 18, 1982.

Wyoming

EPA SLN No. WY 82 0004. Diamond Shamrock Corp. Registration is for Ectrin Insecticide 10 Water Dispersible Liquid, to be used as a livestock and premise spray to control flies, lice, and ticks. May 5, 1982.

(Sec. 24, as amended 92 Stat. 835; (7 U.S.C. 136))

Dated: November 10, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-32389 Filed 11-30-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-53043; TSH-FRL 2254-3]

Toxic Substances; Premanufacture Notices; Monthly Status Report for October 1982

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** at the beginning of each month reporting the premanufacture notices (PMNs) pending before the Agency and the PMNs for which the review period has expired since publication of the last monthly summary. This is the report for October 1982.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on the specific chemical substance. Nonconfidential portions of the PMNs may be seen in Rm. E-106 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments are to be identified with the document control number "[OPTS-53043]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street, SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Kirk Maconaughey, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. 208, 401 M Street, SW., Washington, DC 20460 (202-392-3746).

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during October; (b) PMNs received previously and still under review at the end of October; (c) PMNs for which the notice review period has ended during October; (d) chemical substances for which EPA has received a notice of commencement to manufacture during October; and (e) PMNs for which the review period has been suspended. Therefore, the October 1982 PMN Status Report is being published.

Dated: November 22, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

Premanufacture Notices Monthly Status Report, October 1982

I. 85 Premanufacture Notices Received During the Month

PMN No.	Identity and generic name	FR citation	Expiration date
83-2	Polymer of styrene, substituted sytrene, and substituted methacrylate salt	47 FR 46371 (10/18/82)	Dec. 29, 1982.
83-3	Disubstituted propane	47 FR 46371 (10/18/82)	Do.
83-4	Substituted propane	47 FR 46371 (10/18/82)	Do.
83-5	Substituted alkanoic acid ester	47 FR 46371 (10/18/82)	Do.
83-6	Substituted lactam	47 FR 46371 (10/18/82)	Do.
83-7	Substituted lactam	47 FR 46372 (10/18/82)	Do.
83-8	Substituted alkylsulfonic acid	47 FR 46372 (10/18/82)	Jan. 1, 1983.
83-9	Substituted alkyl polysulfide	47 FR 46372 (10/18/82)	Do.
83-10	Substituted urea	47 FR 46372 (10/18/82)	Do.
83-11	Oxirane[(Phenyl methoxy)methyl]	47 FR 46372 (10/18/82)	Do.
83-12	2,7-Naphthalenedisulfonic acid, 4-amino-3-[[4-[[4-[(2,4-diamino-5-methyl phenyl) azo]phenyl]substituted]phenyl]azo]-5-hydroxy-6-(substituted phenyl)azo-, sodium salt.	47 FR 46372 (10/18/82)	Jan. 2, 1983.
83-13	Amine modified dimethylpolysiloxane	47 FR 46372 (10/18/82)	Do.
83-14	Metal salt of sulfur analog of hydroxy-alkyl carbonic acid	47 FR 46372 (10/18/82)	Do.
83-15	Polymer of methacrylic acid derivatives, a substituted alkane and vinyl-aromatic compound	47 FR 46372 (10/18/82)	Do.
83-16	Polymer of acrylate and methacylate monomers and vinyl aromatic compounds	47 FR 46372 (10/18/82)	Do.
83-17	Fattty acids, substituted aromatic esters, alkali metal salts	47 FR 46372 (10/18/82)	Do.
83-18	Di (disubstitutednaphthyl) poly-heterocycle	47 FR 46372 (10/18/82)	Do.
83-19	Substituted benzoic acid	47 FR 46373 (10/18/82)	Do.
83-20	Substituted phenoxy toluene	47 FR 46373 (10/18/82)	Do.
83-21	Trisubstituted azo naphthol disulfonic acid	47 FR 46373 (10/18/82)	Jan. 3, 1983.
83-22	Pentasubstituted pentanamide	47 FR 46373 (10/18/82)	Do.
83-23	Substituted phenol	47 FR 46373 (10/18/82)	Jan. 4, 1983.
83-24	Substituted pyridine	47 FR 46373 (10/18/82)	Do.
83-25	Substituted pyridine	47 FR 46373 (10/18/82)	Do.
83-26	Antimony thioantimonate	47 FR 47067 (10/22/82)	Jan. 5, 1983.
83-27	Tetra (oxy-1,2-ethanediyl), alfa-(carboxymethyl)-omega-hydroxy-C_{16}-$_{18}$ alkyl ethers	47 FR 47067 (10/22/82)	Do.
83-28	Oxiranemethanamine, N-[3-(oxiranylmethoxy) phenyl]-N-(oxiranylmethyl)	47 FR 47067 (10/22/82)	Jan. 9, 1983.
83-29	Alkyldiarylphosphine	47 FR 47067 (10/22/82)	Do.
83-30	Disubstituted naphthalene	47 FR 47067 (10/22/82)	Do.
83-31	Amine acid salt	47 FR 47067 (10/22/82)	Jan. 10, 1983.
83-32	Modified polyester polyurethane from substituted alkanediols, alkanedioic acid and a diisocyanate	47 FR 47067 (10/22/82)	Do.
83-33	1,2,3-propanetricarboxylic acid; 2 hydroxy, esters with high boiling C_{8}-C_{10} alkane hydroformylation products.	47 FR 46067 (10/22/82)	Do.
83-34	Fatty acids, linseed oil glycidyl	47 FR 46067 (10/22/82	Do.
83-35	Sulfophenylazonaphthyl dye	47 FR 47067 (10/22-82)	Do.
83-36	Acrylated alkoxylated aliphatic glycol	47 FR 47068 (10/22/82)	Do.
83-37	Acrylated alkoxylated aliphatic glycol	47 FR 47068 (10/22/82)	Do.
83-38	Sulfophenylazonaphthyl dye	47 FR 47068 (10/22/82)	Do.
83-39	Polyalkyl substituted unsaturated bicyclic tertiary alcohol	47 FR 47068 (10/22/82)	Jan. 11, 1983.
83-40	Polyalkyl cycloalkenone	47 FR 47068 (10/22/82)	Do.
83-41	Polyalkyl substituted unsaturated bicyclic ketone	47 FR 47068 (10/22/82)	Do.
83-42	Polyalkyl substituted unsaturated bicyclic keto diol, alkanoic acid ester	47 FR 47068(10/22/82)	Do.
83-43	Polyalkyl unsaturated tricyclic diketone	47 FR 47068 (10/22/82)	Do.
83-44	Polymer of 2-propenoic acid, 2-methyl-, 2-[[(perfluoroalkyl) sulfonyl]methyl]amino]ethyl ester with butyl methacrylate and lauryl methacrylate.	47 FR 47068 (10/22/82)	Do.
83-45	Propionic acid, zirconium salt.	47 FR 49072 (10/29/82)	Jan. 12, 1983.
83-46	Not a PMN under Section 5 of TSCA		
83-47	Polymer of acrylic acid and acrylic esters	47 FR 49073 (10/29/82)	Do.
83-48	Polymer of aliphatic and aromatic diacids, ester and an aliphatic diol	47 FR 39073 (10/29/82)	Do.
83-49	Substituted pyridine	47 FR 49073 (10/29/82)	Do.
83-50	Polymer of: isophorone diisocyanate, 2-hydroxy ethyl acrylate, silicone fluid	47 FR 49073 (10/29/82)	Jan. 15,1983.
83-51	Alkoxylated alkyl amine	47 FR 49073 (10/29/82)	Do.
83-52	Reaction product of N, N' 2-tris (6-isocyanatohexyl) imidodicarbinic diamide with 3-(trimethoxzysilyl)-1-propanethiol.	47 FR 49073 (10/29/82)	Do.
83-53	Cobalt complex of substituted phenolazophenylacetacetamide	47 FR 49073 (10/29/82)	Jan. 16, 1983
83-54	Iron complex of substituted phenolazoresorcinol	47 FR 49073 (10/29/82)	Do.
83-55	Substituted alkanediol	47 FR 49073 (10/29/82	Do.
83-56	Substituted acetoxyhexahydroindene	47 FR 49073 (10/29/82)	Jan. 17, 1983.
83-57	Polymer of isophorone diisocyanate, polyhydroxyalkane, and an alkyl alkanoate	47 FR 49073 (10/29/82)	Do.
83-58	Bis(((substituted pyrazolyl)azo) substituted phenol)metallate and bis(((substituted pyrazol)ylazo substituted phenol) metallate, inorganic salts.	47 FR 49073 (10/29/82)	Do.
83-59	Acrylic acid, polymer with vinyl acetate, acrylate esters and substituted ethylene	47 FR 49074 (10/29/82)	Do.
83-60	Metal complex of methyl-substituted-((substituted-hydroxyphenyl)azo)-oxo-dihydro-1H-pyrazole and substituted-((naphthyl)azo)-2-naphthol, and metal complex of methyl-substituted-((substituted-hydroxyphenyl)azo)-oxo-dihydro-1H-pyrazole and substituteed-((naphthyl)azo)-2-naphthol, inorganic salts.	47 FR 49074 (10/29/82)	Do.
83-61	Disubstituted benzothiazole	47 FR 49074 (10/29/82)	Jan. 18, 1983.
83-62	Distributed benzothiazole salt	47 FR 49074 (10/28/82)	Do.
83-63	Succinate ester amide	47 FR 50338 (11/5/82)	Jan. 19, 1983.
83-64	Oxo alcohol (high boilers), ethoxylated alcohol ester of citric acid	47 FR 50338 (11/5/82)	Do.
83-65	Polymer of disubstituted propenoates	47 FR 50338 (11/5/82)	Do.
83-66	Polymer of disubstituted propenoates	47 FR 50338 (11/5/82)	Do.
83-67	Substituted thionocarbamate	47 FR 50338 (11/5/82)	Do.
83-68	Alkylated isopropylbenzene	47 FR 50339 (11/5/82)	Do.
83-69	Mixed C_{21} dicarboxylic amino alkyl amines	47 FR 50339 (11/5/82)	Jan. 22, 1983.
83-70	Benzenedicarboxylic acid saturated mixed glycols copolyester	47 FR 50339 (11/5/82)	Do.
83-71	2-propenoic acid, 2 methyl-, octahydro-2,5-methane-2H-indeneone[1,2-(b)]oxiren-3(or 4)-yl ester	47 FR 50339 (11/5/82)	Do.
83-72	Benzoquinolinyl-sulfoindenedione	47 FR 50339 (11/5/82)	Jan. 23, 1983.
83-73	Polymer from PMDA and diamines	47 FR 50339 (11/5/82)	Jan. 24, 1983.
83-74	Polymer of styrene, alkyl acrylates and substituted alkyl methacrylates	47 FR 50339 (11/5/82)	Jan. 23, 1983.
83-75	Sodium 2-substituted propanoate	47 FR 50339 (11/15/82)	Jan. 24, 1983.
83-76	Incomplete		
83-77	Bis(((substituted propanyl)azo) substituted phenol)metallate, plus bis(((substituted propanyl)azo)substituted phenol)metallate, inorganic salts.	47 FR 52220 (11/19/82)	Jan. 26, 1983.
83-78	Metal complex of ((substituted phenyl)azo) substituted phenol and ((aryl)azo) substituted phenol plus metal complex of ((substituted phenyl)azo)substituted phenol and ((aryl)azo)substitued phenol, inorganic salts.	47 FR 52220 (11/19/82)	Do.

I. 85 Premanufacture Notices Received During the Month—Continued

PMN No.	Identity and generic name	FR citation	Expiration date
83-79	Metal complex of ((substituted phenyl)azo)naphthol and ((substituted naphthyl)azo naphthol plus metal complex of ((substituted phenyl)azo)naphthol and ((substituted naphthyl)azonaphthol, inorganic salts.	47 FR 52221 (11/19/82)	Do.
83-80	Bis(((aryl)azo)substituted phenol) metallate plus bis(((aryl)azo)substituted phenol)metallate, inorganic salts.	47 FR 52221 (11/19/82)	Do.
83-81	Metal complex of ((substituted phenyl)azo)substituted phenol and ((substituted pyrazolyl)azo)-substituted-benzenesulfonic acid plus metal complex of ((substituted phenyl)azo)-substituted phenol and ((substituted pyrazolyl)azo-substituted-benzenesulfonic acid, inorganic salts.	47 FR 52221 (11/19/82)	Do.
83-82	Bis(((substituted pyrazolyl)azo)benzoic acid)metallate plus bis(((substituted pyrazolyl)azo)benzonoic acid)metallate, inorganic salts.	47 FR 52221 (11/19/82)	Do.
83-83	Bis(((substituted aryl)azo)-substituted phenol)metallate and bis(((substituted aryl)azo)-substituted phenol)metallate, inorganic salts.	47 FR 52221 (11/19/82)	Do.
83-84	Bis(((aryl)azo)-substituted phenol)metallate and bisL(((aryl)azo-substituted phenol)metallate, inorganic salts.	47 FR 52221 (11/19/82)	Do.
83-85	Bis(((substituted aryl)azo)-substituted phenol)metallate, and bis(((substituted aryl)azo)-substituted phenol)metallate, inorganic salts.	47 FR 52221 (11/19/82)	Do.
83-86	Mercaptoalkylsilane	47 FR 52221 (11/19/82)	Do.
83-87	Siloxanes and silicones, dimethyl, methyl(mercapto-alkyl), trimethyl end blocked	47 FR 52221 (11/19/82)	Do.

II. 69 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	Identity and generic name	FR citation	Expiration date
82-641	Substituted ammonium sulfonate	47 FR 39885 (9/10/82)	Nov. 29, 1982.
82-642	Organophosphorus compound	47 FR 41165 (9/17/82)	Dec. 1, 1982
82-643	Organophosphorus compound	47 FR 41166 (9/17/82)	Do.
82-644	Alkylene ether diol	47 FR 41166 (9/17/82)	Do.
82-645	Condensate of formaldehyde and an organic base	47 FR 41166 (9/17/82)	Do.
82-646	Cobalt complex-[hydroxynitro-phenyl-azo)-(substituted) phenyl pyrazolones], sodium salt	47 FR 41166 (9/17/82)	Do.
82-647	[(Benzoquinolinyl)-(imidazolyl-methylene)]-indenedione derivative, mixed salt	47 FR 41166 (9/17/82)	Do.
82-648	[(Benzoquinolinyl)-(imidazolyl-methylene)]-indenedione derivative, mixed salt	47 FR 41166 (9/17/82)	Do.
82-649	Benzene Dicarboxylic acid polyester	47 FR 41166 (9/17/82)	Do.
82-650	Pentasubstituted pentanamide	47 FR 41166 (9/17/82)	Do.
82-651	Metal complexed substituted aromatic salt	47 FR 41166 (9/17/82)	Dec. 5, 1982
82-652	Metal complexed substituted aromatic salt	47 FR 41166 (9/17/82)	Do.
82-653	Metal complexed substituted aromatic salt	47 FR 41166 (9/17/82)	Do.
82-654	Mixed complexed substituted aromatic salt	47 FR 41166 (9/17/82)	Do.
82-655	Substituted acrylamide copolymer	47 FR 41166 (9/17/82)	Do.
82-656	Polymer of disubstituted benzenes and disubstituted alkane	47 FR 41167 (9/17/82)	Dec. 7, 1982
82-657	Sulfonated vinylic polymer	47 FR 41167 (9/17/82)	Do.
82-658	Substituted pyrazine salt	47 FR 42152 (9/24/82)	Dec. 8, 1982.
82-659	Substituted succinic anhydride	47 FR 42152 (9/24/82)	Dec. 11, 1982.
82-660	Polycarboxylic anhydride polymer	47 FR 42152 (9/24/82)	Do.
82-661	Modified polyurethane	47 FR 42152 (9/24/82)	Do.
82-662	Modified polyurethane	47 FR 42152 (9/24/82)	Do.
82-663	Modified diol	47 FR 42152 (9/24/82)	Do.
82-664	4-hydroxy-N-substituted-3-nitro-benzenesulfonamide	47 FR 42152 (9/24/82)	Do.
82-665	3-amino-4-hydroxy-N-substituted benzenusulfonamide	47 FR 42152 (9/24/82)	Do.
82-666	Oleic, linoleic and palmitic acids	47 FR 42152 (9/24/82)	Dec. 12, 1982.
82-667	Cyclic aldehyde	47 FR 42152 (9/24/82)	Do.
82-668	Poly(oxy-1,2-ethanediyl) alpha-C_{12}-C_{18} alkyloxy-omega methoxy	47 FR 42152 (9/24/82)	Do.
82-669	Unsaturated polyester with halogenated glycol	47 FR 42153 (9/24/82)	Dec. 13, 1982.
82-670	Oxirane polymer of isocyanic acid ester	47 FR 42153 (9/24/82)	Do.
82-671	Vinyl chloride-ethylene copolymer	47 FR 42153 (9/24/82)	Dec. 14, 1982.
82-672	Substituted polyethyleneamine polyisobutenylsuccinimide	47 FR 42153 (9/24/82)	Do.
82-673	Substituted polyethyleneamine polyisobutenylsuccinimide	47 FR 42153 (9/24/82)	Do.
82-674	Hexa-aquomagnesium (II) bis(2-carboxylatomono-peroxy-benzoic acid)	47 FR 42153 (9/24/82)	Do.
82-675	Isocyanate terminated polyester-ether polyurethane prepolymer	47 FR 43160 (9/30/82)	Dec. 15, 1982.
82-676	Heterocyclic, aromatic methane	47 FR 43161 (9/30/82)	Do.
82-677	Chromium complex of a substituted phenolazophenylpyrazolone	47 FR 43161 (9/30/82)	Do.
82-678	Chlorinated aromatic azo anthraquinone pigment	47 FR 43161 (9/30/82)	Do.
82-679	Chlorinated aromatic azo pigment	47 FR 43161 (9/30/82)	Dec. 18, 1982.
82-680	2-propenoic acid, 2-hydroxyethyl ester, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol-hydro-w-hydroxy poly(oxy-1,2-ethaneidyl), 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethy-cyclo-hexane and 2 oxepanone.	47 FR 43161 (9/30/82)	Do.
82-681	Chromium complex of a sulfonaphthylazophenylpyrazolone	47 FR 43161 (9/30/82)	Dec. 19, 1982
82-682	Polyester from an alkanedioic acid, carbomonocyclic anhydride and substituted alkane diols	47 FR 43161 (9/30/82)	Do.
82-683	Halogenated ketone	47 FR 43161 (9/30/82)	Do.
82-684	Halogenated hydrocarbon	47 FR 43161 (9/30/82)	Do.
82-685	Diethylene glycol ether	47 FR 43161 (9/30/82)	Do.
82-686	Disubstituted-1-naphthol	47 FR 43161 (9/30/82)	Do.
82-687	Methacrylate copolymer	47 FR 43161 (9/30/82)	Do.
82-688	Acrylate copolymer solution	47 FR 43162 (9/30/82)	Do.
82-689	Alkyl amino ethoxy ethanol	47 FR 43162 (9/30/82)	Dec. 20, 1982.
82-690	Hydroxy(methylsulfonyl)phenyl] azo substituted heteromonocycle, metal complex (2:1), compd. alkanamine (1:1).	47 FR 44608 (10/8/82)	Dec. 21, 1982.
82-691	Ethylene interpolymer	47 FR 44608 (10/8/82)	Dec. 22, 1982.
82-692	Substituted glycine complex	47 FR 44608 (10/8/82)	Do.
82-693	1,1-dimethylethyl peroxyester	47 FR 44608 (10/8/82)	Do.
82-694	Trialkyl dioxane	47 FR 44608 (10/8/82)	Dec. 25, 1982.
82-695	Alkyl bicyclononane	47 FR 44608 (10/8/82)	Do.
82-696	Alkyl spirononane	47 FR 44608 (10/8/82)	Do.
82-697	Alkyl spirodecane	47 FR 44609 (10/8/82)	Do.
82-698	Aminosulfur compound	47 FR 44609 (10/8/82)	Do.
82-699	Unsaturated polyester	47 FR 44609 (10/8/82)	Do.
82-700	Alkyd resin	47 FR 44609 (10/8/82)	Do.
82-701	Aromatic disazo dye	47 FR 44609 (10/8/82)	Dec. 26, 1982.
82-702	Metal complexed, substituted aromatic azo compound	47 FR 44609 (10/8/82)	Do.

II. 69 Premanufacture Notices Received Previously and Still Under Review at the End of the Month—Continued

PMN No.	Identity and generic name	FR citation	Expiration date
82-703	Reaction product of coco glycerides, sulfur, and polyalkylene-substituted phenol condensation product with aldehyde and mixed amines.	47 FR 44609 (10/8/82)	Do.
82-704	Reaction product of carboxylic acid, sulfur, and polyalkylene-substituted phenol condensation product with aldehyde and mixed amines.	47 FR 44609 (10/8/82)	Do.
82-705	Epoxy urethane	47 FR 44609 (10/8/82)	Do.
82-706	Sulfophenylazonaphthyl dye	47 FR 44609 (10/8/82)	Do.
82-707	Neutralized reaction product of an alkanedioic acid and substituted alkanes	47 FR 44609 (10/8/82)	Do.
82-708	Ester of diazo-naphthoquinone	47 FR 44609 (10/8/82)	Dec. 27, 1982
82-709	Dibasic acid esters of monohydric alcohols	47 FR 44609 (10/8/82)	Do.

III. 56 Premanufacture Notices for Which the Notice Review Period Has Ended During the Month. (Expiration of the Notice Review Period Does Not Signify That the Chemical Had Been Added to the Inventory)

PMN No.	Identity and generic name	FR citation	Expiration date
82-482	Acetal of polyvinyl alcohol	47 FR 31036 (7/16/82)	Oct. 4, 1982.
82-483	Polymer of acrylic acid and acrylic esters	47 FR 31063 (7/16/82)	Do.
82-484	Phosphorodithioic acid, dialkyl	47 FR 31063 (7/16/82)	Do.
82-485	Chlorotriazine modified copper phthalocyanine sodium salt	47 FR 31063 (7/16/82)	Do.
82-486	Alkyl phosphate ester	47 FR 31063 (7/16/82)	Oct. 5, 1982.
82-487	Copolymer of an alkenoic acid derivative, substituted and unsubstituted vinyl aromatic compounds and a substituted alkene.	47 FR 31063 (7/16/82)	Do.
82-488	Found to be invalid.		
82-489	Sulfurized di-carboxylic polyglycol ester	47 FR 31957 (7/23/82)	Oct. 10, 1982.
82-490	Found to be on the Inventory.		
82-491	Polyester polymer	47 FR 31957 (7/23/82)	Do.
82-492	Substituted dithoic acid salt	47 FR 31957 (7/23/82)	Oct. 11, 1982.
82-493	Tetrasubstituted benzisoxazole	47 FR 31957 (7/23/82)	Do.
82-494	2,2-dimethyl-1, 3-propanediol, polymer with 1,6-hexanediol, 3-dihydro-1, 3-dioxo-5-isobenzofurancarboxylic acid, 1, 3-benzenedicarboxylic acid, 1,4-benzenecarboxylic acid and 1,6-hexanedioic acid.	47 FR 33234 (7/30/82)	Oct. 14, 1982.
82-495	Substituted naphthalene	47 FR 33234 (7/30/82)	Do.
82-496	Rosin ester resin	47 FR 33235 (7/30/82)	Do.
82-497	Rosin ester resin	47 FR 33235 (7/30/82)	Do.
82-498	Rosin ester resin	47 FR 33235 (7/30/82)	Do.
82-499	Rosin ester resin	47 FR 33235 (7/30/82)	Do.
82-500	Alkyl cycloalkanol alkanoate	47 FR 33235 (7/30/82)	Do.
82-501	Substituted pentenedioate	47 FR 33235 (7/30/82)	Oct. 17, 1982.
82-502	Substituted diazo compound	47 FR 33235 (7/30/82)	Do.
82-503	Water base vinyl acrylic copolymer	47 FR 33235 (7/30/82)	Do.
82-504	Polymer of 2-methyl-2-propenoic acid, 1-dodecyl ester; 2-methyl-2-propenoic acid, methyl ester; 2-methyl-2-propenoic acid, 1-butyl ester.	47 FR 33235 (7/30/82)	Oct. 18, 1982.
82-505	4,4'-bis-(2,6-dimethylphenol) sulfone	47 FR 33235 (7/30/82)	Do.
82-506	Alkoxy ester of N-methylacetamide	47 FR 33235 (7/30/82)	Do.
82-507	Substituted isothiocyanate	47 FR 33235 (7/30/82)	Do.
82-508	Bis alkoxylated aluminum acetoacetic ester chelate	47 FR 33235 (7/30/82)	Oct. 19, 1982.
82-509	Alkane diol	47 FR 33235 (7/30/82)	Do.
82-510	Polyether urethane	47 FR 33236 (7/30/82)	Do.
82-511	Found to be on the Inventory.		
82-512	Phenyl derivative of an ethyl methacrylate	47 FR 33236 (7/30/82)	Do.
82-513	Alkyl diol, toluene diisocyanate, alkene ester, adipic acid resin	47 FR 33236 (7/30/82)	Do.
82-514	Substituted cycloaliphatic hydroxyalkyl ether ester	47 FR 33236 (7/30/82)	Do.
82-515	Acrylate ester of acrylic polymer	47 FR 33236 (7/30/82)	Do.
82-516	Aromatic amine derivative	47 FR 33236 (7/30/82)	Do.
82-517	Polysulfide polymer with formal and alcohol moeity	47 FR 34187 (8/6/82)	Oct. 20, 1982.
82-518	Metal complex substitued aromatic	47 FR 34187 (8/6/82)	Do.
82-519	2-(6-chloro-2-benzothiazolylazo)-5-[N-(2-cyanoethyl)-N-(n-pentyl)amino]-acetanilide	47 FR 34187 (8/6/82)	Do.
82-520	2-(3-hydroxy-2-quinolinyl)-2, 3-dihydro-1, 3-dioxo-1H-indene-5-carboxylic acid methyl (ethyl) ester	47 FR 34187 (8/6/82)	Do.
82-521	4-(2, 6-dicholoro-4-nitrophenylazo)-[N-(2-cyanoethyl)-N-(2-phenoxyethyl)amino]benzene	47 FR 34187 (8/6/82)	Do.
82-522	Diureido silane ester	47 FR 34188 (8/6/82)	Oct. 24, 1982.
82-523	Polyaryl sulfone ether	47 FR 34188 (8/6/82)	Do.
82-524	Salt of polyhydroxy stearic acid and polyethyleneimine	47 FR 34188 (8/6/82)	Do.
82-525	Polyester modified epoxy resin	47 FR 34188 (8/6/82)	Do.
82-526	Polyester modified epoxy resin	47 FR 34188 (8/6/82)	Do.
82-527	Titanium (4+) mixed alcohol complex	47 FR 34188 (8/6/82)	Do.
82-528	Polymer of aromatic aldehyde and phenolic compound	47 FR 34188 (8/6/82)	Do.
82-529	Aliphatic acid ester salt	47 FR 34188 (8/6/82)	Do.
82-530	Acidic aliphatic ester	47 FR 34188 (8/6/82)	Do.
82-531	Organophosphorus compound	47 FR 34188 (8/6/82)	Do.
82-532	Organophosohorus compound	47 FR 34188 (8/6/82)	Oct. 25, 1982.
82-533	Polyhydroxylated diisocyanate	47 FR 34188 (8/6/82)	Do.
82-534	Polyether-urethane	47 FR 34188 (8/6/82)	Do.
82-535	Modified phenol formaldehyde substituted alkylamine	47 FR 34189 (8/6/82)	Do.
82-536	Alkyl ester of polethylene glycol	47 FR 35322 (8/13/82)	Oct. 27, 1982.
82-537	Amine/amine salt of dicarboxylic acid	47 FR 35333 (8/13/82)	Do.
82-538	Modified polymer of styrene and substituted alkyl methacrylates	47 FR 35333 (8/13/82)	Oct. 31, 1982.
82-539	Terephthalate polyester transesterification product with dialkylene glycols and glycerine	47 FR 35333 (8/13/82)	Do.
82-540	Polymer of butyl 2-methyl-2-propenoate, ethenyl benzene, N-[(2-methylpropoxy)methyl]-2-propenamide.	47 FR 35333 (8/13/82)	Do.

IV. 53 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Chemical Identification	FR citation	Date of commencement
80-295	Disubstituted nitrobenzene	45 FR 78791 (11/26/80)	May 5, 1981.
80-296	Ethyl, substituted, ((sulfopropyl)heteropolycyclic)methyl)alkenyl heteropolycycle	45 FR 78791 (11/26/80)	Aug. 17, 1981.
80-297	Ethyl, substituted, methylhetero-polycycle tosylate	45 FR 78791 (11/26/80)	Aug. 4, 1981.
80-298	Substituted, methylheteropolycycle	45 FR 78791 (11/26/80)	June 29, 1981.
80-299	Disubstituted benzene	45 FR 78791 (11/26/80)	Mar. 18, 1981.
80-300	Bis(nitro, substitutedphenyl) substituent	45 FR 78791 (11/26/80)	June 1, 1981.
81-71	Alkenylpyrolidinedione	46 FR 19075 (3/27/81)	Oct. 8, 1982.
81-295	Acrylonitrile polymer with alkenoic acid alkyl esters, 2-propenoic acid and 2-propenoic acid, 2-methyl.	46 FR 36241 (7/14/81)	Nov. 1, 1982.
81-298	Polymer of styrene alkyl acrylates, alkyl methacrylate, methacrylic acid with substituted acrylamide	46 FR 36243 (7/14/81)	Oct. 1, 1982.
81-342	Benzene dicarboxylic acid, disubstituted	46 FR 39890 (8/5/81)	September and October 1982.
81-343	Benzene dicarboxylic acid, disubstituted	46 FR 39891 (8/5/81)	September and October 1982.
81-383	Sodium salt of the sulfonated reaction products of 1-amino-4-(phenylamino)-9,10-dihydro-9,10-dioxo-2-((3' propanesulfonic acid)oxo) anthracene.	46 FR 42330 (8/20/81)	Jan. 25, 1982.
81-384	1-amino-4-(ohenylamino)-9,10-dihydro-9,10-dioxo-2-((3' propanesulfonic acid)oxo)anthracene, sodium salt.	46 FR 42331 (8/20/81)	Dec. 12, 1981.
81-496	3-hydroxy-1-propanesulfonic acid	46 FR 49946 (10/8/81)	Feb. 2, 1982.
81-543	3-hydroxy-1-propanesulfonic acid, monosodium salt	46 FR 54972 (11/4/81)	Apr. 4, 1982.
81-574	Polyurethane thermoplastics resin	46 FR 56651 (11/18/81)	Sept. 13, 1982.
81-662	Substituted propionamide	47 FR 1021 (1/8/82)	Aug. 31, 1982.
82-30	Polysubstituted alkyl polyamine	47 FR 3592 (1/26/82)	June 11, 1982.
82-39	Polymer of a diisocyanate, polyglycol and polysubstituted alkyl amine	47 FR 4145 (1/28/82)	June 24, 1982.
82-136	Disubstituted heteromonocycle	47 FR 8842 (3/2/82)	Aug. 18, 1982.
82-149	Trisubstituted phenol	47 FR 10075 (3/9/82)	Aug. 4, 1982.
82-214	Disubstituted benzene	47 FR 13038 (3/26/82)	Nov. 1, 1982.
82-234	Modified aromatic diisocyanate with aliphatic triol	47 FR 15407 (4/9/82)	Oct. 8, 1982.
82-252	Isocyanate terminated polyester polyurethane prepolymer	47 FR 16404 (4/16/82)	Oct. 4, 1982.
82-254	Modified polymer of styrene, alkenoic acid, alkenoic esters and substituted alkenoic esters	47 FR 16404 (4/16/82)	Oct. 25, 1982.
82-260	Disubstituted benzene	47 FR 16404 (4/16/82)	Aug. 1, 1982.
82-292	Substituted trialkyl silane	47 FR 18653 (4/30/82)	Oct. 2, 1982.
82-296	9,10-anthracene sulfonic acid, sodium salt	47 FR 18653 (4/30/82)	Sept. 29, 1982.
82-306	Disubstituted benzenamine	47 FR 19781 (5/7/82)	Sept. 2, 1982.
82-308	Substituted-benzotriazole	47 FR 19782 (5/7/82)	Oct. 7, 1982.
82-334	5-chloro-4-nitro-2-substituted aryloxydimethylaniline	47 FR 20853 (5/14/82)	Nov. 12, 1982.
82-335	5-chloro-2-substituted aryloxy-aniline	47 FR 20853 (5/14/82)	Do.
82-336	2-chloro-4(N,N-dimethylamino)-5-substituted aryloxydiazonium tetrafluoroborate	47 FR 20854 (5/14/82)	Do.
82-337	5-chloro-2-substituted aryloxydi-methylaniline	47 FR 20854 (5/14/82)	Do.
82-356	Polymer of 1,4-benzenedicarboxylic acid dimethyl ester; dihydroxyalkane; 1,6-hexanediol; and alpha hydro-omega hydroxy poly (oxy-1,4-butanediyl).	47 FR 22215 (5/21/82)	November 1982.
82-375	Formaldehyde polymer with 2-furanmethanol and methxyloxirane capped	47 FR 23554 (5/28/82)	Oct. 11, 1982.
82-382	Polymer of alkenoic acid alkyl esters, 2-propenoic acid, and 2-propenoic acid, 2-methyl	47 FR 25400 (6/11//82)	Nov. 1, 1982.
82-383	Brominated xylenol	47 FR 25400 (6/11/82)	Nov. 12, 1982.
82-384	Bis[bromoxylenol]sulfide	47 FR 25400 (6/11/82)	Do.
82-385	Bis[xylenol]sulfide	47 FR 25400 (6/11//82)	Do.
82-408	Tetra tosylate porphine	47 FR 25403 (6/11/82)	Sept. 11, 1982.
82-439	Sulphonated phenyl arsine dibromide	47 FR 27610 (6/25/82)	Sept. 19, 1982.
82-452	Benzoxazole oxazolidinone	47 FR 28995 (7/2/82)	Nov. 1, 1982.
82-453	Benzoxazolium salt	47 FR 28995 (7/2/82)	Do.
82-464	2-hydroxy-3-naphthoic acid N-aryl amide	47 FR 30103 (7/12/82)	Nov. 12, 1982.
82-480	Polyol polyacrylate	47 FR 30104 (7/12/82)	Oct. 1, 1982.
82-481	Blocked urethane polymer	47 FR 31063 (7/16/82)	Sept. 30, 1982.
82-486	Alkyl phosphate ester	47 FR 31063 (7/16/82)	Nov. 1, 1982.
82-489	Sulfurized di-carboxylic polyglycol ester	47 FR 31957 (7/23/82)	Nov. 12, 1982.
82-502	Substituted diazo compound	47 FR 33235 (7/30/82)	Oct. 18, 1982.
82-503	Water base vinyl acrylic copolymer	47 FR 33235 (7/30/82)	Do.
82-527	Titanium (4+) mixed alcohol complex	47 FR 34186 (8/6/82)	Oct. 28, 1982.
82-535	Modified phenol formaldehyde substituted alkylamine	47 FR 34189 (8/6/82)	Oct. 26, 1982.

V. 15 Premanufacture Notices For Which the Review Period Has Been Suspended

PMN No.	Identity and generic name	FR citation	Date suspended
80-137	Benzeneamine, 4,4'-methylene bis [*N*-(1-methybutylidene)	45 FR 48243 (7/18/80)	Sept. 22, 1980.
80-138	Benzeneamine, 4,4'-methylene bis [*N*-(1-methybutylidene)	45 FR 48243 (7/18/80)	Do.
80-146	Phosphorodithioic acid *O,O*-di(isohexyl, isoheptyl, isooctyl, isononyl, isodecyl) mixed esters, zinc salt.	45 FR 49153 (7/23/80)	Sept. 17, 1980.
80-147	Phosphorodithioic acid *O,O*-di(isohexyl, isoheptyl, isooctyl, isononyl, isodecyl) mixed esters	45 FR 49153 (7/23/80)	Do.
80-264	Benzeneamine, [*N*-(1-methylhexylidene)-*N*-(1-methyl butylidene)-4,4'-methylene bis]	45 FR 73127 (11/4/80)	Dec. 24, 1980.
81-558	4-hydroxy-3-(5-(2-hydroxysulfonyloxy) ethylsulfonyl)-2-methoxyphenylazo)-7-succinylamino-2-naphthalenesulfonic acid disodium salt.	46 FR 55146 (11/6/81)	Jan. 27, 1982.
81-561	4-[4-[2-(hydroxysulfonyoxy)ethylsulfonyl]-5-methyl-2-methoxyphenylazo]-3-methyl-1-(3-sulfophenyl)-5-pyrazolone disodium salt.	46 FR 55146 (11/6/81)	Do.
81-660	4-hydroxy-3-(2-methoxy-5-methyl-4-(2-(hydroxysulfonyloxy)ethylsulfonyl)phenylazo)-1-naphthalene sulfonic acid disodium salt.	47 FR 1021 (1/8/82)	Mar. 28, 1982.
81-661	4-hydroxy-3-(2-methoxy-5-methyl-4-(2-(hydroxysulfonyloxy)ethylsulfonyl)phenylazo)-6-(3-sulfophenyl)amino-2-naphthalenesulfonic acid trisodium salt.	47 FR 1021 (1/8/82)	Do.
82-60	Zinc, O,O'-bis alkylphosphoro dithioate	47 FR 5932 (2/9/82)	Apr. 15, 1982.
82-387	Phosphorodithioic acid, O,O', secondary butyl and isooctyl mixed esters	47 FR 25401 (6/11/82)	July 30, 1982.
82-388	Phosphorodithioic acid, O,O', secondary butyl and isooctyl mixed esters, zinc salt	47 FR 25401 (6/11/82)	Do.
82-432	Reaction mixture containing: isobornyl acetylacetate, isobornyl acetate and ethylacetylacetate	47 FR 27610 (6/25/82)	July 2, 1982.
82-586	Ethyl ester of tertiary butyl carbomonocyclic acid	47 FR 39242 (9/7/82)	Oct. 18 through 27, 1982.
83-1	Polyhalogenated aromatic alkylated hydrocarbon	47 FR 46371 (10/18/82)	Oct. 22, 1982.

[FR Doc. 82-32706 Filed 11-30-82; 8:45 am]

BILLING CODE 6560-50-M

[PF-297; PH-FRL 2255-3]

Certain Companies; Pesticide, Food, and Feed Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, food, and feed additive petitions relating to establishment and/or amendments of tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities and food items.

ADDRESS: Written comments to the product manager (PM) cited in each specific petition at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Written comments may be submitted while the petitions are pending before the Agency. The comments are to be identified by the document control number "[PF-297]" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each petition at the telephone number provided.

SUPPLEMENTARY INFORMATION: EPA gives notice that Agency has received the following pesticide, food, and feed additive petitions relating to establishment and/or amendments of tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities and food and feed items in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

FAP OH5277. In the **Federal Register** of October 23, 1980 (45 FR 70313), EPA announced that Dow Chemical Co., P.O. Box 1706, Midland, MI 48640, has submitted food additive petition OH5277 proposing to amend 21 CFR 193.85 by establishing a regulation for the combined residues of the insecticide chlorpyrifos (O,O-diethyl O-(3.5.6-trichloro-2-pyridyl) phosphorothioate) and its metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodities corn oil at 160 parts per million (ppm); milling fractions (except flour) of barley, corn, oats, sorghum, and wheat at 20 ppm; and milling fractions of rice at 30 ppm.

Dow has amended the petition by increasing the proposed tolerance levels on milling fractions (except flour) of sorghum and barley to 90 ppm, milling fractions (except flour) of oats to 130 ppm, and million fraction (except flour) of wheat to 30 ppm. (PM 12, Jay Ellenberger, 703-557-2386).

FAP OH5277. Dow Chemical Corp. Proposes to amend 21 CFR 561.98 by establishing a regulation permitting the combined residues of the insecticide chlorpyrifos and its metabolites in or on the animal feed corn soapstock at 40 ppm. (PM 12, Jay Ellenberger, 703-557-2386).

PP OF2356. In the **Federal Register** of July 9, 1982 (45 FR 46202), EPA announced that Mobay Chemical Corp., P.O. Box 4913, Kansas City, MO 64120, had submitted pesticide petition OF2386 proposing to amend 40 CFR 180.320 by establishing a tolerance for the combined residues of the insecticide/bird repellent 3,5-dimethyl-4-(methylthio) phenyl methylcarbamate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity grapes at 10 ppm.

Mobay has amended the petition by increasing the proposed tolerance level on grapes to 50 ppm, and adding the commodities milk at 0.05 ppm and cattle (fat, meat, and meat byproducts) at 0.1 ppm. The proposed analytical method for determining residues is gas chromatographic procedure equipped with a flame photometric detector operating in the sulfur-mode. (PM 16, William Miller, 703-557-2600).

FAP OH5259. In the **Federal Register** of July 9, 1980 (45 FR 46202), EPA announced that Mobay Chemcial Corp., had submitted feed additive petition OH5259 proposing to amend 21 CFR 561.175 by establishing a regulation permitting the combined residues of the above insecticide/bird repellent (OF2356) in or on the feed commodity raisin waste at 50 ppm.

Mobay has amended the petition by increasing the proposed tolerance level or raisin waste to 250 ppm. (PM 16, William Miller, 703-557-2600).

FAP OH5259. Mobay Chemical Corp. Proposes to amend 21 CFR 193.145 by establishing a regulation permitting the combined residues of the above insecticide/bird repellent (OF2356) in or on the commodity grape juice at 125 ppm. (PM 16, William Miller, 703-557-2600).

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136); 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348)).

Dated: November 22, 1982.

Douglas D. Campt,

Director, Registration Division Office of Pesticide Programs.

[FR Doc. 82-32765 Filed 11-30-82; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30069; PH FRL 2255-6]

Pesticides; Glyphosate Registration Applications; Court Judgment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of judgment

SUMMARY: On August 31, 1982, Judge Wangelin, United States District Judge for the Eastern District of Missouri, entered a final judgment in the case of *Monsanto* vs. *Gorsuch*, C.A. #79-0266C(1), which requires that the Environmental Protection Agency establish certain formal procedures to evaluate pesticide registration applications that may relate to certain documents which were disclosed by the Agency. The procedures apply to all applications for registration of pesticides which contain as an active ingredient the chemical glyphosate or any closely similar chemicals as described in the judgment.

FOR FURTHER INFORMATION CONTACT: Thomas E. Adamczyk. Registration Division (TS-767C), Rm 329,CM #2 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1650).

SUPPLEMENTARY INFORMATION: On or about May 7, 1982, an EPA employee released to a Freedom of Information Act requester documents containing imformation on the Monsanto Company's pesticide product Roundup®. The documents were prepared and processed in a manner contrary to required Agency procedures, and contained information improper for release to the requester under the terms of sections 10(d) (1) and 10(g) of the Federal Insecticide, Fungicide, and Rodenticide Act. Because the requester was an attorney who has claimed that the identity of his client is privileged information, the identity of the ultimate recipient of the documents is not known to the court. In light of these facts, the court established a procedure to provide safeguards against improper use of the disclosed materials to Monsanto's detriment. The court's Judgment requires that applications for pesticide products containing active ingredients closely similar to glyphosate (the active ingredient in Roundup®) be formally evaluated to determine whether materials submitted with such applications were developed

independently of the information contained in the disclosed documents. The judgment is set forth in its entirety below.

In the U.S. District Court for the Eastern District of Missouri

Monsanto Company, Plaintiff, v. *Anne M. Gorsuch, Administrator, United States Environmental Protection Agency*, Defendant.

Civil Action.

No. 79-0366-C(1).

Judgment

Upon joint motion of both parties and upon consideration of the memorandum in support thereof and the other pleadings and papers filed in this case, and upon determination that there is no just reason for delay in entry of this Judgment, it is hereby ordered, adjudged and decreed that:

I. The Administrator of the Environmental Protection Agency shall establish procedures to accomplish the following:

(1) Upon entry of this Judgment and return of the herein described documents by this Court, the Adminstrator shall maintain in a secured, damage-proofed repository the actual documents obtained by Defendant and submitted to this Court and the additional documents identified by the parties with the parties' joint motion as possible subjects of the disclosure (hereafter "disclosed documents").

(2) The Administrator shall identify all applications for registrations of pesticide products received after May 7, 1982 which contain glyphosate (N-phosphonomethyl-glycine); or any N-oxide of N-carboxymethyl glyphosate; or any salts, esters, amides, thioacids, thioesters, acid chlorides or combinations thereof, of N-phosphonomethyl-glycine or of any N-oxide of N-carboxymethyl glyphosate (hereafter "covered application").

(3) For each covered application, the Administrator shall determine whether supporting data is submitted in any of the following subject areas: Toxicology, Residue and metabolism, environmental fate in soil.

(4) For each covered application, the Administrator shall submit the confidential statement(s) of formula and any supporting data in the above-identified subject areas to the Scientific Advisory Panel (hereafter "Sap or Panel") established pursuant to 25(d) of FIFRA together with the actual disclosed documents identified in item 1 above.

(5) The Administrator shall provide instructions to the Panel that it review the materials submitted to it in order to determine whether the materials submitted with the covered applications have been developed independently of the disclosed information. EPA shall provide to the Panel copies of the unexpurgated originals from which the disclosed documents were prepared. The applicant or Monsanto may make presentations to the Panel and answer any inquiries put by the Panel, but neither may have access to the other's data or formula information without the other's consent. The Panel may also request any additional information from EPA which it deems appropriate. All deliberations of the Panel shall be in executive session.

II. If a majority of the SAP determines that the materials in the covered application contain only information that was developed independently of the information contained in the disclosed documents, the Administrator shall certify that the covered application is formally accepted for review by the Agency unless he finds that the SAP did not have substantial information before it to support its finding. If a majority finds that any materials in the covered application were not developed independently of the information contained in the disclosed documents, the Administrator shall deny the applications unless he finds that the SAP did not have substantial information before it to support its findings. If no majority of the SAP can make either finding, the SAP shall submit a written report of its conclusions, including those of individual members, to the Administer who shall, within sixty days of receipt of the SAP report, determine whether to certify formal acceptance of the application for registration or deny the application and shall state the reasons therefor. If the Administrator finds that the SAP did not have substantial information before it to support a finding made by the majority, he shall, within 60 days of receipt of the SAP finding, determine whether to certify formal acceptance of the application or deny the application and shall state the reasons therefore.

III. The Administrator shall notify the applicant and Monsanto within three business days by certified mail of all certifications and denials under Part II of this Order. Any such certifications shall be final Agency actions not committed to Agency discretion by law and therefore judicially reviewable in the district courts pursuant to section 16(a) of FIFRA. Any such denials shall be pursuant to section 3(c)(6) of FIFRA and the appliant shall have the remedies set forth in FIFRA relating to Agency refusals to register pesticide products pursuant to section 3(c) (6).

IV. During any period of time when there is not a validity constituted Scientific Advisory Panel established under section 25(d) of FIFRA, the Administrator shall convene an advisory panel of no fewer than three members drawn from the members of the Scientific Advisory Board established under the Environmental Research, Development, and Demonstration Authorization Act of 1978. Under those circumstances, the advisory panel shall perform the functions assigned to the Scientific Advisory Panel in Parts I and II of this Order. All responsibilities of the Administrator under this Judgment may be performed by a properly designated delegate.

V. Judgment requiring the above terms and conditions is hereby entered.

H. Kenneth Wangelin,

United States District Judge.

Dated: August 31, 1982.

Additional documents relating to this action are available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107 401 M St. SW., Washington, D.C. 20460.

Dated: November 23, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-32766 Filed 11-30-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44001; TSH-FRL 2250-7]

Toxic Substances; Chlorinated Paraffins, 2-Chlorotoluene, and Alkyl Phthalates; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces all data submissions from negotiated testing programs under section 4 of the Toxic Substances Control Act received during the third quarter of 1982. These submissions are available for public inspection at the address provided below. Submissions include: (1) The results of two cell transformation tests on two chlorinated paraffins from the Consortium of Chlorinated Paraffins Manufacturers; (2) the results of three mutagenicity assays, a cell transformation test, and four aquatic toxicity tests on 2-chlorotoluene from Hooker Chemical and Plastics Company; and (3) a submission on analytical characterization and interlaboratory recovery and measurement of all 14 phthalate esters to be tested for environmental effects from the Chemical Manufacturers Association (CMA) Phthalate Esters Program Panel.

ADDRESS: Studies submitted to the Agency under the testing authority of section 4 of the Toxic Substances Control Act are available for public inspection and duplication from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. There is a nominal fee for copying. Rm. E-107 (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Chlorinated Paraffins

The Consortium of Chlorinated Paraffins Manufacturers is conducting a negotiated testing program on chlorinated paraffins, substances used

primarily as flame retardants and plasticizers.

This testing program, described in full in the Federal Register of January 8, 1982 (47 FR 1017), was accepted by the EPA in lieu of a chlorinated paraffins test rule under section 4 of the Toxic Substances Control Act. The negotiated testing program is a two-level testing scheme on four chlorinated paraffins of differing chain length and degree of chlorination. All four of the chlorinated paraffins will be tested in some of the lower-level tests while other studies will test fewer. These lower-level tests include metabolism, teratology and mutagenicity tests in mammals, and subchronic toxicity tests in both mammals and aquatic organisms. The upper-level tests will use the compound considered the most toxic in the lower-level tests, and will include a two-generation reproductive study in rats and a number of specialized aquatic studies. The American members of the Consortium also will be performing an avian reproductive study on a chlorinated paraffin yet to be selected.

The Huntingdon Research Centre, under contract to the Consortium, has performed cell transformation tests of a modified Styles type, both with and without metabolic activation, on the following chlorinated paraffins:

58% chlorination of short chain length n-paraffins (Chlorowax 500C ®)

70% chlorination of long chain length n-paraffins (Electrofine S70 ®)

The cell transformation tests were performed to assess the potential carcinogenicity of these chlorinated paraffins. Clorowax 500C ®) caused an increase in transformed colonies both with and without activation, and at the LC_{50} level, the transformation frequency was 52–94 times the 100 percent survival negative control value in the absence of the S–9 mix, and 100–1,175 times the control in the presence of the S–9 mix.

Electrofine S70 ® was more difficult to get into solution and appeared to be less potent. At the LC_{50} dose in the absence of activation, the transformation rates varied from 12.5–24.3 times the 100 percent survival negative control value and with activation, 38.7–100 times the control.

The studies have been inserted in the public file on the chlorinated paraffins (OPTS–42004A).

II. 2-Chlorotoluene

Hooker Chemical and Plastics Company is conducting a negotiated testing program on 2-chlorotoluene, a solvent for agricultural pesticides and a general solvent replacement for 1,2-dichlorobenzene. The testing scheme is multi-level in approach, with the EPA participating at a number of decision points. The toxicological areas being addressed by this program are metabolism, teratology, mutagenicity, chronic toxicity, and environmental toxicity. Because of Hooker's commitment to this testing scheme, as detailed in the Federal Register of April 28, (47 FR 18172), the EPA decided that it would not propose a 2-chlorotoluene test rule under section 4 of the Toxic Substances Control Act.

Litton Bionetics, under contract to Hooker Chemical, has performed three mutagenicity tests on 2-chlorotoluene, using protocols approved by the Agency. The studies include a mouse lymphoma forward mutation assay, an *in vitro* cytogenetics assay measuring chromosome aberration frequencies in Chinese hamster ovary cells, and a rat bone marrow cytogenetic assay. All tests were negative under the condition of the assays. The negative results in the initial screening tests lead the Agency to conclude that no additional mutagenicity testing is necessary.

Litton Bionetics also performed an *in vitro* transformation assay of Balb/c-3T3 cells without activation. At survival levels between approximately 27 and 109 percent no significant increase in the numbers of transformed foci was seen.

The four aquatic toxicity tests were perofrmed by EG&G Bionomics, using Agency-approved protocols. The results of the tests are as follows:

The 48-hour flow-through LC_{50} for the water flea (*Daphnia magna*) is 1.1 mg/L, and the no discernible effect concentration is 0.45 mg/L.

The 96-hour flow-through LC_{50} for the rainbow trout (*Salmo gairdneri*) is 2.3 mg/L, while the no discernible effect concentration for the same period is 0.76 mg/L.

The 96-hour flow-through LC_{50} for the fathead minnow (*Pimephales promelas*) is 7.5 mg/L, and the no discernible effect level is 1.8 mg/L.

The maximum acceptable toxicant concentration (no adverse effects seen) in a 30-day embryo-larval toxicity study in fathead minnow (*Pimephales promelas*) is estimated to be between 1.4 and 2.9 mg/L.

The study has been inserted in the public file on 2-chlorotoluene (OPTS–42011A).

III. Alkyl Phthalates

The CMA, on behalf of the Phthalate Esters Program Panel, is conducting voluntary testing on the phthalate esters, alkyl diesters of 1, 2-benzenedicarboxylic acid, which are primarily used as plasticizers. The CMA's proposal was accepted by the Agency in lieu of a test rule under section 4 of the Toxic Substances Control Act and is described in the Federal Register of October 30, 1981 (46 FR 53775).

Industry's proposal examines aquatic toxicity, environmental transport and fate, and biodegradation of the high production alkyl phthalates and benzyl butyl phthalate. The proposal also examines, in a more experimental approach, potential oncogenic and mutagenic effects of selected alkyl phthalates and benzyl butyl phthalate. Basically, CMA's health proposal is a multistage test program consisting of two first-stage components: (1) A battery of short-term mutagenicity tests; and (2) a 21-day *in vivo* test with rats. CMA will concurrently be performing extensive metabolism work on di-2-ethylhexyl phthalate. Long-term tests, such as two-year bioassays, will also be performed depending on the results of the short-term tests for other phthalates.

Analytical characterization (by gas chromatography/mass spectroscopy) has been completed for all 14 of the test phthalate esters (dimethyl phthalate, diethyl phthalate, di-n-butyl phthalate, benzyl butyl phthalate, dihexyl phthalate, butyl 2-ethylhexyl phthalate, di (n-hexyl, n-octyl, n-decyl) phthalate, di-2-ethylhexyl phthalate, diisooctyl phthalate, diisononyl phthalate, di(heptyl, nonyl, undecyl) phthalate, diisodecyl phthalate, diundecyl phthalate, and ditridecyl phthalate. Interlaboratory validation was also carried out within EG&G Bionomics' laboratories to examine the ability of their laboratories to recover and measure phthalate esters in freshwater and in seawater at test concentrations anticipated during the aquatic studies. All of the 14 substances listed above were tested. The majority of the recoveries were between 90 and 110 percent of the spiked concentration. Almost all the remaining recoveries were between 80 and 120 percent. These studies in themselves do not address toxicologic or chemical fate questions pertinent to the phthalate esters, but are necessary procedural steps in the proper evaluation of the toxicologic data to be received.

These studies have been placed in the public file on alkyl phthalates and benzyl phthalate (OPTS–42005).

(Sec. 4, 90 Stat. 2006, Pub. L. 94–469 (15 U.S.C. 2601))

Dated: November 12, 1982.

Marcia E. Williams,

Acting Director, Office of Toxic Substances.

[FR Doc. 82–32764 Filed 11–30–82; 8:45 am]

BILLING CODE 6560–50–M

[OPP-31055A; PH-FRL 2255-5]

Great Lakes Biochemical Co., Inc.; Approval of Application To Conditionally Register a Pesticide Product Involving a Changed Use Pattern

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has approved the application by Great Lakes Biochemical Co., Inc., to register the disinfectant Activate and Enhance involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Arturo Castillo, Product Manager (PM) 32, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 303, Cm#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-3965).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of March 3, 1982 (47 FR 9064) which announced that Great Lakes Biochemical Co., Inc., 6129 West Douglas Ave., Milwaukee, WI 53218, had submitted an application to register the disinfectant Activate and Enhance containing 33 percent of the active ingredient sodium bromide. The application proposed a changed use pattern of the product.

The application was approved on September 7, 1982 for general use. The product name as originally applied was labeled as "Activate and Enhance". The application as approved is for "Activate" with 32.18 percent of the active ingredient potassium peroxymonosulfate (73640-30) and "Enhance" with 32.18 percent of the active ingredient sodium bromide (73640-30).

A copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the product manager. The data and other scientific information used to support registration, except for the material specifically protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (92 Stat. 819; 7 U.S.C. 136), will be available for public inspection in accordance with section 3(c)(2) of FIFRA within 30 days after registration date. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), EPA, 401 M St. SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

(Sec. 3(c)(2) FIFRA, as amended)

Dated: November 22, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-32767 Filed 11-30-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of October 5, 1982

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the Committee's Domestic Policy Directive issued at its meeting held on October 5, 1982.[1]

The information reviewed at this meeting suggests that real GNP changed little in the third quarter, following a small increase in the second quarter, while prices on the average continued to rise more slowly than in 1981. In August the nominal value of retail sales fell back to the sharply reduced June level, while industrial production and nonfarm payroll employment also declined. Housing starts fell, reversing much of the substantial July increase. The unemployment rate was unchanged at 9.8 percent in August, but claims for unemployment insurance have risen further in recent weeks and there are indications of some further decline in production. In recent months the advance in the index of average hourly earnings has remained considerably less rapid than during 1981.

The weighted average value of the dollar against major foreign currencies has risen strongly further over the past month, reflecting in part a continuing concern in the market about economic and financial difficulties abroad and also some firming of U.S. interest rates relative to foreign rates after a considerable drop earlier. The U.S. merchandise trade deficit rose sharply in August and on average in July and August the deficit rate was well above that for the first half.

After three months of weakness, M1 grew rapidly in August and September; growth in M2 accelerated in August from an already rapid pace but appears to have slowed markedly in September. Following large declines over the preceding two months, short-term market interest rates have risen somewhat on balance since late August, while bond yields and mortgage rates have continued to decline. The Federal Reserve discount rate was reduced from 10½ percent to 10 percent in late August. Meanwhile, reflecting some well-publicized problems in recent months of a few banks here and abroad and the financing difficulties of Mexico, a more cautious atmosphere in private credit markets has been reflected in wider spreads between U.S. government and some private credit instruments.

The Federal Open Market Committee seeks to foster monetary and financial conditions that will help to reduce inflation, promote a resumption of growth in output on a sustainable basis, and contribute to a sustainable pattern of international transactions. In July, the Committee agreed that these objectives would be furthered by reaffirming the monetary growth ranges for the period from the fourth quarter of 1981 to the fourth quarter of 1982 that it had set at the February meeting. These ranges were 2½ to 5½ percent for M1, 6 to 9 percent for M2, and 6½ to 9½ percent for M3. The associated range for bank credit was 6 to 9 percent. The Committee agreed that growth in the monetary and credit aggregates around the top of the indicated ranges would be acceptable in the light of the relatively low base period for the M1 target and other factors, and that it would tolerate for some period of time growth somewhat above the target range should unusual precautionary demands for money and liquidity be evident in the light of current economic uncertainties. The Committee also indicated that it was tentatively planning to continue the current ranges for 1983 but that it would review that decision carefully in the light of developments over the remainder of 1982.

Specification of the behavior of M1 over the balance of the year is subject to unusually great uncertainties because it will be substantially affected by special circumstances—in the very near term by reinvestment of funds from maturing all savers certificates and later by the public's response to the new account directly competitive with money market funds mandated by recent legislation. The probable difficulties in interpretation of M1 during the period suggest much less than usual weight be placed on movements in that aggregate during the current quarter. These developments are expected to affect M2 and other broader aggregates to a much smaller extent.

[1] The Record of Policy Actions of the Committee for the meeting of October 5, 1982, is filed as part of the original document. Copies are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

In all the circumstances, the Committee seeks to maintain expansion in bank reserves needed for an orderly and sustained flow of money and credit, consistent with growth of M2 (and M3) in a range of around 8½ to 9½ percent at an annual rate from September to December, and taking account of the desirability of somewhat reduced pressures in private credit markets in the light of current economic conditions. Somewhat slower growth, bringing those aggregates around the upper part of the ranges set for the year, would be acceptable and desirable in a context of declining interest rates. Should economic and financial uncertainties lead to exceptional liquidity demands, somewhat more rapid growth in the broader aggregates would be tolerated. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that pursuit of the monetary objectives and related reserve paths during the period before the next meeting is likely to be associated with a federal funds rate persistently outside a range of 7 to 10½ percent.

By order of the Federal Open Market Committee, November 24, 1982.

Murray Altmann,

Secretary.

[FR Doc. 82-32739 Filed 11-30-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism; Notice of Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory body scheduled to assemble during the month of December 1982.

Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism

December 7; 9:30 a.m., Conference Room 703-A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

Open—December 7.

Contact: Mr. Leland H. Towle, Room 16-95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4883.

Purpose: The Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism (1) evaluates the adequacy and technical soundness of all Federal programs and activities which relate to alcohol abuse and alcoholism and provides for the communication and exchange of information necessary to maintain the coordination and effectiveness of such programs and activities; and (2) seeks to coordinate efforts undertaken to deal with alcohol abuse and alcoholism in carrying out Federal health, welfare, rehabilitation, highway safety, law enforcement, and economic opportunity laws.

Agenda: The entire meeting will be open to the public. Members will discuss the future of the Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism and alternatives for continued interagency collaboration and coordination.

Substantive program information may be obtained from the contact person listed above. Summaries of the meetings and rosters of Committee members may be obtained from Mrs. Connie Ecton, International and Intergovernmental Affairs, Office of the Director, National Institute on Alcohol Abuse and Alcoholism, Room 16-95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4883.

Dated: November 24, 1982.

Sue Simons,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 82-32716 Filed 11-30-82; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Safety and Occupational Health Study Section Surveillance Cooperative Agreement Review Subcommittee; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Surveillance Cooperative Agreement Review Subcommittee of the Safety and Occupational Health Study Section.

Date: December 16-17, 1982.

Place: Ivory Room "B" Stauffer Inn Hotel 141 West Sixth Street Cincinnati, Ohio 45202.

Time and Type of Meeting: Open—8:00 p.m. to 9:00 p.m.—December 16. Closed—9:00 p.m. to 10:00 p.m.—December 16. Closed—8:30 a.m. to 5:00 p.m.—December 17.

Contact Person: Mark R. Green, Ph.D. Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 8-63, Rockville, Maryland 20857.

Telephone: 301-443-4493.

Purpose: To review, discuss and evaluate individual Surveillance Cooperative Agreement applications.

Agenda: Agenda items for the open portion of the meeting will include the administrative details of the meeting. Attendance by the public will be limited to space available. Beginning at 9:00 p.m., December 16, through December 17, 1982, the Subcommittee will be performing the initial review of Surveillance Cooperative Agreement applications for Federal assistance, and will not be open to the public, in accordance with the provisions set forth in Section 552b(c)(6), Title 5 U.S. Code, and the Determination of the Director, Centers for Disease Control, pursuant to Public Law 92-463.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: November 26, 1982.

William C. Watson, Jr.,

Acting Director, Centers for Disease Control.

[FR Doc. 82-32923 Filed 11-30-82; 8:45 am]

BILLING CODE 4160-19-M

Health Care Financing Administration

Medicare and Medicaid Programs; Rural Health Clinic Payment Limits and Productivity Screening Guidelines

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

ACTION: Final notice.

SUMMARY: This notice establishes revised productivity screening guidelines and a revised upper limit on Medicare and Medicaid rates of payment for rural health clinic services furnished by independent rural health clinics.

Payments under both programs for rural health clinic services are currently subject to productivity screening guidelines. These guidelines identify clinic costs that will not be reimbursed without special justification by the clinic. These revised guidelines on productivity conform to those set forth by the Bureau of Community Health Services (BCHS), Public Health Service for clinics receiving funds from that agency. We are also discontinuing use of a specific guideline for overhead costs for rural health clinics.

In addition, we have set a new limit on payments using more recent data, but have retained the same methodology used in setting previous limits. The amount of the revised upper limit is $32.10 per visit.

EFFECTIVE DATE: The new productivity guideline, the elimination of the

overhead screening guidelines and the revised payment limit are effective for cost reporting periods beginning on or after January 3, 1983.

FOR FURTHER INFORMATION CONTACT:
Bernard Truffer, (301) 597–1369.

SUPPLEMENTARY INFORMATION:

Background

The Rural Health Clinic Services Act of 1977 (Pub. L. 95–210) added rural health clinic (RHC) services as a new benefit under Part B of Medicare, and as a mandatory benefit of certain State Medicaid plans. (If State law allows nurse practitioners or physician assistants to provide for rural health clinic services, the State must include provision for rural health clinic services under its State plan.) The benefit includes payment for physician services and for medical services provided by nurse practitioners and physician assistants in a rural health clinic. Previously under Medicare, certain medical services such as those now provided by nurse practitioners and physician assistants in RHCs were not covered unless they were furnished incident to a physician's services. Under Medicaid, coverage of physician assistant and nurse practitioner services was optional with the State.

This new benefit became effective for Medicare on March 1, 1978, and under Medicaid on July 1, 1978. The Medicare reimbursement regulations for RHC services are contained in 42 CFR Part 405, Subpart X, and the Medicaid reimbursement regulations are located at 42 CFR 447.371. Our current retrospective reimbursement system for RHCs is expressly interim, pending establishment of a prospective system.

On September 10, 1980, we published a Notice of Proposed Rulemaking (NPRM) (45 FR 59734) that, if published as a final rule, would provide a prospective reimbursement method for Medicare and Medicaid payment for independent rural health clinic services. This proposed method was intended both to replace current payment regulations, and to provide RHCs with increased incentives to be more efficient and cost effective in their operations. In addition to proposing changes in the payment method, the NPRM included proposals to: (1) Revise the current screening guidelines for clinic productivity costs to conform to the guidelines used by the Bureau of Community Health Services (BCHS), Public Health Service, (2) remove the screening guidelines for overhead costs, and (3) eliminate the current payment limit for clinics paid under the prospective method. All of these had originally been put into effect by a notice published in the **Federal Register** September 21, 1978 (43 FR 42787).

Subsequently, on December 23, 1980, we published a separate notice proposing to raise the payment limit to $32.10 per visit (45 Fr 84870). We proposed that this limit become effective for clinic reporting periods beginning on or after March 1, 1980, and remain in effect only until the prospective payment method was in place. After the prospective payment method was effective, the payment limit would no longer apply to clinics paid under that method, while a payment limit computed under a new methodology would apply to other clinics.

However, as a result of extensive comments on the proposed new reimbursement method, and in view of discussions at three public meetings held on that method, we considered extensive revisions and possible alternatives to the proposed rate-setting method. This has delayed the establishment of the new system, but there is no reason to delay implementation of the new productivity screening guidelines or elimination of the overhead costs guidelines. Therefore, in this final notice we have implemented those guideline changes and the new payment limit.

Because publication of this notice has been delayed beyond our expectations when we published the December 23, 1980 notice proposing to raise the payment limit, the effective date proposed in that notice is now inappropriate. The increased payment limit affects only four percent of the RHCs and the total increased reimbursement that would be paid to these clinics as a result of the increased limit is less than $25,000 a year. If we were to make the increased payment limit retroactaive to March 1, 1980 as originally proposed, we would compel the intermediaries to reopen cost reports and to incur implementation costs that are disproprotionate to the relatively small amount of increased reimbursement. Therefore, we have decided to make the increase in the payment limit, as well as the other changes being made in this notice, effective for cost reporting periods beginning on or after January 3, 1983.

Current Payment Method

Payment to Provider Clinics

Regulation at 42 CFR 405.2425 require that RHCs that are a part of a hospital, skilled nursing facility, or home health agency (i.e., a provider of services) participating in the Medicare program be reimbursed on a reasonable cost basis acording to reimbursement principles applicable to that provider under the regulations in subpart D of Part 405. These clinic services are not subject to the screening guildelines and payment limit that apply to services provided by independent RHCs.

Payment to Independent Clinics

Medicare reimburses independent RHCs (i.e., those that are not part of a hospital, skilled nursing facility, or home health agency) based on the clinic's reasonable cost incurred in furnishing RHC services to Medicate beneficiaries. Medicare fiscal agents (carriers) make interim payments to clinics based on an all-inclusive rate for each visit by a Medicare beneficary. For each clinic, the carrier sets an interim rate of payment at the beginning of each reporting period. This interim rate is based on the clinic's estimated costs and estimated number of patient visits for the period. The carrier pays the clinic 80 percent of the all-inclusive rate for each Medicare covered visit, if the patient has fully incurred the Medicare Part B deductible amount. (A beneficary must incur $75 per year deductible before Medicare begins to pay. If the benificary's deductible has not been met, and the clinic's reasonable customary charge for the service, applied to the deductible, is less than the all-inclusive rate, than this amount would be subtracted from the all-inclusive rate, and 80 percent of the difference would be paid to the clinic. If the customary charge were equal to or greater than the all-inclusive rate, no payment would be made.)

At the end of each reporting period, the clinic must report to the carrier its actual costs and the total number of visits for RHC services it actually furnished during the period. Based on this information, the carrier adjusts the payments made during the period to equal 80 percent of the reasonable costs the clinic actually incurred in furnishing covered RHC services to Medicare beneficiaries.

Medicaid reimburses independents RHCs for rural health clinic services under a similar method. States that pay for RHC services use interim rates established by Medicare carriers, subject to adjustment at the end of the reporting period based on actual costs and visits. However, Medicaid pays 100 percent of the all-inclusive rate (subject to State copayment requirements, if applicable).

The all-inclusive rate is subject to tests of reasonableness developed by HCFA or the carrier in accordance with 42 CFR 405.2428. Since both Medicare and Medicaid use the same all-inclusive

rate to pay for RHC services, these tests of reasonableness apply equally to payments for RHC services under both programs. The tests include screening guidelines intended to identify situations where costs will not be allowed without acceptable justification by the clinic, and limits on the amount of payment.

Under the authority of 42 CFR 405.2428, we published in the **Federal Register** on September 21, 1978 a notice that set forth screening guidelines for measuring the reasonableness of RHC costs in terms of staffing levels relative to levels of utilization (i.e., productivity), and of overhead expenses relative to other expenses. That notice also established an upper limit of $27.30 per visit on the all-inclusive payment rate for independent rural health clinics under Medicare and Medicaid. The screening guidelines and payment limit established by that notice were effective under Medicare on March 1, 1978, and under Medicaid on July 1, 1978.

Revised Guidelines

Definition of "Visit"

Under the current retrospective payment method, we use the "visit" as our basic unit of measure for patient utilization. Our current regulations, at 42 CFR 405.2401(b)(18), define a "visit" as a face-to-face encounter between a clinic patient and a physician, physician assistant, or nurse practitioner. This regulation also specifies that encounters with more than one health professional and multiple encounters with the same health professional that occur on the same day and at a single location are considered only one visit unless, after the first encounter, the patient suffers an illness or injury requiring additional diagnosis or treatment.

Our use of this term has caused concern among clinics that also receive grants from the Bureau of Community Health Services (BCHS), PHS. BCHS, in evaluating the performance of clinics that receive these grants, uses the term "encounter"as its basic unit of measure for patient contact. Until recently, multiple encounters with the same health professional that occurred on the same day and at a single location were counted separately by BCHS.

In the past, clinics have found that use of different terms by HCFA and BCHS confusing, causing difficulty in complying with both HCFA and BCHS requirements. In particular, clinics have found it difficult to comply with the separate productivity standards and reporting requirements used by HCFA and BCHS.

As explained below, we are now adopting the productivity guidelines used by BCHS. To make it possible for clinics to use the same productivity guidelines, HCFA and BCHS have agreed to a common meaning of the term "encounter", which is the same as the current HCFA meaning of the term "visit". Under this interpretation, both BCHS and HCFA would use the same criteria for determining the number of visits (or encounters) a clinic furnishes. As our current regulations use the term "visit", we will also do so in this notice.

Productivity Screening Guidelines

The House and Senate committee reports accompanying the RHC benefit legislation (Pub. L. 95–210) direct the Secretary to establish screening guidelines to identify situations in which costs would not be allowed without further investigation or reasonable justification. As noted above, we set forth two such guidelines in the September 21, 1978, **Federal Register** notice, which applied to productivity of the clinic's health care staff and to its level of overhead expenses. The productivity guideline provided that clinics with per visit costs or more than $16, including allowable overhead costs, should provide the following:

- At least three visits per physician hour for rural health clinic services furnished at the clinic;
- At least two visits per physician assistant or nurse practitioner hour for rural health clinic services furnished at the clinic; and
- At least one visit per hour for services furnished at locations other than the clinic.

If the clinic did not meet these guidelines and could not adequately justify its failure to do so, we reduced its rate to what it would have been if the clinic had met the guidelines, but not to less than $16 per visit. The overhead cost guideline provided that allowable overhead costs could not exceed 30 percent of a clinic's total allowable costs, unless reasonably justified by the clinic.

We believe that the overhead guideline is no longer necessary to control RHC costs. Clinic rates are subject to a maximum payment limit, and the amount by which high overhead amounts can impact on clinic rates is, therefore, restricted. Moreover, overhead costs, as is the case with other elements of cost incurred by clinics, must be necessary, proper, and reasonable in amount to be allowable under the program. Although there will be no nationally established overhead guideline, carriers will continue to have the authority to disallow excessive overhead costs in aberrant cases. There are few clinics with excessive overhead amounts at present, and the average reduction in rates under the overhead guideline in those cases where clinics have exceeded the guideline has been less than $2. We have concluded that the effect of this guideline has not jusitified the burden or administrative costs that have been incurred by its imposition.

We will continue using the current productivity and overhead cost guidelines for reporting periods beginning before the effective date of this notice. For reporting periods beginning on or after the effective date, we are eliminating use of the overhead cost guideline.

In addition we will use productivity guidelines that are same as those used by BCHS to evaluate the performance of clinics that receive Federally funded health center grants. These productivity guidelines are set forth in the January, 1980 program instruction manual for the BCHS common reporting requirements. They are as follows:

(1) A least 4,200 visits (encounters) per year per full-time equivalent physician employed by the clinic;

(2) At least 2,100 visits (encounters) per year per full-time equivalent physician assistant or nurse practitioner employed by the clinic; or

(3) If physicians and nurse practitioners or physician assistants are coordinated into a team, at least 6,300 visits (encounters) per year for each team that consists of a full-time equivalent physician and full-time equivalent nurse practitioner or physician assistant.

In accord with the BCHS guidelines, the number of "full-time equivalent" employees of each type (i.e., physician, physician assistant, or nurse practitioner) will be determined by the following formula: The total number of hours per year worked by all employees of that type will be divided by the greater of:

(1) The number of hours per year for which one employee of that type would have to be compensated to meet the clinic's definition of a full-time employee, or

(2) 1,600 hours per year (40 hours per week for 40 weeks).

If the clinic cannot justify its low productivity, the carrier will use the greater of the minimum number of visits a clinic is expected to furnish under the guidelines, or the number of visits the clinic actually furnished, in calculating the clinic's all-inclusive rate and annual reconciliation amount. Thus, if the clinic furnished fewer visits than the screens indicated it should have, the all-

inclusive rate would be calculated by dividing the clinic's allowable costs by the number of visits indicated by the screens. If, however, the clinic reported that it had furnished more visits than called for under the screens, the carrier would use the higher number of visits reported by the clinic in calculating the all-inclusive rate.

Any clinic may ask the carrier to waive application of the guidelines for a reporting period. If the clinic provides the carrier with reasonable justification for its failure to furnish the expected number of visits, the carrier will calculate the clinic's all-inclusive rate based, to the extent that the clinic justified the lesser number, on the number of visits the clinic actually furnished in the period. For example, if a clinic could demonstrate to the carrier that it employs no more than the minimum number of staff necessary to meet applicable certification requirements (see 42 CFR Part 481) but nevertheless is unable to furnish the expected number of visits, the carrier will not apply the productivity guidelines in calculating the all-inclusive rate for the clinic.

We have selected these guidelines for several reasons. First, approximately two-thirds of all facilities now participating in Medicare and Medicaid as RHCs also receive grants from BCHS. BCHS has had extensive experience with such clinics, predating HCFA involvement beginning in 1978. They use these productivity guidelines in their grant review process, and have revised them to improve their appropriateness. Because many clinics already are subject to BCHS productivity guidelines, adoption of these guidelines by HCFA will not impose any additional burden on the clinics. HCFA's adoption of these guidelines ensures that these clinics are not subject to different guidelines imposed by two different agencies of HHS.

Our estimates of the actual productivity of clinics now reporting their costs and utilization to HCFA show that physicians, physician assistants, and nurse practitioners have average FTE productivity substantially greater than the minimum guidelines. We expect, therefore, that clinics not receiving BCHS grants will also have little or no difficulty in meeting the guidelines, unless there are special circumstances preventing this (in which case the clinic could apply for an exception).

Although in the NPRM we had proposed to make these changes effective with the beginning of the proposed prospective reimbursement system, we are now implementing them for all cost reporting periods beginning on or after the effective date of this notice. Since these changes liberalize the rules applying to prior reporting periods, no clinics will be adversely affected. There will be no additional burden on any clinic, since these changes will be applied to these reporting periods using the cost and utilization information already reported. Therefore, we are making them effective the same date as our revised payment limit.

Response to Comments Received on Proposed Productivity Screening Guidelines

We received many comments in response to the NPRM published September 10, 1980. We are responding in this notice only to the comments that addressed our proposals to revise our screening guidelines by eliminating the overhead cost limits and adopting BCHS productivity standards. We will address other comments related to the proposed prospective reimbursement system when that system is revised.

We received eleven supporting comments and only two negative comments on eliminating the overhead guideline, the latter of which were both made by different agencies of the same State. These two comments expressed the view that the elimination of the guideline would have detrimental effects on cost control. We disagree. As noted earlier, the payment limit and the rules under which allowable costs are determined act to control cost increases in RHCs. The overhead guidelines have not had sufficient cost impact to justify their continuation, especially in the absence of a comparable BCHS guideline.

The majority of the 19 comments we received on the proposed adoption of BCHS productivity guidelines supported the change, with only six comments opposing the change.

One commenter suggested that the productivity screens be eliminated entirely, since they reflect patient utilization levels which are beyond the clinic's control. We disagree with this position. The guidelines are intended only to assure the reasonableness of clinic staffing levels in relation to the level of utilization it can reasonably expect. If a clinic cannot meet these productivity levels, it may apply for an exception to them. Our fiscal agents have the authority to waive or modify these requirements when the clinic can reasonably justify its inability to comply.

Two commenters stated that the guidelines would impose a hardship on clinics that are located at some distance from a hospital, but that provides services frequently to hospitalized patients, because the productivity guidelines would not differentiate between services furnished at the clinic or at some other location. However, we would point out that very few, if any, clinics have extensive hospital practices. On the average, less than 7 percent of all clinic visits are furnished at locations other than the clinic. Less than 1 percent of total visits are hospital visits. Clinics which have atypical circumstances are entitled to request an exception. A large volume of hospital services would be reasonable justification for lower productivity. Therefore, we do not believe that there is justification to increase the complexity of the guidelines to deal with this small number of cases.

Two commenters expressed the view that the guidelines on productivity would penalize clinics experiencing normal growth—that is, as utilization increases over time, a clinic would add new staff, who would not be fully productive under the screen until utilization increased further. These commenters argue that our productivity screens should permit a lower standard for the "marginal," or newly added, practitioner. We do not agree, for several reasons. First, we think that the guidelines do not reflect a "full productivity" level, but a reasonable minimum. Second, in 1978, we considered a screening guideline on clinic productivity which would apply 50 percent of the full standard for practitioners added to the staff during the reporting period. We did not use this approach because our analysis disclosed that the effect of this guideline on clinic rates would be of little benefit to all but the smallest clinics. For example, given a typical case of a clinic with two physicians and two nurse practitioners, if a third nurse practitioner were added during the cost report period, using 50 percent of the full standard for the new marginal practitioner would only result in a 6 percent change in the total visits which the clinic would have to furnish to meet minimum productivity standards. Since most clinics are larger than this example, they would experience even less effect on their total productivity limit.

One commenter stated that the guidelines were too liberal, and that clinics should be expected to achieve higher levels of productivity than those proposed. We have not accepted this position. The levels of productivity specified for RHCs reflect our assessment of reasonable minimum

performance levels, based on data submitted to us by RHCs. This assessment is also supported by the experience of clinics receiving grants under the PHS program, using similar guidelines. While we would expect clinics to achieve at least the level of productivity specified in these guidelines, we do not believe it reasonable to establish higher minimum levels. Higher minimums would increase the number of waivers requested, resulting in increased burden and costs for clinics, carriers, and ultimately, the program.

One commenter felt that the guideline should permit some adjustment in the case of a practitioner with administrative, in addition to clinical, responsibilities. This is already the case. If a practitioner performs administrative duties, that portion of the time spent in performance of such tasks is not subject to the guidelines.

Since the great majority of comments supported our proposal, and since we believe that we have adequate justification for not adopting other suggestions, we have decided to implement the guidelines as proposed.

Revised Payment Limit

The present retrospective reimbursement system also provides for a maximum rate per visit that may be paid to RHCs. As specified in the September 21, 1978, notice in the **Federal Register**, this limit was derived from prevailing charge data obtained from the Medicare carriers for a group of items and services selected as a model of a typical rural health clinic visit. We originally set this limit at $27.30 per visit. We are now increasing it to reflect increases in the cost of providing health care. As explained more fully below, we are retaining the same methodology for calculating this limit that we used before, in order to expedite implementation of an increased limit. The new limit is $32.10 per visit.

We have previously explained the methodology we used to derive the current payment limit in the **Federal Register** notice of September 21, 1978. In deriving that limit, we used physician charge data from the 1978 *Medicare Directory of Prevailing Charges*. Prevailing charges for various services are determined by the Medicare carriers in accordance with 42 CFR 405.504, and generally represent the maximum amount payable under Medicare Part B for services of physicians reimbursed on a reasonable charge basis. As we explained in the notice of December 23, 1980, we followed the same methodology in deriving the new payment limit, but used the 1980 *Directory*.

(Because publication of this final notice was delayed, we considered recomputing the payment limit using data for the 1981 *Directory of Prevailing Charges*. However, we decided that this was not necessary. We believe some increase is necessary, and this is supported by the May, 1982, GAO report on the Rural Health Clinic Services Act, which recommends increasing the payment limit to $32.10 as previously proposed. There are several reasons for increasing the limit no more than that. First, we believe that it would be inconsistent to maximize the payment limit increase for RHCs while we are struggling to restrain cost increases in other program areas. Second, only four percent of RHCs are currently affected by the $27.10 limit. While removal of the overhead cost guideline may result in more clinics having costs approaching the limit, current cost levels do not demonstrate a need for an increase of the payment limit above $32.10, which only affect the highest cost clinics. Finally, we do not expect the revised payment limit to be in effect long, because of the planned implementation of a prospective payment method.)

We considered revising our payment limit methodology to use actual clinic cost data, rather than physician charge data, or to make other changes. However, we concluded that it is better to proceed expeditiously with an increased limit based on the same methodology. In the NPRM, we had proposed that 150 percent of the median cost might be a better limit for those clinics that would still be paid under cost reimbursement, principally new clinics and clinics with unusually high, but justifiable, costs. However, this would not be appropriate for all clinics, as it would result in a significantly higher limit. Some States already think the new limit is too high, and we expect very few clinics to have costs higher than the new limit. Other limit methodologies based on clinic costs would require further analysis, and might require publication of another proposed notice.

We are concerned that adoption of a new methodology would further delay implementation of an increased payment limit. Therefore, in view of our conclusion that these clinics' rates should be updated promptly and in light of our hope that we will have a prospective system developed reasonably soon that will replace the current reimbursement system, we decided to continue using our current methodology to calculate the new limit.

Briefly, this methodology is as follows:

1. Our first step in deriving the payment limit was to select a group of services that, taken together, represented a model of a typical rural health clinic visit. To construct this "model visit," we used the services listed below. The numbers in parentheses are the procedures codes for these services from the 1964 California relative value study (Committee on Fees of the Commission on Medical Services: 1965 Relative Value Studies, Edition 4, California Medical Association, San Francisco, 1964). Our "model visit" comprises:

(a) An initial comprehensive physician's office visit for a new patient (9002);

(b) A routine followup physician's office visit for an established patient (9004);

(c) An initial comprehensive hospital visit (9022); and

(d) A routine laboratory procedure-blood sugar (8722).

2. Our next step in deriving the limit was to calculate the average prevailing charge for each of the four types of services in each State, based on data from the 1980 Directory.

3. We then assigned weighting factors to each service in order to reflect the relative frequency with which the services are furnished by RHCs. Because the current RHC cost report does not indicate the proportion of various types of services a clinic furnishes, we are unable to use actual clinic data to develop these factors. Therefore, we followed our 1978 model, which assigned these relative weights based on assumptions drawn from a review of the utilization experience of federally funded health centers, and from other ambulatory care utilization data.

Because we assumed that one of every five RHC patient visits will be an initial comprehensive visit of a new patient, we used 20 percent of each State's average prevailing charge for this type of visit in computing the national average prevailing charge for the model visit. We also assumed that seven of every ten RHC patient visits will be routine followup visits for established patients; therefore, we used 70 percent of each State's average prevailing charge for this type of service. To account for the fact that some RHC services are furnished in a hospital setting, we used 10 percent of each State's average prevailing charge for an initial comprehensive hospital visit. (This percent is not designed as a precise correlate to the actual number of hospital visits, but is used as a

generalized factor incorporating allowances for varied circumstances which contribute to atypically high costs attributable to some RHC visits.) We believe the routine laboratory procedure selected, blood sugar, is typical of laboratory services furnished by RHCs both because of its frequency and its midrange prevailing charge. We used 100 percent of the prevailing charge for this laboratory procedure in calculating the payment limit because federally funded health center visits average slightly less than one routine laboratory procedure per visit.

4. For each State, we then multiplied the average prevailing charge for each type of service by the weighting factor assigned to the service, and summed the resulting four amounts to arrive at the State average (mean) prevailing charge for our "model visit".

5. We then summed the individual State averages and divided by 52 (for purposes of this calculation, we included the District of Columbia and Puerto Rico) to calculate the national mean prevailing charge for the model visit.

6. We set the payment limit at the national mean, plus one standard deviation from the national mean, of the preailing charges for the model visit. We have included an explicit allowance of one standard deviation from the mean to include a margin for any factors not explicitly recognized under our methodology.

7. The amount of this limit, as calculated by applying the methodology described above to data from the 1980 Directory, is $32.10 per visit.

The new limit applies only to payments for RHC services, and not to payments for ambulatory services, other than RHC services, that clinics furnish. This point is important because States may, under Medicaid, pay independent clinics that furnish both other ambulatory services and RHC services at a single rate per visit that is based on the costs of both types of services (see 42 CFR 447.371(c)(1)). In these circumstances, the limit would apply only to the part of the per visit rate that represents payment for the costs of RHC services. The new limit is effective under both Medicare and Medicaid for cost reporting periods beginning on or after January 3, 1983.

Response to Comments Received on Proposed Payment Limit

In response to the proposed payment limit revision published December 23, 1980, we received twelve comments. Eight of these were from physician assistants or organizations representing their interests. All of these expressed support for increasing the limit, but recommended that future limits be based on actual costs rather than physician charge data.

As noted above, we had considered doing this in revising the payment limit, but had decided not to propose changes in order to avoid delay in implementing a revised rate. Further, the proposed rule published September 10, 1980, provided for elimination of the payment limit for RHCs under the proposed prospective payment system. The proposed prospective payment system is now being extensively reevaluated. If it appears at a later date that we will be proposing further increases in the payment limit, we will consider whether we are able to base them on actual RHC costs. However, until we are more certain of the probable future use and impact of the payment limit in relation to future developments in the payment system, we believe that we should retain the established methodology.

Of the other four comments, one was a letter from a physician requesting further data, which we provided to him individually. Two of the remaining three comments are from States. One of these presented a number of recommendations on improving Medicare/Medicaid interactions involving rural health clinics. Although we appreciate and will consider these recommendations, we are not responding to them in this notice since they were not specifically relevant to our proposal to increase the payment limit.

The other State government comment was similar to another comment received, from a State medical association. Both of these were strongly opposes to our proposed increase, and recommended that our proposal be withdrawn and that we set forth a new proposal. These objections were primarily based on our data and methodology. Both letters challenged the validity of our assumptions on the make-up of a "model visit". Some specific problems raised y these commenters included:

- Assuming a laboratory component for each model visit,
- Including the full value of the prevailing charge for such a component in the methodology,
- Lack of empirical data justifying the assumptions made on the intensity of services, or the components of a model visit, and
- Lack of specific discussion of how we used average prevailing charges.

Both of these commenters believe that we are already allowing payments that are too high for the intensity and quality of care provided by rural health clinics.

As noted above, the new payment limit of $32.10 was developed using updated data applied to the methodology set out in the September 21, 1978 notice. The present payment limit of $27.30 per visit became effective March 1, 1978, and has not been raised since that time, although our current reimbursement system (to which these commenters object) is expressly interim. We intend to provide for a prospective reimbursement system which will provide RHCs with increased incentives to be more efficient and cost effective in their operations which, essentially, is the same goal these commenters seek. We have discussed earlier our reasons for not establishing a new methodology at this time, and have given a full explanation of how we have used prevailing charges. There is nothing we can reasonably add to the latter, but we are willing to respond specifically to inquiries of a more detailed nature.

This payment limit is not a floor or a rate. It represents the ceiling we impose on reimbursable costs of furnishing rural health clinc services. Relatively few clinics actually reach this ceiling, and a number are actually paid substantially less than this limit. Although the model visit on which the limit calculations are based was developed without empirical date specific to rural health clinics, it was supported by experience. For example, as noted earlier, the experience of Federally financed health centers supported the inclusion of the laboratory component of the model visit. This limit has been in place for more than two years now, and though there is cause to raise the limit to recognize demonstrable increases in costs, there is no empirical data resulting from this period that shows that this model is clearly inappropriate and inadequate. We find it reasonable to conclude that our initial methodology, though its "model" visit may not have been precise in all details, has been adequate for setting an appropriate ceiling for payment.

Executive Order 12291

In accord with Executive Order 12291, we have determined that this final notice does not constitute a "major rule" because it does not meet any of the three criteria for indentifying such rules.

- This notice will not result in an annual effect on the economy of $100 million or more. The rural health clinic program is projected to have annual expenditures in FY 1982 of only $8.4 million. These revisions may increase this amount by about $500,000 annually, but this may be partially offset by savings incurred through

reducing the burden and cost of the revised guidelines.

- This notice will not result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions. The increased payment limit will result in slight increases in the charges for same rural health clinic services. This could also cause corresponding increases in the copayment obligations of beneficiaries. However, these increases will only recognize recent increases in the cost of providing health services, and they are not excessive. The revised productivity guidelines constitute a reduction of regulatory burden, and clearly would not increase costs or prices.
- This notice will not have 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 import markets. Rather, as is clear from the discussion above, both of these measures will benefit rural health clinics and should improve their financial situation and productivity.

Regulatory Flexibility Act

Because the proposed notice on which this final notice is based was published before January 1, 1981, the requirements of the Regulatory Flexibility Act of 1981 (Pub. L. 96–354) for a regulatory flexibility analysis do not apply. However, if we were to perform a regulatory flexibility analysis, we believe that it would show that this notice will have only a beneficial effect on the small entities that it affects. The increase in the payment limit will recognize increases in RHC costs, and therefore benefit them. The revised productivity guidelines will simplify and reduce their reporting and recordkeeping requirements, also benefiting them. With such a small program, we believe that the increase in expenditures resulting from increasing the payment limit will be more than offset by the benefits, as this increase will ensure continued provision of services to our program beneficiaries in affected rural areas.

(Sections 1102, 1833, 1861(aa), 1871, 1902(a) and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1395l, 1395x(aa), 1395hh, 1396a(a), and 1396d(a))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance; No. 13.761, Medical Assistance Program)

Dated: September 15, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 82–32265 Filed 11–26–82; 3:31 pm]

BILLING CODE 4120–03–M

National Institutes of Health

Clinical Trials Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Trials Committee, National Cancer Institute, December 20, 1982, Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20205. This meeting will be open to the public on December 20 from 9:00 a.m. to 9:30 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 20, from approximately 9:30 a.m. to adjournment, for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Richard A. Rhoden, Executive Secretary, Clinical Trials Committee, National Cancer Institute, Westwood Building, Room 804, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7030) will furnish substantive program information.

Dated: November 17, 1982.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 82–32740 Filed 11–30–82; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of Environmental Health Sciences Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on December 6–7, 1982 in Building 101 Conference Room, Research Triangle Park, North Carolina. This meeting will be open to the public from 8:30 a.m. to approximately 10:30 a.m. on December 6, 1982, for general discussions. Due to the holidays and conflict of member's schedules, a decision on a meeting date was delayed. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 10:30 a.m., December 6, to adjournment on December 7, 1982, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Carol Shreffler, Executive Secretary, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919–541–7826), will provide summaries of meeting, rosters of committee members, and substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.892, Prediction, Detection and Assessment of Environmental Caused Diseases and Disorders; 13.893, Mechanisms of Environmental Diseases and Disorders; 13.894, Environmental Health Research and Manpower Development Resources, National Institutes of Health)

(NIH programs are not covered by OBM Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular)

Dated: November 22, 1982.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 82–32741 Filed 11–30–82; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Privacy Act of 1974; Waiver of Advance Notice Period for New System of Records

AGENCY: Department of Health and Human Services; Public Health Service.

ACTION: Waiver of advance notice period for a new system of records.

SUMMARY: **Federal Register** document 82–2759–2, appearing at page 44432 in the issue for Thursday, October 7, 1982, provided notification of a new system of records proposed by the Alcohol, Drug Abuse, and Mental Health Administration. That system is 09–30–0043, "Shipment Records of Drugs of Abuse to Authorized Researchers," HHS/ADAMHA/NIDA. The document stated that the Public Health Service had requested that the Office of Management and Budget (OMB) grant a waiver of the usual requirement that a system of records not be put into effect until 60 days after the report is sent to OMB and the Congress.

OMB granted the requested waiver on November 3, 1982.

Accordingly, the new system of records, 09–30–0043, became effective upon the date of the waiver except for the routine uses established for the system. They became effective November 8, 1982, following the public comment period.

Dated: November 18, 1982.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

[FR Doc. 82-32785 Filed 11-30-82; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-82-1187]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755–5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Urban Homesteading Quarterly Report and Financing Sources for Rehabilitation of Urban Homesteading Properties.

Office: Community Planning and Development.

Form No. HUD–4027.1 and HUD–4027.2.

Frequency of submission: Quarterly.

Affected public: State or Local Governments.

Estimated burden hours: 1,074.

Status: Revision.

Contact: Lou Thompson, HUD, (202) 755–5970; Robert Neal, OMB, (202) 395–6880.

(Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: August 26, 1982.

Shirley A. Evans,

Director, Finance and Accounting.

[FR Doc. 82-32838 Filed 11-30-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[M56116]

Montana; Realty Action—Exchange; Correction

November 19, 1982.

The final paragraph of column three on page 50763 of **Federal Register** Document No. 82–30790, dated November 9, 1982, should be corrected as follows: The heading "Scenic—Access Easement Pavlovick" should read "Scenic—Access Easement or Fee Estate Pavlovick."

The last sentence in the first paragraph of column one, page 50764, of the same document, which now reads "Aggregating 216.75 acres of scenic—access easement" should read "Aggregating 216.75 acres of scenic—access easement or fee estate."

Michael J. Penfold,

State Director.

[FR Doc. 82-32742 Filed 11-30-82; 8:45 am]

BILLING CODE 4310-84-M

[C-36292]

Colorado; Notice of Invitation for Coal Exploration License Application; Walden Coal Co.

All interested parties are hereby invited to participate with Walden Coal Company in its proposed exploration of certain Federal coal deposits in the following described lands in Jackson County, Colorado:

Sixth Principal Meridian, Colorado

T. 9 N., R. 78 W.,
Sec. 7, lots 5, 8 to 16, inclusive, and lot 18;
Sec. 8, SW¼NW¼NE¼, SW¼NE¼, NW¼SE¼NE¼, S½SE¼NE¼, S½N½NW¼, S½NW¼, NE¼NE¼SW¼, NE¼SE¼, N½NW¼SE¼, SE¼NW¼SE¼, and NE¼SE¼SE¼;
Sec. 9, SW¼NE¼SW¼, NW¼SW¼, and S½SW¼.
T. 9 N., R. 79 W.,
Sec. 1, lots 9, 10, 14, 15, 16, 18, 19, and 20;
Sec. 12, lots 1, 2, and 8.
The area described contains 1333.95 acres.

Any party participating in this exploration license will share all costs on a pro rata basis with Walden Coal Company and with any other participants. The exploration plan, as submitted to the Bureau of Land

Management, is available under serial number C–36292 for public review during normal business hours at the Colorado State Office, 1037 20th Street, Denver, Colorado. Additional copies of the exploration plan are available for review at the BLM Craig District Office, 455 Emerson Street, Craig, Colorado, and at the Minerals Management Service District Mining Supervisor's Office, The Mart, 2135 East Main Street, Grand Junction, Colorado.

Any party seeking to participate in the exploration program described in the application must notify both the Bureau of Land Management and Walden Coal Company in writing within 30 days after the publication of this Notice of Invitation in the **Federal Register**. Such written notice must be addressed to:

Chief, Mineral Leasing Section, Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202, and

Mr. Scott A. Patten, President, Walden Coal Company, P.O. Box 229, Boulder, Colorado 80306.

This Notice of Invitation is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c) (47 FR 33135, July 30, 1982).

Rodney A. Roberts,

Chief Mineral Leasing Section.

[FR Doc. 82–32774 Filed 11–30–82; 8:45 am]

BILLING CODE 4310–84–M

[I–20092]

Lease of Public Lands; Idaho

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action—Lease of Public Lands in Bannock County, Idaho.

SUMMARY: The BLM is proposing to enter into a lease with Dr. George Hales to authorize continued operation of the Caribou Ski Area for a 15 year period. The ski area is located 5 miles east of Pocatello in:

T. 6 S., R. 35 E., B.M.,
Sec. 26, SW¼SW¼;
Sec. 27, SE¼SE¼;
Sec. 35, NW¼NW¼.
Total: 120 acres.

The applicant will be responsible for reimbursing the BLM for the cost of processing the lease and for payment of an annual rent which is to be determined by a BLM appraisal. The lease will be subject to the conditions in the temporary permit under which the ski area is already operating. The lease is authorized by sec. 302 of the Federal Land Policy and Management Act of 1976 and 43 CFR Part 2920.

Comments concerning this proposal may be submitted to the District Manager, Burley District Office, Bureau of Land Management, Route 3, Box 1, Burley, Idaho 83318 for a 45 day period.

Nick James Cozakos,

District Manager.

[FR Doc. 82–32775 Filed 11–30–82; 8:45 am]

BILLING CODE 4310–84–M

[N–891]

Nevada; Classification Vacated

November 16, 1982.

1. Pursuant to the authority delegated by Bureau Order 701 and amendments thereto, the Bureau of Land Management multiple use classification N–891 was published in the Federal Register on June 13, 1967 (FR Doc 67–6542). Pursuant to the Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411–18) and the 43 CFR 2460 regulations, this action classified approximately 3,422,000 acres of public land in Humboldt and Pershing Counties, Nevada, for multiple use management. The land was segregated from appropriation under the agricultural land laws and Section 2455 of the Revised Statutes. One area (Blue Lakes) was further segregated from the mining laws, but not the mineral leasing and material sale laws.

2. Pursuant to 43 CFR 2461.5(c)(2), the classification is hereby vacated with the exception of the following described area known as Blue Lakes:

Mount Diablo Meridian, Nevada

T. 43 N., R. 28 E., unsurveyed,
Secs. 1 and 2;
Sec. 3, E½NE¼;
Sec. 11, N½NE¼, NE¼NW¼;
Sec. 12, N½.
T. 44 N., R. 28 E., unsurveyed,
Sec. 34, SE¼SE¼;
Sec. 35, S½;
Sec. 36, S½S½.
T. 43 N., R. 29 E., unsurveyed,
Sec. 6, W½;
Sec. 7, NW¼NW¼.
T. 44 N., R. 29 E., unsurveyed,
Sec. 35, S½S½.

The area described above comprises approximately 3,100 acres. This area has high potential recreational value and will remain classified for a period of 5 years from the date of this publication at which time the classification will again be reviewed.

3. At 9:00 a.m. on January 3, 1983, all the land except that described in paragraph 2 above is hereby open to the operation of all the public land laws, subject to valid existing rights.

4. All the land described in the classification remains open to the mineral leasing laws.

5. All valid applications received prior to or at 9:00 a.m. on January 3, 1983, will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

Inquiries concerning this land should be addressed to the Chief, Division of Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 82–32776 Filed 11–30–82; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that McMoRan Offshore Exploration Co., has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 5221, Block 176, South Marsh Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested

parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 23, 1982.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-32772 Filed 11-30-82; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Aminoil U.S.A., Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0453, Block 130, Ship Shoal Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 22, 1982.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-32773 Filed 11-30-82; 8:45 am]

BILLING CODE 4310-31-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: November 26, 1982.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Southern Farmers Cooperative Association
(2) 7900 N.E. 2nd Ave., Little River, Miami, FL 33138
(3) 18 Hackensack Ave., Kearny, NJ 07302
(4) Marlene Kelley, 18 Hackensack Ave., Kearny, NJ 07302

1. W.T.S. Farm Lines Inc.
2. 2023 N. Main, Salinas, CA 93906
3. 2023 N. Main, Salinas, CA 93906
4. Robert Staats, 20232 N. Main, Salinas, CA

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-32730 Filed 11-30-82; 8:45 am]

BILLING CODE 7035-01-M

[OP1FC-210]

Motor Carriers; Finance Application; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find

Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3 Members Krock, Joyce and Ewing.

Agatha L. Mergenovich,

Secretary.

Note.—Please direct status inquiries to Team 1, (202) 275-7992.

MC-FC-81005. By decision of November 16, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 3 approved the transfer to STRATFORD FREIGHT COMPANY, INC., of Stratford, CT, of Certificate No. MC 139901, issued January 28, 1975, to Louis Szepesi, doing business as Stratford Freight Company, Stratford, CT, authorizing the transportation of general commodities, with exceptions, between points in the New Youk, NY commercial zone, as defined by the Commission in 1 M.C.C. 665, on the one hand, and, on the other, points in Fairfield County, CT. Applicants' representative: Dennis H. Marlowe, P.O. Box 589, Old Saybrook,

CT 06475. NOTE: Transferee is not a carrier.

MC–FC–81018. By decision of November 18, 1982, issued under 49 U.S.C. 10924 and the transfer rules at 49 CFR 1181.32, Review Board Number 3 approved the transfer to MALONE INTERMODAL, INC., Tucker, GA, of License No. MC–75840 (Sub–No. 143), issued March 10, 1981 to MALONE FREIGHT LINES, INC., Birmingham AL, to engage in operations, as a broker, in arranging for the transportation of general commodities (except household goods), between points on the United States. Applicants' representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210.

[FR Doc. 82–32731 Filed 11–30–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, are governed by 49 CFR 1160.1–1160.23 of the Commission's Rules of Practice. These rules were published in the **Federal Register** on December 31, 1980, at 45 FR 86771 and redesignated at 47 FR 49583, November 3, 1982. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1160.40–1160.49. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

For the following, please direct status inquiries to Team 1 at 202–275–7992.

Volume No! OP1–208

Decided: November 23, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 152361 (Sub-1), filed November 10, 1982. Applicant: SHANNON MOTOR LINES, 7517 Pivot St., Downey, CA 90241. Representative: A. Dayton Schell, 6 Eileen Way, Edison, NJ 08837, (201)–494–8765. Transporting for or on behalf of the U.S. Government, *general commodities* (except used household goods, hazardous or secret materials, sensitive weapons and munitions), between points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 2 at 202–275–7030.

Volume No. OP2–300

Decided: November 22, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 164683, filed November 15, 1982. Applicant: MELTON BROKERAGE, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Wilburn L. Williamson, Suite 107, 50 Classen Center, 5101 North Classen Blvd., Oklahoma City, OK 73118, 405–848–7946. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 164702, filed November 12, 1982. Applicant: J. B. M., INC., Pioneer Rd. P.O. Box 241, Evans City, PA 16033. Representative: Ralph A. Minetti (same address as applicant) 412–776–4930. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–32732 Filed 11–30–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications are governed by 49 CFR 1160.1–1160.23 of the Commission's Rules of Practice. These rules were published in the **Federal Register** of December 31, 1980, at 45 FR 86771 and redesignated at 47 FR 49583, November 1, 1982. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1160.40–1160.49. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the

Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

The the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.– All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to Team 2, (202) 275–7030.

Volume No. OP 2–299

Decided: November 22, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 146113 (Sub-3), filed November 16, 1982. Applicant: VANCOUVER INLAND EXPRESS, LTD., #206 14980 104th Ave., Surrey, B.C., Canada V3R 1M9. Representative: Michael D. Duppenthaler, 211 S. Washington St., Seattle, WA 98104, 206–622–3220. Transporting *transportation equipment*, between points in the U.S., under continuing contract(s) with Western Star Trucks, Inc., of Kelowna, B.C., Canada.

Note.— This decision has been made in accordance with the statutory provisions of the Bus Regulatory Reform Act of 1982 with great weight being given to the mandates set forth in the National Transportation Policy.

MC 151192 (Sub-33), filed November 16, 1982. Applicant: PAULS TRUCKING CORPORATION, 286 Homestead Ave., Avenel, NJ 07001. Representative: Michael A. Beam (same address as applicant) 201–499–3869. Transporting (1) *health care products*, and (2) *such commodities* as are dealt in and sold by manufacturers of artificial kidney and dialysis machines, between points in the U.S. (except AK and HI), under continuing contract(s) with Erika, Inc., of Rockleigh, NJ.

MC 157823 (Sub-1), filed November 17, 1982. Applicant: NOTO MAGIC CITY EXPRESS, LTD., P.O. Box 364, Moberly, MO 65270. Representative: Tom B. Kretsinger, P.O. Box 258, Liberty, MO 64068, 816–781–6000. Transporting (1) *malt beverages, wine, and snack foods*, and (2) *materials; equipment, and supplies* used in the manufacture of the commodities in (1) above, between points in the U.S. under continuing contract(s) with Anheuser-Busch, Inc., of St. Louis, MO.

For the following, please direct status calls to Team 1 (202) 275–7992.

Volume No. OP1–209

Decided: November 23, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 531 (Sub-467), filed October 26, 1982, previously published in the FR on November 8, 1982. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Rd., P.O. Box 14048, Houston, TX 77021. Representative: E. Stephen Heisley, 1919 Pennsylvania Ave., NW., Suite 500, Washington, DC 20006, (713)–748–1000. Transporting (1) *clay, concrete, glass or stone products*, (2) *ores and minerals*, (3) *chemicals and related products*, (4) *rubber and plastic products*, and (5) *petroleum, natural gas and their products*, between points in the U.S. (except AK and HI).

Note:—The purpose of this application is to correct the commodity description.

MC 730 (Sub-531), filed November 12, 1982. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., P.O. Box 8004, Walnut Creek, CA 94596. Representative: Alfred G. Krebs (same address as applicant) (415)–944–7260. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk) between points in the U.S. (except AK and HI), under continuing contract(s) with Sears Roebuck and Co., of Chigago, IL.

MC 47171 (Sub-224), filed November 12, 1982. Applicant: COOPER MOTOR LINES, INC., P.O. Box 2820, Greenville, SC 29602. Representative: Harris G. Andrews (same address as applicant) (803)–879–2101. Transporting *lumber and wood products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Continental Forest Industries, of Savannah, GA.

MC 60271 (Sub-22), filed November 10, 1982. Applicant: HARPER TRUCK LINE, INC., P. O. Box 288, Monroe, LA 71210. Representative: Sherri L. Roberts (same address as applicant) (318) 396–2914. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AL, AR, GA, IL, IN, KS, KY, LA, MS, MO, OK, TN, and TX

MC 63101 (Sub-12), filed November 9, 1982. Applicant: KEENE'S TRANSFER, INC. d.b.a. KEENE'S TRANSFER, 1019 East Ave., Tomah, WI 54660. Representative: Harold O. Orlofske, P. O. Box 368, Neenah, WI 54956, (414)–722–2848. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk) between points in Monroe and Wood Counties, WI, on the one hand, and on the other, points in the U.S. (except AK and HI).

MC 117730 (Sub-93), filed November 9, 1982. Applicant: KOUBENEC MOTOR SERVICE, INC., Route 47, Huntley, L 60142. Representative: Stephen H. Loeb, Suite 4, 2777 Finley Road, Downers Grove, IL 60515, (312) 953–0330. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI).

MC 129790 (Sub-20), filed November 12, 1982. Applicant: JOSEPH A. BECKER, d.b.a. BECKER HI-WAY FRATE, Route 5, Box 10B, Albert Lea, MN 56007. Representative: Andrew R. Clark 1600 TCF Tower, Minneapolis, MN 55402, (612) 333–1341. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between those points in the U.S. in, east and north of ND, SD, NE, MO, KY, and VA, on the one hand, and on the other, points in the U.S. (except AK and HI).

MC 136861 (Sub-45), filed November 9, 1982. Applicant: C-LINE, INC., 303 Jefferson Blvd., Warwick, RI 02888. Representative: Ronald N. Cobert, 1730 M St., NW., Suite 501, Washington, DC 20036, (202)–296–2900. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Gulf & Western, of New York, NY.

MC 141500 (Sub-13), filed November 9, 1982. Applicant: SUPERIOR TRUCKING CO., INC., P.O. Box 35, Kewaskum, WI 53040. Representative: Richard C. Alexander, 710 North Plankinton Ave., Milwaukee, WI 53203, (414) 273–7410. Transporting *commodities in bulk*, between points in the U.S. (except AK and HI), under continuing contract(s) with persons engaged in the distribution of dry bulk commodities.

MC 147001 (Sub-4), filed November 10, 1982. Applicant: NOEL MURRAY, 229 6th Ave., NW., Valley City, ND 58072. Representative: Charles E. Johnson, 220 North 4th St., P.O. Box 2056, Bismarck, ND 58502–2056, (701) 223–5300. Transporting *fertilizer, feed, feed ingredients, and such commodities* as are dealt in or distributed by farm supply stores, between points in MN and ND.

MC 148791 (Sub-34), filed November 12, 1982. Applicant: TRANSPORT-WEST, INC., 2125 N. Redwood Rd., Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110, (801) 531–1777. Transporting *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with the Procter & Gamble Company, of Cincinnati, OH.

MC 150301 (Sub-26), filed November 9, 1982. Applicant: EQUITY TRANSPORTATION COMPANY INC., 9744 E. Fulton Rd., Ada, MI 40301. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503, (616) 459–6121. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI). Condition: The issuance of a certificate in this proceeding is conditioned upon prior or coincidental cancellation and/or dismissal at applicants written request of the authority granted and/or sought in Number MC-150301 Sub Nos. 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24.

Note.—The purpose of this application is to convert applicant's contract carrier authority to common carrier authority.

MC 158221 (Sub-1), filed November 12, 1982. Applicant: CARNACO TRANSPORT, INC., 5045 Wilshire Blvd., Los Angeles, CA 90036. Representative: William H. Borghesani, Jr., 1150 17th St., NW., Suite 1000, Washington, DC 20036 (202) 457–1100. Transporting (1) *tires and materials* used in the manufacture of tires, (2) *food and related products*, (3) *inedible beef products* used in the manufacture of pet foods, (4) *paper and paper products*, (5) *fertilizer and chemicals*, (6) *wood products*, (7) *packaging materials*, (8) *packaging material and food and related products*, and (9) *such commodities* as are dealt in or used by grocery stores, drug stores, and food business houses, between points in the U.S. (except AK and HI), under continuing contract(s) in (1) above with Wisconsin Bandag, Inc., of Fond Du Lac, WI, and Brahler Bandag, Inc., of Jacksonville, IL, in (2) above with Bunge Edible Oil Corporation, of Kankakee, IL, Treetop, Inc., of Selah, WA, and American Fine Foods, of Payette, ID, in (3) above with Pet Foods, a Division of Beatrice Foods, of Modesto, CA, in (4) above with Crown Zellerbach Corp., of San Francisco, CA, in (5) above with Union Fertilizer, Inc., of Nampa, ID, in (6) above with Teton Sales Company, of Caldwell, ID, in (7) above with Merico Cake & Snack Foods, of Ft. Payne, AL, in (8) above with Aunt Nellie's Foods, Inc., of Clyman, WI, and in (9) above with Proctor & Gamble Company and its subsidiaries, namely, Proctor & Gamble Distribution Company, Proctor & Gamble Manufacturing Company, Proctor & Gamble Paper Products Company, Buckeye Celulose Corp., Ben Hill Citrus Juice Company, Norwich Eaton Pharmaceutical Company, Crush International U.S.A., Inc., Floger's Coffee Company, BH Food Company and Buckeye Oil Seed Products Company, all of Cincinnati, OH.

MC 162231 (Sub-2), filed November 12, 1982. Applicant: CAMPBELL TREE & LAND TRANSPORTATION COMPANY, Box 787, Wautoma, WI 54982. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Rd., Madison, WI 53719, (608) 273–1003. Transporting *chemicals and related products*, between points in WI, on the one hand, and, on the other, points in IA, IL, IN, MI, MN, MO, and NE.

MC 164640, filed November 3, 1982. Applicant: WILLIAM H. SACKETT, d.b.a. SACKETT TRANSPORTATION AND INLAND CITIES EXPRESS, 841 Iowa Ave., Riverside, CA 92507. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306, (805) 892–1106. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA, and WY.

MC 164641, filed November 9, 1982. Applicant: DIXIE TRUCKING COMPANY, 3006 Boxwood St., Brunswick, GA 31521. Representative: Bates Block, 3300 First Atlanta Tower, Atlanta, GA 30383, (404) 581–8083. Transporting (1) *commodities in bulk*, and (2) *lumber and wood products*, between points in Glynn County, GA, on the one hand, and, on the other, points in GA, FL, AL, SC, NC, and TN.

MC 164661, filed November 8, 1982. Applicant: TRAFFIC DISTRIBUTION SYSTEMS CORP., 1792 So. Redwood Rd., Salt Lake City, UT 84104. Representative: Wayne Nishimoto (same address as applicant) (801) 972–5406. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in UT, AZ, and NV.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-32733 Filed 11-30-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 199N)]

Conrail Abandonment of Wasepi and Mendon Secondary Track in St. Joseph County, MI; Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization of 1973 that the Commission, Review Board Number 1 has issued a certificate and decision authorizing the Consolidated Rail Corporation to abandon its rail line between Three Rivers, milepost 27.4 and Wasepi, milepost 36.9 in the County of St. Joseph, MI, a total distance of 9.5 miles effective on July 1, 1982.

The net liquidation value of this line is $385,421. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L Mergenovich,

Secretary.

[FR Doc. 82-32734 Filed 11-30-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 361N)]

Conrail Abandonment Between Oneida Castle and Canastota, NY; Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization of 1973 That the Commission, Review Board Number 3 has issued a certificate and decision authorizing the Consolidated Rail Corporation to abandon its Vernon Industrial Track between milepost 251.9 and milepost 256.9 in the Counties of Oneida and Madison, NY, a total distance of 5.0 miles effective on July 15, 1982.

The net liquidation value of this line is $354,403. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L Mergenovich,

Secretary.

[FR Doc 82-32735 Filed 11-30-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387]

Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notices of Provisional Exemptions.

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice. These exemptions may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275-7278 or Tom Smerdon, (202) 275-7277.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in these instances to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions:

These grants neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) not that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

Sub-No.	Name of railroad, contract number, and specifics	Review Board[1]	Decided date
419	Missouri-Kansas-Texas Railroad Co., ICC-MKT-C-0197, Supplement 1, (Wheat flour, prepared flour, bulgur or sorghum grits), Via Port of Galveston, TX.	3	Nov. 23, 1982.
420	Consolidated Rail Corp., ICC-CR-C-0093, Supplement 1, (Copper smelter products).	2	Do.
421	Burlington Northern Railroad Co., ICC-BN-C-0041-A, (Soda ash)	1	Do.
422	Illinois Central Gulf Railroad Co., ICC-ICG-C-0053, (LP gas)	2	Do.

[1] Review Board No. 1, Members Parker, Chandler, and Fortier. Review Board No. 2, Members Carleton, Williams, and Ewing. Review Board No. 3, Members Krock, Joyce, and Dowell. Member Krock not participating.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C.10505)

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-32629 Filed 11-30-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-218

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, N.E., Atlanta, GA 30309.

MC 151380 (Sub-3-2TA), filed November 18, 1982. Applicant: RICLYN ENTERPRISES, INC., Pier 6, Building 6, Port Everglades, Ft. Lauderdale, FL 33335. Representative: Gerald J. Donovan, 4791 82nd Ave., Davie, FL 33328. *General Commodities (Except Classes A and B Explosives, Household Goods, Commodities in Bulk),* between Tampa, FL, the Port of Tampa, FL and points and places in the State of FL, in containers having a prior or subsequent movement by water. Supporting shipper: Caldwell Shipping Co., 8700 N.W. Flagler St., Miami, FL.

The following applications were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, 411 West 7th Street, Suite 500, Fort Worth, TX 76102.

MC 16334 (Sub-5-11TA), filed November 17, 1982. Applicant: DEBRICK TRUCK LINE CO., P.O. Box 421, Paola, KS 66071. Representative: John T. Pruitt, 9832 Connell, Overland Park, KS 66212. *Rubber and Plastic products* between points in Clay County, MO, on the one hand, and, on the other, points in CO, MI, OH, and TN. Supporting Shipper: Package Development Co., North Kansas City, MO.

MC 88368 (Sub-5-18), filed November 18, 1982. Applicant: CARTWRIGHT VAN LINES, INC., 11901 Cartwright Avenue, Grandview, MO 64030. Representative: C. Max Stewart (same as applicant). *Import Shoes, Laces and Accessories and Displays,* from Omaha, NE to Cincinnati, OH. Supporting Shipper: David Shoe Company, Cincinnati, OH.

MC 126852 (Sub-1TA), filed November 19, 1982. Applicant: JERRY LANDING MOVING SERVICE, 160 North Main, St. Clair, MO 63077. Representative: Stephen G. Newman, P.O. Box 456,

Jefferson City, MO 65102, 314/635–7166. Contract, irregular; *general commodities (except classes A and B explosives, household goods and commodities in bulk)* between points in the U.S. (except AK and HI), under continuing contract(s) with Emeco Industries, Inc., of Hanover, PA. Supporting Shipper: Emeco Industries, Inc., Hanover Pa.

MC 141913 (Sub-5–1TA), filed November 18, 1982. Applicant: HEALTHCARE TRANSPORTATION SYSTEM, INC., 7 Ensign Girardot Place, Cape Girardeau, MO 63701. Representative: Patricia F. Scott, P.O. Box 1000, Laurie, MO 65038. *Such commodities as are used in the operation and maintenance of a hospital,* between Kansas City, KS on the one hand, and on the other hand, points in MO; and (20 between Kansas City, MO on the one hand, and on the other hand, points in KS. Supporting Shipper: Mid-America Shared Services, Inc., Cape Girardeau, MO 63701.

MC 143568 (Sub-4), filed November 18, 1982. Applicant: SIMMONS TRUCKING, INC., P.O. Box 71, Glenwood, MO 63541. Representative: Frank W. Taylor, Jr., 1221 Baltimore Avenue, Suite 600, Kansas City, MO 64105, (816) 221–1464. Contract; irregular; *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract with Aldi, Inc., South East First Street, P.O. Box 296, Wright City, MO 63390. Supporting Shipper: Aldi, Inc., Wright City, MO.

MC 156693 (Sub-5–4TA), filed November 17, 1982. Applicant: LYNN D. PLETCHER and PAULETTE PLETCHER, d.b.a. PLETCHER TRUCKING, 450 Coombs Drive, Aurelia, IA 51005. Representative: D. Douglas Titus, 340 Insurance Exchange Building, Sioux City, IA 51101. Contract irregular (1) *Food and related products; and (2) articles used or distributed by food and variety stores,* between points in IA, MN, MO, NE, and SD. Supporting Shipper(s): Hy-Vee Food Stores, Inc., Cherokee, IA.

MC 164496 (Sub-5–1TA), filed November 17, 1982. Applicant: SKYLARK VAN SERVICE, INC., Ave. H Branch Exchange, Bldg. 642, Sheppard Air Force Base, TX 76311. Representative: Norman Marquart, Sr., 5210 Tower Drive, #154, Wichita Falls, TX 76310. Common, Regular; *Passengers and luggage* between Altus, OK and Wichita Falls, TX and/or Altus, OK and Dallas-Fort Worth, TX Airport and return via U.S. Hwy 283, Altus, OK, to Vernon, TX via US Hwy 287; over 287 to Wichita Falls, TX from Wichita Falls, TX over 287 to its junction with 35W; thence over 35W to junction 820; thence over 820 to its junction with 183, over 183 to Dallas-Fort Worth, TX Airport and return over then same route. Supporting Shipper: Altus AFB, OK.

MC 164604 (Sub-5–2TA), filed November 17, 1982. Applicant: W. A. FERGUSON AND TOMMY FERGUSON, d.b.a. FERGUSON FARMS TRANSPORTATION, West Main Street, P.O. Box AB, Green Forest, AR 72638. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72702. *Such Commodities as are dealt in or used by discount, variety and grocery stores*—Between Boone County, AR; Dale County, AL; Lancaster County, NE; and, Washoe County, NV, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting Shipper: Mass Merchandisers, Inc., Post Office Box 790, Harrison, AR 72601.

MC 164712 (Sub-5–1TA), filed November 17, 1982. Applicant: PTD, INC., 4303 Speaker Road, Kansas City, KS 66106. Representative: Thomas A. Stroud, 109 Madison Avenue, Memphis, TN 38103. *Petroleum products, in bulk, in tank vehicles,* from Kansas City, KS and points in its commercial zone, to points in Andrew, Boone, Cass, Caldwell, Clay, Clinton, Cole, DeKalb, Holt, Jackson, Laclede, Ray and Vernon Counties, MO. Supporting Shippers: 8.

MC 164718 (Sub-5–1TA), filed November 18, 1982. Applicant: DON C. BURLESON, d.b.a. W J's TRUCKING, P.O. Box 2263, Corsicana, TX 75110. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062. *Glass and/or Materials, Equipment and Supplies used in the manufacturer, sale and distribution of Glass* between Corsicana, TX on the one hand, and, on the other, points in the U.S. (except AK and HI). Restricted to shipments originating at or destined to the facilities of Chattanooga Glass, Corsicana, TX. Supporting shipper: Chattanooga Glass Company, 400 W. 45th St., Chattanooga, TN 37410.

MC 164740 (Sub-5–1TA), filed November 18, 1982. Applicant: ACE TRANSPORTATION, INC., P.O. Box 91714, 210 Ambassador Caffery & I–10, Lafayette, LA 70501. Representative: Janet Boles Chambers, 8211 Goodwood Blvd., Suite C–1, Baton Rouge, LA 70806. (1) *Contractor's machinery and equipment;* (2) *mercer commodities;* between AL, FL, LA, MS, OK, and TX on the one hand, and, on the other, points in the U.S. (except HI). Supporting shippers: 30.

MC 164774 (Sub-5–1TA), filed November 19, 1982. Applicant: PIN–BRO, INC., 13627 Crystal Brook, Norman, OK 73071. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Metal drilling masts and substructures and parts and accessories thereto, and materials, equipment and supplies used in the manufacture and distribution thereof,* between points in OK, on the one hand, and, on the other, points in AR, CO, KS, LA, MO, MT, ND, NE, NM, SD, TX, and WY. Supporting shipper: Parco Mast and Substructures, Inc., 3200 S.E. 29th Street, Del City, OK.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–32790 Filed 11–30–82; 8:45 am]

BILLING CODE 7035–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–118]

Certain Sneakers With Fabric Uppers and Rubber Soles; Commission Hearing on the Presiding Officer's Recommendation and on Relief, Bonding, and the Public Interest, and the Schedule for Filing Written Submissions

AGENCY: International Trade Commission.

ACTION: The scheduling of a public hearing and written submissions in investigation No. 337–TA–118, Certain Sneakers with Fabric Uppers and Rubber Soles.

Notice is hereby given that the presiding officer has issued a recommended determination that there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the unauthorized importation into and sale in the United States of certain sneakers with fabric uppers and rubber soles which are the subject of the Commission's investigation. Accordingly, the recommended determination and the record of the hearing have been certified to the Commission for review and a Commission determination. Interested persons may obtain copies of the nonconfidential version of the presiding officer's recommendation (and all other public documents on the record of the investigation) by contacting the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 161, Washington, D.C. 20436, telephone 202–523–0161.

Commission Hearing

The Commission will hold a public hearing on January 26, 1983, in the Commission's Hearing Room, 701 E

Street NW., Washington, D.C. 20436, beginning at 10:00 a.m. The hearing will be divided into two parts. First, the Commission will hear oral arguments on the presiding officer's recommended determination that a violation of section 337 of the Tariff Act of 1930 exists. Second, the Commission will hear presentation concerning appropriate relief, the effect that such relief would have upon the public interest, and the proper amount of the bond during the Presidential review period, in the event that the Commission determines that there is a violation of section 3376 and that relief should be granted. These matters will be heard on the same day in order to facilitate the completion of this investigation within time limits established under law and to minimize the burden of this hearing upon the parties. The procedure for each portion of the hearing follows.

Oral Arguments

Any party to the Commission's investigation or any interested Government agency may present an oral argument concerning the presiding officer's recommended determination. That portion of a party's or an agency's total time allocated to oral argument may be used in any way the party or agency making the argument sees fit, i.e., a portion of the time may be reserved for rebuttal or devoted to summation. The oral arguments will be held in the following order: complainant, respondents, Government agencies, and the Commission investigative attorney. And rebuttals will be held in this order: respondents, complainant, Government agencies, and the Commission investigative attorney. Persons presenting oral argument are reminded that such argument must be based upon the evidentiary record certified to the Commission by the presiding officer.

Oral Presentations on Relief, Bonding, and the Public Interest

Following the oral arguments on the presiding officer's recommendation, parties to the investigation, Government agencies, public-interest groups, and interested members of the public may make oral presentations on the issues of relief, bonding, and the public interest. This portion of the hearing is quasi-legislative in nature; presentations need no be confined to the evidentiary record certified to the Commission by the presiding officer, and may include the testimony of witnesses. Oral presentation on relief, bonding, and the public interest will be heard in this order: complainant, respondents, Government agencies, the Commission investigative attorney, public-interest groups, and interested members of the public.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) an order which could result in one or more respondents' being required to cease and desist from engaging in unfair methods of competition or unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in hearing presentations which address the form of relief, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers.

If the Commission finds that a violation of section 337 has occurred and orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in hearing presentations concerning the amount of the bond, if any, which should be imposed.

Time Limit for Oral Argument and Oral Presentation

Complainant, respondents (taken collectively), the Commission investigative attorney, and Government agencies will be limited to a total of 30 minutes (exclusive of time consumed by questions from the Commission or its advisory staff) for making both oral argument on violation and oral presentations on remedy, bonding, and the public interest. Persons making oral presentations solely on remedy, bonding, and the public interest will be limited to 10 minutes (exclusive of time consumed by questions from the Commission and its advisory staff). The Commission may in its discretion expand the aforementioned time limits upon receipt of a timely request to do so.

Written Submissions

In order to give greater focus to the hearing, the parties to the investigation and interested Government agencies are encouraged to file briefs on the issues of violation (to the extent they have not already briefed that issue in their written exceptions to the presiding officer's recommended determination), remedy, bonding, and the public interest. The complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease and desist orders for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, bonding, and the public interest. Written submissions on the question of violation must be filed not later than the close of business on December 29, 1982; written submissions on the questions of remedy, bonding, and the public interest must be filed not later than the close of business on January 5, 1983. During the course of the hearing, the parties may be asked to file posthearing briefs.

Notice of Appearance

Written requests to appear at the Commission hearing must be filed with the Office of the Secretary by January 20, 1983.

Additional Information

The original and 14 true copies of all briefs on violation must be filed with the Office of the Secretary not later than December 29, 1982; the original copy and 14 true copies of all briefs on remedy, bonding, and the public interest must be filed with the Office of the Secretary not later than January 5, 1983. Any person desiring to discuss confidential information or to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents or arguments containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the **Federal Register** of March 9, 1982, 47 FR 10103.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0143.

Issued: November 24, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–32816 Filed 11–30–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–134]

Certain Treadmill Joggers; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 18, 1982, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Battle Creek Equipment Company, 307 West Jackson Street, Battle Creek, Michigan 49016. An amended complaint was filed on October 28, 1982. The amended complaint (hereinafer the complaint) alleges unfair methods of competition and unfair acts in the importation of certain treadmill joggers into the United States, or in their sale, by reason of alleged infringement of the claims of U.S. Letters Patent 3,642,279. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue either a permanent exclusion order or a permanent cease and desist order.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on November 17, 1982, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain treadmill joggers into the United States, or in their sale, by reason of alleged infringement of the claims of U.S. Letters Patent 3,642,279, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Battle Creek Equipment Company, 307 West Jackson Street, Battle Creek, Michigan 49016.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Heinz Kettler Metallwarenfabrik GmbH and Co., 4763 Ense, Dortman, Federal Republic of Germany.

Kettler International, Inc., 4725 Virginia Beach Avenue, Virginia Beach, Virginia 23462.

(c) John Milo Bryant, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 124, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0471.

FOR FURTHER INFORMATION CONTACT: John Milo Bryant, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–0419.

By order of the Commission.

Issued: November 23, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–32824 Filed 11–30–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–91 (Final)]

Sodium Nitrate From Chile

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

EFFECTIVE DATE: November 9, 1982.

SUMMARY: As a result of an affirmative preliminary determination by the U.S. Department of Commerce that there is a reasonable basis to believe or suspect that imports from Chile of sodium nitrate, provided for in item 480.25 of the Tariff Schedules of the United States, are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673), the United States International Trade Commission hereby gives notice of the institution of investigation No. 731–TA–91 (Final) under section 735(b) of the act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Unless the investigation is extended, the Department of Commerce will make its final dumping determination in the case on or before January 22, 1983, and the Commission will make its final injury determination by March 8, 1983 (19 CFR 207.25).

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence Rausch (202–523–0286), Office of Investigations, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Background.—On May 19, 1982, the Commission determined, on the basis of the information developed during the course of its preliminary investigation, that there was a reasonable indication that an industry in the United States

was materially injured or threatened with material injury by reason of allegedly LTFV imports of sodium nitrate from Chile. The preliminary investigation was instituted in response to a petition filed on April 12, 1982, by counsel for Olin Corp., the sole domestic producer of sodium nitrate.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11, as amended by 47 FR 6189, February 10, 1982), not later than 21 days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d), as amended by 47 FR 6189, February 10, 1982). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c), as amended by 47 FR 33682, August 4, 1982).

Staff report.—A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on January 17, 1983, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10 a.m. on February 1, 1983, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 6, 1983. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10 a.m. on January 11, 1983, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is January 27, 1983.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23, as amended by 47 FR 33682, August 4, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 (19 CFR 207.22, as amended by 47 FR 33682, August 4, 1982). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24, as amended by 47 FR 6191, February 10, 1982) and must be submitted not later than the close of business on February 9, 1983.

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 9, 1983. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8, as amended by 47 FR 6188, February 10, 1982, and 47 FR 13791, April 1, 1982). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207, as amended by 47 FR 6190, February 10, 1982, and 47 FR 33682, August 4, 1982), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 47 FR 6188, February 10, 1982; 47 FR 13791, April 1, 1982; and 47 FR 33682, August 4, 1982).

This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20, as amended by 47 FR 6190, February 10, 1982).

By order of the Commission.

Issued: November 23, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-32817 Filed 11-30-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-195 and 196 (Preliminary)]

Stainless Steel Sheet and Strip and Stainless Steel Plate From the United Kingdom

Determination

Based on the record [1] developed in investigation Nos. 701-TA-195 and 196 (Preliminary), the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following products which are alleged to be subsidized by the Government of the United Kingdom:

Stainless steel sheet, provided for in items 607.7610, 670.9010, and 607.9020 of the Tariff Schedules of the United States Annotated (TSUSA), and stainless steel strip (over 0.01 inch in thickness), provided for in TSUSA items 608.4300 and 608.5700 (investigation No. 701-TA-195 (Preliminary)); [2]

Stainless steel plate, provided for in TSUSA items 607.7605 and 607.9005 (investigation No. 701-TA-196 (Preliminary)).[2]

Background

On October 7, 1982, members of the Tool and Stainless Steel Industry of the United States and the United Steelworkers of America filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that an industry in the United States is being materially injured and threatened with material injury by reason of allegedly subsidized imports of stainless steel sheet and strip and stainless steel plate from the United Kingdom. Accordingly, on October 7, 1982, the Commission instituted preliminary countervailing duty investigations (Nos. 701-TA-195 and 196) under section 703(a) of the Tariff Act of 1930. Notice of the institution of

[1] The "record" is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Haggart determines that there is a reasonable indication of material injury and therefore does not reach the issue of threat of material injury.

the investigations and conference therefor was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission and by publishing the notice in the **Federal Register** on October 20, 1982 (47 FR 46781). A public conference was held in Washington, D.C. on November 1, 1982, at which all interested parties were afforded the opportunity to present information for consideration by the Commission.

Views of the Commission

Introduction

We determine, pursuant to section 703(a) of the Tariff Act of 1930, that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury [3] by reason of allegedly subsidized imports of stainless steel sheet and strip from the United Kingdom. Further, we determine that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury [3] by reason of allegedly subsidized imports of stainless steel plate from the United Kingdom.

We have based our determinations on our consideration of the condition of the domestic industries and the causal relationship between the condition of the domestic industries and the allegedly subsidized imports from the United Kingdom.

Domestic Industries

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." [4] Section 771(10) defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with" the article under investigation.[5]

The products being imported into the United States from the United Kingdom are stainless steel sheet and strip and stainless steel plate. Imports of stainless steel sheet and strip were involved in recent preliminary investigations involving West Germany and France.[6] In those investigations, we found the like product to be stainless steel sheet and strip and the domestic industry to consist of the U.S. producers of this like product. In this investigation (701–TA–195), the parties have not suggested, nor does the record support, a revision of this industry definition.[7]

Stainless steel plate from the United Kingdom is a flat-rolled product over 0.1875 inches thick and 12" wide. The characteristics and uses of the domestically produced stainless steel plate do not differ from those of the imported product nor have the parties suggested any differences. Stainless steel plate is thicker than stainless steel sheet and strip and has different uses. Unlike sheet and strip, stainless steel plate is used primarily in the production of industrial equipment for the chemical, oil and gas, and rubber producing and processing industries.[8] Therefore, in Investigation No. 701–TA–196 we find the like product to be stainless steel plate and the domestic industry to consist of the U.S. producers of the like product.[9]

Condition of the Domestic Industries

I. Stainless Steel Sheet and Strip

The stainless steel sheet and strip industry is clearly experiencing difficulties. Nearly all of the economic indicators we considered in reaching our determination in this investigation have declined during the period under investigation.

U.S. production of stainless steel sheet and strip fell from 728,000 short tons (hereinafter referred to as tons) in 1979 to 671,000 tons in 1981. In the eight-month period, January-August, 1982, production declined 85,000 tons, or 19 percent, to 371,000 tons from 456,000 tons during the corresponding period in 1981.[10] Capacity utilization also declined significantly, dropping from 84 percent of capacity in 1979 to 71 percent in 1981. The capacity utilization in January-August 1982 stood at 62.2 percent compared to 83.3 percent for the same period in 1981.[11] [12] Declines in capacity utilization are in large part a result of declines in production in this case although capacity did increase during the period under investigation.

From 1979 to 1981, U.S. producers' shipments of stainless steel sheet and strip decreased by 13 percent from 874,000 short tons to 759,000 short tons. Shipments for January–August, 1982, dropped by 28 percent from 558,000 tons to 400,000 tons, compared to the same period in 1981.[13]

Employment figures have also declined from 1979 to the present. The average number of production and related workers producing stainless steel sheet and strip declined from 7,965 workers in 1979 to 7,288 workers in 1981. During January–August, 1982, however, the average number of workers employed was 6,239, or 20 percent less than the number employed during the corresponding period of 1981. The number of hours paid for production and related workers producing sheet and strip followed similar trends.[14]

The financial information on the record concerning sheet and strip production also indicated a negative trend. Net sales, gross profits, net operating profits, and cash flow all declined during the period of this investigation. Aggregate net sales of stainless steel and strip declined from $1.4 billion in 1979 to $1.2 billion in 1980 or by 14 percent. Net sales increased by $105 million, or 9 percent, to $1.3 billion in 1981, but then dropped off by 21 percent to $632 million in January–August, 1982, compared to $805 million in the corresponding period in 1981.[15]

Gross profit declined by 69 percent during the period 1979 to 1981, from $234 million to $72 million.[16] During that same period, the ratio of gross profit to net sales dropped from 16.9 to 5.6 percent. Operating profit declined from $188 million, or 13.5 percent of net sales in 1979, to $17 million or 1.3 percent of net sales in 1981. For the interim period ending August 31, 1982, aggregate operating losses of nine million dollars or a negative 1.4 percent of net sales were reported, compared to an operating profit of forty-two million dollars, or 5.5 percent of net sales, for the same period in 1981. Cash flow has also declined significantly from $207 million in 1979 to $38 million in 1981 and from $56 million during the interim period of 1981 to $5 million during the interim period of 1982.[17]

[3] Commissioner Haggart determines that there is a reasonable indication of material injury, and therefore does not reach the issue of threat of material injury.

[4] 19 U.S.C. 1677(4)(A).

[5] 19 U.S.C. 1677(10).

[6] Stainless Steel Sheet and Strip from West Germany, Inv. No. 731–TA–92, USITC Pub. 1252 (June 1982); Stainless Steel Sheet and Strip from France, Inv. No. 731–TA–95, USITC Pub. 1264 (June 1982).

[7] As in the prior investigations concerning this product, we note that the definition of the domestic industry in this preliminary investigation is based on the best information available. Based on the record developed in any final investigation, a different definition of the domestic industry is not precluded. The domestic producers of stainless steel sheet and strip are discussed in the report at A–10.

[8] Report at A–8.

[9] The domestic producers of stainless steel plate are discussed in the report at A–10, A–12.

[10] Report at A–14.

[11] Report at A–14.

[12] A factor evidencing the difficulties of both the stainless steel sheet and strip and the stainless steel plate industries is utilization of overall capacity to melt stainless steel. This declined from 83 in 1979 to 53 percent in January–March, 1982. Report at A–14.

[13] Report at A–15.

[14] Report at A–17, A–18.

[15] Report at A–20.

[16] Report at A–20.

[17] Report at A–20, A–21, Table 10.

II. Stainless Steel Plate

The stainless steel plate industry is also experiencing difficulties. Production of stainless steel plate declined from 105,000 tons in 1979 to 95,000 tons in 1981. Plate production decreased to 49,000 tons during the first eight months of 1982, compared with 63,000 tons during the same period in 1981.[18] Capacity utilization also declined from 63.3 percent in 1979 to 57.5 percent in 1981. January–August 1982 capacity utilization was 53.1 percent compared to 68.7 in the same period of 1981.[19]

During 1979–1981, U.S. producers' shipments of stainless plate declined by 16 percent from 146,000 tons to 122,000 tons. This trend continued with a 22 percent decline to 69,000 tons in January–August 1982, compared with 88,000 tons during the corresponding period in 1981.[20]

Although employment of workers producing stainless steel plate increased from 1,272 in 1979 to 1,396 in 1981, the number of workers in January–August 1982 dropped to 1,300 workers compared to 1,397 workers during the same period in 1981. The hours paid for production and related workers declined by 8 percent from 2.0 million in 1979 to 1.9 million in 1981. There was a 24 percent decline to 970,000 hours paid in January–August 1982 compared with 1.3 million in January–August 1981.[21]

The financial condition of producers of stainless steel plate has deteriorated during the period under investigation. Aggregate net sales of plate decreased by 2 percent from $210 million in 1979 to $206 million in 1981. In the period January–August, 1982, net sales dropped by 27 percent to $69 million compared with $94 million in the corresponding period of 1981.[22] Gross profit declined by 69 percent from $29 million in 1979 to $9 million in 1981. In the same period, the ratio of gross profit to net sales dropped from 13.8 percent to 4.4 percent. Operating profit fell from $22 million in 1979 or 10.5 percent of net sales, to a $1 million loss or 0.5 percent of net sales, in 1981. In the interim period ending August 31, 1982, operating profit fell to 0 percent compared to 7.4 percent of net sales during the interim period of 1981 as four of the six producers reporting financial data showed operating and net losses.[23]

[18] Report at A–14.
[19] Report at A–14. *See also* note 10 at page 5.
[20] Report at A–15.
[21] Report at A–19.
[22] Report at A–21.

Reasonable Indication of Material Injury

Section 703(a) of the Tariff Act of 1930 provides that the Commission shall make a determination as to whether there is a reasonable indication of material injury based on the best information available.[24] Section 771(7) directs the Commission to consider, among other factors, (1) the volume of imports of the merchandise under investigation, (2) the effect of imports of that merchandise on prices in the United States for like products, and (3) the impact of imports of such merchandise on domestic producers of like products.

Volume of Imports

I. Stainless Steel Sheet and Strip

Imports of stainless steel sheet and strip from the United Kingdom declined from 1,094 tons in 1979 to 643 tons in 1980, but then increased to 3,840 tons in 1981.[25] Imports in January–September 1982 amounted to 3,520 tons, which is a 39 percent increase over the 2,328 tons imported during the corresponding period of 1981. The ratio of imports from the United Kingdom to apparent U.S. consumption increased from 0.1 percent in 1979 and 1980 to 0.5 percent in 1981. This ratio increased to 0.7 percent in January–September 1982 compared with 0.4 percent in the corresponding period in 1981.[26]

At the same time that imports of stainless steel sheet and strip from the United Kingdom were increasing, the market share of imports from all sources also increased from 6.9 percent in 1979 to 9.0 in 1981 and to 13.4 percent for the first nine months of 1982 from 7.7 percent in the corresponding period of 1981.[27] The best information available to the Commission at this preliminary stage of the investigation indicates that the imported and domestic stainless steel sheet and strip are fungible, and compete in the market for the same end users through common channels of distribution.[28] [29]

[23] Report at A–21.
[24] S. Rep. No. 249, 96th Cong., 1st Sess. 48 (1979).
[25] From June 1976 to February 1980, imports of stainless steel sheet and strip and stainless steel plate, as well as other stainless steel products were subject to quantitative restrictions. *See* Report at A–2. These restrictions, as well as a 3-month strike against British Steel Corporation in early 1980, suppressed the level of stainless steel imports from the United Kingdom during this period.
[26] Counsel for British Steel Corporation stated that the imports from the United Kingdom are generally concentrated in the 60-inch stainless steel cold-rolled sheet. There is only one domestic producer that manufactures sheet in that dimension. However, information on the record indicates that the one producer has sufficient capacity to supply the entire U.S. demand for this product.
[27] Report at A–31, Table 17.

II. Stainless Steel Plate

Imports of stainless steel plate from the United Kingdom decreased from 610 tons in 1979 to 273 tons in 1980 before increasing to 2,985 tons in 1981.[30] Imports in January–September 1982 amounted to 3,217 tons, representing an increase of 38 percent compared with imports in the corresponding period of 1981. The market share for imports of plate from the United Kingdom rose from 0.4 percent in 1979 to 2.5 percent in 1981. This market share increased from 2.4 percent in January–September 1981 to 3.8 percent in January–September 1982.[31] [32]

Effect of Imports on Prices

I. Stainless Steel Sheet and Strip

There are indications that imports of stainless steel sheet and strip from the United Kingdom have had a negative impact on domestic prices. U.S. producers and British Steel Corporation provided prices on two specifications of stainless steel sheet (one grade 304 and one grade 316) for sales to service centers/distributors.[33] The U.S. producers' prices for this sheet declined from July–September 1981 to July–September 1982 by 10 percent for the grade 304 sheet and 27 percent for the grade 316 sheet. While the imported grade 304 was priced higher than the domestic product, the imported grade 316 sheet undersold the domestic grade 316 sheet by an average of 14 percent during the three quarters during which we were able to make price comparisons.

With regard to lost sales, two firms contacted confirmed that they purchased British stainless steel sheet from the United Kingdom because of lower price. Additionally, a third firm recently purchased a large quantity of British stainless steel sheet because of favorable credit terms.

II. Stainless Steel Plate

There are also indications that imports of stainless steel plate from the United Kingdom have depressed U.S. producers' prices of stainless steel plate. U.S. producers' prices (for the two grade 304 plates and the one grade 316 plate for which the Commission received

[28] Report at A–8. *See also* Staff briefing at the November 17, 1982, public meeting of the U.S. International Trade Commission.
[29] Chairman Eckes and Commissioner Haggart have made their determination on the basis of imports of stainless steel sheet and strip from the United Kingdom alone. In the event that this case returns for a final investigation, they do not preclude cumulation should the record developed demonstrate that it is appropriate.
[30] *See* note 23 at page 8.

price information) decreased by an average of 17 percent during July–September 1982 compared with Jul–September 1981.

Imports of stainless steel plate from the United Kingdom undersold the domestic product for all three plate specifications for which prices were collected. Margins of underselling ranged from less than 1 percent to 15 percent below domestic prices for the two grade 304 plate products. For the grade 316 plate specification, British Steel provided prices for 3 quarters during the period under investigation.[34] Margins of underselling averaged 21 percent.

With regard to lost sales, six firms confirmed that they purchased stainless steel plate from British Steel and that the price was lower than that for U.S. produced plate. The firms indicated that U.S. prices declined throughout 1982, narrowing the margins of underselling.

Reasonable Indication of a Threat of Material Injury[35]

In examining threat of material injury, the Commission looks for, among other factors, demonstrable trends in the following areas: (1) Rate of increase of the imports in the U.S. market; (2) importers' inventories; (3) capacity in the exporting country to generate exports; and (4) the likelihood that such exports will be directed to the U.S. market taking into account the availability of other export markets. The threat must be real and the injury imminent, not a mere possibility based on supposition and conjecture.[36]

There is a steadily increasing rate of imports of stainless steel sheet, strip and plate from the United Kingdom, both in absolute terms and in terms of ratio of the imports from the United Kingdom to domestic consumption.[37] Import figures for the first quarter of 1982 demonstrate the capability of British Steel to increase its imports into the United States substantially in a very short time.[38] Other considerations suggest that imports of stainless steel sheet and plate from the United Kingdom will continue to increase in the near future.

The capacity for production of stainless steel sheet and strip in the U.K. increased each year from 1979–1982.[39] Capacity for increased production of stainless steel plate remained essentially the same during this period, leaving substantial unused capacity.[40] There is a likelihood that exports of stainless steel sheet and strip and stainless steel plate will be directed to the U.S. market. Although the European Community has traditionally been the largest export market for the United Kingdom, it has a limited demand for stainless steel sheet and strip and stainless steel plate from the United Kingdom. During the period of this investigation, the role of the United States as an export market for the United Kingdom has increased.[41]

Conclusion

Therefore, on the basis of the best available information, we determine that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury[42] by reason of subsidized imports of stainless steel sheet and strip and stainless steel plate from the United Kingdom.

By Order of the Commission.

Issued: November 22, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-32818 Filed 11-30-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-197 (Preliminary)]

Softwood Lumber From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of softwood lumber, provided for in items 202.03 through 202.30, inclusive, of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Canada.[2]

Background

On October 7, 1982, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of the United States Coalition for Fair Canadian Lumber Imports, a group of 8 trade associations and more than 350 domestic producers of softwood lumber products, alleging that imports of softwood lumber from Canada are being subsidized by the Government of Canada within the meaning of section 701 of the act (19 U.S.C. 1671). Accordingly, effective October 7, 1982, the Commission instituted a preliminary countervailing duty investigation under section 703(a) of the act (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise from Canada.

Notice of the institution of the Commission's investigation and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on October 20, 1982 (47 FR 46780). The conference was held in Washington, D.C., on November 3, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of the Commission

In this preliminary countervailing duty investigation, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of softwood lumber from Canada.[3] [4] Our reasons for this determination are discussed below.

Domestic Industry

As a threshold consideration the Commission is required to define the domestic industry against which the impact of the subject imports is to be examined. Section 771(4)(A) of the Tariff Act of 1930 defines the domestic industry as "the domestic producers as a

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[31] Report at A-34, Table 19.

[32] Counsel for British Steel Corporation stated that imports of stainless steel plate from the United Kingdom are concentrated in the 316 grades, which contain molybdenum, and that the U.S. producers maintain artificially high prices in these grades compared to prices of non-molybdenum grades. There is information on the record, however, that the U.S. prices of grade 316 plate were lowered to reflect the lower price of molybdenum. Moreover, there are other factors affecting the price of 316 plate that need to be analyzed before conclusions may be accurately drawn on the impact of molybdenum prices on the relative price differences between grade 316 plate and non-molybdenum plate. The Commission will pursue this issue further if the case returns for a final investigation.

[33] The Commission did not receive information concerning the prices of British stainless steel strip.

[34] Report at A-37.

[35] *See* note 1 at page 3.

[36] S. Rep. No. 294, 96th Cong., 1st Sess. 88-89 (1979); S. Rep. No. 1298, 93rd Cong., 2nd Sess. 180 (1974); Alberta Gas Chemicals, Inc. v. United States, 515 F. Supp. 780, 790 (CIT 1981).

[37] *See* Report at A-33, A-34, and A-35.

[38] Report at A-33.

[39] Report at A-27.

[40] *Id.*

[41] The negotiated settlement agreement worked out for carbon steel may prompt adjustments of product mix to emphasize stainless production, and therefore exports might shift from carbon steel products to stainless steel products. This possibility will be explored further in a final investigation.

[42] *See* note 1 on page 3.

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i), 47 FR 6190, February 10, 1982).

[2] Commissioner Stern also determines that there is a reasonable indication of threat of material injury by reason of the allegedly subsidized imports.

[3] Commissioner Stern also determines that there is a reasonable indication that an industry in the United States is threatened with material injury.

[4] Material retardation of the establishment of an industry is not at issue in this investigation.

whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the domestic production of that product." [5] "Like product" is defined in section 771(10) as a "product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation * * *."[6]

The term "softwood lumber" refers to a variety of wood products made from coniferous species of trees. These products include boards, planks, timbers, framing materials, moldings, flooring, and siding. The Canadian imports covered by this investigation, however, are limited to those items listed in items 202.03 through 202.30 of the Tariff Schedules of the United States.[7] Excluded from coverage are drilled and treated lumber, wood siding, and edge-glued or end-glued wood not over 6 feet in length or over 15 inches in width.

The items covered by this investigation, both imported and domestic, vary based upon such characteristics as size, shape, stage of manufacture, moisture content, and grade.[8] In terms of usage, softwood lumber has its principal applications in the construction, shipping, and manufacturing industries. Normally about 45 percent of consumption of these products is for new housing.[9]

Information available to the Commission indicates that the softwood lumber products offered by Canadian mills in the United States market are generally fungible and interchangeable with U.S.-produced items.[10] Moreover, this substitutability is not ordinarily dependent on the products having been fabricated from the same species of trees. Southern yellow pine, which does not grow in Canada, generally competes with Canadian spruce-pine-fur products for the same uses. Although certain wood species are preferable in particular construction applications, price differentials may make a less desirable kind of wood competitive even in those applications.[11]

Imported and domestic softwood lumber products may differ significantly in their sizes, shapes and other specifications. However, all such products share generalized characteristics and uses. Softwood lumber produced domestically, as well as that imported from Canada, is sold to U.S. wholesalers, who often mix the domestically-produced and imported products prior to resale. There is no information that would warrant making any distinctions between them for purposes of determining the like product. Therefore, we define the like product for purposes of this preliminary investigation to include all softwood lumber products covered by the Commission's notice of investigation.[12] On the basis of our like product definition, we determine the industry to consist of all domestic producers of softwood lumber covered by the scope of this investigation.

Condition of the Domestic Industry

The Commission is required to make its preliminary determination on the basis of "the best information available to it at the time of the determination." [13] Our assessment in this case of the question of material injury or threat thereof to the domestic industry is limited by the sparseness of the information received in response to Commission questionnaires. However, such information is reasonably reliable and consistent with the trends in the data available from published sources. In any final investigation, the Commission will seek more extensive and detailed information on the industry and the impact of the allegedly subsidized imported products under investigation.

Demand for softwood lumber is highly dependent on residential housing construction.[14] The domestic softwood lumber industry is unquestionably undergoing a decline at present, but to a great extent this has been caused by slackened consumption of its products brought about by the drop in residential housing construction.[15] Domestic consumption fell from 38.9 billion board feet in 1979 to 29.8 billion board feet in 1981. It further declined to 18.9 billion board feet in the January–August 1982 period compared with 21.4 billion board feet in the same period in 1981, a 12 percent drop.[16]

U.S. production has declined from 29.7 billion board feet in 1979 to 24.3 billion in 1980 and 22.7 billion in 1981. The decline continued in the first eight months of 1982, falling to 14.3 billion board feet compared with 16.3 billion board feet in the same period in 1981, a decline of 12 percent.[17] Domestic producers' shipments dropped along with the decline in production.[18]

A number of mills in this industry have closed in recent years. From 1979 to 1981 the number of mills producing softwood lumber has decreased 5.6 percent.[19] These closings largely account for the 8 percent decline in production capacity over the same period from 31.5 to 29 billion board feet. A further capacity decline of 18.6 billion board feet was marked in the beginning eight months of 1982, a 10 percent loss compared with same period in 1981.[20]

Despite falling capacity, utilization of available capacity has also continued to decline since 1979. Figures provided both by overall industry sources and by the firms responding to questionnaires indicate that capacity utilization fell about 20 percent from 1979 to 1981. Further declines were registered in January–August 1982.[21]

Thirteen U.S. producers, accounting for approximately 10 percent of production in 1981, supplied information concerning profitability on their softwood lumber operations.[22] These firms reported a decline in net sales of 23 percent from 1979 to 1981 and a further decline of 25 percent in the first eight months of 1982 compared to the corresponding period in 1981. In 1979, the firms posted an aggregate operating profit of $82 million, or 9.4 percent of net sales. Thereafter, they sustained operating losses of $30 million in 1980 and $99 million in 1981, which equalled 4.4 percent and 14.8 percent of net sales, respectively. A further operating loss of $56 million, or 15.7 percent of net sales, occured in the first eight months of 1982.[23]

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[5] 19 U.S.C. 1677(4)(A).

[6] 19 U.S.C. 1677(10).

[7] Notice of institution of investigation, 47 FR 46780 (Oct. 20, 1982).

[8] Report at A–2 to A–3.

[9] *Id.* at A–4.

[10] Transcript of staff conference at 19.

[11] *Id.* at 101–102. One witness testified at the staff conference that perhaps 80 percent of all uses are common to all species. Transcript at 102, 104–109. Other kinds of wood and nonwood products can be substituted for softwood lumber in certain applications, depending in part both on performance characteristics and price. Each of these items is interchangeable with softwood lumber only with respect to limited applications and none is competitive with, or substitutable for, softwood lumber in the broad range of its uses.

[12] We note that this is the definition proposed by the petitioner and that respondents have not contested this definition.

[13] 19 U.S.C. 1671b(a).

[14] Report at A–6 to A–7.

[15] The act does not "contemplate that injury from * * * imports be weighed against other factors (e.g., * * * contraction in demand * * *) which may be contributing to overall injury to an industry." H. Rep. No. 96–317, 96th Cong., 1st sess. 47 (1979).

[16] Report at A–6 to A–7, A–46, Table 1.

[17] Report at A–12, A–46, Table 1. Data provided by 21 firms accounting for approximately 23 percent of U.S. production responding to the Commission's questionnaires were fairly consistent with these industry figures. *Id.* at A–14.

[18] Report at A–14.

[19] *Id.* at A–12.

[20] *Id.* at A–12.

[21] *Id.* at A–13.

[22] We note that the responses to the Commission's questionnaires concerning the condition of the industry were limited. In a final investigation we would anticipate an improved response rate.

[23] *Id.* at A–15 to A–16, A–56, Table 12.

Reasonable indication of material injury or threat of material injury by reason of allegedly subsidized imports.[24] Although the drop in consumption due in large part to the decline in residential housing construction has greatly affected this industry, we find a reasonable indication that allegedly subsidized imports from Canada have caused material injury.[25] Over 99 percent of all imports of softwood lumber are from Canada. Imports have declined recently from 10.9 billion board feet in 1979 to 9.4 billion in 1980, 9 billion in 1981, and 5.7 billion in the period January–August 1982 compared with 6.4 billion in the period January–August 1981. While the absolute volume of imports has declined, the percentage of the U.S. market held by imports has increased slightly during this period of declining consumption. As a percentage of consumption, imports increased from 28 percent in 1979 to 29.5 percent in 1980 and 30.2 percent in 1981, slipping to 29.9 percent in the first eight months of 1982.[26]

There is sufficient information in the record to conclude that the softwood lumber products are fungible and that the commodity nature of the market for these products requires sales to be made on the basis of price.[27] Prices fluctuate on a daily or on an even more frequent basis.[28] Although very limited data regarding specific prices were supplied in response to the Commission's questionnaires, published data indicate a downward trend in both domestic and imported prices of certain softwood lumber products during the period under investigation.[29] For example, monthly comparisons of Canadian Douglas fir, f.o.b. mill British Columbia, and prices for U.S. Douglas, fir, f.o.b. mill Portland, reveals that the prices of the Canadian product did not exceed those of the U.S.-produced product during the entire period January 1979–August 1982.[30] At certain times, the price differential exceeded $50 per thousand board feet.[31] [32]

Import trends indicate a likelihood of continued influence by Canadian products on the U.S. market. As noted above, there have been recent small increases in market penetration by imports. Additionally, the Canadian industry is dependent on export trade for a large portion of its business because of the relatively limited Canadian demand for its products which, like that in the United States, is also presently depressed by a decline in homebuilding. Since 1979, 55 percent of Canadian production has been exported to the United States, and Canada has capacity for increasing this level of exporting.[33]

For the above reasons, we have concluded that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of softwood lumber from Canada.

By Order of the Commission.

Issued: November 22, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-32819 Filed 11-30-82; 8:45 am]

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[Investigation No. 701-TA-198 (Preliminary)]

Softwood Shakes and Shingles From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of softwood shakes and shingles, provided for in item 200.85 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Canada.[2]

Background

On October 7, 1982, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of the United States Coalition for Fair Canadian Lumber Imports, a group of 8 trade associations and more than 350 domestic producers of softwood lumber products, alleging that imports of softwood shakes and shingles from Canada are being subsidized by the Government of Canada within the meaning of section 701 of the act (19 U.S.C. 1671). Accordingly, effective October 7, 1982, the Commission instituted a preliminary countervailing duty investigation under section 703(a) of the act (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise from Canada.

Notice of the institution of the Commission's investigation and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on October 20, 1982 (47 FR 46781). The conference was held in Washington, D.C., on November 5, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of the Commission

Introduction

Based on the record in this investigation, we determine, pursuant to section 703(a) of the Tariff Act of 1930, that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of softwood shakes and shingles,[3] which are alleged to be sudsidized by the Government of Canada.

Domestic Industry

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[4] Section 771(10) defines "like product" as "a product which is like, or in the absence of like, most similar in

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[24] Commissioner Haggart determines that there is a reasonable indication of material injury and does not reach the issue of threat of material injury.

[25] Commissioner Stern notes that due to problems with the basic assumptions used in the petitioner's regression analysis, she was unable to use it. *See* Memorandum of Nov. 15, 1982, from the International Economist, Office of Economics, to the Commission.

[26] Report at A-22.

[27] Other indices of causation besides import penetration, such as lost sales and price suppression and depression, have been cited by the petitioner. These will be examined further in any final investigation.

[28] Transcript of staff conference at 25.

[29] Report, at A-19 to A-21.

[30] *Id.* at A-19 to A-21.

[31] *Id.*

[32] The pricing information raises certain issues regarding causation. The importers have argued that any underselling can be explained in large part, if not entirely, by the difference in exchange rates caused by the devaluation of the Canadian dollar. These issues will be explored further in any final investigation.

[33] *Id.* at A-22 to A-23.

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i), 47 FR 6190, February 10, 1982).

[2] Commissioner Stern also determines that there is a reasonable indication of threat of material injury by reason of the allegedly subsidized imports.

[3] Commissioner Stern also determines that there is a reasonable indication of threat of material injury.

characteristics and uses" with the article under investigation.[5]

The imported articles under investigation are softwood [6] shakes and shingles. Shakes and shingles are thin, rectangular pieces of wood that have been split (shakes) or sawed (shingles) from a block or bolt of wood. Shakes and shingles generally are used interchangeably as covering for the roof or side of a building.[7] Shakes account for approximately 60 to 65 percent of all shakes and shingles consumed in the United States.[8] Shakes account for approximately 55 percent of the Canadian production of shakes and shingles.[9] Many domestic and Canadian producers manufacture both shakes and shingles.[10] Since shakes and shingles are made from the same materials, and since generally they have the same uses, we find that softwood shakes and shingles are one like product.

Domestically produced shakes and shingles are like shakes and shingles imported from Canada with respect to both characteristics and uses. There are generally no quality differences between the domestic and the imported article of the same grade and specification. In fact, many domestically produced shakes and shingles, as well as those imported from Canada, are inspected by the same organizations and conform to the same grade and inspection standards.[11] In addition, most domestic and imported shakes and shingles are sold to the same U.S. wholesalers, who often mix the domestically produced shakes and shingles with those imported from Canada.[12] Therefore, we conclude that domestically produced softwood shakes and shingles are "like" those imported from Canada that are the subject of this investigation.[13] Thus, the appropriate domestic industry consists of the domestic producers of softwood shakes and shingles.[14]

Condition of the Domestic Industry [15]

Relevant economic indicators show that the domestic industry is currently experiencing material injury. U.S. consumption of shakes and shingles declined steadily throughout the period under investigation coincident with the slowdown in housing construction.[16] Apparent domestic consumption declined steadily from 7.4 million squares in 1979 to 5.3 million squares in 1981, or by 29 percent.[17] In January-August 1982, apparent consumption further declined to 2.6 million squares as compared with 3.7 million squares in the corresponding period of 1981, a decline of 30 percent.[18] Domestic production of shakes and shingles declined from 3.5 million squares in 1979 to 2.0 million squares in 1981, or by 45 percent.[19] In January-August 1982 production stood a 0.6 million squares as compared with 1.3 million squares in the corresponding period of 1981, a decline of 55 percent.[20] Therefore the drop in production during the period under investigation was considerably greater than the decline in consumption.

Capacity utilization dropped from 49 percent in 1979 to 31 percent in 1981, and to 23 percent in the January-August 1982 period as compared with 33 percent in the corresponding period of 1981.[21] Inventories as a percent of average mill production increased from 6 percent in 1979 to 10 percent in 1981, and further increased to 12 percent in January-August 1982 as compared with 10 percent in the corresponding period of 1981.[22] Employment patterns also evidenced a steadily negative trend. The average number of hours worked per week declined from 27 hours in 1979 to 22 hours in 1981, and to 20 hours in January-August 1982 as compared with 22 hours in the corresponding period of 1981.[23]

The financial indicators of domestic producers declined precipitously during the period.[24] Net sales declined steadily from $14.1 million in 1979 to $5.9 million in 1981, and to $3.1 million in the January-August 1982 period as compared with $4.3 million in the corresponding period of 1981.[25] These producers experienced an operating loss of $106,000 in 1979, followed by an operating profit of $238,000 in 1980.[26] However, in 1981, they again experienced an operating loss of $340,000. Moreover, in the January-August 1982 period, operating losses increased to $318,000 as compared with $279,000 in the corresponding period or 1981.[27]

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[4] 19 U.S.C. 1677(4)(A).

[5] 19 U.S.C. 1677(10).

[6] Hardwood shakes and shingles are believed to account for less than 1 percent of all shakes and shingles. Report at A–38 n. 2. Included in the softwood category are shakes and shingles made from western red cedar, redwood, northern white cedar, and other species. Report at A–2. Between 85–95 percent of softwood shakes and shingles produced in the United States and those imported from Canada are made from western red cedar. *Id.* at A–2, A–15.

[7] Because shakes are generally thicker than shingles, they tend to be used on roofs more than shingles. *Id.* at A–2. Since the mid-1960's, consumers in certain parts of the United States, such as California, have preferred the rough-hewn shakes to shingles. However, shingles have remained popular in the East. Tr. at 29.

[8] *Id.* at A–7. This figure is based on data for 1981.

[9] *Id.* at A–10. This figure is based on data for 1980.

[10] *Id.* at A–7. According to the Red Cedar Shingle and Handsplit Shake Bureau, the members of which account for 80–90 percent of domestic, and a substantial amount of Canadian shake and shingle production, approximately 43 percent of its member mills produce both shakes and shingles, approximately 52 percent produce only shakes, and approximately 5 percent produce only shingles. *Id.* at A–7.

[11] *Id.* at A–4.

[12] *Id.* at A–8.

[13] Those opposed to the petition have not challenged the petitioner's characterization of domestically produced shakes and shingles as products "like" those imported from Canada. *See,* e.g., Transcript of Preliminary Conference (Tr.) at 83.

[14] Hereinafter the term "shakes and shingles" refers only to softwood shakes and shingles.

[15] In a preliminary investigation the Commission must determine whether there is a *reasonable indication* that an industry is materially injured or threatened with material injury by reason of allegedly subsidized imports *based upon the best information available to it at the time of the determination.* (emphasis added). 19 U.S.C. 703(a). The petitioner in this investigation represents approximately 50 to 70 percent of the approximately 400 domestic producers of the product under investigation. Report at A–10 n. 1. However, the data in the Report on capacity, inventories employment, prices, lost sales, and financial performance is based on the questionnaire responses of producers that together represent only approximately 10 percent of domestic production. *Id.* The petitioner supplied the Commission with copies of responses to its own questionnaire which were generally consistent with the trends in the data represented in the Report. However, these responses, most of which were by the same producers that responded to the Commission's questionnaire, represented only approximately 25 percent of domestic production. We would anticipate an improved response rate should there be a final investigation.

[16] Report at A–6. Housing starts decreased by 38 percent between 1979–81. *Id.* at A–16. The Act "does not contemplate that injury from * * * imports be weighted against other factors (e.g., * * * contraction in demand * * *) which may be contributing to overall injury in an industry." H. Rep. No. 317, 96th Cong., 1st Sess. 47 (1979).

[17] *Id.* at A–38 (Table 1). These figures are estimates based on data published by the Northwest Independent Forest Manufacturers.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* A–11. These figures are based on data supplied by producers that together represent approximately 10 percent of domestic production. *Id.* at A–10 n. 1. Because this industry is characterized by numerous small, low-capital operations, figures for capacity can be expected to be large, and figures for capacity utilization can be expected to be lower than for many other industries. The petitioner estimates that the break-even capacity utilization rate is 50 percent or less. Tr. at 52. Thus, these figures indicate that the capacity utilization rate has fallen to levels that are low even for this industry.

[22] *Id.* at A–12. These figures are based on data supplied by producers that together represent 10 percent of domestic production.

[23] *Id.*

[24] These yearly figures are based on data supplied by domestic producers that together represent approximately 9 percent of domestic production. *Id.* at A–14 n. 1. The January-August figures are based on data supplied by producers that together represent approximately 8 percent of domestic production.

[25] *Id.* at A–42 (Table 5).

[26] *Id.*

The ratio of operating income to net sales followed a similar trend, increasing from a negative ratio of 0.7 percent in 1979 to a positive 2.3 percent in 1980.[28] However, in 1981, the industry again experienced a ratio of operating loss to net sales of 5.8 percent.[29] In the January–August 1982 period, the negative ratio further increased to 10.3 percent as compared to a negative 6.5 percent in the corresponding period of 1981.[30] Furthermore, of the seven reporting firms, the number of individual firms reporting net losses increased from one in 1979 to three in 1980 and six in 1981.[31] All of the six firms that reported for the January–August 1982 period experienced net losses as compared with four in the corresponding period of 1981.[32] Furthermore, many mills have ceased operations, either permanently or temporarily, during this period.[33]

Reasonable indication of material injury or threat thereof by reason of allegedly subsidized imports.[34] In making a determination as to whether there is a reasonable indication of material injury, the Commission is required to consider, among other factors: (1) The volume of imports; (2) the effect of imports on domestic prices for like products; and (3) the impact of imports on the domestic industry.[35]

During the period under investigation, domestic producers steadily lost market share to shakes and shingles imported from Canada.[36] The ratio of imports from Canada to apparent domestic consumption steadily increased from 53 percent in 1979 to 64 percent in 1981.[37] In January–August 1982 the ratio rose to 79 percent as compared with 66 percent in the corresponding period of 1981.[38] Thus imports from Canada have captured a significant amount U.S. market share from domestic producers during a period of declining demand.

Imports of shakes and shingles from Canada, also affected by the decrease in U.S. consumption of shakes and shingles, declined steadily from 3.9 million squares in 1979 to 3.4 million squares in 1981 and to 2.0 million squares in January–August 1982 as compared with 2.5 million squares in the corresponding period of 1981.[39] However, the decline in imports from Canada was significantly less than the decline in domestic production during this period.[40]

Shakes and shingles are commodity items. Sales of comparable grades and specifications are generally made on the basis of price alone. Prices of shakes and shingles are determined by negotiations between buyers and sellers based on market perceptions, and often change daily.[41] Based on the best information currently available, it appears that the gain in market share of the allegedly subsidized imports from Canada during the 1981–1982 period is related to underselling.[42] [43] Margins of underselling ranged from 5 to 14 percent in 1981 and 1982. In addition, purchasers contacted by the Commission stated that Canadian firms are generally the price leaders in the western marketing region and that the prices of the imports from Canada have generally been priced $1 to $3 per square below those of equivalent domestically produced shakes and shingles in recent months.[44] Such underselling has forced domestic producers to decrease their prices or to forego price increases at a time when there was upward pressure from the increasing ratio of cost of goods sold to net sales.[45] In addition, four of the five purchasers contacted indicated that sales of domestic products have been lost to imports from Canada based on price.[46] [47]

As discussed earlier, the Ratio of imports to domestic consumption increased from 66 percent in January–August 1981 to 79 percent in the corresponding period of 1982, a significantly greater increase than that occurring between other years during the period under investigation.[48]

In addition, an average of 93 percent of Canada's production of shingles and shakes were exported during the period under investigation.[49] Furthermore, the United States is by far Canada's principal export market for shakes and shingles, accounting for virtually all of Canada's exports of shakes and shingles.[50] Canada's other export markets are very small, and there are no indications that their share of total exports has been increasing.[51]

Given that shake and shingle production is characterized by many low-capital operations and easy market entry, and that the supply of old-growth western red cedar in Canada is much greater than that of the United States, there are no indications that Canadian producers lack the capacity to continue to supply the U.S. market at either current or increased levels.[52]

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[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] Petitioner alleges that approximately 400 firms have ceased operations. Petition at appendix II B(2). Because of the large number of small producers in this industry, it is difficult to ascertain the exact number of producers that have ceased operations. *Id.* at A–7. We expect to develop better information on this issue should there be a final investigation.

[34] Commissioner Haggart finds that there is a reasonable indication of material injury, and therefore does not reach the issue of threat.

[35] 19 U.S.C. 1677(7)(B).

[36] *Id.* at A–39 (Table 2) and A–38 (Table 1).

[37] *Id.* at A–38 (Table 1).

[38] *Id.*

[39] *Id.* at A–39 (Table 2).

[40] Whereas domestic production declined 45 percent between 1979 and 1981, imports from Canada declined by only 13 percent. Similarly, in the January–August 1982 period, whereas domestic production declined by 55 percent compared to the corresponding period of 1981, imports from Canada declined by only 17 percent. *Id.* at A–10, A–39.

[41] *Id.* at A–16.

[42] *Id.* at A–46 (Table 9). Price data for 1979 and 1980 indicate that the prices of the imported product were higher than those of the domestic product during this period.

[43] The price data regarding imports are based on the response of one importer to the Commission's questionnaire. This importer represents a very small percent of the imports under investigation. However, data published in the Department of Commerce Import Monthly No. 146 on unit values of imports of shakes and shingles from Canada generally followed the same trend as price data reported to the Commission. *Id.* at A–17. In addition, because the importer did not provide price by grade as requested, the staff constructed a weighted average price for combined grades of both the imports and domestic products for the purpose of making price comparisons. Should the Commission undertake a final investigation, we intend to develop price comparisons based on grade.

[44] *Id.* at A–18.

[45] The ratio of cost of goods sold to net sales decreased from 95 percent in 1979 to 90 percent in 1980, but increased to 97 percent in 1981, and to 104 percent in the January–August 1982 period compared with 98 percent in the corresponding period of 1981. *Id.* at A–42 (Table 5). The average cost of red cedar wood accounts for approximately 70 percent of the cost of production. Tr. at 20.

[46] *Id.* at A–18–19. One purchaser indicated that its purchases of imports from Canada has not increased relative to its purchases of the domestic product because it was cutting back on purchases of imports in an attempt to protect its customers' list from direct sales by Canadian producers. Another purchaser noted that domestic producers are unable to supply certain higher-quality large shakes and shingles at a competitive price owing to the limitations of their raw material supply. *Id.*

[47] The pricing information raises certain issues regarding causation. The importers have argued that any underselling can be explained in large part, if not entirely, by the difference in exchange rates cause by the devaluation of the Canadian dollar. In addition, they suggest that the difficulties of the domestic producers may also be explained by a price disparity attributable to shortages of old-growth red cedar trees in the United States due to either resource depletion, export sales, or both. Should we conduct a final investigation, we shall explore these issues further.

Commissioner Stern notes that the petitioner provided a regression analysis indicating the existence of a causal nexus. However, due to problems with the basic assumptions used in petitioner's regression analysis, she was unable to use it. *See* Nov. 15, 1982 Memorandum to The Commission from the International Economist at 1–2.

[48] *Id.* at A–45 (Table 8).

[49] *Id.* at A–21.

[50] *Id.* at A–47 (Table 10).

[51] *Id.*

[52] *Id.* at A–20–21

Therefore, we determine that there is a reasonable indication that a domestic industry is materially injured by reason of allegedly subsidized imports of shakes and shingles from Canada.

By Order of the Commission.

Issued: November 22, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-32820 Filed 11-30-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-199 (Preliminary)]

Softwood Fence From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of softwood fence, provided for in item 200.75 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Canada. [2]

Background

On October 7, 1982, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of the United States Coalition for Fair Canadian Lumber Imports, a group of 8 trade associations and more than 350 domestic producers of softwood lumber products, alleging that imports of softwood fence from Canada are being subsidized by the Government of Canada within the meaning of section 701 of the act (19 U.S.C. 1671). Accordingly, effective October 7, 1982, the Commission instituted a preliminary countervailing duty investigation under section 703(a) of the act (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise from Canada.

Notice of the institution of the Commission's investigation and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the the **Federal Register** on October 20, 1982 (47 FR 46779). The conference was held in Washington, D.C., on November 4, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of the Commission

The record of this investigation provides a reasonable indication that an industry in the United States is materially injured [3] by reason of allegedly subsidized softwood fence imports from Canada.

Domestic Industry

The domestic industry against which the impact of allegedly subsidized imports is to be assessed is defined in section 771(4)(A) of the Tariff Act of 1930 as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." [4] "Like product" is defined in section 771(10) as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation * * *" [5]

The imported product subject to this investigation is softwood fence. Softwood fence includes pickets, palings, rails, and posts of softwood which have been dedicated to fence construction.[6] The primary types of fence being imported into the United States are picket, stockade, and rail,[7] although other styles of fence may be imported in small quantities.[8] These fences are primarily constructed of white cedar, fir, spruce, and red cedar,[9] but also may be made of hemlock, poplar, juniper, pine or Alaskan yellow cedar.[10] Fences are either fully assembled in sections or unassembled, such as bundles of pickets, but clearly dedicated for fence construction.[11]

The imported product can be distinguished from both nonwood fences and from other wood used for fencing. Wood fences differ from nonwood fences such as chain link both in characteristics, i.e., construction materials, and in uses. While both wood and nonwood fences are used to enclose areas, wood fences also provide landscaping, screen undesirable views, provide a barrier to dirt, dust, and noise pollution, as well as provide privacy and security.[12] The softwood fences subject to this investigation differ from other wood used for fencing [13] in that the softwood fences have been notched, tooled, or otherwise dedicated for fencing.

The domestic product also consists of pickets, palings, rails and posts which have been physically processed from softwood into fence. The products are not exactly identical in that each fence may reflect a slightly different style, but these differences are minor.[14]

We conclude that the like product is assembled and unassembled fences constructed of pickets, palings, and rails in any softwood, and includes posts if they are attached to the assembled fence sections. The domestic industry would therefore include all domestic manufacturers of these fences.

Reasonable indication of material injury or threat thereof by reason of allegedly subsidized imports. [15] Section 771(7) of the Act directs the Commission to consider, among other factors, (1) the volume of imports of the merchandise under investigation, (2) their impact on domestic prices, and (3) the consequent impact on the domestic industry.[16]

The Commission has made its preliminary determination on the basis of "the best information available to it at the time of the determination".[17] The sparseness of the information presently available to the Commission has limited the assessment of material injury and causation that can be made at this

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[1] The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i), 47 FR 6190, Feb. 10, 1982).

[2] Commissioner Stern also determines that there is a reasonable indication of threat of material injury by reason of the allegedly subsidized imports.

[3] Commissioner Stern also determines that there is a reasonable indication of threat of material injury.

[4] 19 U.S.C. 1677(4)(A).

[5] 19 U.S.C. 1677(10).

[6] Report at A-2. Only posts attached to a fence section, classified under TSUS 200.75, are subject to this investigation. 47 FR 46779 (October 20, 1982).

[7] Transcript of Conference, November 4, 1982 (Transcript) at 71.

[8] Transcript at 77 and 111.

[9] Report at A-5.

[10] Transcript at 72 and 110.

[11] Report at A-2. *See* note 4 *supra.*

[12] Report at A-3 and transcript at 15.

[13] Wood which has not been dedicated to fence use is subject to the investigation on softwood lumber rather than this investigation. *See* Inv. No. 701-TA-197.

[14] "The requirement that a product be 'like' the imported article should not be interpreted in such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other * * *" H. Rep. 249, 96th Cong., 1st Sess. 90 (1979).

[15] Commissioner Haggart determines only that there is a reasonable indication of material injury and therefore does not reach the issue of reasonable indication of threat of material injury.

[16] 19 U.S.C. 1677(7)(B).

[17] It is estimated that those producers reporting accounted for at least one-third of domestic production. Report at A-1.

time.[18] The information obtained in this investigation is reasonably reliable; it is consistent with regard to trends in the secondary source data. The Commission would expect to obtain more extensive and detailed information in any final investigation.

Volume of imports—Imports of wood fence pickets, palings and rails increased by 36 percent in terms of value from 1979 to 1981.[19] Because there is no information on apparent U.S. consumption of wood fence, it was not possible to determine the level of market penetration by traditional analysis.[20]

Impact of the imports on prices—Weighted average net selling prices (f.o.b.) [21] for softwood fence products were compared by quarter from 1980 through September 1982. Because of the similarities among the products in this investigation, pricing is an important factor in the purchase decision.[22] For the three products for which data was supplied,[23] the Canadian softwood fence undersold the domestic product in all but one quarter.[24] The margin of underselling for these products ranged from 3.8 percent to 48.8 percent.[25]

Since the ratio of general, selling, and administrative expenses to net sales has increased significantly,[26] it would be expected that there would be upward pressure on the price of softwood fence products.[27] The fact that the prices have not shown a comparable rise indicates price suppression.

Impact of imports on the domestic industry—A number of important indicators—production, capacity utilization, shipments, employment, and profit-and-loss data—reveal that the domestic producers are experiencing difficulties. Although the recession and the significant decline in the number of housing starts contributed to the weakened current condition of the industry,[28] [29] this deterioration has occurred at the same time that imports have increased.

Production for the firms reporting declined from 49,600 cords in 1979 to 44,900 cords in 1981. The level of production continued to decline in the January–August 1982 period to 20,700 cords, down 8 percent from the corresponding level in 1981 of 22,600 cords.[30] Since capacity has remained fairly constant, capacity utilization has followed the same trend as production. In 1979, capacity utilization was at 68.6 percent. It then rose to 79.8 percent in 1980 before dropping to 61.6 percent in 1981.[31] The January–August 1982 level was 66.4 percent, down from 72 percent for the comparable period of 1981.[32]

Shipments of domestic softwood fence have declined. Quantity has decreased by 7 percent and value by almost 15 percent from 1979 to 1981.[33] The decrease in the January–August 1982 period from the same period in 1981 was 14 percent by quantity and 18 percent by value.[34] This decrease has occurred at the same time that imports were increasing in value by 36 percent.

Employment declined by 29 percent during the 1979–81 period, and by 18 percent in the January–August 1982 period as compaed to the same period in 1981.[35]

The financial experience of the reporting domestic firms showed severe losses in operating income and net income. In 1979, the firms reported an operating income of $594,000. Although the figure rose in 1980 to an operating income of $712,000, it dropped to $256,000 in 1981. An operating income of $480,000 was reported for the January–August 1981 period compared with an operating loss of $163,000 in the comparable 1982 period.[36] The net income before income taxes shows an even greater decline, falling from $374,000 in 1979 to $63,000 in 1981. The January–August 1981 net income figure of $296,000 dropped sharply to a loss of $364,000 for the same period in 1982.[37]

Allegations of lost sales were made by 11 domestic producers involving 58 instances. Although it was difficult to confirm lost sales in this industry, the staff did confirm one lost sale of between $30,000 and $60,000 because of price.[38]

The Commission's April 1982 investigation [39] on softwood lumber indicates that Canada has sufficient resources to generate a higher level of softwood fence exports.[40] The United States is currently the only market for Canadian exports of "pales or fence pickets."[41]

The information gathered in this preliminary investigation provides a reasonable indication that the allegedly subsidized imports of softwood fence from Canada are causing material injury to the domestic industry.

By Order of the Commission.

Issued: November 22, 1982.

Kenneth R. Mason,

Secretary.

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[18] 19 U.S.C. 1171b(a).

[19] Report at A–13–14. Information on the quantity of imports is not reported in the U.S. foreign trade statistics.

[20] Report at A–15. A comparison of the value of shipments of total softwood fence imports from Canada with the value of shipments of domestic producers that supplied data to the Commission reveals significant trends. The ratio of dollars of imports to dollars of domestic shipments has gone from 2.5-to-1 in 1979 to 4-to-1 in 1981. Although the value of imports declined in the January-August 1982 period to $22.9 million from the level of $25.3 million in the corresponding period, the ratio of imports to domestic shipments increased. In the interim period of 1982, it was 8.2-to-1 compared to the corresponding period of 1981 when it was 7.4-to-1.

[21] In addition to f.o.b. prices, both domestic producers and importers were requested to supply information on inland freight charges. The information supplied shows that the purchasers of domestic fence pay the freight and destination costs while the one importer of Canadian fence identifying transportation charges paid these costs.

[22] The pricing information raises certain issues regarding causation. The importers have argued that any underselling can be explained in large part, if not entirely, by the difference in exchange rates caused by the devaluation of the Canadian dollar. Should we conduct a final investigation, we shall explore this issue further.

[23] Information was supplied on cedar 6 ft. x 8 ft. sections, mixed softwood 6 ft. x 8 ft. sections, and 8-ft. cedar dowel rails. For other wood fence products, the information supplied was insufficient to make comparisions. *Id.* at A–22.

[24] Report at A–17.

[25] *Id.*

[26] *Id.* At A–11. *See* discussion page 6 infra.

[27] Prices used for comparison are weighted average net selling prices.

[28] Report at A–4.

[29] Even though the Commission considers other causes, the act does not "contemplate that injury from * * * imports be weighted against other factors (e.g., * * * contraction in demand * * *) which may be contributing to overall injury to an industry." H. Rep. No. 317, 96th Cong., 1st Sess. 47 (1979).

[30] *Id.* at A–5.

[31] *Id.* at A–6.

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.* at A–7.

[36] *Id.* at A–11.

[37] *Id.*

[38] *Id.* at A–21. If this case returns for a final investigation, more information regarding lost sales will be sought.

[39] Conditions Relating to the Importation of Softwood Lumber into the United States, Inv. No. 332–134, USITC Pub. No. 1241 (April 1982).

[40] Report at A–22.

[41] *Id.*

[Investigation No. 701–TA–152 (Final)]

Prestressed Concrete Steel Wire Strand From Brazil

AGENCY: International Trade Commission.

ACTION: Continuation of final countervailing duty investigation..

EFFECTIVE DATE: November 12, 1982.

SUMMARY: On October 22, 1982, the United States Department of Commerce suspended its countervailing duty investigation concerning steel wire strand for prestressing concrete from Brazil (47 FR 47048). The basis for the suspension was an agreement by the Government of Brazil to offset all benefits which Commerce found to constitute subsidies with an export tax on all exports of the subject product to

the United States. Accordingly, pursuant to section 704(f)(1)(B) of the Tariff Act of 1930 (19 U.S.C. 1671c(f)(1)(B)), the United States International Trade Commission suspended its countervailing duty investigation on prestressed concrete steel wire strand from Brazil (47 FR 49908). On November 12, 1982, however, a request to continue the investigation was filed with commerce pursuant to section 704(g)(2) of the Tariff Act (19 U.S.C. 1671c(g)(2)) by counsel for American Spring Wire Corp., Florida Wire & Cable Co., and Shinko Wire America, Inc. Accordingly, the Commission hereby gives notice of the continuation of investigation No. 701–TA–152 (Final), Prestressed Concrete Steel Wire Strand from Brazil.

FOR FURTHER INFORMATION CONTACT: Mr. David Coombs (202–523–1376), Office of Investigations, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Commission determination.—The Commission will make its determination in this investigation within 45 days of the date on which Commerce publishes its final net subsidy determination.

Hearing.—The Commission does not intend to schedule an additional hearing in connection with this continued investigation since the hearing of October 19, 1982, on this investigation was held prior to the suspension.

Written submissions.—Any person may submit to the Commission a written statement of information pertinent to the subject of this investigation. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission on or before January 26, 1983. All written submissions except for confidential business data will be available for public inspection.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6)

For further information concerning the conduct ot the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207, as amended by 47 FR 6190, Feb. 10, 1982, and 47 FR 33682, Aug. 4, 1982), and Part 201, subparts A through E (19 CFR Part 201, as amended by 47 FR 6188, Feb. 10, 1982; 47 FR 13791, Apr. 1, 1982; and 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to section 297.20 of the Commission's rules (19 CFR 207.20, as amended by 47 FR 6190, Feb. 10, 1982).

Issued: November 24, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-32822 Filed 11-30-82; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Nadlar Drugs, Inc., d.b.a. Hillside Pharmacy et al.; Revocation of Registration

On September 30, 1982, the Acting Administrator of the Drug Enforcement Administration [DEA] directed Orders to Show Cause to Nadlar Drugs, Inc., d.b.a Hillside Pharmacy, 4532 Broadway, New York, New York 10040, and Grand General Pharmacy, 2836 Third Avenue, Bronx, New York 10455, and to Uptown Drugs, Inc., d.b.a. Ascot Drugs, 2275 Grand Concourse, Bronx, New York 10453. The Orders to Show Cause proposed to revoke DEA Certificates of Registration AN9545128, AN9079193 and AU1291804, issued, respectively, to the above-named pharmacies. The proposed revocations were based upon the controlled substance-related felony convictions of Nobel Adjin Lartey, R.Ph., the President and sole corporate officer of the three pharmacies.

Simultaneously, based upon his preliminary finding of an imminent and unacceptable risk to the public health and safety, the Acting Administrator ordered the immediate suspension of the three registrations.

The Orders to Show Cause were served at Hillside Pharmacy and Ascot Drugs on October 1, 1982. Service could not be effected at Grand General Pharmacy because the pharmacy was found to be closed during normal business hours and is apparently no longer in business. More than thirty days have elapsed since the Orders to Show Cause were served and the Drug Enforcement Administration has received no response from any of the three registrants. Accordingly, the Acting Administrator hereby issues his final order in this matter, based upon the investigative file and the record as it presently appears. 21 CFR 1301.54(d).

The Acting Administrator finds that Nobel Adjin Lartey, the President and sole corporate officer of the subject pharmacies, diverted over 1.2 million dosage units of controlled substances from these pharmacies. The drugs diverted included over 786,000 tablets of Doriden and Empirin with codeine. Doriden is a Schedule III controlled substance containing glutethimide, a hypnotic, and Empirin with codeine is a Schedule III narcotic analgesic. In combination, these drugs are known as "loads" and are heavily abused, often with fatal results. DEA Investigators found numerous forged prescriptions for controlled substances at Grand General Pharmacy. It appears that Mr. Lartey used Grand General Pharmacy as a front for the procuring and diverting of controlled substances. It further appears that Mr. Lartey used the Hillside Pharmacy and Ascot Drugs registrations to obtain quantities of controlled substances which he then transferred to, and diverted from, Grand General Pharmacy.

On September 21, 1982, Mr. Lartey was convicted of three counts of possessing controlled substances with intent to distribute, in violation of 21 U.S.C. 841(a)(1), and one count of conspiring to unlawfully distribute controlled substances, in violation of 21 U.S.C. 846, all felony offenses under the Controlled Substances Act. On November 10, 1982, the Honorable Edmund O. Palmieri, United States District Judge for the Southern District of New York, sentenced Lartey to imprisonment for 15 years, a fine of $120,000 and 20 years of probation following his release from imprisonment.

The Acting Administrator finds that the President and sole corporate officer of the subject pharmacies has been convicted of felony offenses relating to controlled substances. There is, therefore, a lawful basis for the revocation of their registrations pursuant to 21 U.S.C. 824(a)(2). The registrants have failed to respond to the Orders to Show Cause and have been deemed to have waived their opportunity for a hearing on the issues involved in this matter. Accordingly, pursuant to the authority vested in the Attorney General by 21 U.S.C. 824, and redelegated to the Acting Administrator of the Drug Enforcement Administration, the Acting Administrator hereby orders that DEA Certificates of Registration AN9545128, AN9079193 and AU1291804 be, and they hereby are, revoked. In light of the immense quantities and the extremely dangerous nature of the drugs diverted from the subject pharmacies, and taking into consideration all of the facts and circumstances herein, the revocation of these registrations shall be effective immediately.

Dated: November 23, 1982.

Francis M. Mullens, Jr.,

Acting Administrator.

[FR Doc. 82-32777 Filed 11-30-82; 8:45 am]

BILLING CODE 4410-09-M

Controlled Substances; Proposed Aggregate Production Quotas for 1983

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of Proposed Aggregate Production Quotas for 1983.

SUMMARY: This notice proposes initial 1983 aggregate production quotas for controlled substances in Schedule I and II of the Controlled Substances Act (CSA).

DATE: Comments or objections should be received on or before January 3, 1983.

ADDRESS: Send comments or objections in quintuplicate to the Acting Administrator, Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C. 20537. Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Acting Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations.

The quotas are to provide adequate supplies of each substance for: (1) the estimated medical, scientific, research, and industrial needs of the United States, (2) lawful export requirements, and (3) the establishment and maintenance of reserve stocks.

In determining the below listed proposed 1983 aggregate production quotas, the Acting Administrator considered the following factors:

(1) Total actual 1981 and estimated 1982 and 1983 net disposals of each substance by all manufacturers.

(2) Projected trends in the national rate of net disposals of each substance.

(3) Estimates of inventories of each substance and of any substance manufactured from it, and trends in accumulation of such inventories.

(4) Projected demand as indicated by procurement quota applications which were filed pursuant to § 1303.12 of Title 21 of the Code of Federal Regulations.

Pursuant to § 1303.23(c) of Title 21 of the Code of Federal Regulations, the Acting Administrator of the Drug Enforcement Administration will in early 1983 adjust individual manufacturing quotas allocated for the year based upon 1982 year-end inventory and actual 1982 disposition data supplied by quota applicants for each basic class of Schedule I or II controlled substance.

Based upon consideration of the above factors, the Acting Administrator of the Drug Enforcement Administration hereby proposes that aggregate production quotas for 1983 for the following controlled substances, expressed in grams of anhyrdous acid or base, be established as follows:

Basic class	Proposed 1983 quota
Schedule I	
2,5-Dimethoxyamphetamine	9,000,000
Schedule II	
Alphaprodine	32,000
Amobarbital	2,728,000
Amphetamine	510,000
Cocaine	1,000,000
Codeine (for sale)	56,452,000
Codeine (for conversion)	4,081,000
Desoxyephedrine	1,491,000
(1,348,000 grams for the production of levodesoxyephedrine for use in a noncontrolled, nonprescription product, and 143,000 grams for the production of methamphetamine.)	
Dextropropoxyphene	53,345,000
Dihydrocodeine	1,425,000
Diphenoxylate	1,100,000
Diprenorphine	94
Ecgonine (for conversion)	800,000
Ethylmorphine	13,000
Etorphine hydrochloride	42
Fentanyl	5,014
Hydrocodone	1,058,000
Hydromorphone	131,000
Levorphanol	18,200
Meperidine	9,382,000
Methadone	1,400,000
Methadone Intermediate (4-cyano-2-dimethyl-amino-4,4-diphenylbutane)	1,750,000
Methamphetamine (for conversion)	1,900,000
Methaqualone	0
Methylphenidate	1,062,000
Mixed Alkaloids of Opium	14,000
Morphine (for sale)	985,000
Morphine (for conversion)	61,686,000
Opium (tinctures, extracts, etc. expressed in terms of powdered opium)	1,919,000
Oxycodone (for sale)	1,800,000
Oxycodone (for conversion)	8,500
Oxymorphone	4,000
Pentobarbital	13,000,000
Pethidine Intermediate A	6,708,000
Phenmetrazine	1,838,000
Secobarbital	5,435,000
Tetrahydrocannabinols	3,438
Thebaine (for sale)	2,275,000
Thebaine (for conversion)	1,580,000

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposals relating to any one or more of the above-mentioned substances without filing comments or objections regarding the others. Comments and objections should be submitted in quintuplicate to the Acting Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative, and must be received by (January 3, 1982).

If a person believes that one or more issues raised by him warrant a full adversary-type hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Acting Administrator finds, in his sole discretion, warrant a full adversary-type hearing, the Acting Administrator shall order a public hearing in the **Federal Register** summarizing the issues to be heard and setting the time for the hearing (which shall not be less than 30 days after the date of the order).

Pursuant to Sections 3(c)(3) and 3(e)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Acting Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The establishment of annual aggregate production quotas for Schedule I and II controlled substances in mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: November 10, 1982.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82-32778 Filed 11-30-82; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

Office of Management and Budget Review; NRC Form 398, Personal Qualifications, Statement—Licensee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, revision, or extension: Revision.

2. The title of the information collection: Personal Qualifications Statement—Licensee.

3. The form number if applicable: NRC 398.

4. How often the collection is required: On occasion and biennially.

5. Who will be required or asked to report: Individual requiring a license to operate the controls at a nuclear facility.

6. An estimate of the number of responses: 1800.

7. An estimate of the total number of hours needed to complete the requirement or request: 1800.

8. Section 3504(h) Pub. L. 96–511 does not apply.

9. Abstract: NRC Form 398 requests detailed information that should be submitted by a licensing candidate when applying for a new or renewal license to operate the controls at a nuclear facility. This information, once collected, would be used for licensing actions and for providing statistical analyses on the Operator Licensing Program.

ADDRESSES: Copies of the submittal will be made available for inspection or copying for a fee at the NRC Public Document Room, 1717 H Street N.W., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7340.

NRC Clearance Officer R. Stephen Scott, (301) 492–8585. Dated at Bethesda, Maryland, this 24th day of November 1982.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 82–32795 Filed 11–30–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–329 OM, 50–330 OM, 50–329 OL, 50–330 OL]

Consumers Power Co.; Continuation of Evidentiary Hearings

November 24, 1982.

Atomic Safety and Licensing Board; before Administrative Judges: Charles Bechhoefer, Chairman Dr. Frederick P. Cowan Dr. Jerry Harbour; In the matter of; Consumers Power Co. (Midland Plant, Units 1 and 2).

Notice is hereby given that further evidentiary hearings in the consolidated OL–OM proceeding have been scheduled (to the extent necessary for the issues involved) for December 6–11, 1982, and January 4–8 and 10–14, 1983. Hearings will commence at 9:00 a.m. each day. On December 6, 1982, the hearing will be held in Room E, Quality Inn (formerly Ramada Inn Central), 1815 Saginaw Road, Midland, Michigan 48640. On other days, hearings will be held at the Midland County Courthouse Auditorium, 301 W. Main, Midland, Michigan 48640.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 82–32793 Filed 11–30–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–466]

Houston Lighting & Power Co.; Withdrawal of Application for Construction Permit

The Houston Lighting & Power Company, P.O. Box 1700, Houston, Texas 77001, by Motion dated October 6, 1982, has requested withdrawal of its application for a license to construct and operate the Allens Creek Nuclear Generating Station, Unit 1, a single-unit boiling water reactor at its site located in Austin County, Texas, about 45 miles west of Houston. A copy of the Motion for Termination of Proceeding is available for inspection in the NRC's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555. By order dated October 28, 1982, the Atomic Safety and Licensing Board granted Houston Lighting & Power Company's request to withdraw its application and terminate the proceedings before it. Accordingly, the Nuclear Regulatory Commission grants the applicant's request for withdrawal of this application.

Notice of receipt of the application was published in the **Federal Register** on December 28, 1973 (38 FR 35523).

Dated at Bethesda, Maryland, this 22d day of November 1982.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 82–32794 Filed 11–30–82; 8:45 am]

BILLING CODE 7590–01–M

Applications for Licenses To Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or a petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requester or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, DC. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear material or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 24th day of November 1982 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

FEDERAL REGISTER (EXPORT)

Name of applicant, date of application, date received, application No.	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Westinghouse Electric, Nov. 1, 1982, Nov. 4, 1982, XR 142.	(*)	(*)	(*)	300 MW PWR Nuclear Power Station	People's Republic of China.

FEDERAL REGISTER (EXPORT)—Continued

Name of applicant, date of application, date received, application No.	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
General Electric, Oct. 30, 1982, Nov. 9, 1982, XSNM01994.	4.0% Enriched uranium	40,920	1,202	Reload fule for Fukushima I, Unit 2	Japan.
Mitsui & Co., Nov. 12, 1982, Nov. 15, 1982, XSNM01995.	3.5% Enriched uranium	33,079	1,016	Routine reload fuel for Fukushima II, Unit 1	Japan.
Mitsui & Co., Nov. 12, 1982, Nov. 15, 1982, XSNM01996.	2.85% Enriched uranium	147,990	3,215	Initial core for Kashiwazaki Kariha Unit 1	Japan.
Edlow International, Nov. 16, 1982, Nov. 17, 1982, XU08559.	Natural uranium	[2]961,632	[2]961,632	For fabrication and enrichment for use in LWR in EURATOM.	EURATOM Countries.
General Atomic, Nov. 8, 1982, Nov. 12, 1982, XSNM01666(04).	19.9% Enriched uranium	16.2	3.2	Increase quantity of material authorized for export for Kartini and Bandung Reactors.	Indonesia.

[1] 2 Reactor Coolant Pumps; 2 Centrifugal Charging pumps; 1 in-core flux mapping system-300 MW PWR Nuclear Power Station.
[2] Kgs.

[FR Doc. 82-32792 Filed 11-30-82; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of Section 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on December 9–11, 1982, in Room 1046, 1717 H Street, NW., Washington, D.C. Notice of this meeting was published in the **Federal Register** on November 17, 1982.

The agenda for the subject meeting will be as follows:

Thursday, December 9, 1982

8:30 A.M.–8:45 A.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly on miscellaneous matters of interest relating to ACRS activities.

8:45 A.M.–12:00 Noon and 1:00 P.M.–3:30 P.M.: SEP Review of Light Water Reactors (Open)—The Committee will hear the report of its Subcommittee and consultants who may be present regarding the SEP review and evaluation of the Dresden Power Station Unit 2 and the Millstone Nuclear Power Station Unit 1.

Members of the NRC Staff will report and respond to Committee questions regarding these evaluations. Representatives of the power plant licensees will also participate in the discussion to the degree considered appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the projects being considered.

3:30 P.M.–5:00 P.M.: Future ACRS Activities (Open)—The members will discuss proposed Subcommittee and full Committee activities including proposed ACRS review of QA deficiencies at the Zimmer Nuclear Power Station Unit No. 1, ACRS review of proposed changes in the nuclear regulatory process, and ACRS review of the NRC Reactor Safety Research Program and Budget for FY 1984–85.

5:00 P.M.–6:30 P.M.: Sequoyah Nuclear Power Plant Units 1 and 2 (Open)—The members will consider proposed final design features for the Sequoyah Nuclear Power Station to deal with combustible hydrogen gases resulting from a serious accident. Representatives of the NRC Staff and the licensee will participate as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matter being discussed.

Friday, December 10, 1982

8:30 A.M.–12:15 P.M.: Seismic Design of Nuclear Power Plants (Open)—The Committee will be briefed by invited experts regarding the current status of seismic design methodology.

1:15 P.M.–1:45 P.M.: Staffing Requirements at Nuclear Power Plants (Open)—The members will discuss proposed ACRS comments to NRC regarding proposed revision of 10 CFR 50.54, Conditions of Licenses. Representatives of the NRC Staff and the nuclear industry will participate as appropriate.

1:45 P.M.–5:30 P.M.: Clinch River Breeder Reactor (Open)—The Committee will be briefed regarding the proposed design features of the CRBR and selected aspects of the plant design criteria.

5:30 P.M.–6:00 P.M.: Subcommittee Activities (Open)—The ACRS members will hear and discuss the report of its Subcommittee regarding HCDA Energetics for the CRBR.

Saturday, December 11, 1982

8:30 A.M.–8:45 A.M.: Selection of ACRS Officers for CY–1983 (Closed)—The Committee members will discuss proposed candidates and will select ACRS Officers for Calendar Year 1983.

This session will be closed to discuss matters that relate solely to the internal rules and practices of the agency.

8:45 A.M.–12:30 P.M.: Preparation of ACRS Reports to NRC (Open)—The members will discuss proposed reports to the NRC regarding proposed changes in 10 CFR 50.54, Conditions of Licenses and other matters discussed during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being discussed.

1:30 P.M.–3:30 P.M.: ACRS Subcommittee Activities (Open)—The ACRS members will hear and discuss reports of designated ACRS Subcommittees regarding current activities including staffing, training and certification at the Waterford Steam Electric Station, Unit 3, and proposed changes in rules and policies regarding radiological protection of nuclear power-plant operators and the general public.

3:30 P.M.–4:00 P.M.: Preparation of ACRS Reports to NRC—The Committee will complete preparation of its reports to the NRC.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 1, 1982 (47 FR 43474). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion

picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a telephone call to the ACRS Executive Director (R. F. Fraley) prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information (5 U.S.C. 552b(c)(4)) and information which relates solely to internal personnel rules and practices.

(5 U.S.C. 552b(c)(2))

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M. EST.

Dated: November 24, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–32796 Filed 11–30–82; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–34]

J. I. Case Co.; Rescheduling of Public Hearing

On October 28, 1982 the United States Trade Representative initiated an investigation pursuant to section 302 of the Trade Act of 1974, as amended (19 U.S.C. 2412) on the basis of a petition filed by J.I. Case Co. concerning the Canadian duty remission scheme relating to front end loaders and parts. In announcing the initiation of the investigation, the United States Trade Representatives also scheduled a public hearing on the issues raised in the petition for December 1, 1982 at 10:00 a.m. (47 FR 51029, November 10, 1982).

That public hearing has now been rescheduled for December 14, 1982 at 10:00 a.m. Requests to testify orally should be submitted no later than December 7, 1982 and the brief accompanying such oral testimony should be submitted no later than December 10, 1982. Those interested parties who do not wish to testify orally but who wish to submit written briefs must do so no later than December 14, 1982. Rebuttal briefs must be submitted no later than December 28, 1982.

Details as to the procedures and requirements relating to the above-described submissions are set forth in 47 FR 51029.

Jeanne S. Archibald,

Chairman, Section 301 Committee.

[FR Doc. 82–32791 Filed 11–30–82; 8:45 am]

BILLING CODE 3190–01–M

PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH

Meeting

Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committees Act, that the twenty-seventh and final meeting of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research will be held in the Interdepartmental Auditorium, Conference Room B, between 13th and 14th Streets on Constitution Avenue, NW., Washington, D.C. from 9:00 a.m. to 5:00 p.m. on Tuesday, December 14, 1982 and from 9:00 a.m. to 5:00 p.m. on Wednesday, December 15, 1982.

The meeting will be open to the public, subject to limitations of available space. The agenda will include, among other things, deliberation on reports concerning the ethical and legal implications (a) of differences in the availability of health services, and (b) of decisions to forego life-sustaining treatment, and concerning the adequacy and uniformity of Federal regulations for the protection of human subjects in research and of the enforcement of those regulations.

During Tuesday afternoon, at approximately 1:00 p.m., and Wednesday afternoon, at approximately 1:00 p.m., fifteen minutes will be devoted to comments from the floor on the subject of any of the agenda items, limited to three minutes per comment. Written suggestions and comments will be accepted for the record from those who are unable to speak because of the constraints of time and from those unable to attend the meeting.

Records shall be kept on all Commission proceedings and will be available for public inspection at the Commission office, located in Suite 555, 2000 K Street, NW., Washington, D.C. 20006.

For further information, contact Andrew Burness, Public Information Officer, at (202) 653–8051.

Alexander M. Capron,

Executive Director.

[FR Doc. 82–32798 Filed 11–30–82; 8:45 am]

BILLING CODE 6820–AV–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 22720/; (70–6811)]

Associated Natural Gas Co.; Proposal To Issue and Sell Unsecured Short-Term Notes

November 19, 1982.

Associated Natural Gas Company ("Associated"), 405 West Park Street, Blytheville, Arkansas 72315, a gas utility subsidiary of Arkansas Power & Light Company, an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application-declaration with this Commission pursuant to Sections 6(a) and 7 of the public Utility Holding Company Act of 1935 and Rule 50(a)(2) thereunder.

Associated proposes to make unsecured short-term borrowings from Farmers Bank & Trust Co., Blytheville, Arkansas ("Bank"), from time to time during the period commencing on the effective date of this application-declaration, ("Effective Date"), and continuing for one year thereafter, in the aggregate principal amount not to exceed $3,000,000 at any one time outstanding.

To effect such borrowings, Associated proposes to issue and sell to the Bank its unsecured promissory notes, ("Notes") payable not more than 270 days from the date of issuance and which may be renewed from time to time but to mature not later than one year from the Effective Date. The Notes will bear interest, payable monthly and at muturity, on the unpaid principal amount thereof at a rate per annum equal to the prime commercial loan rate (12% as of November 8, 1982) of The Chase Manhattan Bank (N.A.), New York, New York, from time to time in effect, with adjustments to be made effective on the first business day of the month next following the month in which any change in such rate occurs. Such rate will not exceed the maximum rate of interest chargeable to corporate borrowers under applicable laws. The Notes will, at the option of Associated, be prepayable in whole or in part, at any time without premium or penalty.

Associated will not be required to maintain compensating balances with the Bank or to pay any commitment fees based upon the unused portion of its line of credit with the Bank.

The proceeds to be received from the issuance and sale of the Notes will be used by Associated to meet its working capital requirements, for the payment, in part, of construction expenditures and for other corporate purposes. Associated currently intends to repay the $3,000,000 of borrowings proposed herein from the proceeds of permanent financing or with funds that might otherwise become available to Associated.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 13, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affadavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc 82-32751 Filed 11-30-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12834; (812-5291)]

BuildAmerica Government Securities Trust; Filing of Application

November 19, 1982.

Notice is hereby given that BuildAmerica Government Securities Trust ("Applicant"), 320 North Meridian Street, Indianapolis, Indiana 46204, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on August 24, 1982, and an amendment thereto on October 18, 1982, requesting an order of the Commission pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to value its assets pursuant to the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below. Such persons are also referred to the Act and the rules thereunder for the complete test of the provisions from which an exemption is being sought.

Applicant states that it is a business trust organized under the laws of the State of Indiana and that its investment objective is to seek to obtain maximum current income consistent with preservation of principal and maintenance of liquidity. The Fund, Inc., Applicant's manager, provides Applicant with administrative and certain other services and monitors and evaluates the performance of American Fletcher National Bank & Trust Company which provides day to day management of Applicant's assets in accordance with a sub-advisory agreement. Applicant states that it will invest its assets in short-term securities issued or guaranteed as to principal and interest by the United States Government or its agencies or instrumentalities and in repurchase agreements with respect to such securities. Applicant represents that in making portfolio investments, including repurchase and reverse repurchase agreements with banks, Applicant will comply with Investment Company Act Release No. IC-10666 as applicable.

Among its arguments in support of the application, Applicant states that it wishes to attract sophisticated individual and institutional investors and understands that many of these investors require a short-term government obligations fund which maintains a constant net asset value per share and pays dividends which do not fluctuate on account of daily changes in the values of its portfolio securities. It is represented that Applicant's management believes that if Applicant's securities portfolio were valued using the amortized cost method, the offering price would remain constant and that there would normally be a negligible discrepancy between market value and the amortized cost value. Applicant asserts that money market funds employing the amortizd cost method of valuation have a market advantage in both obtaining new customers and retaining old customers.

Section 6(c) of the Act provides, in pertinent part, that the Commission by order upon application may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes or persons, securities or transactions, from an provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant represents that its board of trustees has determined in good faith that the amortized cost method of valuing portfolio securities would be appropriate and represents fair value, subject to compliance wih the conditions set forth below.

Applicant agrees to operate subject to the following conditions in order to attempt to assure the stability of its price per share:

1. In supervising Applicant's operations and delegating special responsibilities involving management of Applicant's portfolio to Applicant's manager and its sub-adviser, Applicant's board of trustees undertakes—as a particular responsibility within its overall duty of care owned to Applicant's shareholders to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of trustees shall be the following:

(a) Review by the board of trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of trustees will promptly consider what action, if any, should be initiated.

(c) If the board of trustees believes that the extent of any deviation from

[1] To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of trustees in the exercise of its discretion to be appropriate indicators of value, which may include among others, (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources.

Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share: provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of trustee's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements and reverse repurchase agreements, if any, to those United States dollar-denominated instruments which the board of trustees determines present minimal credit risks, and which are of high quality as determined by any major rating service, or, in the case of any instrument that is not rated, of comparable quality as determined by Applicant's board of trustees.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than December 14, 1982, at 5:30 pm., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-32750 Filed 11-30-82; 9:45 am]

BILLING CODE 8010-01-M

[2] In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

[Release No. 12837; (812-5361)]

Capital Housing Partners-CXLV—William B. Dockser, Martin C. Schwartzberg, C.R.I., Inc., and H. William Willoughby; Filing of Application

November 19, 1982.

Notice is hereby given that Capital Housing Partners-CXLV (the "Partnership"), a District of Columbia limited partnership, and its general partners, C.R.I., Inc., which is the Managing General Partner of the Partnership, William B. Dockser, Martin C. Schwartzberg and H. William Willoughby ("General Partners" and, together with the Partnership, collectively referred to hereinafter as "Applicants"), One Central Plaza, 11300 Rockville Pike, Rockville, Maryland 20852, filed an application on October 28, 1982, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), for an order exempting the Partnership from all provisions of the Act and rules thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that the Partnership was formed under the District of Columbia Uniform Limited Partnership Act as of January 1, 1981, as a vehicle for equity investment in government-assisted rental housing in accordance with the policies and objectives of Title IX of the Housing and Urban Development Act of 1968 ("Title IX"). Applicants state that the Partnership will operate as a "two-tier" entity, i.e., the Partnership, as limited partner, will invest in four other limited partnerships ("Local Limited Partnerships"): (i) A Minnesota limited partnership which owns and is developing a government-assisted apartment project for elderly and handicapped persons of low and moderate income in the City of St. Cloud, Stearns County, Minnesota, (ii) a Minnesota limited partnership which owns and is rehabilitating and developing a government-assisted apartment project for individuals, families and handicapped persons of low and moderate income in the City of Minneapolis, Hennepin County, Minnesota, (iii) a Minnesota limited partnership which owns and is developing a government-assisted townhouse project for individuals, families and handicapped persons of low and moderate income in the City of Minneapolis, Hennepin County, Minnesota, and (iv) an Illinois limited partnership which owns and is developing a government-assisted apartment project for individuals and families of low and moderate income in the City of Chicago, Cook County, Illinois. All such investments are represented to be in accordance with the purposes and criteria set forth in the last paragraph of Investment Company Act Release No. 8456 (August 9, 1974), which Release states the views of the Commission's Division of Investment Management regarding the applicability of the Act to two-tier real estate limited partnerships.

Applicants state that the Partnership is organized as a limited partnership because that form of organization is the only one that provides investors with both liability limited to their capital investments and the ability to claim on their individual tax returns the deduction, losses, credits, and other tax

items that originate from the Partnership's interests in the Local Limited Partnerships. Through its investment in the Local Limited Partnerships, the Partnership intends to realize (i) a potential increase in its equity in the projects through amortization of the projects' mortgage indebtedness, (ii) cash flow from operations, (iii) a potential increase in the value of the projects, (iv) cash distributions through potential refinancing of the projects, and (v) certain current tax benefits. Although the Partnership's direct control over the management of each apartment complex is represented to be limited, the Partnership's ownership of interests in Local Limited Partnerships shall, in an economic sense, it is argued, be tantamount to direct ownership of the apartment complexes themselves. The interests in Local Limited Partnerships will have no substantial value other than their pro rata share of the value of the apartment complexes. No Local Limited Partnership will generate a substantial amount of income or expense other than as directly related to the development, ownership and operation of its apartment complex.

The Partnership, in reliance upon Rule 506 under Section 4(2) of the Securities Act of 1933, will offer $4,600,000 of limited partnership interests in 80 units at $57,500 per unit (the "Units"). Subscriptions for half units may be accepted by the General Partners, and accordingly, the Partnership's securities could be held by more than 100 persons. Bache Halsey Stuart Shields, Incorporated and CRICO Securities Corporation will act as selling agents for the offering of Units. Purchasers of Units will become limited partners ("Limited Partners") of the Partnership.

Applicants state that the Partnership will be controlled by the General Partners, and the Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Partnership. However Limited Partners owning a majority of Partnership interests will have the right to amend the Partnership Agreement, remove any General Partner and elect a replacement therefor, and to dissolve the Partnership, provided that such rights will not adversely affect the tax or limited partner status of the Limited Partners. It is stated that the Partnership will receive an opinion of counsel to the effect that the Partnership's liability in respect to each Local Limited Partnership will be limited to the Partnership's capital contribution to the Local Limited Partnership. Applicants represent, in addition, that under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Partnership at any and all reasonable times.

Section 6(c) of the Act provides, as herein pertinent, that the Commission, by order upon application, may conditionally or unconditionally exempt any person from the provisions of the Act and the rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Without conceding that the Partnership is an investment company as defined in the Act, Applicants request that the Partnership be exempted from all the provisions of the Act pursuant to Section 6(c) of the Act. In support of this request, Applicants assert that such exemption is both necessary and appropriate in the public interest and would be consistent with the protection of investors and the purposes and policies underlying the Act.

Applicants argue that the Partnership is not an " investment company" under the Act; that it will be in the business of investing in and being the beneficial owner of apartment complexes which are not securities, and that the limited partnership interests it will own should not constitute "investment securities" within the meaning of Section 3(a)(3) of the Act. They state that the interests in Local Limited Partnerships, by their nature, are not readily marketable, and will have no value apart from the value of the apartment complexes owned by the Local Partnerships. No separate market is alleged to exist for such interests and their sale could involve severe adverse tax consequences. To treat such interests as "investment securities" within the ambit of the Act, Applicants state, would be to ignore the economic realities of the two-tier partnership structure as utilized by the Partnership and the Partnership's participation in the development, ownership, and operation of government-assisted housing.

Applicants assert that investment in low and moderate income housing in accordance with the national policy expressed in Title IX is not economically suitable for private investors without the tax and organizational advantages of the limited partnership structure. That form of organization provides the only means of bringing private equity capital into government-assisted housing, particularly because public investors typically consider investment in low and moderate income housing programs as involving greater risk than real estate investment generally. Applicants state that the limited partnership form insulates each limited partner from personal liability and limits financial risk incurred by the limited partner to the amount he has invested in the program, while also allowing the limited partner to claim on his individual tax return his proportionate share of the income and losses from the investment.

Applicants state that despite the advantages it affords investors in government-assisted housing, the limited partnership form of organization is incompatible with fundamental provisions of the Act, such as the requirement of Section 15(a)(2) of the Act that investors annually approve a management contract. In addition, the application states that the asset coverage limitations contained in Section 18 of the Act were designed to protect investors in securities from wide fluctuations in market prices. It is asserted that such concerns are not justified in real estate investments and are inapposite to the mortgage financing and other federal, state and local government-assisted programs developed for low and moderate income housing. Thus, an exemption from these basic provisions is necessary and, Applicants contend, it is appropriate that such exemption be granted so as not to discourage use of the two-tier limited partnership entity. To do so, Applicants assert, would frustrate the public policy established by the housing laws.

Applicants state that the substantial fees and other forms of compensation that will be paid to the General Partners and their affiliates will not have been negotiated through arm's length negotiations. They represent, however, that terms of all such compensation will be fair and not less favorable to the Partnership than would be the case if such terms had been negotiated with independent third parties. Further, the Partnership believes that such compensation meets all applicable guidelines necessary to permit the Units to be offered and sold in the various states which prescribed such guidelines, including, without limitation, the statement of policy adopted by the North American Securities Administrators Association, Inc., with respect to real estate programs.

According to the application, interests

in the Partnership will be sold only to relatively sophisticated investors who must meet specified suitability standards which the Partnership believes are consistent with the securities laws of all states where the Units will be sold, and these investors will receive extensive reports concerning the Partnership's business and operations. Although the interests of the General Partners and their affiliates may conflict in various ways with the interests of Limited Partners, the Applicants claim that the Prospectus contains various provisions designed to eliminate or significantly reduce such conflicts of interest. Further protection for the interests of Limited Partners is provided. Applicants assert, by the numerous provisions of the Partnership Agreement designed to prevent overreaching by the General Partners and to assure fair dealing by the General Partners vis-a-vis the Limited Partners.

Notice is further given that any interested person may, not later than December 14, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-32753 Filed 11-30-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12833; 812-5280]

Compagnie Financiere de Paribas Paribas Finance Inc.; Application

November 19, 1982.

Notice is hereby given that Compagnie Financiere de Paribas ("Paribas") and Paribas Finance Inc. ("Paribas Finance") (together, "Applicants"), c/o Samuel M. Feder, Esquire, Wender, Murase & White, 400 Park Avenue, New York, New York 10022, filed an application on August 18, 1982, for and order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicants from all provisions of the Act. All interested persons are referred to the application of file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that Paribas is a holding company incorporated under the laws of France as an *etablissement financier* or "financial institution." Applicants state further that Paribas ranks 32nd in size among banking organizations in the world, with its largest asset being Banque Paribas, the 7th largest commercial bank in France and the 89th largest commercial bank in the world, in each case on the basis of total assets. Applicants state that Paribas was founded in 1872 as a result of a merger between Banque de Credit et de Depots des Pays-Bas and Banque de Paris. Applicants represent that until 1968, Paribas conducted business as a *banque d'affaires*, a merchant bank accepting deposits only from corporate and commercial customers. In 1968, Paribas created Banque Paribas, a commercial bank, as a new subsidiary and tranferred to it all of Paribas' commercial banking operations. Applicants state that effective February 11, 1982, the outstanding shares of capital stock of Paribas were nationalized by the Republic of France ("France") as part of a general reorganization of the French financial and industrial sector.

Applicants state that Paribas conducts three types of banking and financial businesses through subsidiaries: banking activity in France, banking activity outside France and investment activity in France and abroad. Applicants represent that at December 31, 1981 (the latest date for which figures are published), Paribas' consolidated total assets were approximately $50 billion, customer loans and deposits in banks were approximately $42.1 billion, total customer and banks' deposits were approximately $27.3 billion (demand deposits of approximately $5.3 billion and other deposits of approximately $22 billion), and long term debt was approximately $2 billion. Applicants state further that, at that date, customer loans and deposits in banks represented 84.1% of Paribas' assets and 154% of its deposits, and during 1981 such loans and deposits provided more than 75.6% of revenues and approximately 55% of Paribas' net income. Applicants represent that at December 31, 1981, Paribas' consolidated net worth was approximately $2.4 billion.

Applicants state that Paribas' French banking activites represent 69% of its consolidated total assets, and are principally conducted through three major French banks, the accounts of all of which are consolidated on a fully integrated basis with those of Paribas: Banque Paribas; Compagnie Bancaire, a merchant bank engaged in equipment financing and leasing, real estate financing and development and installment sale financing; and Credit du Nord, a commercial bank principally serving individuals and smaller corporate customers through 516 offices in France and 9 offices abroad, including a branch in New York. Applicants state that at December 31, 1981, it is estimated that Paribas' three French subsidiary banks, Banque Paribas, Compagnie Bancaire and Credit du Nord, held deposits accounting for approximately 7.8% of all French bank deposits (exclusive of deposits in the giro system maintained by the French post office).

Applicants represent that Paribas' largest subsidiary bank is Banque Paribas, a commercial bank primarily engaged in making loans and other extensions of credit, accepting deposits and providing other banking services traditional in Europe. Applicants state that the business, and thus the asset and liability structure, of Banque Paribas is substantially similar to that of the major United States banks. Applicants state further that at December 31, 1981, Banque Paribas had total assets of approximately $19.6 billion and aggregate customer loans and deposits in banks of approximately $16 billion. Applicants represent that, at that date, total customer and banks' deposits were approximately $13 billion (demand deposits of approximately $1.7 billion and other deposits of approximately $11.3 billion), and long term debt was approximately $314 million. Applicants state that at December 31, 1981, customer loans and deposits in banks represented approximately 82% of assets and 124% of deposits, and during 1981 such loans and deposits provided more

that 85% of revenues and approximately 70% of Banque Paribas' net income. Applicants state further that at December 31, 1981, Banque Paribas' capital and reserves were approximately $254 million. Applicants state that at December 31, 1981, it is estimated that Banque Paribas held deposits accounting for approximately 5% of all French bank deposits (exclusive of deposits in the giro system maintained by the French post office).

Applicants state that, in conjunction with its commercial banking activities, Banque Paribas has made limited equity investments in certain French and foreign companies. Applicants state further that commercial banks such as Banque Paribas are not permitted under French law to own more than 20% of the outstanding shares of a corporation whose business is not related to banking or financial operations. Applicants state that, in the aggregate, these investments, together with Banque Paribas' portfolio of debt securities, constitute less than 1% of Banque Paribas' total assets at December 31, 1981.

Applicants indicate that Paribas' overseas banking activities are conducted through many banks and financial institutions around the world. Applicants further indicate that Paribas has significant shareholdings, held both directly and indirectly, in three major European banks: 93.49% of Banque de Paris et des Pays-Bas Belgique, the fourth largest Belgian commercial bank; 100% of Banque de Paris et des Pays-Bas N.V., the eighth largest Dutch commercial bank; and 40.7% of Banque de Paris et des Pays-Bas (Suisse) S.A., the eighth-largest Swiss commercial bank. Applicants state that Paribas and its wholly-owned French subsidiary, Paribas International, also conduct banking activities through their controlling and noncontrolling positions in banks and financial institutions in Canada, Mexico, Egypt, the Gulf States, Turkey, Iran, Hong Kong, Luxembourg, Gabon, Zaire, Cameroun, New Caledonia and Lebanon. Applicants assert that Paribas International also has a 24% indirect interest in S.G. Warburg & Co., Ltd., a leading English merchant bank. Applicants represent that Paribas International and S.G. Warburg & Co. Ltd. jointly own a 40% interest in The Becker Warburg Paribas Group Inc., which conducts an investment banking and securities underwriting and brokerage business through subsidiaries in the United States, including A.G. Becker & Co. Incorporated and Warburg Paribas Becker Inc.

Applicants state that Paribas' investment activities are primarily concentrated in France and Belgium and are principally conducted through four holding companies: Omnium de Participations Financieres et Industrielles de Paris et des Pays-Bas, which is 76.5% owned (directly and indirectly) by Paribas and which holds investments in companies in the industrial, commercial and service sectors of the French economy; Societe de Gestion d'Interets Petroliers, which is 100% owned by Paribas and which holds investments in petroleum companies in France and abroad; Compagnie de Gestion d'Investissements Internationaux, which is indirectly controlled by Paribas and which makes mining research and extraction investments in France and abroad; and Compagnie Belge de Participation Paribas, which is 35.01% directly owned by Paribas and which holds investments in a variety of Belgian companies.

Applicants state that, in most cases, the securities held by these investment vehicles represent noncontrolling positions and rarely rise above a 25% holding of capital stock. Applicants state further that these investment vehicles generally seek long-term capital appreciation, and portfolio turnover of such entities is low, averaging approximately 20% per year. Applicants state that Paribas views its activities through these entities as the investment of surplus funds generated by its banking and financial businesses, in the same way that United States banks have sizable bond portfolios. Applicants represent that at December 31, 1981, the securities held by the investment vehicles referred to above, together with Paribas' minority unconsolidated investments in banks and other companies, constituted approximately 1.9% of consolidated total assets. Applicants state further that income from such securities (dividends and short-term capital gains) represented approximately 3.8% of Paribas' revenues and 27.7% of its net income. Applicants represent further that the aggregate amount of Paribas' equity investments is limited under French law to the amount of its shareholder equity. Accordingly, Paribas' banking liabilities (deposits and money market borrowings) can be seen as funding its banking assets (loans and deposits in banks), while shareholders' equity can be seen as funding its investment activities.

According to the application, Paribas' French banking subsidiaries, Banque Paribas, Credit du Nord and Compagnie Bancaire, are also engaged—as are virtually all major European banks—in underwriting and selling securities outside the United States. Applicants assert that these underwriting activities represent, however, only a small part of Paribas' business, accounting for approximately 3% of both its revenues and net income in 1981.

Applicants state that Paribas Finance was formed under Delaware law on August 12, 1982, to serve as a financing vehicle for Paribas in connection with the provision of funds to Banque Paribas. It is proposed that the Notes (defined below) and any other securities issued in connection with offerings made by Paribas Finance will be unconditionally guaranteed by Paribas. Applicants maintain that since it is intended that the sole business of Paribas Finance will be the provision of funds to Banque Paribas, virtually all of its assets will consist of amounts receivable from Banque Paribas.

Applicants assert that Paribas is subject to extensive government regulation in France under a structure which is generally comparable to that applicable to United States banks. Applicants further assert that the regulatory requirements outlined in the application apply equally to Paribas' French subsidiary banks, Banque Paribas, Compagnie Bancaire and Credit du Nord. Applicants maintain that the basic operating authority of Paribas comes from its registration with the National Credit Council. Applicants further maintain that, like the other registered financial institutions and commercial banks in France, Paribas is subject to a variety of regulatory and other measures, principally administered, often on a cooperative basis, by the National Credit Council and three other entities: the Bank Control Commission, the Bank of France and the French Banking Association. Applicants assert that these measures include, among other things, the requirement that French banks and financial institutions file detailed reports at least on a quarterly basis, in the first instance with the Bank Control Commission, evidencing compliance with various restrictions and reporting generally on their operations as well as on certain categories of loans and guarantees. Applicants state that, in addition, commercial banking operations conducted by banks and financial institutions in France are significantly affected by monetary policies established by the Ministry of the Economy and implemented by the National Credit Council and the Bank of France. Applicants state that, pursuant to the International Banking Act of 1978, Paribas is subject to certain of the

regulatory and reporting requirements of the Board of Governors of the Federal Reserve System ("Board") applicable to bank holding companies under the Bank Holding Company Act of 1956, as amended. Applicants state that, in this connection, Paribas is required to file each year with the Board an annual report containing detailed information about Paribas as well as additional information which the Board may request. Applicants state that, in the future, the annual report of Paribas will include information as to Paribas Finance.

It is proposed that Paribas Finance issue and sell in the United States short-term negotiable promissory notes of the type generally referred to as commercial paper (the "Notes"). Applicants assert that the proceeds from sales of the Notes (except for amounts needed to repay maturing securities of Paribas Finance) will be made available solely to Paribas' French subsidiary bank, Banque Paribas, in the form of loans or deposits for use in funding Banque Paribas' "current transactions". Applicants state that, under current French law, if Paribas were to issue the Notes directly the payments constituting interest on the Notes could in certain cases be subject to French withholding tax. Applicants state further that should there be a change regarding the imposition of the withholding tax, Paribas may also issue the Notes directly.

Applicants represent that the Notes will be in minimum denominations of $100,000. The Notes and guarantees thereof will rank *pari passu* among themselves; the Notes will rank equally with all other unsecured indebtedness of Paribas Finance; and the guarantees will rank equally with all other unsecured indebtedness of Paribas. Applicants state that they cannot predict with certainty the aggregate amount of Notes which may be outstanding, although it is their present expectation that this amount will average $300 million in the first year in which the Notes are issued.

Applicants represent that the Notes will be sold through one or more major dealers experienced in the marketing of commercial paper to the types of investors that ordinarily participate in the United States commercial paper market. Applicants represent further that they will not advertise or otherwise offer the Notes for sale to the general public and will obtain undertakings from said dealers to the same effect. Applicants undertake to ensure that each dealer in the Notes will provide each offeree prior to any sale of Notes to such offeree with a memorandum which describes the business of Applicants and contains the most recent publicly available official financial statements of Paribas, examined by its statutory auditors in accordance with generally accepted accounting standards in France. Applicants assert that such financial statements shall include or be accompanied by a paragraph highlighting the material differences between French accounting standards applicable to Paribas and generally accepted accounting principles employed by similar institutions in the United States. Applicants assert that the memorandum will be updated as promptly as practicable to reflect material adverse changes in the business and financial status of Paribas to the extent not previously reflected in such memorandum or financial statements and will be at least as comprehensive as those customarily used in offering commercial paper in the United States.

Applicants aver that the characteristics of the Notes are to be such as to qualify them for exemption from registration under Section 3(a)(3) of the Securities Act of 1933 (the "1933 Act"). Applicants state that they will not authorize the issuance and sale of the Notes until they have received a written opinion of United States counsel to the effect that, under the circumstances of the proposed offering, the Notes would be entitled to the exemption afforded by Section 3(a)(3) of the 1933 Act. Applicants do not request Commission review or approval of such opinion letter and the Commission expresses no opinion as to the availability of any such exemption. Applicants represent that prior to issuance the Notes shall have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and that their United States counsel shall certify that such rating has been received, provided, however, that no such rating need be obtained if, in the opinion of Applicants' United States counsel, such counsel having taken into account for the purposes thereof the doctrine of "integration" referred to in various releases and no-action letters made public by the Commission, an exemption from registration is available with respect to such issue under Section 4(2) of the 1933 Act.

Applicants represent that in connection with the issuance and sale of the Notes they will appoint (1) a bank or trust company in the United States as authorized agent to issue the Notes from time to time on behalf of Applicants and (2) the issuing agent, the manager of Banque Paribas' New York Branch, or a corporate entity which normally acts in such capacity to accept service of process in any action commenced in any State or Federal court by the holder of any Note against Applicants based on the Notes or the guarantees relating thereto. Applicants state that they will expressly accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Applicants state further that such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes shall have been paid. The application states that Applicants will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the Notes or otherwise.

Although the application states that they have no present intention of doing so, Applicants or either of them may in the future offer other debt securities for sale in the United States. Applicants state that any such debt securities issued by Paribas Finance would be unconditionally guaranteed by Paribas. In connection with any such offering, Applicants undertake (1) to ensure that offerees will be provided prior to any sale of such securities with disclosure documents no less comprehensive than is customary for offerings of similar securities in the United States, (2) to cause the appointment of an agent to accept any process which may be served on them in any action based on such securities, (3) to obtain an opinion of United States counsel as to compliance with, or the availability of an exemption from, the 1933 Act, and (4) to expressly accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Applicants state that such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of such securities have been paid. Applicants undertake, in addition, that all future issues of securities offered for sale in the United States by Paribas or Paribas Finance shall have received prior to issuance one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization.

Applicants maintain that the application is not intended to be an admission that either of the Applicants is an "investment company" within the meaning of the Act. Applicants recognized, however, that uncertainty

exists as to whether at least some foreign commercial banks and financial institutions are "investment companies" under the Act. Accordingly, Applicants state that they are making application under Section 6(c) of the Act, which provides that by order upon application the Commission may unconditionally exempt any person from the provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants state that approval of the application would be appropriate in the public interest. Applicants assert that if they were deemed to be "investment companies" for the purposes of the Act, and if the requested exemption were not granted, they would be effectively precluded from publicly offering securities in the United States. In such event applicants would be denied access to the U.S. commercial paper market, a major financing source. Applicants state further that many of the large U.S. banks which are Paribas' competitors in much of its commercial banking activities have access to the U.S. commercial paper market.

Applicants assert that approval of the application would be consistent with the protection of investors under the same rationale that has exempted United States banks from coverage thereunder. Applicants maintain that Paribas is subject to extensive regulation by the French banking authorities. Applicants further maintain that such regulation affords substantial protection to investors. Moreover, Applicants state that the Notes sold by them would be short-term and of prime quality and would not be sold to the general public.

Applicants assert that approval of the application would be consistent with the purposes of the Act because foreign financial institutions such as Paribas are not within the intent of the Act. Applicants state that Paribas is a holding company primarily engaged through subsidiaries in the business of commercial banking. Applicants assert that Paribas is regulated by the French banking authorities as a "financial institution" in virtually the same manner as French commercial banks. Accordingly, Applicants believe that Paribas should be treated as a bank and not as an "investment company" for the purposes of the Act.

Applicants contend that the rationale for granting a Section 6(c) exemption to Paribas extends to Paribas Finance as well because of the close relationship of the Applicants, because the sole business of Paribas Finance will be to operate as a financing vehicle for Paribas in connection with the provision of funds to its largest French subsidiary bank, Banque Paribas, and because the obligations of Paribas Finance will be guaranteed uncoditionally by Paribas. Thus, Applicants state that the purchase of the Notes will be equivalent to pruchasing obligations of Paribas.

Notice is further given that any interested person may, not later than December 14, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law propose to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon applicants at the address stated above. Proof of such service (By affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-32755 Filed 11-30-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22721; (70-6594)]

Consolidated Natural Gas Co.; Supplemental Notice of Extension of Period To Issue Debentures at Competitive Bidding.

November 19, 1982.

Consolidated Natural Gas Company ("Consolidated"), 100 Broadway, New York, New York 10005, a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder.

On May 13, 1981 (HCAR No. 22048) this Commission issued notice of a proposal by Consolidated to issue and sell up to $100,000,000 of sinking fund debentures at competitive bidding not later than December 31, 1981. On January 5, 1982, a supplemental notice (HCAR No. 22353) of extension of the period of issuance until December 31, 1982 was issued. Due to market conditions, Consolidated has not sold such debentures during 1982.

Consolidated seeks a further extension of the period for the issuance and sale of the debentures from December 31, 1982 to December 31, 1983. Consolidated has not amended its declaration in any other respect.

The declaration and any further amendments are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment request a hearing should submit their views in writing by December 13, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20579, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-32747 Filed 11-30-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12836; (812-5272)]

Eaton Vance U.S. Government Reserves; Filing of an Application

November 19, 1982.

Notice is hereby given that Eaton Vance U.S. Government Reserves ("Applicant"), 24 Federal Street, Boston, MA 02110, registered under the Investment Company Act of 1940 as an open end, diversified, management investment company, filed an application on August 11, 1982, and an amendment thereto on October 19, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a) (41) of the Act and Rules 2a-4 and 22c-1 thereunder, to

the extent necessary to permit Applicant's use of the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund whose investment objective is to safeguard principal, maintain liquidity and price stability, and simultaneously earn as high a rate of income as is consistent with those objectives by investing solely in instruments issued by the United States Government, and by agencies or instrumentalities thereof if principal and interest is guaranteed by the United States Government.

Applicant requests an exemption from Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit Applicant to value its portfolio securities using the amortized cost method of valuation. Section 6(c) of the Act provides, in pertinent part, that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of its request for exemption, Applicant represents that its trustees have determined in good faith that, absent unusual circumstances, amortized cost represents fair value of money market instruments. Applicant further states that valuation of its assets on the amortized cost basis is likely to enable it to maintain a constant net asset value of one dollar per share under usual or ordinary circumstances, a feature required by a large number of investors.

Applicant further consents to the imposition of the following conditions to any order granting the requested relief:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment manager, Applicant's trustees undertake—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at one dollar per share.

2. Included within the procedures to be adopted by the trustees shall be the following:

(a) Review by the trustees as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the one dollar amortized cost price per share, and maintenance of records of such review. To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its trustees in the exercise of their discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include, *inter alia*, (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources.

(b) In the event such deviation from Applicant's one dollar amortized cost price per share exceeds ½ of 1%, a requirement that the trustees will promptly consider what action, if any, should be initiated.

(c) Where the trustees believe the extent of deviation from Applicant's one dollar amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, they shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that the Fund will not (i) purchase any instrument with a remaining maturity of greater than one year, or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, Applicant undertakes that if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, if any, to those instruments issued by the United States Government, and by agencies or instrumentalities thereof if principal and interest are guaranteed by the United States Government, which the trustees determine present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the trustees.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceeding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than December 13, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application herein

will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-32752 Filed 11-30-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12838; (812-5255)]

First American Government Securities Fund, Inc.; Filing of Application

November 19, 1982.

Notice is hereby given that First American Government Securities Fund, Inc. ("Applicant"), 3033 Excelsior Boulevard, Minneapolis, MN 55416, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on July 28, 1982, and an amendment thereto on October 25, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to value its assets using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that its investment objective is to attain high current income to the extent consistent with the preservation of capital and maintenance of liquidity. Applicant further states that it will pursue this objective by investing exclusively in United States Government securities maturing in 12 months or less, including United States Treasury bills and notes and other obligations issued or guaranteed by the United States Government or its agencies or instrumentalities, as well as repurchase agreements relating to the foregoing securities that provide for repurchase by the seller within forty-five days from the date of acquisition. Applicant represents that repurchase agreements maturing in more than seven days, together with other illiquid assets shall be limited to 10% of Applicant's total assets. Applicant may also purchase United States Government securities on a when-issued or delayed delivery basis. Applicant represents that in managing its portfolio it will comply with relevant Commission rules and interpretations, including Investment Company Act Release No. 10666 (April 18, 1979).

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant asserts that it needs to use the amortized cost method of valuation in order to be competitive with other money market funds. Applicant believes that because it will invest in short-term obligations, and will dispose of portfolio securities prior to their maturity only to a limited degree, there will normally be a negligible discrepancy between the market value and the amortized cost value of its portfolio securities. Applicant represents that its board of directors has determined that the amortized cost method is appropriate and preferable for Applicant and reflects the fair value of its securities.

Applicant consents to the imposition of the following conditions in an order granting the relief it requests:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of directors undertakes, as a particular responsibility within the overall duty of care owed to its shareholders, to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption, and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such review. To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the board of directors in the exercise of its discretion to be appropriate indicators of value, which may include, inter alia (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data published by reputable sources relating to the types of money market instruments that Applicant is permitted to purchase.

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds one-half of one percent, the board of directors will promptly consider what action, if any, should be initiated.

(c) In the event that the board of directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it will take such action as it deems appropriate to eliminate or to reduce, to the extent reasonably practicable, such dilution or unfair results. Such action may include: selling portfolio instruments prior to maturity to realize capital gains or losses or to shorten Applicant's average portfolio maturity; withholding dividends; redemption of shares in kind; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year; or (b) maintain a dollar-weighted average portfolio maturity that exceeds 120 days. In fulfilling this comdition, if the disposition of a portfolio instrument should result in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 or less as soon as reasonably practicable.

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and Applicant will record, maintain, and

preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, if any, to United States Government obligations that its board of directors determines present minimal credit risks, and that are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of directors.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action as taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than December 14, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-32754 Filed 11-30-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22730; (70-6813)]

New England Electric System; Proposed Issuance and Sale of Short-Term Notes to Banks

November 23, 1982.

The New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01581, a registered holding company, has filed an application-declaration with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) promulgated thereunder.

NEES proposes to issue and sell an aggregate outstanding principal amount of $40 million of short-term notes from time to time through March 31, 1984. The proposed borrowings by NEES will be evidenced by notes payable maturing in less than one year from the date of issuance.

Borrowings will be made in any of the following manners:

(i) NEES may maintain funds in the banks which represent compensating balances or may pay fees to the banks in lieu of such compensating balance requirements. The effective interest cost of such borrowings will not be greater than the effective interest cost of borrowings at the bank's base prime lending rate with compensating balance requirements of 10 percent of the line of credit and 10 percent of any borrowings thereunder.

(ii) NEES may negotiate borrowings without compensating balances or the payment of fees at an effective interest cost equivalent to the effective cost of borrowings made under arrangements calling for compensating balances or the payment of fees. The effective interest cost to NEES is expected to be no greater than the effective interest cost of bank borrowings at the bank's base lending rate based on compensating balance requirements of 10 percent of the line of credit and 10 percent of any borrowings thereunder. In no event will the rate be greater, at the time of borrowing, than the limit on the effective interest cost under Paragraph (i) above.

(iii) Borrowings may be made at fixed rates, which may be greater than the then current prime rate, but in no event greater than the limit on the effective interest cost under paragraph (ii) above. Such borrowings may be without prepayment privileges.

Based on compensating balance requirements of about 10 to 20 percent, or fees equivalent thereto, the effective interest cost of bank borrowing under (i) and (ii) would be approximately 13.3 percent to 15 percent per annum based on the current prime rate of 12 percent.

The proceeds will be used to make capital contributions to subsidiaries, to acquire notes or stock of subsidiaries and to finance other corporate needs.

The application-declaration and any further amendments are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 16, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-32760 Filed 11-30-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22723; 70-6823]

New England Energy Inc. And New England Electric System; Proposed Investment by Energy Subsidiary in Oil and Gas Partnership; Proposed Amendments to Partnership Agreement

New England Energy Incorporated ("NEEI"), a non-utility subsidiary of New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01581 a registered holding company, has filed an application pursuant to Sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

NEEI has participated in most of its oil and gas exploration and development through a partnership ("Partnership") with Samedan Oil Corporation ("Samedan"). By order dated October

30, 1981 (HCAR No. 22250), the Commission authorized NEEI to invest in the Partnership from November 1, 1981 through December 31, 1982 a maximum of $135 million for exploration and development. As of September 20, 1982, NEEI has invested about $76 million under this authorization.

Under the terms of the NEEI-Samedan Partnership Agreement, as amended ("Partnership Agreement") Samedan places into the Partnership 100% of any and all interests which it or any of its affiliates may acquire in new oil and gas leases located in, or offshore of, the continental United States (including Alaska). Each partner owns a 50% interest in the Partnership property. The Partnership Agreement provides for capital contributions by the partners to be used to pay the costs and expenses of the Partnership. NEEI pays a larger share of the costs of exploration to compensate Samedan for its accumulated geological and geophysical work in evaluating prospects, as well as for management and expertise in running the Partnership as managing partner. The partners share equally the development and production costs for successful prospects.

The Partnership Agreement assigns to Samedan, as managing partner, responsibility for developing, evaluating, and selecting new prospects for exploration. As a matter of practice, NEEI and its consultants are kept informed by Samedan of this evaluation and selection process. Once a prospect has been identified as appropriate for investment by the Partnership, Samedan undertakes to acquire for the Partnership an interest in the leases included in the prospect. Due to the finite supply of promising oil and gas prospects, NEEI states that the long-term success of the Partnership's exploration program depends upon the Partnership being in a position to take full advantage of these opportunities to bid for leases on such prospects when they are offered for sale.

Samedan has proposed to place in the Partnership interests in 14 offshore California federal oil and gas leases which it has acquired from Ogle Resources, Inc. Under the terms of the Partnership Agreement, NEEI would pay a disproportionate share of certain exploration costs incurred by the Partnership of these leases. All such expenditures made by NEEI above 50% of the Partnership's costs are commonly referred to as "promote". In connection with the acquisition by the Partnership of these interests, Samedan and NEEI propose to amend the Partnership Agreement to put a limit on the total "promote" paid by NEEI with respect to those interests. The proposed amendment would also increase NEEI's ability to reduce its participation in the development of the tracts during the term of the Partnership.

NEEI has invested about $342 million in oil and gas ventures through July 1, 1982. NEEI's share of the total proved and probable reserves discovered by its oil and gas ventures through that date, including 4.0 million equivalent barrels of production, was 17.4 million equivalent barrels. Costs associated with these reserves including capital costs and costs associated with production, totalled about $326 million or an average cost per barrel of $19.51. NEEI production and revenue through June 30, 1982 were about 4.0 million equivalent barrels and about $69 million, respectively. This production has resulted in about $7.4 million of savings in fuel costs for customers of the NEES system. NEEI estimates that its 1983 production will be about 2.7 million equivalent barrels. NEEI proposes to continue its current level of participation in the Partnership in order to increase its oil and gas reserves and production, and to generate additional customer savings.

The Partnership's oil and gas exploration and development during 1983 will be primarily directed toward offshore activities, including the exploration and development of leases previously acquired in the Gulf of Mexico and offshore California, and the acquisition of new leases in these areas. Onshore activities will be carried on primarily in Oklahoma, North Dakota, New Mexico and Texas.

For calendar year 1983, NEEI estimates that its share of Partnership expenses for exploration purposes will require capital contributions by NEEI to the Partnership of approximately $75 million and that its share of expenses for development of successful prospects will require capital contributions to the Partnership of approximately $50 million. NEEI requests that the Commission authorize investments by it in the Partnership through December 31, 1983 of up to $125 million for exploration and development.

NEEI proposes to finance its investments in the Samedan Partnership through December 31, 1983 from the following sources:

Bank Loan. By order dated August 24, 1981 (HCAR No. 22175), the Commission authorized NEEI to enter into a revolving credit and term loan agreement with Bank of Montreal and Citibank, N.A. ("Bank Loan"). The terms of the Bank Loan provide for borrowings by NEEI under the revolving credit portion up to a total outstanding of $400 million through at least December 31, 1984. Total borrowings by NEEI at August 31, 1982 were $211.5 million. Total borrowings are expected to grow to about $256 million at December 31, 1982, leaving $144 million available under the Bank Loan through 1984.

NEES Investment. In its order of August 24, 1981 approving the Bank Loan, the Commission also extended through the term of the Bank Loan the authority for NEES to invest up to $45 million in NEEI through acquisition of subordinated notes or common stock. As of August 31, 1982, the total of outstanding common stock and NEEI subordinated notes issued NEES was about $40 million. It is estimated that NEES investment will be about $41 million at December 31, 1982.

Deferred Taxes. Pursuant to a Tax Allocation Agreement adopted and filed pursuant to Rule 45(c), NEEI will be credited with and receive the cash equivalent of reductions in consolidated tax liabilities arising from inclusion of its tax losses in the consolidated tax returns of the NEES system. It is estimated that NEEI will receive in 1983 approximately $33 million in such payments to it by other companies in the NEES system. These payments are accounted for by NEEI as deferred federal income taxes.

Amortization. The Commission's order dated July 19, 1978 (HCAR No. 20632) authorized NEEI to make sales of fuel derived from the exploration and development activities of the Partnership on terms and conditions prescribed in the Commission's order to New England Power Company ("NEP"), a generation and transmission subsidiary of the NEES system. Those terms include a pricing policy under which NEEI recovers its investment in oil and gas exploration and development by dividing the total costs for its exploration and development program, including capital costs as defined, by total estimated equivalent barrels of reserves to determine a unit cost to be applied to each equivalent barrel produced. NEEI anticipates recovery of approximately $62 million of its investment in this manner in 1983.

The application and any amendment thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to coment or request a hearing should submit their views in writing by December 13, 1982, to the

Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affadavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-32748 Filed 11-30-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22724; 70-6780]

Michigan Power Co.; Proposed Change in Maximum Interest Rate in Connection With the Issuance and Sale of Long-Term Notes to Banks.

November 22, 1982.

In the matter of Michigan Power Company, P.O. Box 413, Three Rivers, Michigan 49093 (70-6780).

Michigan Power Company ("Michigan"), a public-utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act").

By order in this proceeding dated October 8, 1982 (HCAR No. 22663), Michigan was authorized to issue and sell one or more unsecured promissory notes in the aggregate amount of up to $20 million through December 31, 1983, to evidence indebtedness under a proposed bank loan agreement with one or more banks. Such note or notes were to bear interest at a fixed rate per annum which would be no greater than the rate of interest then payable by Michigan to Manufacturers Hanover Trust Company and National Bank of Detroit under an existing Term Loan Agreement. Under said existing Term Loan Agreement, the applicable rate is equal at all times to the prime rate, as announced by Manufacturers Hanover Trust Company from time to time, on or before December 31, 1982; 102% of the prime rate from January 1, 1983, to December 31, 1985; and 104% of the prime rate thereafter.

Michigan now requests a further order of the Commission authorizing Michigan to issue its unsecured promissory note or notes as previously authorized in this proceeding except that such note or notes shall bear interest at a fixed rate of not more than 200 basis points above the applicable rate payable by Michigan under its existing Term Loan Agreement with Manufacturers Hanover Trust Company and National Bank of Detroit at the time of any such borrowing, but in no event greater than 14% per annum. All the other terms and conditions of the proposed transaction remain unchanged.

Michigan states that it believes that funds at a fixed rate at or near the applicable prime rate are currently available on loans having maturities of two years but not on loans having longer maturities. Rates quoted to Michigan on loans having longer maturities have generally been in the range of up to 200 basis points higher than the prime rate. Michigan believes that it will be of long-term benefit to the company and its customers to refund its outstanding variable rate notes, in whole or in part, with the proceeds of notes having longer maturities, even though such long-term notes may bear a fixed rate of interest higher than current short-term rates at the time of such borrowings.

The declaration, as amended by the post-effective amendment, and any further amendments are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 17, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affadavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-32756 Filed 11-30-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22727; 70-6792]

Montaup Electric Co., et al.; Proposed Issuance and Sale of Short-Term Notes to Banks

November 22, 1982.

In the matter of Montaup Electric Company, P.O. Box 391, Fall River, Massachusetts 02722, Eastern Edison Company, 110 Mulberry Street, Brockton, Massachusetts 02403, and Blackstone Valley Electric Company, Washington Highway, P.O. Box 1111, Lincoln, Rhode Island 02865 (70-6792).

Eastern Edison Company ("Eastern Edison"), Montaup Electric Company ("Montaup") and Blackstone Valley Electric Company ("Blackstone"), electric utility subsidiaries of Eastern Utilities Associates, a registered holding company, has filed a declaration with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) promulgated thereunder.

The declarants seek authorization to issue and sell short-term notes to banks during the period from December 31, 1982 to December 31, 1983. The aggregate amounts outstanding at any one time would be up to $13 million for Eastern Edison, $26 million for Montaup and $6 million for Blackstone.

The notes issued to banks (the "Bank Notes") will each be dated the date of issue and will be issued no later than December 30, 1983. No notes will mature after September 30, 1984. Notes bearing interest at the floating prime rate will have maximum maturities of nine months and will be subject to prepayment at any time without premium. Notes bearing interest at available money market rates, which in all cases will be less than the prime rate at the time of issuance, will have maximum maturities of sixty days and will not be prepayable.

Credit lines with banks are subject in some cases to commitment fees and/or compensating balance requirements. The credit line arrangements include: (1) Borrowing at the prime rate or money market rates, if lower, with no formal compensating balances; (2) borrowing at the prime rate or money market rates, if lower, with compensataing balances not exceeding 10%; and (3) borrowing at the prime rate or money market rates, if lower, together with a commitment fee not exceeding 8% of the prime rate on the credit line.

Assuming full usage and a prime rate of 13.5%, the effective interest cost of the proposed borrowings would not exceed 14.99% resulting from compensating balances of 10%.

The funds to be derived by Eastern Edison, Montaup and Blackstone from the issuance of the Bank Notes together with other funds available to these companies wil be applied: (1) To renew outstanding notes payable to banks, as they become due; (2) to finance their respective 1983 cash construction expenditures which are estimated to be approximately $9,900,000 in the case of Eastern Edison, $48,900,000 in the case of Montaup, and $7,300,000 in the case of Blackstone; and (3) to provide funds to meet certain bond maturities and sinking fund requirements in the case of Eastern Edison.

The declaration and any amendments are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 14, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-32757 Filed 11-30-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No 19261; File No. SR-NASD-82-14]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

November 19, 1982.

In the matter of National Association of Securities Dealers, Inc., 1735 K Street, NW., Washington, D.C. 20006; File No. SR-NASD-82-14.

The National Association of Securities Dealers, Inc., ("NASD") submitted on August 20, 1982, copies of a proposed rule change 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, to amend Appendix C of Article III, Section 32, of the NASD's Rules of Fair Practice to include a definition of the term "employee" for purposes of fidelity bonding requirements. The proposed definition defines as employee as any person associated with a member firm with the exception of a sole proprietor, sole stockholder or a director or trustee who does not perform duties that are usually performed by an officer or employee. Securities salespeople deemed to be independent contractors who are not themselves registered as broker-dealers and family members employed by a firm will be regarded as employees under the definition and therefore subject to fidelity bonding requirements.

In this regard, the NASD notes that its members recently were sent a copy of a letter, dated June 18, 1982, from the Director of the Commission's Division of Market Regulation to the NASD's President, which discusses the status of independent contractors under the Act.[1] That letter reiterated the legal requirement that a person selling securities must be registered under Section 15(a) of the Act as a borker-dealer unless he is an associated person as defined in Section 3(a)(18) of the Act. The letter specifically points out the Commission's postition that denoting a saleperson as an independent contractor does not change the legal status of the individual under the Act. Thus, a broker-dealer which forms a relationship with an independent contractor is responsible for either (1) ensuring that the independent contractor is registered as a broker-dealer or (2) assuming the legal responsibilities, including provision of fidelity bonding coverage, attendant to a relationship with the associated person. The determination of whether an independent contractor is an associated person or needs to register separately as a broker-dealer is a factual question dependent on who controls the selling activities of the salesperson.[2] The letter also noted that independent contractors are properly characterized as employees of a broker-dealer under the Act if they are subject to the control of such broker-dealer.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 19042, September 8, 1982) and by publication in the **Federal Register** (47 FR 40965, September 16, 1982). No comments were received with respect to the proposed rule change.

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 NASD and, in particular the requirements of Section 15A of the Act and the rules and the regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-32758 Filed 11-30-82; 8:45 am]

BILLING CODE 8010-01-M

[1] Letter to All NASD Members from Frank J. Wilson, Executive Vice President and General Counsel (August 25, 1982).

[2] In this connection, the Commission believes that it is important to emphasize that a simple denial of "control" of an independent contractor by a broker-dealer would not remove its responsibility for supervising that person. The Commission believes that if a salesperson was not registered and a broker-dealer permitted him to hold out to the public that he was acting on behalf of the firm, such salesperson would be deemed to be an associated person of the broker-dealer.

[3] 17 CFR 200.30-3(a)(12).

[Release No. 12835; 812-5317]

Pacific Funding Corp.; Filing of Application

November 19, 1982.

In the matter of Pacific Funding Corp., 165 Broadway, New York, NY 10080 (812-5317).

Notice is hereby given that Pacific Funding Corporation ("Applicant"), a Delaware corporation, filed an application on September 16, 1982, requesting an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

According to the application, Applicant's sole business will be the issuance and sale of commercial paper notes and use of the net proceeds of those sales to make purchases ("Purchases") from Union Bank ("Bank"), a banking corporation organized under the laws of California, of promissory notes ("Loan Notes") issued to the Bank by its customers ("Borrowers") evidencing loans or credit ("Loans") made or advanced by the Bank to the Borrowers.

Borrowers' payment obligations under each Loan will be supported by an irrevocable letter of credit ("Letter of Credit") issued in favor of Applicant by the Bank for the account of each Borrower. Each Letter of Credit will

entitle Applicant to demand payment thereunder in the event of a failure of the Borrower for whose account the Letter of Credit was issued to pay upon maturity Loans made to the Borrower. Substantially all of Applicant's assets will consist of notes representing the Loans. The application further states that none of Applicant's outstanding stock is or will in the future be owned by the Bank, by any of the Borrowers, or by any affiliate of the Bank or the Borrowers, and that there has been and there will in the future be no public offering of Applicant's common stock.

Applicant proposes to issue and sell short-term negotiable promissory notes of the type exempt from the registration requirements of the Securities Act of 1933 (the "Securities Act") by virtue of Section 3(a)(3) thereof and generally referred to as commercial paper (the "Commercial Paper Notes"). The Commercial Paper Notes will be sold in minimum denominations of $100,000, will have a maturity not exceeding 270 days, and will neither be payable on demand prior to maturity nor eligible for any extension, renewal, or automatic "rollover" at the option of either the holder or the issuer.

Applicant undertakes not to market any Commercial Paper Notes prior to receiving an option of counsel to the effect that the proposed offering of commercial paper is exempt from the registration requirements of the Securities Act by virtue of Section 3(a)(3) thereof. Applicant further undertakes that, in respect of any future offerings of Applicant's debt securities it will obtain an opinion of counsel as to compliance with, or the availability of an exemption from, the registration requirements of the Securities Act.

Applicant states that the Commercial Paper Notes will be offered publicly, through one or more major dealers, only to the types of sophisticated and largely institutional investors that ordinarily participate in the commercial paper market and that, while an announcement of the establishment of the commercial paper facility may be made as a matter of record, the offering will not be advertised. Applicant undertakes to ensure that each dealer in the Commercial Paper Notes will furnish to each offeree, memoranda describing the businesses of the Bank and Applicant and providing the most recent annual and quarterly financial information for the Bank. Applicant represents that the memoranda prepared by each dealer will be updated as promptly as practicable to reflect material adverse changes in the financial status of Applicant or the Bank and will be at least as comprehensive as memoranda customarily used in offering commercial paper. Applicant consents to having the granting of its requested order expressly conditioned upon its compliance with the undertakings in the prior two sentences.

Applicant represents that, prior to their issuance, the Commercial Paper Notes, and any future issue of Applicant's debt securities, will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization. However, Applicant understands that no such rating shall be required to be obtained with respect to an issue of Applicant's other debt securities if, in the opinion of counsel, an exemption is available for the issue pursuant to Section 4(2) of the Securities Act.

According to the application, Morgan Guaranty Trust Company of New York ("Depositary") will, through its corporate trust department, act as issuing and paying agent for the Commercial Paper Notes. As trustee for the benefit of holders of the Commercial Paper Notes, the Depositary will receive an assignment of Applicant's rights to payments of the Loans evidenced by the Loan Notes and of Applicant's rights under the Letters of Credit supporting payment of such Loans. The Depositary will receive proceeds from Applicant's sales of the Commercial Paper Notes and will remit such proceeds to accounts maintained at the Bank. The Bank, as agent for Applicant, will collect payments made in respect of Loans evidenced by the Loan Notes upon maturity and transfer those payments to the Depositary for deposit in a special account to be used to pay the Commercial Paper Notes. Maturing Commercial Paper Notes will be paid by the Depositary with funds from the foregoing sources.

Applicant believes, on the basis of estimates provided by the Bank, that in the first year in which Commercial Paper Notes are issued, the face amount of Commercial Paper Notes outstanding will average approximately $150,000,000. Applicant will utilize all of the proceeds from sales of the Commercial Paper Notes (after deduction from the proceeds of a commission payable to Applicant's commercial paper dealer on account of its services in connection with the purchase and sale of the Commercial Paper Notes) to make Purchases from the Bank. For each Borrower, the aggregate amount of Commercial Paper Notes issued to obtain funds to make Purchases of Loan Notes of that Borrower and disbursements under the Letter of Credit issued for its account will not be permitted to exceed a designated amount specified for that Borrower. It is expected that each Borrower will use the proceeds of the Loans in the ordinary course of its business for, among other things, the purchase of merchandise, insurance and services. Applicant states that the Loan Notes that would constitute virtually all of Applicant's assets could be deemed to be investment securities under the Act, and thus Applicant could be deemed an investment company subject to the Act under the definition of the term investment company set forth in Section 3(a)(3) of the Act.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act, or from any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant represents that it will receive assurances from the Bank that each Borrower is not an investment company as defined in Section 3 of the Act. Each Borrower would be a company that itself could issue and sell its commercial paper without compliance with the Act's registration requirements. Applicant states that significant economies and efficiencies may be obtained by financing Loans to the Borrowers in the manner proposed, enabling the Bank to finance Loans to the Borrowers based on the rates available in the commercial paper market. Applicant argues that as a special purpose corporation engaging only in issuing commercial paper to obtain funds to make Purchases for the purposes specified, it is not the type of company intended to be regulated under the Act, and that its operations do not lend themselves to the kinds of abuses the Act was intended to prevent. Applicant further argues that holders of Applicant's Commercial Paper Notes do not require the protections accorded investors under the Act because, as the ultimate beneficiaries of Applicant's rights under the Letters of Credit, they will be adequately protected by the credit of the Bank in the event Borrowers fail to meet their repayment obligations under the Loan Notes. In addition, Applicant points out that prior

to issuance the Commercial Paper Notes will have received one of the three highest investment grade ratings from a nationally recognized rating organization.

Notice is further given that any interested person may, not later than December 14, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-32749 Filed 11-30-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22731; 70-6808]

Yankee Atomic Electric Co.; Proposed Issuance and Sale of Short-Term Notes to Banks and Commercial Paper to a Dealer; Exception From Competitive Bidding

November 23, 1982.

In the Matter of Yankee Atomic Electric Company, 1671 Worcester Road, Framingham, Massachusetts 01701 (70-6808).

Yankee Atomic Electric Company, ("Yankee Atomic"), an electric utility subsidiary of New England Electric System and Northeast Utilities, has filed an application-declaration with this Commission pursuant to Section 6(a), 7 and 9(a) of the Public Unility Holding Company Act of 1935 and Rules 42(b)(2), 50(a)(2) and 50(a)(5) promulgated thereunder.

Yankee Atomic proposes to issue and sell up to a maximum aggregate outstanding principal amount of $16 million of short-term notes to banks and commercial paper to a dealer through December 31, 1983. The bank notes are expected to be sold to the Bank of Nova Scotia ("Nova Scotia") or the Bank of Nova Scotia International (Curacao), N.V. ("International") (collectively the "Banks"). The commercial paper would be sold to A.G. Becker and Company, Incorporated ("Becker"). Under an Operating/standby Credit Agreement between Yankee Atomic and the Banks, proposed borrowings will be evidenced by a note maturing in less than twelve months from the date of issuance. Voluntary prepayment, in whole or in part, is not subject to premium or penalty. However, if Yankee Atomic makes a voluntary prepayment on advances by International on other than a London Interbank Offered Rate ("LIBO Rate") rollover date, Yankee Atomic is required to compensate this bank for any loss or expense it might incur as a result of such payment. Advances made by Nova Scotia shall bear interest at a rate per annum which at all times shall be equal to ½ of 1% above this bank's base rate. Borrowings from International shall bear interest equal to ¾ of 1% above this bank's 1, 2, 3, 6 or 9 month LIBO Rate as selected from time to time by Yankee Atomic. On a monthly basis, the Company is to pay a standby fee equal to ⅜ of 1% per annum on the average daily unborrowed portion of the line of credit under the credit agreement. Assuming borrowings at the maximum amount of the lines of credit, based on the current base rate of 12.50% and using the 6-month LIBO Rate of 10.50%, the effective interest cost to Yankee Atomic under borrowings with International would be 13.00% and 11.25%, respectively.

Yankee Atomic proposed to issue and sell commercial paper within the overall aggregate limit to Becker through December 31, 1983.

The commercial paper so issued and sold will be in the form of unsecured promissory notes having varying maturities of not in excess of 270 days. Actual maturities will be determined by market conditions, the effective interest cost to Yankee Atomic, and Yankee Atomic's cash requirements at the time of issuance. The commercial paper will be in denominations of not less than $50,000 and not more than $1,000,000 and will not by its terms be prepayable prior to maturity. The commercial paper will be purchased by Becker from Yankee Atomic at a discount which will not be in excess of the discount rate per annum prevailing at the date of issuance for the particular maturity at which prime commercial paper of comparable quality is sold by public utility issuers to commercial paper dealers. Becker will initially reoffer the commercial paper at a discount rate not more than ⅛ of 1% per annum less than the prevailing discount rate to Yankee Atomic.

No Commercial paper note having a materity of more than 90 days will be issued at an effective interest cost which exceeds the effective interest cost at which Yankee Atomic could borrow from Nova Scotia or International.

Becker, as a principal, will reoffer such commercial paper to not more than 100 of its customers whose names appear on a non-public list prepared in advance by Becker. No additions will be made to such list of costomers. Each list includes commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, municipal and state benefit funds, eleemosynary institutions, finance companies and non-financial corporations. Prior to or concurrently with the offerings, customers will be furnished current financial and other information with respect to the issuer. It is expected that such commercial paper will be held to maturity by the purchasers, but, if any such purchaser wishes to resell prior to maturity, Becker, pursuant to an oral repurchase agreement, will repurchase the paper for resale to others on said list of costomers.

The proceeds will be used for Yankee Atomic's 1983 expenditures including approximately $13 million for nuclear fuel and $8 million of capital expenditures for plant improvements.

The proposed short-term borrowings will be repaid from time to time in part from internally generated funds and the balance will be refinanced either through additional short-term borrowings or, subject to prior Commission approval, permanent financing.

The application-declaration and any amendments thereto are available for public inspectin through the Commission's Office of Public Reference. interested persons wishing to comment or request a hearing should submit their views in writing by December 16, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the appliant-declarant at the address specified above. Proof of service (by affidavit or, in the of an attorney at law, by certificate) should be filed with the request.

Any request for a hearing shall identify specifically the issues of fact or

law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-32759 Filed 11-30-82; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-12091]

Texaco Inc.; Application and Opportunity for Hearing

November 23, 1982.

Notice is hereby given that Texaco Inc. (a Delaware corporation) (the "Applicant") has filed an application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission ("Commission") that the trusteeships of Manufacturers Hanover Trust Company ("Manufacturers") under six indentures, five heretofore qualified under the Act and the other not requiring qualification under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Manufacturers from acting as trustee under any of such indentures.

The Applicant alleges that:

1. As of the year ended December 31, 1981, it has issued and outstanding the following described securities issued under the following indentures, each of which was qualified under the Act in connection with the registration under the Securities Act of 1933 of the securities issued thereunder, the file number of each Registration Statement being set forth in parenthesis below (collectively, the "Texaco Indentures"):

(a) $150,000,000 principal amount 3⅜% Debentures Due May 1, 1983, issued under an Indenture dated as of May 1, 1958, (File No. 2-14039);

(b) $180,000,000 principal amount 5¾% Debentures Due 1997, issued under an Indenture dated as of July 15, 1967, (File No. 2-26807);

(c) $200,000,000 principal amount 7¾% Debentures Due 2001, issued under an Indenture dated as of June 1, 1971, (File No. 2-40333); and

(d) $298,175,000 principal amount 8⅜% Debentures Due 2005, issued under an Indenture dated as of May 1, 1975, (File No. 2-53027).

2. As part of its Registration Statement (File No. 2-71823), Pembroke Capital Company Inc. ("Pembroke") qualified under the Act an Indenture dated as of December 1, 1978, between Pembroke and Manufacturers, as trustee, as amended, including a Sixth Supplemental Indenture dated as of May 1, 1981 (the "Pembroke Indenture"). The securities already issued and which are to be issued under the Pembroke Indenture are secured by the pledge of a Partnership Note of Pembroke Cracking Company, an English partnership whose two partners are Gulf Oil (Great Britain) Limited and Texaco Limited, a wholly-owned subsidy of the Applicant. As security for the payment of the Partnership Note, the partnership has assigned to Manufacturers, as trustee, all the partnership's rights, title and interest in both a Completion Agreement and a Throughput Agreement, both dated as of December 1, 1978, between the partnership and its two partners. Texaco Limited's performance under the Completion Agreement and under the Throughput Agreement is guaranteed by the Applicant, which guarantee has also been assigned to Manufacturers, as trustee, as additional security for the payment of the Partnership Note.

3. Each of the Indentures referred to in paragraphs 1 and 2 above contain the provisions required by Section 310(b) of the Act.

4. Industrial Development Corporation of the Port of Anacortes, Washington ("IDC") has entered into an Indenture dated as of October 1, 1982 (the "IDC Indenture"), with Manufacturers as trustee, pursuant to which IDC is authorized to issue initially up to an aggregate principal amount of $34,000,000 of its Exempt Facilities Revenue Bonds, Series 1982 (Texaco Project) (the "Series 1982 Bonds"). IDC is a public corporation created by the Port of Anacortes, Washington. The Series 1982 Bonds are industrial development bonds, being issued for the purpose of financing the cost of acquiring, constructing, equipping and installing certain machinery, equipment and related property consisting of pollution control facilities and dock and wharf facilities (the "Project") at the Anacortes refinery of the Applicant, the interest on which is excludable from gross income under the Internal Revenue Code of 1954. In light of the above, the Series 1982 Bonds are not being registered under the Securities Act of 1933 and the IDC Indenture is not being qualified under the Trust Indenture Act of 1939.

IDC will be lending the proceeds of the Series 1982 Bonds to Texaco Convent Refining Inc. ("Texaco Convent"), a wholly-owned subsidiary of the Applicant, to finance the Project pursuant to a Loan Agreement dated as of October 1, 1982 between IDC and Texaco Convent (the "Agreement"). To evidence its obligation to repay the loan from IDC, Texaco Convent has issued and delivered to Manufacturers, as trustee, its promissory note (the "Series 1982 Note"), having principal, interest and prepayment provisions corresponding to the principal, interest and redemption provisions of the Series 1982 Bonds.

To secure payment of the loan from IDC, Texaco Convent has entered into a Security Agreement dated as of October 1, 1982 (the "Security Agreement"), pursuant to which Texaco Convent grants to IDC a security interest and a continuing lien in certain property described therein. In addition, the Applicant has entered into a Guaranty Agreement dated as of October 1, 1982 (the "Guaranty"), with Manufacturers as trustee, under which the Applicant absolutely and unconditionally guarantees for the benefit of the Bondholders the performance of Texaco Convent of its obligations under the Agreement and the Series 1982 Note.

Under the IDC Indenture, IDC has assigned to Manufacturers, as trustee, all of its right, title and interest under the Agreement, including the right to receive the Series 1982 Note, the Security Agreement and the Guaranty.

5. The Applicant's guarantee pursuant to the Guaranty Agreement with Manufacturers, as trustee, for the benefit of the Bondholders under the IDC Indenture, of Texaco Convent's performance of its obligations under the Agreement and the Series 1982 Note is unsecured and ranks in pari passu with the securities issued under the Texaco Indentures and with the Applicant's guarantee of Texaco Limited's performance under the Completion Agreement and under the Throughput Agreement and the assignment thereof to Manufacturers, as trustee, unde the Pembroke Indenture.

6. The Applicant believes that Manufacturers' trusteeship under the IDC Indenture is not so likely to involve a material conflict of interest with Manufacturers' continued trusteeships under the Texaco Indentures and the Pembroke Indenture as to make it necessary in the public interest or for the protection of investors to disqualify Manufacturers from continuing to act as trustee under the Texaco Indentures and the Pembroke Indenture if Manufacturers were to contique to act as trustee under the IDC Indenture.

7. The Applicant has waived notice of hearing, any right to a hearing on the issues raised by the application, and all rights to specify procedures under the Rules of Practice of the Commission with respect to its application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at 450 Fifth Street, NW., Washington, D.C.

Notice is further given that any interested person may, not later than December 23, 1982, submit to the Commission his views or any substantial facts bearing on this application or may request that a hearing be held on such matter. Any such communication or request should be addressed Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission. Persons who request a hearing or advice as to whether a hearing is ordered will receive all notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-32780 Filed 11-30-82; 8:45 am]

BILLING CODE 8010-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 231
Wednesday, December 1, 1982

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).

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COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., Friday, December 10, 1982.

PLACE: 2033 K Street, N.W., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6374.

[S-1737-82 Filed 11-29-82; 3:30 pm]

BILLING CODE 6351-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:30 p.m. on Monday, December 6, 1982, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Request for relief from adjustment for violations of Regulation Z:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(A)(ii)).

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,514—Central Savings Banks, New York, New York

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: November 29, 1982.

Federal Deposit Insurance Corp.

Hoyle L. Robinson,

Executive Secretary.

[S-1735-82 Filed 11-29-82; 3:06 pm]

BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 1:00 p.m. on Monday, December 6, 1982, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Sidley & Austin, Chicago, Illinois, in connection with the liquidation of Drovers' National Bank of Chicago, Chicago, Illinois.

Memorandum and resolution re: Recommendations regarding FDIC internal audit and investigation activities.

Memorandum and resolution re: Contract for the printing, distribution, storage and inventory maintenance of the FDIC loose-leaf reporting service.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications or requests approved by the Director or Associate Director of the Division and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC building located at 550 – 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: November 29, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1736-82 Filed 11-29-82; 3:06 pm]

BILLING CODE 6714-01-M

4

FEDERAL HOME LOAN BANK BOARD

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 47, Page No. 52844, Date Published—Tuesday, November 23, 1982.

PLACE: Board Room, 6th Floor, 1700 G St., N.W., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Lockwood (202-377-6679).

CHANGES IN THE MEETING: The following item has been added to the open portion of the Bank Board meeting scheduled Wednesday, December 1, 1982.

Application for Merger—Sandia Federal Savings and Loan Association West Gallup, New Mexico AND Sandia Federal Savings and Loan Association, Central Belen, New Mexico AND Sandia Federal Savings and Loan Association, North Los Alamos, New Mexico INTO Sandia Federal Savings and Loan Association, Albuquerque, New Mexico.

No. 80, November 29, 1982.

[S-1729-82 Filed 11-29-82; 9:37 pm]

BILLING CODE 6720-01-M

5

FEDERAL HOME LOAN BANK BOARD

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 47, Page No. 52844, Date Published—Tuesday, November 23, 1982.

PLACE: Board Room, 6th Floor, 1700 G St., N.W., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Lockwood (202-377-6679).

CHANGES IN THE MEETING: The following item has been withdrawn from the open portion of the bank board meeting scheduled Wednesday, December 1, 1982.

Amendments Relating to the Organization, Merger and Acquisition of Interim Savings and Loan Associations.

No. 81, November 29, 1982.

[S-1738-82 Filed 11-29-82; 3:57 pm]

BILLING CODE 6720-01-M

6

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9 a.m.—December 8, 1982.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion open to the public:

1. Docket No. 81-51: Time Limit for Filing of Overcharge Claims—Consideration of petitions for reconsideration and clarification.

Portions closed to the public:

1. Activities of TransEurope Shipping, Inc.
2. Docket No. 82-1: California Cartage Company, Inc. v. Pacific Maritime Association; and Docket No. 82-10: Containerfreight Terminals Company, et al. v. Pacific Maritime Association—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523-5725.

[S-1734-82 Filed 11-29-82; 2:51 pm]

BILLING CODE 6730-01-M

7

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Notice of deletion of item from November 23, 1982.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed (Pursuant to 5 U.S.C. section 552(c)(10)).

CHANGE IN THE MEETING: The following item was deleted from the agenda:

3. Council of the Southern Mountains, Inc. v. Martin County Coal Corp., Docket No. KENT 80-222-D.

It was determined by a unanimous vote of Commissioners that the above item should be deleted from the agenda and that no earlier announcement of the deletion was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5632.

[S-1730-82 Filed 11-29-82; 11:19 am]

BILLING CODE 6735-01-M

8

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Wednesday, December 1, 1982.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. White Pine Copper Division, Copper Range Co., Docket Nos. LAKE 81-106-RM, LAKE 81-171-M. (Issues include whether the judge erred in concluding that the operator violated 30 CFR § 57.3-20, dealing with roof support requirements.)

TIME AND DATE: 11:00 a.m., Wednesday, December 1, 1982.

The Commission will hear oral argument on the following:

2. Cleveland Cliffs Iron Company, Docket No. LAKE 80-129-M. (Issues include whether the judge erred in concluding that the operator violated 30 CFR § 55.12-16, dealing with deenergizing of electrically powered equipment.)

TIME AND DATE: Following oral argument of above cases, December 1, 1982.

STATUS: Closed (Pursuant to 5 U.S.C. § 522(c)(10))

MATTERS TO BE CONSIDERED: The Commissioners will meet in closed session to consider both of the above cases.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5632.

[S-1733-82 Filed 11-29-82; 2:35 pm]

BILLING CODE 6735-01-M

9

POSTAL SERVICE

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Monday, December 6, and at 8:30 a.m. on Tuesday, December 7, 1982, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, D.C. As indicated in the following paragraphs, the December 6 meeting is closed to public observation. The December 7 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

At its meeting on November 8, 1982, the Board voted to close to public observation its meeting scheduled for December 6, 1982.

One portion of the meeting to be closed will consist of further consideration of the July 9, 1982, decision of the U.S. Court of Appeals for the Second Circuit in *Time, Inc. et al.* v. *United States Postal Service* concerning the most recent general ratemaking proceeding. Another portion of the Board meeting to be closed will consist of a discussion of Postal Service strategic planning.

Agenda:

Monday Afternoon Session (Closed)

1. Further consideration of Court Decision on Rates.

2. Strategic Planning

Tuesday Morning Session (Open)

1. Minutes of the Previous Meeting.

2. Remarks of the Postmaster General. (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. Nothing that requires a decision by the Board is brought up under this item.)

3. Adjustment in Executive Compensation. (The Board will consider approval of a recommendation by the Postmaster General regarding an adjustment in compensation of an officer of the Postal Service.)

4. Amendments to the ByLaws of the Board of Governors. (The Board will consider proposed revisions to its ByLaws to clarify the description of matters that the Board reserves for its approval and for other purposes.)

5. Review of Postal Service Budget Program. (Mr. Finch, Senior Assistant Postmaster General, Finance Group, will present the Postal Service's budget for FY 1984, as it is proposed for transmission to OMB and the Congress, for the approval of the Board.)

6. Comprehensive Statement. (Public Law 94-421 amended 29 U.S.C. § 2401 to require the Postal Service to present a "Comprehensive Statement" to the Legislative and Appropriations Committees of the Congress having cognizance over postal matters. The Comprehensive Statement is to describe the plans, policies, and procedures of the Postal Service designed to comply with the policies of the Postal Reorganization Act; postal operations generally; and financial summaries and projections. Mr. Sanders, Associate General Counsel for General Law and Administration, and Mr. Cox, will present the proposed Comprehensive Statement for the Boarder's approval.)

7. Annual Report of the Postmaster General. (The Board will consider the Annual Report of the Postmaster General to the Board concerning the operations of the Postal Service, as required by 39 U.S.C. § 2402. Upon approval thereof, or after making such changes as it considers appropriate, the Board is to transmit this report to the President and the Congress. Ms. Layton, Assistant Postmaster General for Public and Employee Communications, will present the proposed Report.)

8. Proposed filing with the Postal Rate Commission on ZIP+4 postage rates. (The Board will consider authorizing the Postal Service to request the Postal Rate Commission to recommend a decision on establishing ZIP+4 regular mail and card subclasses of First-Class Mail. Mr. Finch will present management's proposal for approval.)

9. Capital Investment Project—Western Nassau, New York. (Mr. Biglin, Senior Assistant Postmaster General, Administration Group, will present a proposal for Board approval of an additional capital investment for the proposed Western Nassau, New York, General Mail Facility and Vehicle Maintenance Facility at Garden City, New York, the Board having approved investment in an amount not to exceed $14,806,000 at its meeting of April 4, 1978.)

10. Report by the Chairman of the Audit Committee. (Mr. Babcock will report on the audited financial statements for the Postal Service for fiscal year 1982.)

11. Consideration of tentative agenda for the January 1982 meeting of the Board.

Louis A. Cox,

Secretary.

[S-1731-82 Filed 11-29-82; 11:30 am]

BILLING CODE 7710-12-M

10

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 29, 1982, at 450 5th Street, NW., Washington, D.C.

Closed meetings will be held on Tuesday, November 30, 1982, at 10:00 a.m. and on Wednesday, December 1, 1982, at 10:00 a.m. An open meeting will be held on Thursday, December 2, 1982, at at 10:00 a.m. in Room 1C30.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Evans and Longstreth voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 30, 1982, at 10:00 a.m., will be:

Settlement of injunctive action.
Subpoena enforcement action.
Institution of injunctive actions.
Access to investigative files by Federal, State, or Self-Regulatory authorities.
Formal orders of investigation.
Settlement of administrative proceedings of an enforcement nature.
Regulatory matter regarding financial institution.
Regulatory matter bearing enforcement implications.
Institution of administrative proceeding of an enforcement nature.

The subject matter of the closed meeting for Wednesday, December 1, 1982, at 10:00 a.m., will be:

Formal order of investigation.
Settlement of adminstrative proceedings of an enforcement nature
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.

The subject matter of the open meeting for Thursday December 2, 1982, at 10:00 a.m., will be:

1. Consideration of whether to issue a notice of the filing of an application by First Boston Corporation for an order pursuant to Section 9(c) of the Investment Company Act of 1940 exempting First Boston Corporation from Section 9(a) of that Act and issue an order granting the application if no request for a hearing on the matter is filed. For further information, please contact Katherine A. Malfa at (202) 272-2349.
2. Consideration of whether to adopt Item 404 of Regulation S-K, "Certain relationships and related transactions" and coordinating rule, form and schedule amendments. These amendments are intended to make uniform and streamline the disclosure requirements regarding relationships and transactions involving management while reducing compliance costs in a manner consistent with investor protection. For further information, please contact Susan P. Davis or Robert B. Pincus at (202) 272-2589.
3. Consideration of whether to issue proposed amendments to Rules 14a-3, 14b-1 and 17a-3 under the Securities Exchange Act of 1934 relating to certain recommendations made to the Commission by the Advisory Committee on Shareholder Communications concerning communications between issuers and beneficial owners of securities held in nominee name. For further information, please contact Eric E. Miller at (202) 272-2589.
4. Consideration of whether to propose for public comment an advance concept release relating to whether the Commission should propose rules or recommend legislation to enable open-end investment companies to be organized and operated without shareholder voting or without either shareholder voting or boards of directors. For further information, please contact Elizabeth K. Norsworthy at (202) 272-2048.
5. Consideration of whether to adopt final rules which would amend Article 6 of Regulation S-X relative to financial statements filed by registered investment companies. The amendments to Article 6 being considered are intended to (1) eliminate rules which are duplicative of generally accepted accounting principles, (2) effect changes which recognize current industry practices, and (3) integrate and simplify the rules to improve financial reporting. The Commission will also consider whether to adopt similar amendments to financial statement requirements for employee stock purchase, savings and similar plans. For further information, please contact Clarence M. Staubs at (202) 272-2130.

The following item was considered at a closed meeting held on Tuesday, November 23, 1982, at 10:00 a.m.

Settlement of injunctive action.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Catherine McGuire at (202) 272-3085.

November 26, 1982.

[S-1732-82 Filed 11-29-82; 12:46 pm]

BILLING CODE 8010-01-M

federal register

Wednesday
December 1, 1982

Part II

Environmental Protection Agency

Coil Coating Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 465

[WH-FRL 2226-3]

Coil Coating Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This regulation establishes effluent limitations and standards limiting the discharge of pollutants into navigable waters and into publicly owned treatment works by existing and new coil coating operations. The Clean Water Act and a consent decree require EPA to promulgate this regulation. The purpose of this action is to establish specific effluent limitations based on "best practicable technology" and "best available technology," new source preformance standards based on "best demonstrated technology" and pretreatment standards for existing and new indirect dischargers.

DATES: In accordance with 40 CFR 100.1 this regulation shall be considered issued for the purposes of judicial review at 1:00 p.m. Eastern Time on December 15, 1982. This regulation shall become effective January 17, 1983, except section 465.03(a)2, which contains information collection requirements which are under review at OMB. The compliance date for the BAT regulations is as soon as possible, but no later than July 1, 1984. The compliance date for New Source Preformance Standards (NSPS) and Pretreatment Standards for New Sources (PSNS) is the date the new source begins operations. The compliance date for Pretreatment Standards for Existing Sources (PSES) is December 1, 1985.

Under Section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under Section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: Technical information may be obtained by writing to Ms. Mary L. Belefski, Effluent Guidelines Division (WH-552), EPA, 401 M Street, S.W., Washington, D.C. 20460, or by calling (202) 382-7126. Copies of the technical and economic documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161 (703/487-4600).

The Record will be available for public review on or before February 7, 1983, in EPA's Public Information Reference Unit, Room 2004 (Rear) (EPA Library), 401 M Street, S.W., Washington, D.C. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ernst P. Hall, (202) 382-7126.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

I. Legal Authority
II. Scope of This Rulemaking
III. Summary of Legal Background
IV. Methodology and Data Gathering Efforts
V. Control Treatment Options and Technology Basis for Final Regulations
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  B. Control and Treatment Options
  C. Technology Basis for Final Regulation
VI. Costs and Economic Impacts
VII. Non-Water-Quality Environmental Impacts
  A. Air Pollution
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VIII. Pollutants and Subcategories Not Regulated
  A. Exclusion of Pollutants
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IX. Public Participation and Response to Major Comments
X. Best Management Practices
XI. Upset and Bypass Provisions
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XIII. Relationship to NPDES Permits
XIV. Availability of Technical Information
XV. List of Subjects in 40 CFR Part 465
XVI. Appendices
  A. Abbreviations, Acronyms, and Other Terms Used in this Notice
  B. Toxic Pollutants Not Detected in Wastewater
  C. Toxic Pollutants Detected Below the Analytical Quantification Limit
  D. Toxic Pollutants Found in a Small Number of Plants Where Such Pollutants Are Unique to These Plants
  E. Toxic Pollutants Found in Quantities Not Treatable Using Technologies Considered Applicable for this Category
  F. Toxic Pollutants Effectively Controlled by BPT and BAT Limitations in This Regulation
  G. Toxic Pollutants Not Regulated at Pretreatment Because the Toxicity and Amount are Insignificant

I. Legal Authority

This regulation is being promulgated under the authority of Sections 301, 304, 306, 307, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95-217), also called the "Act." It is also being promulgated in response to the Settlement Agreement in *Natural Resources Defense Council, Inc.*, v. *Train*, 8 ERC 2120 (D.D.C. 1976), *modified*, March 9, 1979, 12 ERC 1833 (D.D.C. 1979).

II. Scope of This Rulemaking

This final regulation, which was proposed January 12, 1981 (46 FR 2934), establishes effluent limitations and standards for existing and new coil coating operations. Coil coating consists of that sequence or combination of steps or operations which clean, surface or conversion coat, and apply an organic (paint) coating to a long thin strip or coil of metal.

EPA's 1973 to 1976 round of rulemaking emphasized the achievement of best practicable technology currently available (BPT) by July 1, 1977. In general, BPT represents the average of the best existing performances of well-known technologies for control of familiar (i.e., "classical") pollutants.

In contrast, this round of rulemaking aims for the achievement by July 1, 1984, of the best available technology economically achievable (BAT) that will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants. At a minimum, BAT represents the performance of the best available technology economically achievable in any industrial category or subcategory. Moreover, as a result of the Clean Water Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of a lengthy list of toxic substances.

EPA is promulgating BPT, BAT, new source performance standards (NSPS) and pretreatment standards for existing and new sources (PSES and PSNS) for the steel basis material (steel), galvanized steel basis material (galvanized) and aluminum alloys basis material (aluminum) subcategories of the coil coating category.

III. Summary of Legal Background

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (Section 101(a)). To implement the Act, EPA was to issue effluent standards, pretreatment standards, and new source performance standards for industry dischargers.

The Act included a timetable for issuing these standards. However, EPA was unable to meet many of the deadlines and, as a result, in 1976, it was

sued by several environmental groups. In settling this lawsuit, EPA and the plaintiffs executed a court-approved "Settlement Agreement." This Agreement required EPA to develop a program and adhere to a schedule in promulgating effluent limitations guidelines, new source performance standards and pretreatment standards for 65 "priority" pollutants and classes of pollutants, for 21 major industries. See *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.D.C. 1979).

Many of the basic elements of this Settlement Agreement program were incorporated into the Clean Water Act of 1977. Like the Agreement, the Act stressed control of toxic pollutants, including the 65 "priority" pollutants. In addition, to strengthen the toxic control program, Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" (BMPs) to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

Under the Act, the EPA program is to set a number of different kinds of effluent limitations. These are discussed in detail in the proposed regulation and Development Document. The following is a brief summary:

1. *Best Practicable Control Technology (BPT).* BPT limitations are generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the industry or subcategory.

In establishing BPT limitations, we consider the total cost of applying the technology in relation to the effluent reduction derived, the age of equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes, and non-water quality environmental impacts (including energy requirements). We balance the total cost of applying the technology against the effluent reduction.

2. *Best Available Technology (BAT).* BAT limitations, in general, represent the best existing performance in the industrial subcategory or category. The Act establishes BAT as the principal national means of controlling the direct discharge of toxic and nonconventional pollutants to navigable waters.

In arriving at BAT, the Agency considers the age of the equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes, the cost of achieving such effluent reduction, and non-water quality environmental impacts. The Administrator retains considerable discretion in assigning the weight to be accorded these factors.

3. *Best Conventional Pollutant Control Technology (BCT).* BCT limitations are based on the "best conventional pollutant control technology" for discharges of conventional pollutants from existing sources. Section 304(a)(4) defines conventional pollutants to include BOD, TSS, fecal coliform, pH and any additional pollutants defined by the Administrator as conventional. On July 30, 1979 the Administrator defined oil and grease as a conventional pollutant (44 FR 44501).

BCT is not an additional limitation but replaces BAT for the conventional pollutants. In addition to other factors specified in Section 304(b)(4)(B), the Act requires that BCT limitations be assessed in light of a two-part "cost reasonableness" test, *American Paper Institute* v. *EPA*, 660 F.2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them under BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for analyzing BCT costs on August 29, 1979 (44 FR 50732). In the case noted above the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test and to apply the second test. (EPA had argued that a second test was not required).

EPA has determined that the technology which is the basis for the coil coating BAT can remove significant amounts of conventional pollutants. However, EPA has not yet promulgated a revised BCT methodology in response to the *American Paper Institute* v. *EPA* decision mentioned earlier. Accordingly, EPA is deferring a decision on the appropriate final BCT limitations.

4. *New Source Performance Standards (NSPS).* NSPS are based on the best available demonstrated technology (BDT). New plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies.

5. *Pretreatment Standards for Existing Sources (PSES).* PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly owned treatment works (POTW). They must be achieved within three years of promulgation. The Clean Water Act of 1977 requires pretreatment for pollutants that pass through the POTW in amounts that would violate direct discharger effluent limitations or interfere with the POTW's treatment process or chosen sludge disposal method. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based, analogous to the best available technology for removal of toxic pollutants. EPA has generally determined that there is pass through of pollutants if the percent of pollutants removed by a well operated POTW achieving secondary treatment is less than the percent removed by the BAT model treatment system. The general pretreatment regulations, which served as the framework for the pretreatment regulations are found at 40 CFR Part 403.

6. *Pretreatment Standards for New Sources (PSNS).* Like PSES, PSNS are to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operation of the POTW. PSNS are to be issued at the same time as NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating PSES.

IV. Methodology and Data Gathering Efforts

The data gathering methodology and efforts used in developing the proposed regulations were summarized in the "Preamble to the Proposed Coil Coating Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards" (FRL 1671–6, January 12, 1981). The *Development Document for Effluent Guidelines, New Source Performance Standards, and Pretreatment Standards for the Coil Coating Point Source Category* expands and details this summary.

After proposal, the Agency performed statistical reanalyses to assure itself that the data base used for determining treatment effectiveness of model technologies accurately reflected the ability of the technologies to achieve the limitations and standards established for coil coating. These analyses led to changes discussed below and in Section VII of the development document.

V. Control Treatment Options and Technology Basis for Final Regulations

A. Summary of Category

"Coil coating" is a term generally used to describe the combination of processing steps involved in converting a coil—a long thin strip of metal rolled into a coil—into a coil of painted metal ready for further industrial use.

Three basis materials are commonly used for coil coating: steel, galvanized (steel), and aluminum. Additionally, there is some minor amount of coating of other material such as brass, galvalum and coated steels.

There are three major groups or standard process steps used in manufacturing coated coils: (1) Cleaning to remove soil, oil, corrosion, and similar dirt; (2) chemical conversion coating in which a coating of chromate, phosphate or complex oxide materials is chemically formed in the surface of the metal; and (3) the application and drying of one or more coats of organic polymeric material such as paint.

Water is used throughout the coil coating processes. The cleaning processes for removing oil and dirt usually employ water-based alkaline cleaners, and acid pickling solutions are sometimes used to remove oxides and corrosion. Water is used to rinse the strip after it has been cleaned. Most of the chemical conversion coating processes are water based and water is used to rinse excess and spent solutions from the strip. After painting, the strip is baked in an oven to dry the paint and then chilled with water to prevent burning or charring of the organic coating. The characteristics of the wastewater generated by coil coating may vary depending on the basis material and the process options selected for cleaning and chemical conversion coating.

The most important resulting pollutants or pollutant parameters are: (1) Toxic pollutants—chromium, zinc, nickel, lead, copper, cyanide; (2) conventional pollutants—suspended solids, pH, and oil and grease, and (3) nonconventional pollutants—iron, aluminum, phosphorus, and fluoride. Toxic organic pollutants were not found in large quantities. Because of the amount of toxic metals present, the sludges generated during wastewater treatment generally contain substantial amounts of toxic metals.

B. Control and Treatment Options

The control and treatment technologies considered by EPA in developing this regulation include both in-process and end-of-pipe treatments. A wide range of treatment options were considered before proposing the coil coating regulations and were detailed in the preamble to the proposed regulation. Major technology options considered after proposal are discussed below; all of the options which were considered in developing the proposed rule are discussed in the development document.

In-process treatment considered includes a variety of water flow reduction steps and major process changes such as: Countercurrent cascade rinsing (to reduce the amount of water used to remove unwanted materials from the product surface); cooling and recycling of quench water; and substitution of non-wastewater generating conversion coating processes (no-rinse conversion coating).

End-of-pipe treatment considered includes: Cyanide oxidation or precipitation; hexavalent chromium reduction; chemical precipitation of metals using hydroxides, carbonates, or sulfides; and removal of precipitated metals and other materials using sedimentation, filtration, and combinations of these technologies; and sludge dewatering and disposal. Because the amount of priority organic materials in the wastewater is small and can be adequately controlled by controlling oil and grease, no specific organic removal wastewater treatment except oil removal has been considered. Similarly, because of high energy costs and low product recovery values, distillation has not been seriously considered as an end-of-pipe treatment.

The effectiveness of these treatment technologies has been evaluated and established by examining the performance of these technologies on coil coating and other similar wastewaters. The data base for the performance of hydroxide precipitation—sedimentation technology is a composite of data drawn from EPA sampling and analysis of copper and aluminum forming, battery manufacturing, porcelain enameling, and coil coating. This data, called the combined metals data base, reports influent and effluent concentration for nine pollutants. These wastewaters are judged to be similar in all material respects for treatment because they contain a range of dissolved metals which can be removed by precipitation and solids removal.

In the proposed coil coating regulation, the Agency relied on the data we collected from sampling and analyzing raw and treated wastewaters from the aluminum forming, battery manufacturing, copper forming, coil coating, porcelain enameling and electroplating categories to determine the effectiveness of the lime and settle, and lime, settle and filter technologies. Subsequent to proposal, an analysis of variance of both raw and treated pollutant concentrations was made of this data to determine homogeneity. The electroplating data were found to substantially reduce the homogeneity of the pooled data while the inclusion or removal of data from any other category did not meaningfully alter the homogeneity of the data pool. Therefore, the electroplating data were removed from the pooled data base and only data from the remaining five categories were used for determining treatment effectiveness of the technologies.

The lime and settle treatment effectiveness values used in the proposed regulation were derived from the full pooled data set described above using statistical methodology which assumed the data set was normally distributed. Variability factors for estimating one day and thirty day average values were transferred from electroplating pretreatment. The treatment effectiveness values used in this promulgation are derived from the reduced data set using statistical methodology which assumes the data set is log normally distributed. One day maximum and ten day average regulatory values and variability factors are derived directly from the data set. These variability factors are applied to long term mean values to derive treatment effectiveness for other pollutants. The derivation of the treatment effectiveness values is detailed in Section VII of the technical development document. The Agency performed this analysis to assure itself that performance data from other industries reflects the ability of the technology to achieve the established results in coil coating facilities.

The Agency examined the effectiveness of end-of-pipe treatment now being used to treat coil coating wastewater and found the treatment was universally inadequate. Data collected by the Agency and discussed in Section IX of the development document indicate that adequate operation is intermittent and that adequate performance must be based on performance data transferred from other categories. Based on similarities in the quantity and characteristics of the wastewater and the processes used, we are confident that the technology used in the other categories will perform as well in coil coating facilities as it does in facilities in the other categories. The intermittent performance of some coil coating facilities confirms that conclusion. Therefore, the transfer of technology performance data with

respect to this is supportable under *Tanners' Council* v. *Train*, 5405. 2d 1188, 4th Cir. 1976.

To establish the treatment effectiveness of lime, settle and filter, the technologies used as the basis for NSPS and PSNS, EPA used data from three plants that had the recommended technology in place; these plants had wastewater that was similar to the wastewater generated at coil coating plants. In generating long-term average standards for NSPS and PSNS, EPA applied variability factors from the combined metals data base because the combined data base provided a better statistical basis for computing variability than the data from the three plants sampled. The combined data base is composed of data showing the treatment effectiveness of lime and settle without filtration. It was assumed that filtration would remoye 33 percent more pollutants than lime and settle. This assumption was based upon a comparison of removals of several pollutants by lime and settle and lime, settle, and filter technologies. Similarly lime, settle—and filter technology performance which is used for new sources is based on the performance of full scale commercial systems treating multicategory wastewaters which are essentially similar to coil coating wastewaters. This also is discussed fully in Section VII of the development document.

The limitations and standards established for this category are mass based (mass of pollutant allowed to be discharged per unit of production) and are derived as the product of the regulatory flow and the overall treatment effectiveness. The regulatory flows are derived from sampling and measurement of flows in manufacturing operations and flow data supplied by the industry. Because flow reduction is a significant part of the overall pollutant reduction technology, the Agency has concluded that mass based limitations and standards are necessary to ensure adequate pollution control is achieved.

C. Technology Basis for Final Regulations

A brief summary of the technology basis for the regulation is presented below. A more detailed summary is presented in the "Preamble to the Proposed Coil Coating Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards" (FRL 1671–6, January 12, 1981) and the *Development Document for Effluent Limitations Guidelines and Standards for the Coil Coating Point Source Category.*

The technologies outlined below apply to all of the coil coating subcategories, and the final effluent concentrations resulting from the application of the technology are identical for all three subcategories. However, the mass limitations for each subcategory vary due to different water uses among the subcategories and the absence of some pollutants in some subcategories.

The Agency is revising certain monitoring and compliance requirements of the proposed regulation in response to comments. The Agency has reduced the number of pollutants regulated to five metals and three conventional pollutants. This level of control and regulation will effectively ensure that the treatment technology is installed and properly operated. The pollutants not being regulated are metals which are effectively removed by properly operated lime and settle technology and will be removed coincidentally with removal of the regulated pollutants.

Cyanide is widely used as a process chemical in the aluminum subcategory. An exemption procedure is provided so that a plant that demonstrates and certifies that it neither has nor uses cyanide may be exempted from the requirements of monitoring for cyanide. This procedure is a change from proposal. In the preamble to the proposed regulation the Agency stressed the desirability of achieving the cyanide limitations by changing to non-cyanide conversion coating. This exemption procedure allows a coil coating plant which has selected alternate non-cyanide processes to avoid the expense of making regular analysis for cyanide.

The 30 day average limitations and standards that were proposed have been replaced with monthly average limitations based on the average of 10 consecutive sampling days. The 10 day average value was selected as the minimum number of consecutive samples which need to be averaged to arrive at a stable slope on the statistically based curve relating 1 day and 30 day average values and it approximates the most frequent monitoring requirements of direct discharge permits. Monthly averages based on 10 days of data are slightly less stringent than monthly averages based on 30 days of data. The monthly average figures shown in the regulation and derived from 10 days of monitoring data are to be used by plants with combined wastestreams that use the "combined wastestream formula" set forth at 40 CFR 403.6(e) and by permit writers in writing direct discharge permits.

BPT: This regulation imposes BPT requirements on all three subcategories. The technology basis for the BPT limitations being promulgated is the same as for the proposed regulation and includes removal of cyanide and reduction of hexavalent chromium in conversion coating wastewaters; combination of all wastewater streams and oil skimming to remove oil and grease and some organics; and lime and settle technology to remove metals and solids from the combined wastewaters. Sludge from the settling tank is concentrated to facilitate landfill disposal. The effluent which would be expected to result from the application of these technologies was evaluated against the known performance of some of the best plants in the category. From this examination, the Agency found that there is uniformly inadequate performance due to improper operating practices throughout the category. This finding is detailed in Sections VII and IX of the development document.

The pollutants regulated in all three subcategories under BPT include chromium, cyanide, zinc, oil and grease, TSS and pH. Additionally, iron is regulated in the steel subcategory, iron and copper are regulated in the galvanized subcategory and aluminum is regulated in the aluminum subcategory.

Implementation of the BPT limitations will remove annually an estimated 72,000 kg of toxic pollutants and 555,000 kg of other pollutants (from estimated current discharge) at a capital cost above equipment already in place of $9.70 million and an annual cost of $3.82 million.

BAT: This regulation establishes BAT for all three subcategories. The BAT limitations being promulgated are changed from the proposed BAT limitations. The promulgated BAT limitations are based on the technology for BPT plus in-process wastewater reduction including quench water recycle and reuse; wastewater discharge is reduced by approximately 60 percent. The proposed BAT limitations were based on the BPT technology plus filtration after sedimentation and in-process wastewater reduction. Industry objected to the use of filtration because of its cost. The addition of filtration would remove annually 150 kg of toxic pollutants and 9790 kg of other pollutants. This translates into an additional removal of approximately 0.021 kg of toxic pollutants and 0.135 kg of other pollutants per day per direct discharger. The incremental costs of these effluent reduction benefits are

$2.16 million capital cost and $1.87 million total annual costs. In addition, some coil coating facilities are intergrated facilities which are not currently subject to effluent limitations based on filtration of their other wastewater streams. These facilities may incur additional cost if the coil coating wastewater streams were subject to effluent limitations based on filtration. In response to these comments the Agency re-evaluated filtration and determined that filtration was too costly for existing facilities.

The BAT model technology does not include countercurrent cascade rinsing, which is used as a basis for NSPS. The installation of countercurrent cascade rinsing to existing sources is impractical because it would require the plants to shut down temporarily and, therefore, is not used as the basis for BAT by the Agency.

The pollutants regulated under BAT are chromium, copper, cyanide, zinc, aluminum and iron.

Implementation of the BAT limitations will remove annually an estimated 72,700 kg of toxic pollutants and 607,000 kg of other pollutants (from estimated current discharge) at a capital cost above equipment in place of $9.93 million and an annual cost of $4.01 million.

The incremental effluent reduction benefits of BAT above BPT are the removal annually of 700 kg of toxic pollutants and 52,000 kg of other pollutants. The incremental costs of these benefits are $0.23 million capital cost and $0.19 million total annual costs.

NSPS: This regulation establishes NSPS for all three subcategories. The technology basis for the NSPS being promulgated includes oil skimming, precipitation of metals, sedimentation, polishing filtration, dewatering of sludge, recycle of quench water, reuse of quench water blowdown as cleaning and conversion coating rinse water, and three stage countercurrent cascade rinsing for both cleaning and conversion coating.

The Agency proposed no-rinse conversion coatings as a part of the basis for the proposed NSPS. However, the industry commented that no-rinse conversion coating has not been demonstrated for some applications and there is no Food and Drug Administration approved no-rinse conversion coating. Since food containers are often manufactured from coil coated stock, it is necessary to have FDA approval of the coating applied to the coil. The Agency reconsidered the requirement for no-rinse conversion coating and substituted multistage countercurrent cascade rinsing in both the cleaning and conversion coating segments. This alternate technology, which was discussed in the proposed development document, will provide essentially equivalent overall pollutant control. The pollutants regulated under NSPS are the same as those under BPT.

A new direct discharge normal plant having the industry average annual production level in the steel subcategory of 12.2 million square meters per year would generate a raw waste of 550 kg toxic pollutants and 18,400 kg total pollutants. The NSPS technology would reduce these pollutant levels to 4.0 kg toxics and 60 kg total pollutants. Estimates of the investment and annual compliance costs reflect that the cost of pollution control for NSPS are less expensive than the cost of pollution control for existing sources because of the addition of multistage countercurrent cascade rinsing which reduces the flow rate and, consequently, the size of the required treatment systems. The average capital investment cost for new plants is estimated to be $230,000. These new source performance standards do not pose a barrier to entry into the category because they impose no greater cost than BAT effluent limitations.

PSES: In establishing pretreatment standards interference and pass-through of the pollutants must be considered. POTW removals of the major toxic pollutants found in coil coating wastewater average about 50 percent (Cr–18%, Cu–58%, CN–52%, Zn–65%) while BAT technology treatment removes more than 99 percent of these pollutants. This difference in removal effectiveness clearly indicates pass-through of pollutants will occur unless coil coating wastewaters are adequately pretreated.

The Agency found a small amount of several toxic organic compounds (collectively referred to as total toxic organics or (TTO) in coil coating wastewaters. The Agency considered whether these pollutants should be specifically regulated and determined that they did not require such regulation. Oil and grease removal technology would reduce the amount of TTO by an estimated 85 to 97 percent, while removal of these pollutants in a POTW is somewhat less—about 65 percent. Thus clearly there is pass through of these pollutants. Because the raw waste level of TTO is only about 1.6 mg/1 the treatment effected by POTW is judged to reduce the amount and toxicity of TTO below the level that would require national regulation. The Agency has considered the time for compliance for PSES. Few if any of the coil coating plants have installed and are properly operating the treatment technology for PSES. Additionally, the readjustment of internal processing conditions to achieve reduced wastewater flows may require more time than for only the installation of end-of-pipe treatment equipment. Additionally, many plants in this and other industries will be installing the treatment equipment suggested as model technologies for this regulation at about the same time, and this may result in delays in engineering, ordering, installing, and operating this equipment. For all these reasons, the Agency has decided to set the PSES compliance date at three years after promulgation of this regulation: November, 1985.

The pollutants to be regulated by PSES include chromium, copper (Subpart B only), cyanide, and zinc. Oil and grease and TSS are not regulated by pretreatment because these conventional pollutants in the quantities encountered do not interfere with or pass through a POTW. Iron and aluminum, which are sometimes added as coagulant aids at POTW are not regulated by pretreatment because at the levels released to the POTW, they will neither pass through nor interfere with the POTW.

The technology basis for PSES is analogous to BAT; flow reduction by reusing quench water, hexavalent chromium reduction, cyanide removal, and lime and settle end-of-pipe treatment. We proposed PSES based in part on filtration after lime and settle treatment. Because, as indicated above in the BAT discussion, filters were found to be too costly for existing facilities they are not included in the technology basis for PSES. The incremental effluent reduction benefits of the proposed PSES above the promulgated PSES are the removal annually of 330 kg of toxic pollutants and 14,200 kg of other pollutants. The incremental costs of these benefits are $2.23 million capital cost and $2.8 million total annual costs.

The proper operation of this technology on coil coating wastewater will result in the removal of all of the major pollutants to the levels demonstrated (see Section VII of the development document); however only some key pollutants need to be regulated to ensure installation and effective operation of technology which will meet PSES. For this reason chromium, copper, cyanide and zinc are regulated at PSES; the remaining toxic metals are expected to be removed adequately by the treatment technology when regulated levels of the specified metals are achieved.

Implementation of the PSES standards will remove annually an estimated 106,000 kg of toxic pollutants and 898,000 kg of other pollutants (from estimated current discharge) at a capital cost above equipment in place of $14.32 million and an annual cost of $5.03 million. The technologies are discussed more fully in Section XII of the development document.

PSNS: The technology used as a basis for proposing and now promulgating PSNS is analogous to the technologies for proposing and promulgating NSPS except that oil skimming is not required. The changes from proposal technology to promulgation technology are discussed under NSPS above and apply equally to PSNS. As discussed under PSES, pass through of the regulated pollutants will occur without adequate pretreatment and therefore pretreatment standards are required. The pollutants regulated under PSNS are chromium, copper (Subpart B only), cyanide and zinc for the reasons cited under PSES.

A new indirect discharge normal plant having the industry average annual production level in the steel subcategory, would generate a raw waste of 550 kg toxic pollutants and 18,400 kg total pollutants. The PSNS technology would reduce these pollutant levels to 4.0 kg toxics and 60 kg total pollutants. The average capital cost for PSNS treatment is $230,000 per plant about 3.2 percent of the construction cost for a new coil coating plant. PSNS costs, like NSPS costs, are expected to be lower than existing source costs because countercurrent cascade rinsing reduces the water use and end-of-pipe treatment equipment size and cost. These PSNS do not pose a barrier to entry into the category because they do not impose greater compliance costs than PSES.

VI. Costs and Economic Impacts

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of "major rules," defined as rules which impose an annual cost on the economy of $100 million or more or meet other economic impact criteria. On the basis of these criteria, EPA does not consider the final regulation for Coil Coating to be a major rule. This rulemaking satisfies the requirements of the Executive Order for a non-major rule.

The economic impact assessment is presented in *Economic Impact Analysis of Effluent Limitations and Standards for the Coil Coating Industry*. Copies of the analysis can be obtained by contacting the National Technical Information Service, 5282 Port Royal Road, Springfield, VA 22161 (703/487-4600). The analysis details the investment and annual costs for the industry as a whole and for individual plants in each subcategory covered by the regulation. The analysis also assesses the impact of effluent control costs in terms of price changes, profitability changes, plant closures, production changes, employment effects, and balance of trade effects.

Since proposal, the economic impact analysis has been revised to reflect several changes. Revised compliance costs are based on a modified computer cost model program. These compliance costs are engineering estimates for the effluent control systems described earlier in the preamble. Compliance cost estimates account for the equipment in place at each plant. The revised cost estimates address many of industry's comments on the proposal. A discussion of the revisions to the cost model is presented in Section VIII of the development document. In addition, these costs reflect the conclusion that only one of the wastewater treatment sludges generated by the model technology (the aluminum subcategory) is likely to be hazardous, as defined in the Resource Conservation and Recovery Act. The appropriate sludge disposal costs are included in the economic analysis. The analysis also reflects other industry comments and additional information provided since proposal and uses more current information on financial and economic characteristics of the industry.

EPA has identified 69 coil coating plants. Total investment costs for combined BAT and PSES (above equipment in place) is estimated to be $24.3 million with annual costs of $9.0 million. These costs are expressed in 1982 dollars. Costs will be incurred by 68 plants; one plant discharges no process wastewater.

Industry is expected to incur a price increase as a percent of production of 1.15 percent and a change in quantity demanded of one-half of one percent. The price and quantity changes are small and indicate that, on average, coil coating plants will be able to pass through most of their compliance costs, due to the expected increase in the demand for coated metal coils. No plant closures are projected for either the baseline (without this regulation) or for the final regulation. Other impacts on the coil coating industry such as product substitution, and foreign trade effects are negligible. Also, secondary impacts on employment and the community are not anticipated.

In summary, the Agency has concluded that the economic impacts of the cost of additional water pollution controls likely to be incurred as a result of this regulation are not substantial and are justified by the effluent reduction benefits associated with compliance with the limitations and standards.

The economic analysis basically utilizes plant-specific production data and compliance costs estimated by EPA for 62 sample plants (which represent 80 percent of the plants in the category) to determine the impact of the proposed regulation. The first step of the analytical procedure was to determine the industry-wide price change as a percent of production and resulting change in quantity demanded at each compliance level. Those estimates served as the basis for the screening analysis which identified plants that may potentially incur significant costs and economic impacts. A decrease in profit margin of two percent or more was chosen as the criterion for determining those plants likely to incur substantial impacts as a result of this regulation.

The potentially vulnerable plants were then subjected to further financial analysis to quantify the level of anticipated impact and to assess the likelihood of plant closure. Financial profiles were developed and subsequently used to calculate financial ratios in order to analyze plant profitability and the magnitude of captial investment requirements. The plant-specific ratios were compared to threshold values established at levels at which closures became likely. The plant closure threshold values differed among three categories developed for the economic analysis: (1) Toll coaters, which coat customer-owned metal on a service basis; (2) captive operations, which coat metal as part of a proprietary product manufacturing process; and (3) adjunct operations, which are performed in plants with rolling mills on the plant site. Return on investment (ROI) was chosen as the primary profitability measure to assess the likelihood of potential plant closures among toll coaters and adjunct plants. Plants with an ROI of less than 8 percent were considered potential closure candidates. The ratio of "profits to annual compliance costs" was calculated for captive plants. Plants with a ratio below 1.0 were categorized as potential plant closures. The ratio of compliance capital investment requirements to plant revenues (CCI/R) was used to analyze a coil coating plant's ability to raise additional capital. A threshold value of 10 percent for toll coaters and 30 percent for adjunct and captive plants was used. The differences in the threshold levels were established

to account for differences in the financial characteristics of the plants within the three sectors. However, in general, the conclusions of the study are relatively insensitive to the economic categorization. The result of the screening analysis indicates that no plant closures or employment effects are projected for the final regulations.

BPT—EPA estimates that the BPT effluent limitation will cause the coil coating industry to incur additional total capital investment and annual compliance costs (including interest and depreciation) of $9.7 million and $3.8 million, respectively. The economic analysis based on the profitability and capital investment requirement ratios indicates that no plant closures or employment effects are expected for the plants affected by the regulation.

BAT—Assuming that direct dischargers implement BAT from present equipment in place, EPA estimates that they will incur additional capital investment and annual compliance costs of $9.9 million and $4.0 million, respectively. These figures were extrapolated from the plant-specific cost data for 27 direct dischargers to the projected universe of 29 plants. No plant closures or unemployment effects are estimated as a result of this regulation.

PSES—EPA estimates that the indirect discharging segment of the coil coating industry will incur additional capital investment and annual compliance costs of $14.3 million and $5.0 million, respectively. These figures were extrapolated from the plant-specific cost data for 31 indirect dischargers to the projected universe of 39 plants. The one plant that now discharges no process wastewater was an indirect discharger.

No plant closures or employment impacts are expected among existing indirect dischargers. Other impacts such as employment, product substitution, and foreign trade effects are not anticipated.

NSPS–PSNS—The coil coating category has experienced strong growth over the period 1962 through 1978. Total coated metal coil shipments have grown at a compounded annual rate of over 12 percent. Growth during the same period for the end-use markets (transportation equipment and building products) have averaged 3–4 percent for the use of coated metal coils has grown more rapidly than that of other materials. The industry is still expected to be relatively profitable and to grow at a rate at least as great as the GNP through 1985 (which has averaged around 3 percent in real terms since World War II).

EPA estimates the average cost to build a new coil coating plant of 78.1 million square meters per year would be $20 million ($15 million for equipment costs and $5 million for building costs). Our analysis indicates that these cost estimates will be the same regardless of whether a new coil coating plant is built on a new or existing plant site. The average investment cost for a plant of this size to comply with NSPS or PSNS is $686,000 which represents approximately 3 percent of the cost to build a new coil coating plant. Because of this high growth rate and the relatively low capital investment required by the NSPS and PSNS regulation, the construction of new coil coating lines is not expected to be adversely impacted. The competitive advantages of coated coil over other products combined with the forecasted growth and expanded end-product uses through 1985 should allow the plants to earn a level of profits sufficient to attract needed capital funding.

Regulatory Flexibility Analysis: Pub. L. 96–354 requires EPA to prepare an Initial Regulatory Flexibility Analysis for all regulations that have a significant impact on a substantial number of small entities. The analysis may be conducted in conjunction with a part of other Agency analyses. A small business analysis for this industry is included in the economic impact analysis.

Plant annual production is the primary variable used to distinguish firm size. The small category includes 10 facilities (16 percent of the total) with annual production of 50,000 square feet or less of coil (long strips of metal) coated. Annual BAT and PSES compliance costs for these small plants are $960 thousand, and investment costs are $2.7 million. No plant closures or employment effects are projected for small firms as a result of this regulation; therefore, a formal Regulatory Flexibility Analysis is not required. The Agency has concluded that this regulation will have no significant impact on a substantial number of small entities.

VII. Non-Water-Quality Environmental Impacts

Eliminating or reducing one form of pollution may cause other environmental problems. Sections 304(b) and 306 of the Act require EPA to consider the non-water-quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, we considered the effect of this regulation on air pollution, solid waste generation, water scarcity, and energy consumption. This regulation was circulated to and reviewed by EPA personnel responsible for non-water-quality programs. While it is difficult to balance pollution problems against each other and against energy use, we believe that this regulation will best serve often competing national goals.

The following non-water-quality environmental impacts (including energy requirements) are associated with the final regulation. The Administrator has determined that the impacts identified below are justified by the benefits associated with compliance with the limitations and standards.

A. Air Pollution—Imposition of BPT, BAT, NSPS, PSES, and PSNS will not create any substantial air pollution problems because the wastewater treatment technologies required to meet these limitations and standards do not cause air pollution.

B. Solid Waste—EPA estimates that coil coating facilities generate 43,900 kkg/yr of solid wastes (wet basis—1976). These wastes were comprised of treatment system sludges containing toxic metals, including chromium, copper, lead, nickel and zinc.

EPA estimates that the BPT limitations will contribute an additional 11,500 kkg/yr of solid wastes. BAT and PSES will increase these wastes by approximately 1,100 kkg/yr beyond BPT levels. These sludges will necessarily contain additional quantities (and concentrations) of toxic metal pollutants. New sources (either direct or indirect dischargers) are projected to generate 127 kkg/yr sludge for each new steel basis material plant.

Only one of the wastewater treatment sludges from coil coating is likely to be hazardous under the regulations implementing subtitle C of the Resource Conservation and Recovery Act (RCRA). Under those regulations, generators of these wastes must test the wastes to determine if the wastes meet any of the characteristics of hazardous waste (see 40 CFR 262.11, 45 FR 33142–33143, May 19, 1980). Wastewater sludge generated by aluminum coil coating may contain cyanides and may exhibit extraction procedure (EP) toxicity. Therefore these wastes may require disposal as a hazardous waste. We have estimated the added cost above the cost of disposing an equivalent mass of non-hazardous waste at $361,800 per year.

C. *Consumptive Water Loss*—Treatment and control technologies which require extensive recycling and reuse of water may, in some cases, require cooling mechanisms. Where evaporative cooling mechanisms are used, water loss may result and contribute to water scarcity problems, a concern primarily in arid and semi-arid regions. This regulation envisions the evaporative cooling and recycling of

relatively small quantities of cooling water. For the average size coil coating plant, this could result in evaporative loss of about 2,000 gal/day of water. This quantity of water does not constitute a significant consumptive water loss.

D. *Energy Requirements*—EPA estimates that the achievement of BPT effluent limitations will result in a net increase in electrical energy consumption of approximately 0.55 million kilowatt-hours per year. BAT limitations are projected to add another 2.84 million kilowatt-hours to electrical energy consumption. To achieve the BPT and BAT effluent limitations, a typical direct discharger will increase total energy consumption by less than one percent of the energy consumed for production purposes.

The Agency estimates that PSES will result in a net increase in electrical energy consumption of approximately 3.54 million kilowatt-hours per year. To achieve PSES, a typical existing indirect discharger will increase energy consumption less than one percent of the total energy consumed for production purposes.

The energy requirements for NSPS and PSNS are estimated to be similar to energy requirements for BAT and PSES. However, this can only be quantified in kwh/year after projections are made for new plant construction.

VIII. Pollutants and Subcategories Not Regulated

The Settlement Agreement in *NRDC v. Train, supra* contains provisions authorizing the exclusion from regulation in certain instances of toxic pollutants and industry subcategories.

Paragraph 8(a)(iii) of the Revised Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants not detectable by Section 304(h) analytical methods or other state-of-the-art methods. The toxic pollutants not detected and therefore, excluded from regulation are listed in Appendix B to this preamble—first those excluded from all subcategories, then by subcategory those not excluded in all subcategories.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants detected in amounts too small to be effectively reduced by technologies known to the Administrator. Appendix C to this preamble lists the toxic pollutants in each subcategory which were detected in the effluent in amounts at or below the nominal limit of analytical quantification, which are too small to be effectively reduced by technologies and which, therefore, are excluded from regulation.

Paragraph 8(a)(iii) allows the Administrator to exclude from regulation toxic pollutants detectable in the effluent from only a small number of sources within the subcategory which are uniquely related to those sources. Appendix D to this preamble lists for each subcategory the toxic pollutants detected in the effluent from only a small number of sources within the subcategory which are uniquely related to these sources.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation, toxic pollutants present in amounts too small to be effectively reduced by technologies considered applicable to the category. Appendix E to this notice lists for each subcategory the which are not treatable using technologies considered applicable to the category.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants which will be effectively controlled by the technologies upon which are based other effluent limitations and standards. Appendix F list those toxic pollutants which will be adequately controlled by the BPT and BAT limitations promulgated here even though they are not specifically regulated.

Paragraph 8(b)(ii) allows the Administrator to exclude from regulation, toxic pollutants introduced into POTW whose amount and toxicity are so insignificant as to not justify developing a pretreatment regulation. Appendix G lists by subcategory pollutants not regulated in pretreatment because the quantity is so insignificant that it does not justify regulation.

IX. Public Participation and Response to Comments

Industry and government groups have participated during the development of these effluent guidelines and standards. Following the publication of the proposed rule on January 12, 1981 in the Federal Register, we provided the development document supporting the proposed rules to industry, Government agencies, and the public sector for comments. A workshop was held on the Coil Coating BAT Rulemaking in Washington, D.C., on March 10, 1981. On March 11, 1981, in Washington, D.C., a public hearing was held on the proposed pretreatment standards at which one person presented testimony. The comment period closed April 13, 1981 and eight commenters submitted a total of 48 comments on the proposed regulation.

All comments received have been carefully considered, and appropriate changes in the regulation have been made whenever available data and information supported those changes. Major issues raised by the comments are addressed below in this preamble. A summary of the comments received and our detailed responses to all comments are included in a report "Responses to Public Comments, Proposed Coil Coating Effluent Limitations and Standards," which is a part of the public record for this regulation. This report, along with the rest of the public record, will be available for public review February 7, 1983, in EPA's Public Information Reference Unit, Room 2004 (Rear), (EPA Library), 401 M Street, SW., Washington, D.C.

The principal comments received and the Agency response follows:

1. Some commenters felt the Agency should limit regulation to pH, TSS, oil and grease, and chromium as only these parameters are needed, in their view, to control pollution.

We agree that the final regulation need not establish limitations for all the pollutants identified in the proposal. However, we do not believe industry's suggestion for pollutant control is adequate. We have concluded that a better regulatory approach for direct dischargers is to regulate pH, TSS, oil and grease, and three to four metals depending on the subcategory for direct dischargers. This approach reduces the number of metals to be regulated from eight in the proposed regulation to three or four in the final regulation and would, therefore, decrease the cost of sampling and analysis for industry. For indirect dischargers we conclude that regulation of toxic metals (and cyanide) is adequate.

Regulating the three or four metals which occur in large amounts or which are unique to that subcategory and pH and TSS will control all eight of the metals that were limited in the proposed regulation.

2. Comments suggested that only hexavalent chromium should be regulated because trivalent chromium is not toxic.

While hexavalent chromium is clearly the more toxic form of chromium, the trivalent form of chromium is also toxic. Therefore we have no basis for not regulating trivalent chromium along with the hexavalent form.

3. Some commenters supported a concentration based regulation instead of a mass based regulation because a mass based regulation would, in their opinion, tend to disclose confidential information.

The fundamental problem with concentration-based limitations is that the amount of pollutants in the efflunet stream is not limited by effluent concentration. The mass limitations set forth are the only method of designating effluent standards. Concentration standards can be met without implementing the water flow reduction which is a major feature of the treatment and control system. Therefore, to regulate on the basis of concentration only is not adequate because it will not control the quantity of toxics to POTW. Therefore mass based limitations are necessary to adequately control pollution from this category.

4. Comments objected to the use of data from other categories to establish the treatment effectiveness of the major technologies. Commenters argued that there were differences in the base metals used and that these differences indicate that technology used in other categories cannot achieve equivalent results in coil coating facilities.

Our plant visits and sampling revealed that the wastewater in coil coating facilities is similar to the wastewater of the other categories from which data to support this regulation were derived. As discussed earlier in this preamble the Agency made a detailed analysis of data from several sources to assure the correctness of using the pooled data base in many categories. Based on similarities in the quantity and characteristics of the wastewater and the processes used, we are confident that the technology used in the other categories will perform as well in coil coating facilities as it does in facilities in the other categories. Therefore, the transfer of technology performance data with respect to this is supportable under *Tanners' Council v. Train.*

5. Industry objected to NSPS based on no-rinse conversion coating because industry believed that the use of no-rinse conversion coating had not been fully demonstrated for all product applications and that no no-rinse conversion coatings have been approved by the Food and Drug Administration for use in food containers.

The proposed NSPS was based on reduction of process wastewater and elimination of coatings wastewater by the use of no-rinse conversion coatings followed by lime, settle and filter treatment. This is the proposed BAT plus flow reduction using no-rinse conversion coating. At the time of proposal, we were also evaluating an equivalent option which would not require elimination of coating wastewater but which achieves essentially equivalent pollutant reduction by using multistage countercurrent cascade rinsing to reduce flow with cyanide removal, hexavalent chromium reduction, oil removal, and lime, settle and filter treatment.

Based on the comments submitted, we re-evaluated the requirement for no-rinse conversion coating. Because no-rinse conversion coatings cannot be used across all product lines, the model NSPS technology is now based on alternative control technology in which countercurrent rinsing replaces no-rinse conversion coating. This will not result in a substantial increase in the discharge of pollutants from conversion coating operations.

6. Several commenters expressed the fear that the reuse of quench water in the cleaning and conversion coating rinses would damage the quality of their products.

The comment suggesting that product quality will be degraded by the reuse of quench water was not supported and does not appear to be valid. Thirty percent of the coil coating plants already recycle quench water; many facilities reuse the quench water in the cleaning and conversion coating rinses. Therefore we are continuing to rely on the reuse of quench water as a viable pollution control technology for BAT, NSPS, PSES and PSNS.

7. Some comments raised the problem of meeting the 30 day average limitations when fewer than 30 samples were taken because a lesser number is required by their permit.

The issue of sampling frequency and monthly average permit requirements was considered fully during the final consideration of this regulation. Because most coil coating plants are not required to monitor each day, we are publishing a "monthly average" number which is similar to the 30-day average number but is based on the average of ten consecutive sampling days (not necessarily calendar days). This monthly average number shall be the basis for monthly average permit and pretreatment compliance and for use in the combined waste stream formula regardless of the number of samples required to be taken.

The Agency rejected shorter time periods for averaging into a monthly average because they do not reasonably approximate the daily values over one month and because shorter time periods such as a four-day average used for a monthly average would allow much greater discharges of pollutants.

8. Comment from one company complained that the cyanide limitation is too low and connot be achieved.

We do not agree with the comment that the cyanide limitation is unattainable. Our limitation is based on cyanide removal data from three coil coating plants. After receiving the comment we inspected the commenter's plant and found the treatment process to be improperly operated. With proper operation we believe that this plant can meet the limitations. Furthermore, alternative processes which do not use cyanide are available to eliminate cyanide and treatment needs. The Agency believes that non-cyanide coatings are the most appropriate solution to cyanide removal problems.

We are promulgating the limitations for cyanide allowing the plant to be relieved from monitoring cyanide after certifying that cyanide is not present in either the process or wastewaters.

9. Industry criticized the oil and grease limitation as being too low and not achievable.

Because of the comment, we re-evaluated the oil and grease limitations and find they are achievable by plants now operating in the category. During sampling we made oil and grease analysis of 39 effluents and found that 26 achieved the one day limitation; five of the eleven that did not meet the limitation had no oil and grease removal treatment.

10. We proposed to use oil and grease as an indicator for BAT for the removal of toxic organic pollutants. One comment questioned the relationship between oil and grease and toxic organic pollutants.

Twenty-five toxic organic pollutants were found during sampling and analysis. Most of those are polycyclic aromatic hydrocarbon (PAH) compounds found at low concentrations above the limits of detection. The organics appear to come from the cold-rolling lubricants used in manufacturing the metal strip. (Similar compounds were found in iron and steel and aluminum forming). The organics are not uniformly used across the category but may vary from coil to coil depending on the rolling oil used by the mill which manufactured the coil. The variability of the presence of specific compounds and the ability to shift rolling lubricant formulas from one toxic organic to another makes regulation of a subset of specific toxic organic compounds appear ineffective. The relationship between oil and grease and toxic organics is established in the development document and high removals seem assured by regulating oil and grease. We proposed the use of an oil and grease limitation in BAT as an indicator of adequate removal of the toxic organics; however, further analysis makes this now appear unnecessary. Good oil and

grease control at BPT should remove more than 85 percent of the toxic organics present reducing all but 2 of them below the limit of analytic quantification; the two remaining above quantification would not be treatable and therefore would be excluded from regulation.

11. A few commenters asserted that the economic impact of the regulation would be too great. These comments generally were not specific and included no data. One comment criticized our return on investment (ROI) assumptions.

We estimate the total investment for these plants to be $24.3 million to comply with BAT ($9.9 million) and PSES ($14.3 million). For all existing source regulations (BAT & PSES), the annual compliance costs of $9.0 million are about 1 percent of the industry revenues and will cause minimal industry-wide price and quantity changes. No plant closures or employment impacts are projected for the final regulation. In the most recent economic impact analysis, the ROI has been adjusted upward to 8.0 percent. The reasons for this adjustment is explained in the economic impact report.

12. In response to a request for comments, three commenters expressed the view that canmaking is sufficiently different from coil coating to require separate regulation rather than be covered under one of the coil coating subcategories. They cited flow and oil and grease or lubricant type as major differences.

We agree with the commenters that, because of process and wastewater differences, canmaking is sufficiently different from coil coating to require separate limitations. Canmaking has a separate schedule under the Court Order and we plan to regulate canmaking as separate subcategories of coil coating.

X. Best Management Practices

Section 304(e) of the Clean Water Act gives the Administrator authority to prescribe "best management practices" (BMP). EPA is not now considering promulgating BMP specific to coil coating.

XI. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion", is an unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations is necessary because such upsets will inevitably occur even in properly operated control equipment. Because technology based limitations require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have disagreed on whether an explicit upset or excursion exemption is necessary, or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co.* v. *EPA*, 564 F. 2d 1253 (9th Cir. 1977) with *Weyerhaeuser* v. *Costle, supra*, and *Corn Refiners Association, et al.* v. *Costle*, No. 78–1069 (8th Cir., April 2, 1979). See also *American Petroleum Institute* v. *EPA*, 540 F. 2d 1023 (10th Cir. 1976); *CPC International, Inc.* v. *Train*, 540 F. 2d 1320 (8th Cir. 1976); *FMC Corp.* v. *Train*, 539 F. 2d 973 (4th Cir. 1976).

An upset is an unintentional episode during which effluent limits are exceed; a bypass however, is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. We have, in the past, included bypass provisions in NPDES permits.

We determined that both upset and bypass provisions should be included in NPDES permits and have promulgated Consolidated Permit regulations that include upset and bypass permit provisions (See 40 CFR 122.60, 45 FR 33290 (May 19, 1980). The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Consequently, although permittees in the coil coating industry will be entitled to upset and bypass provisions in NPDES permits, this final regulation does not address these issues.

XII. Variances and Modifications

Upon the promulgation of this regulation, the effluent limitations for the appropriate subcategory must be applied in all Federal and State NPDES permits thereafter issued to direct dischargers in the coil coating industry. In addition, on promulgation, the pretreatment limitations are directly applicable to any indirect dischargers.

For the BPT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E. I. duPont deNemours & Co.* v. *Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co.* v. *Costle, supra*. This variance recognizes factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973–1976 industry regulations, it is now included in the NPDES regulations and will not be included in the coil coating or other industry regulations. See the NPDES regulations at 40 CFR Part 125, Subpart D.

The BAT limitations in this regulation are also subject to EPA's "fundamentally different factors" variance. BAT limitations for nonconventional pollutants are subject to modifications under Sections 301(c) and 301(g) of the Act. These statutory modifications do not apply to toxic or conventional pollutants. According to Section 301(j)(1)(B), applications for these modifications must be filed within 270 days after promulgation of final effluent limitations guidelines. No regulations establishing criteria for 301(c) and 301(g) determinations have been proposed or promulgated, but the Agency recently announced in the April 12, 1982 Regulatory Agenda plans to propose such regulations by December, 1982 (47 FR 15702). All dischargers who file an initial application within 270 days will be sent a copy of the substantive requirements for 301(c) and 301(g) determinations once they are promulgated. Modification determinations will be considered at the time the NPDES permit is being reissued. Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTW. (See 40 CFR 403.7, 403.13).

The economic modification section (301(c)) gives the Administrator authority to modify BAT requirements for nonconventional pollutants [1] for dischargers who file a permit application after July 1, 1977, upon a showing that such modified requirements will (1) represent the maximum use of technology within the economic capability of the owner or operator and (2) result in reasonable further progress toward the elimination of the discharge of pollutants. The environmental modification section (301(g)) allows the Administrator, with the concurrence of the State, to modify BAT limitations for nonconventional pollutants from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that:

[1] Section 301(l) precludes the Administrator from modifying BAT requirements for any pollutants which are on the toxic pollutant list under Section 307(l)(1) of the Act.

(a) Such modified requirements will result at a minimum in compliance with BPT limitations or any more stringent limitations necessary to meet water quality standards;

(b) Such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(c) Such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

Section 301(j)(1)(B) of the Act requires that application for modifications under section 301 (c) or (g) must be filed within 270 days after the promulgation of an applicable effluent guideline. Initial applications must be filed with the Regional Administrator and, in those States that participate in the NPDES Program, a copy must be sent to the Director of the State program. Initial applications to comply with 301(j) must include the name of the permittee, the permit and outfall number, the applicable effluent guideline, and whether the permittee is applying for a 301(c) or 301(g) modification or both. Applicants interested in applying for both must do so in their initial application. For further details, see 43 FR 40859, September 13, 1978.

The nonconventional pollutants limited under BAT in this regulation are aluminum and iron. No regulation establishing criteria for 301(c) and 301(g) determinations have been proposed or promulgated, but the Agency recently announced in the April 12, 1982, Regulatory Agenda plans to propose such regulations by December, 1982 (47 FR 15702). All dischargers who file an initial application within 270 days will be sent a copy of the substantive requirements for 301(c) and 301(g) determinations once they are promulgated. Modification determinations will be considered at the time the NPDES permit is being reissued.

Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTW. (See 40 CFR 403.7, 403.13.) Pretreatment standards for new sources are subject only to the credits provision in 40 CFR 403.7. NSPS are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. See *E. I. du Pont de Nemours and Co.*, v. *Train*, supra.

XIII. Relationship to NPDES Permits

The BPT limitations and NSPS in this regulation will be applied to individual coil coating plants through NPDES permits issued by EPA or approved state agencies, under Section 402 of the Act. As discussed in the preceding section of this preamble, these limitations must be applied in all Federal and State NPDES permits except to extent that variances and modifications are expressly authorized. Other aspects of the interaction between these limitations and NPDES permits are discussed below.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit-issuing authorities. The promulgation of this regulation does not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulations, guidelines, or policy. For example, even if this regulation does not control a particular pollutant, the permit issuer may still limit such pollutant on a case-by-case basis when limitations are necessary to carry out the purposes of the Act. In addition, to the extent that state water quality standards or other provisions of State or Federal law require limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

A second topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which were considered in developing this regulation. We emphasize that although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. We have exercised and intend to exercise that discretion in a manner that recognizes and promotes good-faith compliance efforts.

We agree with the commenters that, because of process and wastewater differences, canmaking is sufficiently different from coil coating to require separate limitations. Canmaking has a separate schedule under the Court Order and we plan to regulate canmaking as separate subcategories of coil coating.

XIV. Availability of Technical Information

The basis for this regulation is detailed in four major documents. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants.* EPA's technical conclusions are detailed in *Development Document for Effluent Guidelines, New Source Performance Standards and Pretreatment Standards for the Coil Coating Point Source Category.* The Agency's economic analysis is presented in *Economic Impact Analysis of Effluent Limitations and Standards for the Coil Coating Industry,* EPA. A summary of the public comments received on the proposed regulation is presented in a report "Responses to Public Comments, Proposed Coil Coating Effluent Guidelines and Standards," which is a part of the public record for this regulation and economic documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161 (703/487-4600). Additional information concerning the economic impact analysis may be obtained from Ms. Josette Bailey, Economic Analysis Staff (WH-586) EPA, 401 M Street, S.W., Washington, D.C. 20460 or by calling (202)382-5382.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this regulation have been or will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

XV. List of Subjects in 40 CFR Part 465

Metal coating and allied services, Waste treatment and disposal, Water pollution control.

Dated: November 5, 1982.

Anne M. Gorsuch,

Administrator.

XVI. Appendices

Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Notice

Act—The Clean Water Act

Agency—The U.S. Environmental Protection Agency

BAT—The best available technology economically achievable under Section 304(b)(2)(B) of the Act

BCT—The best conventional pollutant control technology, under Section 304(b)(4) of the Act

BDT—The best available demonstrated control technology processes, operating methods, or other alternatives, including where practicable, a standard permitting no discharge of pollutants under Section 306(a)(1) of the Act

BMPs—Best management practices under Section 304(e) of the Act

BPT—The best practicable control technology currently available under Section 304(b)(1) of the Act

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Pub. L. 95–217)

Direct discharger—A facility which discharges or may discharge pollutants into waters of the United States

Indirect discharger—A facility which discharges or may discharge pollutants into a publicly owned treatment works

NPDES permit—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act

NSPS—New source performance standards under Section 306 of the Act

POTW—Publicly owned treatment works

PSES—Pretreatment standards for existing sources of indirect discharges under Section 307(b) of the Act

PSNS—Pretreatment standards for new sources of indirect discharges under Section 307 (b) and (c) of the Act

RCRA—Resource Conservation and Recovery Act (Pub. L. 94–580) of 1976, Amendments to Solid Waste Disposal Act

Appendix B—Toxic Pollutants Not Detected in Wastewaters

(a) Toxic pollutants not detected in wastewaters of any subcategory.

001 Acenaphthene
002 Acrolein
003 Acrylonitrile
005 Benzidine
006 Carbon tetrachloride (tetrachloromethane)
007 Chlorobenzene
008 1,2,4-trichlorobenzene
009 Hexachlorobenzene
010 1,2-dichloroethane
012 Hexachloroethane
014 1,1,2-trichloroethane
015 1,1,2,2-tetrachloroethane
016 Chloroethane
017 Bis(chloromethyl)ether
018 Bis(2-chloroethyl)ether
019 2-chloroethyl vinyl ether (mixed)
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
022 Parachlorometa cresol
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3-dichlorobenzidine
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene (1,3-dichloropropene)
034 2,4-dimethylphenol
035 2,4-dinitrotoluene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 Bis(2-chloroisopropyl) ether
043 Bis(2-chloroethoxy) methane
044 Methylene chloride (dichloromethane)
045 Methyl chloride (dichloromethane)
046 Methyl bromide (bromomethane)
047 Bromoform (tribromomethane)
048 Dichlorobromomethane
049 Trichlorofluoromethane
050 Dichlorodifluoromethane
052 Hexachlorobutadiene
053 Hexachloromyclopentadiene
056 Nitrobenzene
057 2-nitrophenol
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosodimethylamine
062 N-nitrosodiphenylamine
063 N-nitrosodi-n-propylamine
064 Pentachlorophenol
065 Phenol
086 Toluene
088 Vinyl chloride (chloroethylene)
089 Aldrin
090 Dieldrin
091 Chlordane (technical mixture and metabolites)
092 4,4-DDT
093 4,4-DDE (p, p-DDX)
094 4,4-DDD (p, p-TDE)
095 Alpha-endosulfan
096 Beta-endosulfan
097 Endosulfan sulfate
098 Endrin
099 Endrin aldehyde
100 Heptachlor
101 Heptachlor epoxide (BHC-hexachlorocyclohexane)
102 Alpha-BHC
103 Beta-BHC
104 Gamma-BHC (lindane)
105 Delta-BHC (PCB-polychlorinated biphenyls)
106 PCB-1242 (Arochlor 1242)
107 PCB-1254 (Arochlor 1254)
108 PCB-1221 (Arochlor 1221)
109 PCB-1232 (Arochlor 1232)
110 PCB-1248 (Arochlor 1248)
111 PCB-1260 (Arochlor 1260)
112 PCB-1016 (Arochlor 1016)
113 Toxaphene
115 Arsenic
116 Asbestos
117 Beryllium
125 Selenium
127 Thallium
129 2, 3, 7, 8-Tetiachlorodibenzo-p-dioxin (TCDD)

(b) Toxic pollutants not detected in wastewaters of the steel basis material subcategory.

023 Chloroform (trichloromethane)
029 1,1-dichloroethylene
030 1,2-trans-dichloroethylene
051 Chlorodibromomethane

(c) Toxic pollutants not detected in wastewaters of the Galvanized Basis Material Subcategory.

044 Methylene chloride (dichloromethane)
114 Antimony

(d) Toxic pollutants not detected in wastewaters of the Aluminum Basis Material Subcategory.

011 1,1,1-trichlorethane
013 1,1-dichloroethane
023 Chloroform (trichloromethane)
029 1,1-dichloroethylene
030 1,2-trans-dichloroethylene
038 Ethylbenzene
051 Chlorodibromomethane
054 Isophorone
114 Antimony

Appendix C—Toxic Pollutants Detected Below the Analytical Qualification Limit

(a) Steel Basis Material Subcategory.

004 Benzene
038 Ethylbenzene
044 Methylene chloride (dichloromethane)
071 Dimethyl phthalate
085 Tetrachloroethylene
123 Mercury

(b) Galvanized Basis Material Subcategory.

004 Benzene
013 1,1-dichloroethane
023 Chloroform (trichloromethane)
038 Ethylbenzene
051 Chlorodibromomethane
069 Di-n-octyl phthalate
071 Dimethyl phthalate
085 Tetrachloroethylene
123 Mercury
126 Silver

(c) Aluminum Basis Material Subcategory.

004 Benzene
039 Fluoranthene
044 Methylene chloride (dichloromethane)
055 Naphthalene
069 Di-n-octyl phthalate
072 1,2-benzanthracene (benzo(a)anthracene)
073 Benzo(a)pyrene (3,4-benzo-pyrene)
074 3,4-Benzofluoranthene (benzo(b)fluoranthene)
075 11,12-benzofluoranthene (benzo(b)(fluoranthene)
076 Chrysene
077 Acenaphthylene
078 Anthracene
079 1,12-benzoperylene (benzo(ghi)perylene)
080 Fluorene
081 Phenanthrene
082 1,2,5,6-dibenzanthracene/dibenzo(,h)anthracene)

083 Indeno(1,2,3-cd) pyrene (2,3-o-pheynylene pyrene)
084 Pyrene
085 Tetrachloroethylene
087 Trichloroethylene
123 Mercury
126 Silver

Appendix D—Toxic Pollutants Found in a Small Number of Plants Where Such Pollutants Are Unique to These Plants

(a) Steel Basis Material Subcategory.

013 1,1-dichloroethane
054 Isophorone
066 Bis(2-ethylhexyl)phthalate
067 Butyl benzyl phthalate
068 Di-N-Butyl Phthalate
069 Di-n-octyl phthalate
070 Diethyl Phthalate
126 Silver

(b) Galvanized Basis Material Subcategory.

054 Isophorone
066 Bis(2-ethylhexyl)phthalate
067 Butyl benzyl phthalate
068 Di-N-Butyl Phthalate
070 Diethyl Phthalate

(c) Aluminum Basis Material Subcategory.

066 Bis(2-ethylhexyl)phthalate
067 Butyl benzyl phthalate
070 Diethyl Phthalate
071 Dimethyl phthalate

Appendix E—Toxic Pollutants Found in Quantities Not Treatable Using Technologies Considered Applicable to the Category

(a) Steel Basis Material Subcategory.

011 1,1,1-Trichloroethane
055 Naphthalene
114 Antimony
120 Copper

(b) Galvanized Basis Material Subcategory.

011 1,1,1-trichlorethane
029 1,1-dichloroethylene
030 1,2-trans-dichloroethylene
055 Naphthalene

(c) Aluminum Basis Material Subcategory.

068 Di-N-Butyl Phthalate
124 Nickel

Appendix F—Toxic Pollutant Effectively Controlled by BPT and BAT Limitations in This Regulation

(a) Steel Basis Material Subcategory.

039 Fluoranthene
072 1,2-benzanthracene (benzo(a)anthracene)
073 Benzo(a)pyrene(3,4-benzo-pyrene)
074 3,4- Benzofluoranthene (benzo(b)fluoranthene)
075 11,12- benzfluoranthene (benzo(b)fluoranthene)
076 Chrysene
077 Acenaphthylene
078 Anthracene
079 1,12-benzoperylene(benzo(ghi)perylene)
080 Fluorene
081 Phenanthrene
082 1,2,5,6-dibenzanthracene(dibenzo(,h)anthracene)
083 Indeno(1,2,3-cd) pyrene (2,3-o-pheynylene pyrene)
084 Pyrene
087 Trichloroethylene
118 Cadmium
120 Copper
122 Lead
124 Nickel

(b) Galvanized Basis Material Subcategory.

011 1,1,1-trichlorethane
029 1,1-dichloroethylene
030 1,2-trans-dichloroethylene
039 Fluoranthene
066 Bis(2-ethylhexyl)phthalate
070 Diethyl Phthalate
072 1,2-benzanthracene (benzo(a)anthracene)
073 Benzo(a)pyrene (3,4-benzo-pyrene)
074 3,4-Benzofluoranthene (benzo(b)fluoranthene)
075 11,12-benzofluoranthene) (benzo(b)fluoranthene)
076 Chrysene
077 Acenaphthylene
078 Anthracene
079 1,12-benzoperylene (benzo(ghi)perylene)
080 Fluorene
081 Phenanthrene
082 1,2,5,6-dibenzanthracene (dibenzo(,h)anthracene)
083 Indeno(1,2,3-cd) pyrene (2,3-o-pheynylene pyrene)
084 Pyrene
087 Trichloroethylene
118 Cadmium
122 Lead
124 Nickel

(c) Aluminum Basis Material Subcategory.

118 Cadmium
120 Copper
122 Lead
124 Nickel

Appendix G—Toxic Pollutants Not Regulated at Pretreatment Because the Toxicity and Amount are Insignificant

(a) Steel Basis Material Subcategory.

039 Fluoranthene
054 Isophorone
065 Phenol
066 Bis(2-ethylhexyl)phthalate
067 Butyl benzyl phthalate
069 Di-n-octyl phthalate
070 Diethyl Phthalate
072 1,2-benzanthracene(benzo(a) anthracene)
073 Benzo(a)pyrene (3,4-benzo-pyrene)
074 3,4-Benzofluoranthene (benzo(b)fluoranthene)
075 11,12-benzofluoranthene (benzo(b)fluoranthene)
076 Chrysene
077 Acenaphthylene
078 Anthracene
079 1,12-benzoperylene (benzo(ghi) perylene)
080 Fluorene
081 Phenanthrene
082 1,2,5,6-dibenzanthracene (dibenzo(,h)anthracene)
083 Indeno(1,2,3-cd) pyrene (2,3-o-pheynylene pyrene)
084 Pyrene
087 Trichloroethylene

(b) Galvanized Basis Material Subcategory.

011 1,1,1-trichlorethane
029 1,1-dichloroethylene
030 1,2-trans-dichloroethylene
039 Fluoranthene
066 Bis(2-ethylhexyl)phthalate
070 Diethyl Phthalate
072 1,2-benzanthracene (benzo(a)anthracene)
087 Trichloroethylene

(c) Aluminum Basis Material Subcategory.

None.

A new Part 465 is added to 40 CFR to read as follows:

PART 465—COIL COATING POINT SOURCE CATEGORY

General Provisions

Sec.
465.01 Applicability.
465.02 General definitions.
465.03 Monitoring and reporting requirements.
465.04 Compliance date for PSES.

Subpart A—Steel Basis Material Subcategory

465.10 Applicability; description of the steel basis material subcategory.
465.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
465.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
465.13 New source performance standards.
465.14 Pretreatment standards for existing sources.
465.15 Pretreatment standards for new sources.
465.16 [Reserved].

Subpart B—Galvanized Basis Material Subcategory

465.20 Applicability; description of the galvanized basis material subcategory.
465.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
465.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
465.23 New source performance standards.
465.24 Pretreatment standards for existing sources.
465.25 Pretreatment standards for new sources.
465.26 [Reserved].

Subpart C—Aluminum Basis Material Subcategory

465.30 Applicability; description of the aluminum basis material subcategory.
465.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
465.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
465.33 New source performance standards.
465.34 Pretreatment standards for existing sources.
465.35 Pretreatment standards for new sources.
465.36 [Reserved].

Authority: Secs. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

General Provisions

§ 465.01 Applicability.

This part applies to any coil coating facility which discharges a pollutant to waters of the United States or which introduces pollutants to a publicly owned treatment works.

§ 465.02 General definitions.

In addition to the definitions set forth in 40 CFR Part 401, the following definitions apply to this part:

(a) "Coil" means a strip of basis material rolled into a roll for handling.

(b) "Coil coating " means the process of converting basis material strip into coated stock. Usually cleaning, conversion coating, and painting are performed on the basis material. This regulation covers processes which perform any two or more of the three operations.

(c) "Basis material" means the coiled strip which is processed.

(d) "Area processed" means the area actually exposed to process solutions. Usually this includes both sides of the metal strip.

(e) "Steel basis material" means cold rolled steel, hot rolled steel, and chrome, nickel and tin coated steel which are processed in coil coating.

(f) "Galvanized basis material" means zinc coated steel, galvalum, brass and other copper base strip which is processed in coil coating.

(g) "Aluminum basis material" means aluminum, aluminum alloys and aluminum coated steels which are processed in coil coating.

§ 465.03 Monitoring and reporting requirements

The following special monitoring requirements apply to all facilities controlled by this regulation.

(a) Periodic analyses for cyanide are not required when both of the following conditions are met:

(1) The first wastewater sample taken in each calendar year has been analyzed and found to contain less than 0.07 mg/l cyanide

(2) The owner or operator of the coil coating facility certifies in writing to the POTW authority or permit issuing authority that cyanide is not used in the coil coating process.

(b) The "monthly average" regulatory values shall be the basis for the monthly average discharge limits in direct discharge permits and for pretreatment standards. Compliance with the monthly discharge limit is required regardless of the number of samples analyzed and averaged.

§ 465.04 Compliance date for PSES.

The compliance date for Pretreatment Standards for Existing Sources (PSES) is December 1, 1985.[1]

Subpart A—Steel Basis Material Subcategory

§ 465.10 Applicability; description of the steel basis material subcategory.

This subpart applies to discharges to waters of the United States, and introductions of pollutants into publicly owned treatment works from coil coating of steel basis material coils.

§ 465.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available:

SUBPART A

Pollutant or pollutant property	BPT effluent limitations			
	Maximum for any 1 day		Maximum for monthly average	
	Mg/m² (pounds per 1 million ft²) of area processed			
Chromium	1.16	(0.24)	0.47	(0.096)
Cyanide	0.80	(0.17)	0.33	(0.068)
Zinc	3.66	(0.75)	1.54	(0.32)
Iron	3.39	(0.70)	1.74	(0.36)
Oil and grease	55.1	(11.3)	33.1	(6.77)
TSS	113.0	(23.1)	55.1	(11.3)
pH	(1)	(1)	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 465.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

SUBPART A

Pollutant or pollutant property	BAT effluent limitations			
	Maximum for any 1 day		Maximum for monthly average	
	Mg/m² (pounds per 1 million ft²) of area processed			
Chromium	0.50	(0.10)	0.20	(0.041)
Cyanide	0.34	(0.07)	0.14	(0.029)
Zinc	1.56	(0.32)	0.66	(0.14)
Iron	1.45	(0.30)	0.74	(0.15)

§ 465.13 New source performance standards.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

SUBPART A

Pollutant or pollutant property	NSPS			
	Maximum for any 1 day		Maximum for monthly average	
	Mg/m² (pounds per 1 million ft²) of area processed			
Chromium	0.12	(0.024)	0.047	(0.01)
Cyanide	0.063	(0.013)	0.025	(0.005)
Zinc	0.33	(0.066)	0.14	(0.027)
Iron	0.39	(0.086)	0.20	(0.041)
Oil and grease	3.16	(0.65)	3.16	(0.65)
TSS	4.74	(0.97)	3.48	(0.72)
pH	(1)	(1)	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

[1] The Consent Decree in NRDC v. Train, 12 ERC 1833 (D.D.C. 1979) specifies a compliance data for PSES of no later than June 30, 1984. EPA will be moving for modification of that provision of the Decree. Should the Court deny that motion, EPA will be required to modify this compliance date accordingly.

§ 465.14 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following retreatment standards for existing sources. The mass of wastewater pollutants in coil coating process wastewater introduced into a POTW shall not exceed the following values:

SUBPART A

Pollutant or pollutant property	PSES			
	Maximum for any 1 day		Maximum for monthly average	
	Mg/m³ (pound per 1 million ft²) of area processed			
Chromium	0.50	(0.10)	0.20	(0.041)
Cyanide	0.34	(0.07)	0.14	(0.029)
Zinc	1.56	(0.32)	0.66	(0.14)

§ 465.15 Pretreatment standards for new sources.

Except as provided in CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in coil coating process wastewater introduced into a POTW shall not exceed the following values:

SUBPART A

Pollutant or pollutant property	PSNS			
	Maximum for any 1 day		Maximum for monthly average	
	Mg/m³ (pounds per 1 million ft²) of area processed			
Chromium	0.12	(0.024)	0.047	(0.01)
Cyanide	0.063	(0.013)	0.025	(0.005)
Zinc	0.33	(0.066)	0.14	(0.027)

§ 465.16 [Reserved]

Subpart B—Galvanized Basis Material Subcategory

§ 465.20 Applicability; description of the galvanized basis material subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from coil coating of galvanized basis material coils.

§ 465.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available:

SUBPART B

Pollutant or pollutant property	BPT effluent limitations			
	Maximum for any 1 day		Maximum for monthly average	
	Mg/m³ (pounds per 1 million ft²) of area processed			
Chromium	1.10	(0.23)	0.45	(0.091)
Copper	4.96	(1.02)	2.61	(0.54)
Cyanide	0.76	(0.16)	0.32	(0.064)
Zinc	3.47	(0.71)	1.46	(0.30)
Iron	3.21	(0.66)	1.65	(0.34)
Oil and grease	52.2	(10.7)	31.3	(6.42)
TSS	107.0	(21.9)	52.2	(10.7)
pH	(1)	(1)	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 465.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

SUBPART B

Pollutant or pollutant property	BAT effluent limitations			
	Maximum for any 1 day		Maximum for monthly average	
	Mg/m³ (pounds per 1 million ft²) of area processed			
Chromium	0.37	(0.077)	0.16	(0.031)
Copper	1.71	(0.35)	0.90	(0.19)
Cyanide	0.26	(0.053)	0.11	(0.022)
Zinc	1.20	(0.25)	0.51	(0.11)
Iron	1.10	(0.23)	0.57	(0.12)

§ 465.23 New source performance standards.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section which may be discharged by a new source subject to the provisions of this subpart:

SUBPART B

Pollutant or pollutant property	NSPS			
	Maximum for any 1 day		Maximum for monthly average	
	Mg/m³ (pounds per 1 million ft²) of area processed			
Chromium	0.13	(0.027)	0.052	(0.011)
Copper	0.44	(0.090)	0.21	(0.043)
Cyanide	0.07	(0.015)	0.028	(0.006)
Zinc	0.35	(0.08)	0.15	(0.030)
Iron	0.43	(0.09)	0.22	(0.045)
Oil and grease	3.43	(0.71)	3.43	(0.702)
TSS	5.15	(1.06)	3.78	(0.78)
pH	(1)	(1)	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 465.24 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in coil coating process wastewater introduced into a POTW shall not exceed the following values:

SUBPART B

Pollutant or pollutant property	PSES			
	Maximum for any 1 day		Maximum for monthly average	
	Mg/m³ (pounds per 1 million ft²) of area processed			
Chromium	0.37	(0.077)	0.16	(0.031)
Copper	1.71	(0.35)	0.90	(0.19)
Cyanide	0.26	(0.053)	0.11	(0.022)
Zinc	1.20	(0.25)	0.51	(0.11)

§ 465.25 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in coil coating process wastewater introduced into a POTW shall not exceed the following values.

SUBPART B

Pollutant or pollutant property	PSNS			
	Maximum for any 1 day		Maximum for monthly average	
	Mg/m³ (pounds per 1 million ft²) of area processed			
Chromium	0.13	(0.027)	0.052	(0.011)

SUBPART B—Continued

Pollutant or pollutant property	PSNS			
	Maximum for any 1 day		Maximum for monthly average	
Copper	0.44	(0.090)	0.21	(0.043)
Cyanide	0.07	(0.015)	0.028	(0.006)
Zinc	0.35	(0.072)	0.15	(0.030)

§ 465.26 [Reserved]

Subpart C—Aluminum Basis Material Subcategory

§ 465.30 Applicability; description of the aluminum basis material subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from coil coating of aluminum basis material coils.

§ 465.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available:

SUBPART C

Pollutant or pollutant property	BPT Effluent limitations			
	Maximum for any 1 day		Maximum for monthly average	
	mg/m² (pounds per 1 million ft²) of area processed			
Chromium	1.42	(0.29)	0.58	(0.12)
Cyanide	0.98	(0.20)	0.41	(0.083)
Zinc	4.48	(0.92)	1.89	(0.39)
Aluminum	15.3	(3.14)	6.26.	(1.28)
Oil and grease	67.3	(13.8)	40.4	(8.27)
TSS	138.0	(28.3)	67.3	(13.8)
pH	(1)	(1)	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 465.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

SUBPART C

Pollutant or pollutant property	BAT Effluent limitations			
	Maximum for any 1 day		Maximum for monthly average	
	mg/m² (pounds per 1 million ft²) of area processed			
Chromium	0.42	(0.085)	0.17	(0.034)
Cyanide	0.29	(0.059)	0.12	(0.024)
Zinc	1.32	(0.27)	0.56	(0.12)
Aluminum	4.49	(0.92)	1.84.	(0.38)

§ 465.33 New source performance standards.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart.

SUBPART C

Pollutant or pollutant property	NSPS			
	Maximum for any 1 day		Maximum for monthly average	
	Mg/m² (pounds per 1 million ft²) of area processed			
Chromium	0.18	(0.037)	0.072	(0.015)
Cyanide	0.095	(0.020)	0.038	(0.008)
Zinc	0.49	(0.10)	0.20	(0.041)
Aluminum	1.44	(0.30)	0.59	(0.121)
Oil and Grease	4.75	(0.98)	4.75	(0.98)
TSS	7.13	(1.46)	5.23	(1.07)
pH	(1)	(1)	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 465.34 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in coil coating process wastewater introduced into a POTW shall not exceed the following values:

SUBPART C

Pollutant or pollutant property	PSES			
	Maximum for any 1 day		Maximum for monthly average	
	Mg/m² (pounds per 1 million ft²) of area processed			
Chromium	0.42	(0.085)	0.17	(0.34)
Cyanide	0.29	(0.059)	0.12	(0.024)
Zinc	1.32	(0.27)	0.56	(0.12)

§ 465.35 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in coil coating process wastewater introduced into a POTW shall not exceed the following values:

SUBPART C

Pollutant or pollutant property	PSNS			
	Maximum for any 1 day		Maximum for monthly average	
	Mg/m² (pounds per 1 million ft²) of area processed			
Chromium	0.18	(0.037)	0.072	(0.015)
Cyanide	0.095	(0.02)	0.038	(0.008)
Zinc	0.049	(0.01)	0.20	(0.041)

§ 465.36 [Reserved]

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Part III

Environmental Protection Agency

Standards for Emission of Particulate Matter From Diesel-Powered Light-Duty Vehicles and Light-Duty Trucks; Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL 2133-5]

Standards for Emission of Particulate Matter From Diesel-Powered Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would delay for two years the effective date of the particulate emission standards for diesel-powered light-duty vehicles and light-duty trucks (light-duty diesels or LDD's) currently scheduled for the 1985 model year. The 0.20 gram per mile (0.12 gram per kilometer) standard for diesel-powered light-duty vehicles and the 0.26 gram per mile (0.16 gram per kilometer) standard for diesel-powered light-duty trucks would not become effective until the 1987 model year. The delay is necessary to provide adequate leadtime for LDD manufacturers to complete development and testing of trap-oxidizer technology, which will be required for a portion of the LDD fleet to meet the standards.

Associated with these light-duty diesel particulate standards is an outstanding EPA proposal to allow emissions averaging when complying with the particulate standards. This proposal to delay the implementation of the 1985 particulate standards does not affect the content of that averaging program nor EPA's decision whether to promulgate the program. However, EPA has always intended the averaging program to coincide with the implementation of the more stringent particulate standards scheduled for 1985. Any delay in the implementation of these standards would also delay the implementation of the averaging program until the same model year.

DATES: EPA will hold a public hearing on this notice on January 18, 1983. The hearing will convene at 9:00 a.m. and adjourn when the business of the hearing has been completed. Written comments will be accepted for a period of 30 days following the close of the hearing, and should be submitted on or before February 17, 1983.

ADDRESSES: The hearing will take place in the conference room at the EPA Motor Vehicle Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105.

Written comments, other than those submitted directly at the hearing, should be submitted (preferably 4 copies) to: Central Docket Section (A-130), Environmental Protection Agency, Docket No. A-81-32, 401 M Street, S.W., Washington, D.C. 20460. Docket No. A-81-32 is located in the U.S. EPA, Central Docket Section, West Tower Lobby, Gallery I, 401 M Street, S.W., Washington, D.C. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Rykowski, U.S. Environmental Protection Agency, Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668-4339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Promulgation of the 1985 Standards

On February 1, 1979, as a first step toward controlling the increasing contribution of diesel particulate emissions to ambient particulate levels, EPA proposed standards for particulate emissions from diesel-powered light-duty vehicles and light-duty trucks (44 FR 6650). The proposed standards would have limited particulate emissions from these vehicles to 0.60 gram per mile beginning in the 1981 model year and to 0.20 gram per mile beginning in the 1983 model year. On March 5, 1980, after analyzing the comments elicited by the proposal, EPA promulgated final standards which were modified somewhat from those proposed (45 FR 14496). The effective date of the 0.60 gram per mile standard was postponed to the 1982 model year, the effective date of the 0.20 gram per mile standard was postponed to model year 1985, and the level of the 1985 standard for light-duty trucks was adjusted to 0.26 gram per mile.

The 1985 standards were based on EPA's projections that the necessary particulate control technology would be developed to meet the standards by 1985. In particular, EPA projected that a new device called a trap-oxidizer would be available for use by 1985, and that use of the device would allow even the highest-emitting light-duty diesels to meet the 1985 standards. This device is similar in construction to exhaust emission catalysts currently found on nearly all new gasoline-fueled vehicles. A trap-oxidizer filters particulate matter from the diesel exhaust. It then periodically burns this particulate, via a process called regeneration, since a trap cannot be made large enough to collect all the particulate matter emitted by a diesel over its lifetime.

In the final rulemaking EPA identified the three critical issues surrounding trap-oxidizer feasibility: Collection efficiency, trap regeneration, and trap durability. EPA found that the collection efficiences of the available traps were sufficient and that satisfactory regeneration techniques had been identified. Trap durability (the maintenance of trap efficiency and the regeneration mechanism over time) was identified as the most critical issue remaining, and its solution appeared to require primarily engineering solutions as opposed to new technological discoveries. After assessing the magnitude of the engineering tasks involved, the manufacturers' estimates on required leadtime, and the economic risks associated with forcing premature application of trap-oxidizer technology, EPA concluded that trap-oxidizers could be ready for use on 1985 model year production vehicles.

B. Manufacturers' Petitions

On May 5, 1980, General Motors (GM) petitioned EPA for reconsideration of the 1985 particulate standards, claiming that the required technology could not be developed in time. At the same time that GM's petition was filed, GM and several other light-duty diesel manufacturers petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review the rules and to direct the Agency to establish technologically feasible standards under the appropriate statutory authority.

On June 27, 1980, EPA denied GM's administrative petition on the basis that there was sufficient evidence at that time that the standards were feasible, and that reconsideration at a later date was still possible if developmental progress proved to be slower than anticipated (45 FR 48133). On April 22, 1981, the Court of Appeals denied the manufacturers' request for relief, finding that EPA's projections were reasonable, and that in any case, the standards could be modified if necessary. *NRDC v. EPA*, 655 F.2d 318 (D.C. Cir. 1981). The Court also found that EPA had incorrectly cited section 202(a)(3)(A)(iii) of the Clean Air Act as authority for the regulations. The Court concluded that this mandatory standard-setting provision of the Act only applied to heavy-duty engines, and that the regulations should have been promulgated under the general standard-setting authority of Section 202 (a)(1) and (2). Unlike Section 202(a)(3)(A)(iii), these provisions require that a finding be made that the controlled pollution "reasonably be anticipated to endanger public health or

welfare." However, the Court found that there was sufficient evidence in both the statute's legislative history and the rulemaking record on the health-related concerns of diesel particulate emissions to warrant EPA's regulation of LDD particulate emissions under its general standard-setting authority. Accordingly, the Court of Appeals upheld the regulations in their entirety. On July 31, 1981, GM petitioned the U.S. Supreme Court for review of the decision of the Court of Appeals, but the petition was denied on November 2, 1981.

C. Feasibility Study

Due to the importance of these standards to the automobile industry, on April 6, 1981, Vice President Bush announced as part of President Reagan's Program for the U.S. automobile industry ("Actions to Help the U.S. Auto Industry," April 6, 1981) that EPA would conduct a study of the technological feasibility of the 1985 standards.

EPA published a Request for Information associated with the feasibility study on June 17, 1981 (46 FR 31677), which included a list of questions concerning trap-oxidizer development. EPA invited trap-oxidizer and diesel manufacturers as well as other interested parties to submit new data or information not considered during the original rulemaking, as well as direct responses to specified questions, by October 1, 1981. The information received has been reviewed and assessed, and EPA's analysis, summarized below, appears in a document in the public docket entitled "Trap-Oxidizer Feasibility Study." The information gathered and EPA's analysis form the basis for this proposal to delay the 1985 standards.

D. General Motors Petition for Suspension (1981)

On September 30, 1981, GM petitioned the Administrator to suspend the 1985 standards, alleging that they continued to be technologically infeasible in the leadtime remaining and would effectively preclude production of LDD's in 1985. GM also contended that EPA's original reliance on the criteria of section 202(a)(3)(A)(iii) rather than its general standard-setting authority had resulted in unnecessarily stringent standards, and suggested that suspending the standards pending completion of the feasibility study would give EPA the opportunity to promulgate revised standards under the proper statutory criteria.[1] This rulemaking makes it unnecessary to respond at this time to all issues raised in GM's petition. Delaying implementation of the standards for two years would provide relief from the deadlines GM claims could impede diesel production, and would allow time to consider other issues raised in the petition. As noted below, EPA will continue to examine other issues, such as health risks and the relative cost of control, as pertinent data are generated.

Thus, this proposal amounts to a partial grant of GM's petition, although the relief is in a different form than requested (rulemaking rather than immediate suspension). GM has asserted in its petition that rulemaking is not required to suspend the standards and that GM cannot afford to continue investing resources in attempting to meet the 1985 deadline. EPA believes that proposing to defer the effective date of the standards is appropriate in view of the keen interest exhibited by all sectors in commenting on EPA's trap-oxidizer feasibility study. Some comments already have addressed GM's submissions by raising legal issues with regard to suspension without notice and opportunity for comment, which EPA need not address in this action. In addition, since EPA's study indicates that the expenditures made at least until January 1983 are development-related, the time required to expose this proposal to public scrutiny should not prejudice any manufacturer and, in fact, will avoid prejudgment of other issues raised in GM's petition.

II. Basis for Proposal

The Court of Appeals found in *NRDC* v. *EPA, supra,* that EPA had the authority to promulgate the 1985 particulate standards under Sections 202(a) (1) and (2) of the Act. The Court also noted EPA's authority and responsibility to revise the standards if new circumstances indicated that the technology required to meet them would not be ready by the 1985 model year.

As the Court of Appeals concluded, the Section 202(a)(1) requirement that the regulated emissions be found to "cause or contribute to air pollution which may reasonably be anticipated to endangered public health and welfare" was satisfied in the original rulemaking when EPA assessed the current health and air quality data and concluded that regulating LDD particulate emissions was warranted. The Section 202(a)(2) requirement that EPA ". . . giv[e] appropriate consideration to the cost of compliance . . ." was also satisfied in the original rulemaking. These findings are not being reconsidered at this time. The purpose of this rulemaking is to address pressing issues of leadtime in the most expeditious way possible. That purpose would be frustrated by reopening the entire rulemaking at this time.

On the other hand, the Section 202(a)(2) requirement that standards are to "take effect after such period as . . . [is] necessary to permit the development and application of the requisite technology . . ." does warrant immediate reconsideration. If EPA's original projection of the period necessary to permit development and application of trap-oxidizers was in fact too optimistic, then the regulations no longer meet this criterion and must be revised. This action is intended to address the technological feasibility of the 1985 standards, as required by Section 202(a)(2), by allowing adequate leadtime for completion of the necessary technological development. There are other issues surrounding control of LLD particulate emissions, such as health risks and the relative cost of control. EPA will continue to examine these issues as pertinent data are generated.

Although some comments submitted to EPA for use in the feasibility study asserted that the 1985 model year is still feasible, given the progress made by trap-oxidizer manufacturers, the full record supports this proposed delay, as discussed in the next section and in the "Trap-Oxidizer Feasibility Study" in the docket. Moveover, a balancing of the potential hardships of an erroneous decision to retain the 1985 standards against the environmental harm of an erroneous delay warrants proposing a two-year delay.[2] The harm that might result from not deferring these standards after the base hour for "leadtime" has passed outweighs the risks that would result from relief needlessly granted. For

[1] Letter from F. James McDonald, President, General Motors Corporation (GM), to Anne M. Gorsuch, Administrator, EPA, and attached petition, September 30, 1981; letter from William L. Weber, Jr., Attorney, GM, to the Administrator, EPA, and attached Supplemental Information in Support of GM Petition to Suspend 1985 Diesel Particulate Standards, November 5, 1981; letter from Thomas L. Arnett, Attorney, GM, to Samuel I. Gutter, Attorney, EPA, April 13, 1982.

[2] The considerations in this case are analogous to those in *International Harvester* v. *Ruckleshaus,* 478 F.2d 615 (D.C. Cir. 1973), where the court reversed EPA's refusal to suspend for one year strict new 1975 model year emission standards set by Congress. The Court noted the need for: ". . . an analysis which balances the costs of a 'wrong decision' on feasibility against the gains of a correct one. These costs include the risks of grave maladjustments for the technological leader from the eleventh-hour grant of a suspension, and the impact on jobs and the economy from a decision which is only partially accurate, allowing companies to produce cars but at a significantly reduced level of output. Against this must be weighed the environmental savings from denial of suspension." 478 F.2d at 641.

example, GM has stated in its petition that retaining the standards for 1985 will mean the demise of its diesel passenger car production in 1985. If this occurred, it could affect the economic well-being of manufacturers planning to expand sales of diesels, and would likely result in a decrease in fuel economy for the passenger car fleet. Similarly, relief granted too late would penalize any manufacturer that had started to produce light-duty diesels in compliance with the standards.

A delay of the 1985 standards would inevitably result in higher emissions of diesel particulate. However, this increase should not be significant. In the analyses supporting the promulgation of the 1985 standards, EPA projected the diesel penetration of light-duty sales in 1985 and 1986 to be 11 and 14 percent, respectively. These figures are well below the 20 percent penetration projected for 1990 and beyond. Thus, even with a two-year delay, the more stringent standards would take effect well before full diesel penetration occurs, mitigating the significant air quality impacts of dieselization.

EPA considered proposing an interim standard for the 1985 and 1986 model years which was more stringent than 0.60 gram per mile, yet still achievable without trap-oxidizers. The purpose of such a standard would be to obtain whatever additional control is available during the interim period through non-trap technology. However, it appears that most non-trap particulate control technology has already been implemented on today's diesel cars.

The next substantial reduction in particulate emissions will have to come from exhaust treatment, such as the trap-oxidizer. Thus, an interim level could only be based on what light-duty diesels are emitting today. While this level would likely be below 0.60 gram per mile, it would have no real effect on the environment, since EPA would not expect present emission levels to increase even if the standard remained at 0.60 gram per mile. Diesel manufacturers should have no motivation to increase particulate emissions and have some incentive to reduce them because of the negative effect of particulate formation on oil-change intervals.

In addition, proposing an interim standard other than 0.60 gram per mile would have delayed this proposal, due to the additional effort required to determine an appropriate level for the standard. Given that there would be no real benefit resulting from the interim standard, the proposal of a delay of the 0.20 and 0.26 gram per mile standards and extension of the existing 0.60 gram per mile standard was chosen as the preferred alternative.

III. Trap-Oxidizer Feasibility Study

A. Conclusions

In order to determine whether trap-oxidizers would be available in time for light-duty diesels to comply with the 1985 model year particulate standards, EPA examined the current state of trap-oxidizer development, identified those areas in which development and testing are still needed, and estimated the leadtime required for each remaining task. This assessment is documented in a document entitled, "Trap-Oxidizer Feasibility Study," which is available for inspection in Docket No. A–81–20 at the address listed above.

EPA's analysis of these issues is summarized below. The major conclusions drawn from this analysis, which form the basis for this proposal, are:

(1) Current trap-oxidizer designs are satisfactory with respect to trapping efficiency, backpressure and material durability when regeneration is properly controlled;

(2) The one development task remaining is to integrate the regeneration mechanisms which have been identified with existing sensors and electronic control techniques to initiate and control trap regeneration safely and consistently in-use;

(3) This development task should be completed by January 1983;

(4) Production-related leadtime, including sufficient time for assurance testing, production tooling and certification, should require an additional 25 to 33 months, thus being completed between February 1985 and October 1985, in time for the 1986 and 1987 model years, respectively; and

(5) The potential error present in projecting the completion of any development process and the large financial risk involved if one or more manufacturers were not able to comply with the trap-based standards and could not market some or all of their diesels warrant the choice of the more conservative date and a delay of the trap-based standards until the 1987 model year.

B. Summary

1. *State of Development:* The development of trap-oxidizers has advanced significantly over the two years since the 1985 particulate standards were promulgated. This research has primarily been concentrated on two trap designs. One is a porous ceramic honeycomb monolith similar to the ceramic substrate used in catalytic converters on many gasoline-fueled vehicles. These monoliths have had alternate channels blocked in order to maximize particulate filtering. To this point most ceramic monolith traps have not utilized catalytic material. The second design utilizes compacted alumina-coated wire mesh as the trapping medium. Both catalyzed and non-catalyzed wire-mesh traps are being tested.

While trapping efficiency and backpressure have always been acceptable with new traps, this is now true for traps with up to 50,000 miles of use and which have undergone 50–100 regenerations. Trapping efficiency remains in the 50–90 percent range depending on trap type and backpressure remains near zero-mile levels.

When regeneration is properly controlled, the durability of current trap designs is also acceptable. Prototpye traps have been tested up to 50,000 miles and when they do fail, it is almost invariably due to excessive temperature during regeneration. Thus, the key to satisfactory durability appears to be the control of the maximum temperature achieved during regeneration. The available materials appear to be satisfactory in every other respect.

Critical to the control of the regneration process is knowledge of the conditions required to initiate and maintain oxidation of the trapped particulate. Based on the comments on the study, the conditions necessary to initiate regeneration and maintain oxidation of the trapped particulate until it has all been burned are now fairly well understood. For non-catalyzed traps, temperatures in the range of 500–650°C and oxygen levels of at least 3–4 percent are required for 2–10 minutes (low temperatures being associated with longer times and vice versa). The presence of a catalyst in the trap may be able to reduce the temperature required to as low as 310–350°C.

It is almost certain that these temperatures will not be attained for the necessary length of time during normal driving. Thus, some means to raise the temperature of the exhaust artificially is necessary with any trap design. At the same time, the degree to which the exhaust temperature must be raised will likely depend on trap design, particularly whether or not a catalyst is present.

Several systems have been developed to initiate and maintain regeneration. Two designs which add heat to the exhaust, fuel burners and electrical heating, appear to be quite workable and available for use, although both

would have a relatively high cost and the latter could require extensive modification of the vehicle elcectrical system. Two other systems, intake air throttling and exhaust stroke fuel injection appear to be simpler and less expensive, but the degree to which they can raise exhaust temperature is limited. While these last two techniques may be sufficient to initiate and maintain regeneration for catalyzed trap-oxidizers, non-catalyzed traps will likely require fuel burners or electrical heating.

The greatest amount of work remaining in trap-oxidizer development involves monitoring and controlling the regeneration process to achieve the required temperatures and oxygen levels without over-heating the trap materials, which can lead to melting or destruction. Some form of electronic control, similar to the feedback controls used on most of today's gasoline-fueled automoblies, and sensors will likely be necessary to balance important parameters such as trap loading, exhaust temperature and oxygen level. This is a complex task since the temperature and oxygen level of the exhaust varies quickly and dramatically with changes in driving conditions. An added complexity is that particular loading cannot be directly measured with available sensor technology. Thus, accumulated milage or engine revolutions will have to be used as a surrogate, even though the amount of particulate produced and trapped per mile or per engine revolution can vary markedly depending on engine operating conditions.

The main task remaining to complete the development of trap-oxidizer technology, then, is the automation of the control of the regeneration process. While more vehicle testing certainly will be required to integrate the electronic logic with the sensors and the regeneration initiation techniques, the progress made to date leads EPA to project that trap-oxidizers will be feasible with more development effort.

2. *Leadtime:* There are four necessary steps which must be taken before trap-oxidizers can be utilized on mass-produced vehicles:(1) Further development to produce a basic system design: (2) assurance testing to ensure that the system will operate satisfactorily under real-life conditions and to optimize the system for each vehicle type; (3) tooling for trap production: and (4) EPA certification.

a. *Developmental Leadtime.* Although a fully acceptable trap-oxidizer system has yet to be developed, the critical parts of the system (i.e., the trap materials, the techniques to initiate regeneration, the conditions for regeneration initiation and control, and the basic parameters which require monitoring) are all known or available. The task remaining is to integrate them and to regenerate the trap successfully under a variety of operating conditions.

Based on the progress made to date and the technical difficulties involved in the remaining tasks, EPA estimates that a basic system design will be available for assurance testing by January 1983. This estimated date is somewhat earlier than that of the only commenter which specifically projected the amount of time it would take to develop trap-oxidizer systems to this point. GM stated that it was beginning a 24-month product design development program in September 1981, which, if successful, could result in a production design. EPA is confident that its own estimate is reasonable. In any event, the difference between the two projections does not affect the model year for which traps are projected to be available below.

b. *Production Leadtime.* Once a complete trap-oxidizer design is developed and the physical specifications of the system are available, assurance testing to optimize the system can commence. During this testing, vehicles are equipped with trap-oxidizer systems and operated under real-life conditions to develop confidence in, and further refine, the design. EPA projects that two phases of testing may be necessary, each consisting of 50,000 miles of driving and taking 3.5–5 months. Between the two phases would be a 3–4 month period of data analysis.

After the first phase of testing and the subsequent period of data analysis (7–9 months), manufacturers can begin to make initial commitments for production tooling in preparation for mass production. This third step of the process is far more straightforward than the developmental phase because no technological advances are necessary. Depending on the anticipated production volumes and the number of different sizes and models to be built, trap-oxidizer suppliers must procure facilities, make any necessary facility modifications, and install tooling and other equipment. Once the final specifications are received, any final tooling or equipment can be purchased and any last minute modifications can be made.

EPA projects that 18–24 months will be necessary for the entire step of preparing for trap-oxidizer mass production. The 18–24 month period represents a synthesis of commenters' projections since they were not all directly comparable due to their inclusion of different parts of the overall development process. The 18–24 month estimate is corroborated by projections previously submitted to EPA by heavy-duty engine manufacturers concerning the production tooling leadtime required for the introduction of catalysts.

Modification of the vehicle and engine to accept the trap-oxidizer system also will be necessary. Vehicle designs will require modification to accommodate the trap and to add regeneration initiation systems like the fuel burner and electrical heating. The necessary modifications of the engine could be more complex, depending on the type of regeneration system chosen, and could involve electronic controls, sensors, throttling, or exhaust-stroke fuel injection. Since the tooling for these engine/vehicle modifications can occur at the same time as the tooling for trap production, EPA projects that the 18–24 months allotted for the latter should also suffice for the engine/vehicle modifications. That no additional leadtime should be necessary for this task is supported by the fact that no commenter suggested that any additional time would be necessary to make engine/vehicle modifications.

c. *Certification Leadtime.* The final step that must be taken before trap-equipped vehicles may be produced and sold is emission certification testing. In general, it takes 9–10 months to certify a vehicle family and about 14 months for a manufacturer to certify its entire product line (gasoline and diesel). Thus, EPA estimates that 12 months is a reasonable period for manufacturers to certify only the diesel portion of their fleets.

Since the vehicles used for certification are prototypes built to production specifications, certification can begin very soon after the second phase of assurance testing is completed and can be conducted while tooling up for production. The difference in the time needed for certification (12 months) and production tooling (18–24 months) would be more than adequate to complete the second phase of assurance testing and to prepare prototypes for certification. Thus, certification would be completed within the time allotted for production tooling and not require any additional leadtime. EPA did not receive any comments suggesting that additional leadtime for certification was required and those comments which included certification leadtime with that for production tooling still fell within the range allotted by EPA for production tooling.

In summary, the total leadtime required for trap-oxidizer/vehicle production is estimated to be 25–33 months from early 1983. First, EPA projects that further development of the

trap-oxidizer system should be completed within 18 months from mid-1981 or by early 1983. Assurance testing would add 7–9 months to this date and be completed in the fall of 1983. Tooling up for production and certification would add another 18–24 months and move the projected date to between the spring and fall of 1985. Thus, EPA projects that trap-oxidizers should be ready to be placed on production vehicles between that time. Since production for a given model year begins in July/August of the previous calendar year, the spring of 1985 would be early enough for 1986 model year production. However, a projected date in the fall of 1985 would not allow trap-oxidizer introduction to occur until the 1987 model year.

There are a number of factors which should be considered in the choice of a model year for trap introduction based on this range of projections. One is the inherent potential for error in any projection of technological development. Another is the current financial condition of the automobile industry, which could affect the level of effort it can afford to place in trap development. A third factor is the potential consequence of requiring trap-oxidizers before they are full ready (e.g., inefficient and failing traps, safety problems). In view of these factors and the range of possible introduction dates, EPA judges that it should take a conservative approach and propose delaying the trap-based standards for two years, until the 1987 model year.

Applying GM's estimated developmental leadtime of 24 months (from September 1981) would add 9 months to the leadtime schedule described above. This would move the outer date to July 1986, still in time for the 1987 model year. In addition, a number of manufacturers' estimates of the total leadtime necessary to take a satisfactory trap-oxidizer prototype design and prepare it for production and integration with production vehicles support EPA's projection. Assuming that a satisfactory prototype design would be available by January 1983, the projections of Volkswagen, GM, Daimler-Benz, and all of the trap manufacturers showed that trap-oxidizers would be available by at least the 1987 model year. Only the unsupported projections of Ford and the National Academy of Sciences (NAS) resulted in a later date, and then only by one year (1988).

3. *Secondary Issues:* Several commenters also addressed a number of secondary issues associated with the introduction of trap-oxidizers, such as fuel economy, cost, safety, and the effects of trap-oxidizers on the emission of pollutants other than total particulate. These comments indicated that trap-oxidizers could have a negative impact on fuel economy, add significant cost, and both increase and decrease the emissions of other pollutants. However, none of the commenters suggested that any of these effects alone should preclude the use of trap-oxidizers.

IV. Description of Proposed Amendments

The regulations proposed in this notice are intended to effect only one substantive change: To delay the effective date of the 1985 particulate standards for two years, until the 1987 model year. This is proposed through the removal of the 0.20 gram per mile and 0.26 gram per mile standards from 40 CFR 86.085–8 and 86.085–9 and their inclusion in a new § 86.087–8 and § 86.087–9, respectively. Thus, the current 0.60 gram per mile standard would be retained through the 1986 model year.

As EPA has already proposed a new averaging program for compliance with the 1985 standards (46 FR 62608), the proposed averaging provisions have been included in the proposed § 86.087–8 and § 86.087–9 for consistancy. EPA is not seeking additional comments on the averaging provisions; any decision on promulgation of the proposed averaging provisions will be made independent of any final action to delay the 1985 particulate standards. Since the averaging program has always been intended to coincide with the more stringent 1985 particulate standards, any delay in the effective date of the 1985 particulate standards would also delay the averaging program.

The proposal would also delete § 86.085–8 and § 86.085–9. These sections were originally added to indicate the change in particulate standards for the 1985 model year (45 FR 14497). If the particulate standards do not change and averaging is not implemented in 1985, then the emission standards for 1985 and 1986 model year light-duty vehicles and light-duty trucks are fully described in earlier sections. Thus, this deletion should serve to simplify the regulations while having no substantive effect.

V. Public Hearing

A. Issues To Be Addressed

As indicated above, the proposed delay of the 1985 LDD particulate standards is being made solely on the basis of their technological infeasibility due to inadequate leadtime. Therefore, EPA requests that written comments and comments at the public hearing be limited to the issue of technological feasibility, and in particular, to those issues concerning technology and leadtime addressed in EPA's feasibility study.

Comments already submitted to EPA on the issues contained in the original rulemaking or for the trap-oxidizer feasibility study will be fully considered in this rulemaking and need not be resubmitted.

B. Public Participation

Any persons desiring to make a statement at the hearings should provide written notice of such intention to the Agency contact indicated above by January 7, 1983. This notice should include an estimate of the length of testimony and any need for audio-visual equipment. If possible, EPA requests that an advance copy of the proposed statement or meterial be included. The Agency also suggests that approximately 30 copies be brought to the hearings for distribution to the audience.

The record of the hearings will be left open for 30 days following the close of the hearings to allow submission of rebuttal and supplementary information. Any documents submitted during this period should be sent to the EPA central docket section at the address shown above (Docket No. A–82–32). It is also requested, but not required, that a copy of this submittal be sent directly to the Agency contact indicated above.

Commenters desiring to submit proprietary information should segregate that information from other comments to the greatest extent possible, and label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the Agency contact indicated above, and not to the Docket, to ensure that proprietary information is not inadvertently placed in the public docket.

Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the information when it is received by EPA, it may be made available to the public without further notice to the commenter.

Mr. Richard Wilson is hereby designated as the Presiding Officer of the hearings. The hearings will be conducted informally. Technical rules of evidence will not apply. A written transcript of the hearings will be taken. Anyone desiring to purchase a copy of the transcript should make

arrangements individually with the court reporter recording the hearings.

VI. Authority

Statutory authority for this proposal is provided by Sections 202(a) and 301(a) of the Clean Air Act [42 U.S.C. 7521 and 7601]. Section 202(a)(1) of the Act provides, in part, that "the Administrator shall by regulation prescribe . . . standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles * * * which may reasonably be anticipated to endanger the public health or welfare . . ." Section 202(a)(2) of the Act provides, in part, that "any regulation prescribed under paragraph (1) * * * shall take effect after such period as the Administrator finds necessaary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period." Section 301(a) provides, in part, that "the Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act."

VII. Administrative Designation

Under Executive Order 12291 EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it involves no negative cost impacts and has no significant adverse effect on competition, productivity, investment, employment, or innovation.

This proposed regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA response to those comments are available for public inspection in the docket cited at the beginning of this preamble.

VIII. Effect on Small Entities

Section 605 of the Regulatory Flexibility Act requires that the Administrator certify regulations that do not have a significant impact on a substantial number of small entities. I certify that this regulation indeed does not have any significant impact on small entities. Few, if any, small entities market diesel engines or are involved in trap-oxidized development, which is the subject of these regulations. Therefore, no small entities should see any significant impact.

IX. Impacts of Reporting Requirements

There are no information collection requirements in this proposed rule as it merely delays for two years the implementation date of a standard already promulgated in a separate rulemaking.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: November 22, 1982.

Anne M. Gorsuch,

Administrator.

PART 86—[AMENDED]

For the reasons discussed in the preamble, EPA proposes to amend Subpart A of CFR Part 86 as set forth below:

1. Section 86.085–8 is proposed to be removed.

2. Section 86.085–9 is proposed to be removed.

3. A new § 86.087–8 is proposed to be added to read as follows:

§ 86.087–8 Emission standards for 1987 light-duty vehicles.

(a)(1) Exhaust emissions from 1987 and later model year light-duty vehicles shall not exceed:

(i) *Hydrocarbons.* 0.41 gram per vehicle mile (0.255 gram per vehicle kilometer).

(ii) *Carbon monoxide.* 3.4 grams per vehicle mile (2.11 grams per vehicle kilometer).

(iii) *Oxides of nitrogen.* 1.0 gram per vehicle mile (0.629 gram per vehicle kilometer).

(iv) *Particulate emissions* (Diesels only). 0.20 gram per vehicle mile (0.124 gram per vehicle kilometer). A manufacturer may elect to include all or some of its diesel light-duty vehicles in the particulate averaging program. If the manufacturer elects to average diesel light-duty vehicles and diesel light-duty trucks together in the particulate averaging program, its composite particulate standard applies to its entire diesel light-duty vehicle and diesel light-duty truck fleet and is calculated as defined in § 86.085–2. Under the particulate averaging program, the maximum allowable particulate emission level for diesel light-duty vehicles is 0.40 gram per vehicle mile (0.248 gram per vehicle kilometer).

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures.

(b)(1) Fuel evaporative emissions from 1987 and later model year gasoline-fueled light-duty vehicles shall not exceed:

(i) *Hydrocarbons.* 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1987 and later model year gasoline-fueled light-duty vehicle.

4. A new § 86.087–9 is proposed to be added to read as follows:

§ 86.087–9 Emission standards for 1987 light-duty trucks.

(a)(1) Exhaust emissions from 1987 and later model year light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 0.8 gram per vehicle mile (0.5 gram per vehicle kilometer).

(ii)(A) *Carbon monoxide.* 10 grams per vehicle mile (6.2 grams per vehicle kilometer).

(B) 0.47 percent of exhaust gas flow at curb idle.

(iii) *Oxides of nitrogen.* 2.3 grams per vehicle mile (1.4 grams per vehicle kilometer).

(iv) *Particulate emissions* (Diesels only). 0.26 gram per vehicle mile (0.162 gram per vehicle kilometer). A manufacturer may elect to include all or some of its diesel light-duty trucks in the particulate averaging program. If the manufacturer elects to average both diesel light-duty vehicles and diesel light-duty trucks together in the particulate averaging program, its composite particulate standard applies to its entire diesel light-duty vehicle and diesel light-duty truck fleet and is calculated as defined in § 86.085–2. Under the particulate averaging program, the maximum allowable particulate emission level for diesel light-duty trucks is 0.40 gram per vehicle mile (0.248 gram per vehicle kilometer).

(2) The standards set forth in paragraph (a)(1)(i), (a)(1)(ii)(A),

(a)(1)(iii), and (a)(1)(iv) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures. The standard set forth in paragraph (a)(1)(ii)(B) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in Subpart P of this part.

(b)(1) Fuel evaporative emissions from 1987 and later model year gasoline-fueled light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1987 and later model year gasoline-fueled light-duty truck.

[FR Doc. 82-32672 Filed 11-30-82; 8:45 am]

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federal register

Wednesday
December 1, 1982

Part IV

Environmental Protection Agency

Standards of Performance for New Stationary Sources; Petroleum Liquid Storage Vessels; Amendment and Notice of Final Equivalency Determinations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2183-3(a)]

Standards of Performance for New Stationary Sources; Petroleum Liquid Storage Vessels; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for petroleum liquid storage vessels were promulgated in the **Federal Register** on April 4, 1980 (45 FR 23373). This action amends the standards by adding provisions allowing the use of a storage vessel primary seal that is considered by EPA to be equivalent to one of the primary seals required by the standards. This amendment implements Section 111(h) of the Clean Air Act and is based on the Administrator's determination that the primary seal in the Volume-Maximizing Seal system manufactured by R.F.I. Services Corporation is equivalent to the vapor-mounted foam-filled primary seal specified in the standards of performance.

EFFECTIVE DATE: December 1, 1982.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this amendment is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* A docket, number A-80-58, containing information considered by EPA in development of the amendment, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, S.W., Washington, D.C. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gene W. Smith, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5624.

SUPPLEMENTARY INFORMATION: On April 29, 1981 (46 FR 23984), EPA published a notice of proposed determinations that two seal systems for petroleum liquid storage vessels, for which equivalency determinations were requested by the manufacturers, were not equivalent to volatile organic compound (VOC) emission control systems required by the standards of performance in Subpart Ka of 40 CFR Part 60. The final determinations are published elsewhere in this issue of the **Federal Register.** During the public comment period from April 29 to June 29, 1981, one of the manufacturers, R.F.I. Services Corporation, requested EPA to also determine equivalency for another one of its seal systems, the Volume-Maximizing Seal (VMS).

The VMS is essentially a combination of two Weather-Guard single seals. (The Weather-Guard single seal is the subject of the original equivalency determination requested by R.F.I.) The VMS uses an inverted Weather-Guard single seal as lower seal and an upper or secondary seal (also Weather-Guard single seal, but not inverted) to protect the lower seal from water and debris so a no-gap condition can be maintained. R.F.I. commented that the lower seal should be more than equivalent to a metallic shoe and the VMS equivalent to a shoe seal with a rim-mounted secondary seal. The VMS has a continuous vapor curtain hung from the lower seal to isolate the vapor space from the seal tip. R.F.I., therefore, believes the lower seal to be more than equivalent to a metallic shoe seal, which is noncompressive and which has fabric-to-metal expansion joints subject to potential leaks. R.F.I. calculations show emissions from a 100-foot diameter gasoline storage tank equipped with the VMS system to be 0.016 megagrams per year compared to 0.64 megagrams per year for a metallic shoe seal with a rim-mounted secondary seal.

EPA is unable to determine whether the VMS is equivalent to a metallic shoe seal with a secondary seal on the basis of the information provided by R.F.I. The R.F.I. emission calculations were based on the emissions calculated from leak rate data for the Weather-Guard single seal. This method of estimating emissions is felt to be invalid for this determination. Furthermore, at the public hearing held on May 28, 1981, R.F.I. referred to the VMS as "* * * nothing more than our single-seal system inverted close to the product with a similar secondary seal put above the product." No mention was made then of the continuous vapor curtain and the similarity to a metallic shoe seal. EPA believes that more information is needed to make an equivalency determination on the VMS lower seal as a metallic shoe seal. However, the lower seal with or without a vapor curtain is considered equivalent to a vapor-mounted foam log seal based on the fact that the seal is an inverted Weather-Guard single seal. As discussed in the proposed equivalency determination for the Weather-Guard single seal (46 FR 23984), emission tests for the foam-log seal used in EPS's determination on the Weather-Guard single seal because the two seals were considered analogous. An amendment to the NSPS for petroleum liquid storage vessels is, therefore, being promulgated to provide that the lower seal of the VMS system is equivalent to the vapor-mounted seal specified in Subpart Ka of 40 CFR Part 60.

The VMS systems is designed to allow the secondary seal to rise above the tank shell, thus allowing complete utilization of the tank capacity and a net saving of 3 to 4 percent of tank capacity, equal to tankage investment savings of $18,480 for a 100-foot diameter tank. R.F.I. has requested EPA to allow the VMS to be operated in this mode. They state that when the tank is full, the rim space is fully protected by the lower seal, and at all other times, the space is protected by two seals.

R.F.I. has overstated the saving in tank capacity by assuming the tank will be operated full 100 percent of the time. It is more realistic to assume the tank would be full only during peak periods, and the resulting investment savings would probably be a fraction of R.F.I.'s estimate. More important, however, is the potential for high VOC emissions when the secondary seal is out of the tank, leaving only a single seal to reduce emissions. Allowing the VMS to be operated in this manner would neither be consistent with the importance EPA has placed on the need for a double-seal system, nor with the Agency's conclusion on equivalency status for the Weather-Guard single seal. Therefore, it is concluded that the VMS system would be in compliance with the NSPS only if the secondary seal remains in contact with the tank wall.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents readily so that they can intelligently and effectively participate in the rulemaking process. The contents of the docket will serve as

the record in case of judicial review (Sec. 307(d)(7)(A)).

Miscellaneous

The effective date of this regulation is December 1, 1982. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, construction, or modification of which was commenced after the date of proposal. This amendment applies to petroleum liquid storage vessels for which construction commenced after May 18, 1978, the date of proposal of the standards of performance.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source performance standard under Section 111(b) of the Act, or for any substantial revision of a standard. This equivalency determination is not considered to be a substantial revision of a standard. Therefore, no economic impact assessment was prepared for the equivalency determinations published in this Federal Register notice.

The Administrator certifies that a regulatory flexibility analysis under 5 U.S.C. 601 et seq. is not required for this determination. The determination will not have a significant impact on a substantial number of small entities because it does not impose any new requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This equivalency determination is not major because it would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule."

This action was submitted to the Office of Management and Budget for review by Executive Order 12291.

List of Subjects in 40 CFR Part 60.

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

Dated: November 22, 1982.

Anne M. Gorsuch,

Administrator.

PART 60—[AMENDED]

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended by adding § 60.114a(c) to Subpart Ka as follows:

§ 60.114a Equivalent equipment and procedures.

* * * * *

(c) The primary vapor-mounted seal in the "Volume-Maximizing Seal" manufactured by R.F.I. Services Corporation is approved as equivalent to the vapor-mounted seal required by § 60.112a(a)(1)(i) and must meet the gap criteria specified in § 60.112a(a)(1)(i)(B). There shall be no gaps between the tank wall and any secondary seal used in conjunction with the primary seal in the "Volume-Maximizing Seal."

(Sec. 111, 114, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7411, 7414, 7601(a))

[FR Doc. 82-32806 Filed 11-30-82; 8:45 am]

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40 CFR Part 60

[AD-FRL-2183-3(b)]

Standards of Performance for New Stationary Sources; Petroleum Liquid Storage Vessels; Notice of Final Equivalency Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule-related notice; notice of final equivalency determinations.

SUMMARY: This is a notice of EPA's determination that two seal systems for petroleum liquid storage vessels, for which equivalency determinations were requested by the manufacturers [Pittsburgh-Des Moines Corporation (PDM) and R.F.I. Services Corporation (R.F.I.)], are not equivalent to the volatile organic compound (VOC) emission control systems required by the standards of performance in Subpart Ka of 40 CFR Part 60.

ADDRESSES: *Docket.* Docket No. A-80-58, containing supporting information used in making the determinations, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gene W. Smith, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5624.

SUPPLEMENTARY INFORMATION:

Final Equivalency Determinations

On April 29, 1981 (46 FR 23984), EPA published a notice of proposed determinations that two seal systems for petroleum liquid storage vessels, for which equivalency determinations were requested by the manufacturers, were not equivalent to volatile organic compound (VOC) emission control systems required by the standards of performance in Subpart Ka of 40 CFR Part 60. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed determinations, a public hearing was held on May 28, 1981, in Research Triangle Park, North Carolina. In addition, during the public comment period from April 29 to June 29, 1981, eight comment letters were received.

After careful consideration of the comments presented at the public hearing and in letters received during the public comment period, EPA has concluded that the proposed determinations should not be changed. Therefore, the final determinations are that neither the PDM TUBESEAL®/ Weathershield system nor the R.F.I. Weather-Guard single seal is equivalent to seal systems required by the standards of performance for petroleum liquid storage vessels in 40 CFR 60.112a. The main reason for these denials of equivalency status is that gaps can be expected to develop between the seals and tank walls over a period of time, and when gaps occur, the performance of these candidates seal systems is clearly not equivalent to the equipment required by the standards. The fact that gaps occur is supported by specific inspection data submitted by commentors as well as a statement of general knowledge common to storage tank owners and regulatory agencies. The complete rationale for these denials of equivalency appeared in the proposed determinations (46 FR 23984, April 29, 1981) and remains unchanged. EPA's responses to major comments received since April 29 are discussed below. A more detailed discussion of comments and EPA's responses is included in Docket Number A-80-58.

Significant Comments and EPA's Responses

Comments were received from the two companies requesting equivalency,

petroleum storage tank owners and operators, and State and local air pollution control agencies. Most of the comment letters contained multiple comments which have been categorized for discussion. The equivalency determinations are discussed separately below.

PDM's TUBESEAL®/Weathershield

In the original request for equivalency and in comments subsequent to the proposed denial of equivalency, PDM submitted data and information in support of its claim that the "* * * TUBESEAL®/Weathershield system is more than equivalent to the shoe seal with secondary and hence should itself receive equivalency status." The primary basis for the equivalency request was a set of emission test data taken by PDM which compared the efficiency of the TUBESEAL® system to the shoe seal system. The tests were conducted with no gaps in the TUBESEAL® and large gaps (inherent in the design) in the Weathershield, and no gaps in either the shoe seal or its secondary. Under these test conditions, the data indicated that the TUBESEAL® system was more efficient that the shoe seal system. PDM contends that the TUBESEAL® can be operated without gaps and, therefore, a Weathershield, even with its large gap area, is sufficient to make the system equivalent to a shoe seal system, and a continuous secondary seal is not necessary.

EPA does not believe that the TUBESEAL® can always be operated without gaps, based on inspection data discussed later in this notice. Further, Chicago Bridge and Iron Company (CBI) test data, on which the equivalency determination is based, indicate that when gaps are introduced in a liquid-mounted, liquid-filled seal like the TUBESEAL®, emissions increase at a significantly higher rate than they do from a metallic shoe seal with comparable gaps. In the CBI tests, when gap areas in the metallic shoe seal were increased from 0 to 14 square inches per foot of tank diameter, there was only about a 50 percent increase in emissions, whereas emissions from the liquid-mounted, liquid-filled seal increased by about 300 percent when the gap area increased from 0 to 2.4 square inches per foot of tank diameter. These data illustrate the importance of a continuous secondary seal when the primary has gaps, particularly when the primary is a liquid-mounted, liquid-filled seal.

PDM's comments on the proposed denial of equivalency were primarily concerned with the basis for the determination. PDM commented that (1) EPA should have based the determination on emission data taken by PDM under gap-free conditions rather than on CBI data taken with gaps in the seals; (2) EPA assumed too high an emission reduction efficiency for continuous secondary seals and too low an efficiency for the PDM Weathershield; (3) EPA did not consider PDM data that showed the TUBESEAL® system to be more efficient than the metallic shoe seal system even when temperatures under the TUBESEAL® approached the product's boiling point, but the same conditions did not exist under the shoe seal; (4) EPA should consider factors other than emission reduction, such as cost effectiveness, fire hazard potential, and corrosiveness of the seal system, in making the final determination

Effect of Gaps on Seal System Performance

PDM commented that EPA assumptions concerning gap areas on liquid-mounted primary seals do not reflect actual conditions on at least two-thirds of the tank population and, therefore, should not be used for determining equivalency for the TUBESEAL®/Weathershield system. PDM submitted inspection data it collected in 1977 for 38 tanks equipped with TUBESEALS® which showed that two-thirds had no gaps between the seal and tank wall. This percentage was similar to that for tanks inspected in 1976–1977 by local regulatory agencies which were equipped with resilient primary seals, an uncertain number of which were liquid-filled liquid-mounted seals.

EPA agrees that the inspection data cited by PDM indicate that, at any given time, a large percentage of liquid-mounted seals can be expected to operate without gaps. However, the data also indicate that as many as one-third of the seals inspected had gaps. Without evidence to the contrary, EPA assumes that all the seals inspected were properly installed and well maintained. Therefore, emission data obtained while gaps were between the liquid-mounted seal and tank wall reflect actual field conditions for at least a portion of the tank population and are appropriate for use in evaluating seal system performance.

The San Diego Air Pollution Control District commented that the PDM TUBESEAL®/Weathershield system would be equivalent to a vapor-mounted primary seal with a continuous secondary seal if the TUBESEAL® could be maintained with gaps no wider the 1/16 inch, it would not be used where freezing of liquid in the TUBESEAL® is possible, and there would be a weekly inspection by tank owners. The District emphasized that it would be very difficult to ensure that these conditions are met in the field. This comment supports EPA's position that under normal operating conditions, the PDM system is not equivalent.

PDM commented that EPA's assumptions about seal gaps were unrealistic and should not have been used in the equivalency determination for the TUBESEAL® system. EPA evaluated effects of primary seal gaps ranging from 2.4 to 10.0 square inches per foot of tank diameter, and the CBI pilot tank tests included primary seals with gaps of 1.3 to 14.7 square inches. PDM has stated that primary seal gaps of 10.0 square inches are extreme, and a gap area of 2.4 square inches would indicate a totally failed liquid-mounted seal.

EPA agrees that a gap area of 10.0 square inches per foot of tank diameter is unrealistic for a liquid-mounted seal and, therefore, did not use it in making the final determination. PDM's statement that a gap area of 2.4 square inches per foot of tank diameter represents a failed seal is inconsistent with field inspection data mentioned earlier that showed gap areas greater than 2.4 square inches. It is also inconsistent with PDM's own request that a gap area of 4.7 square inches per foot of tank diameter be allowed for the TUBESEAL®. EPA's use of emission data under varying gap areas was intended to illustrate the fact that with any gap in the primary seal, regardless of the size, the effectiveness of a Weathershield is less than that of a continuous secondary seal.

Secondary Seal Performance

PDM commented that EPA's proposed determination was based on an emission reduction efficiency that was too high for continuous secondary seals (78 percent). The basis for the comment was the emission data from one test conducted by PDM that showed that the rim-mounted continuous secondary seal was only 50 percent efficient in reducing emissions from the primary metallic shoe seal. Thus, according to PDM, it can be assumed that fully tight secondary seals (over all types of primary seals) are only 50 percent effective in reducing emissions.

EPA carefully reviewed the data submitted by PDM and could not determine the reasons for the low efficiency for the secondary seal in the PDM test. Therefore, EPA decided to use data taken from several tests by CBI on a 20-foot diameter pilot test tank to

evaluate the secondary seal's performance. These tests were conducted under varying conditions and with different types of primary seals. In all the CBI tests, the efficiency of secondary seals was shown to be greater than the 50 percent claimed by PDM. When used with a metallic shoe primary seal, the efficiency of the secondary was 88 percent (no gaps in either seal and parameters normalized to a windspeed of 5.4 mph and a 7.5 psia true vapor pressure of stored gasoline). In addition, API Publication 2517, "Evaporation Loss from External Floating-Roof Tanks, Second Edition," February 1980, presents loss equations for determining emissions from representative tank populations ("average" seal factors) and from field tanks with essentially no gaps in their seal system ("tight" seal factors). Using these factors, the efficiency of a continuous secondary seal over a metallic shoe primary seal at the PDM normalized field test condition is calculated to be greater than 92 percent.

In specific CBI tests of fully tight secondary seals over fully tight liquid-mounted and vapor-mounted primary seals, the secondary seal efficiencies were 78 and 96 percent, respectively. The "average" seal efficiencies calculated from API 2517 are 77 and 72 percent, respectively.

Based on the specific CBI tests, EPA selected 78 percent efficiency for a secondary seal over a liquid-mounted primary seal in determining equivalency of the PDM TUBESEAL® Weathershield to the standards of performance.

PDM also commented that EPA used too low an efficiency for the Weathershield in making the determination. Their position is that the PDM Weathershield is unique and not "typical" as inferred in the proposed equivalency determination. The Weathershield is bolted and gasketed to the rim of the pontoon and has self-flexing shields which improve shield-to-tank wall contact and shield-to-shield contact. In PDM's 35-foot diameter test tank, gaps between the shields and tank wall varied from 0 to ½ inch and between the shields from 0 to ⅜ inch. Shield-to-wall gap area was estimated to be 136 square inches and shield-to-shield gap area 59 square inches for a total of 195 square inches. In contrast, the Weathershield tested on the CBI pilot tank had gaps between the shields and tank wall ranging from ½ inch to 1 7/16 inches; and the shields were hinge mounted to the pontoon rather than gasketed, which allowed a large gap around the entire base. The CBI tests show this very "loose" Weathershield to be 50 percent efficient while a tight fitting secondary is 78 percent efficient. Based on these data, PDM believes the efficiency of its Weathershield should be somewhere in between.

EPA does not agree that the CBI test data support PDM's claim that the efficiency of PDM's Weathershield is between 50 and 78 percent. In fact, the data indicate that the efficiency of the PDM Weathershield is comparable to that of a loose-fitting Weathershield or loose-fitting secondary seal. The CBI data show that a fully tight secondary seal is 78 percent efficient. They also show that both a loose-fitting Weathershield with a gap area ranging from 9 to 27 square inches per foot of tank diameter and a loose-fitting secondary seal with a gap area of 4.87 square inches per foot of tank diameter are about 50 percent efficient. This indicates that the existence of a large gap area (greater than 1 square inch per foot of tank diameter) is the main reason for the decrease in efficiency. The relative sizes of the gap areas apparently had little effect on the test results since the efficiency remained at about 50 percent even though the gap areas ranged from 4.87 to 27 square inches per foot of tank diameter. The Weathershield tested by PDM had a gap area of 5.6 square inches per foot of tank diameter and, thus, could be expected to exhibit the same efficiency as the CBI Weathershield and loose-fitting secondary seal.

Performance of PDM TUBESEAL® System v. Metallic Shoe Seal System

PDM believes its test data demonstrate that the TUBESEAL®/Weathershield is 2½ times more efficient than the metallic shoe seal with a secondary seal. PDM contends that the tests were conducted during a period that included many days when temperatures under the TUBESEAL® approached the boiling point of the product, but temperatures under the metallic shoe seal did not approach the boiling point. Therefore, according to PDM, the efficiency of the TUBESEAL® system is probably even greater than 2½ times that of the shoe seal system.

EPA has reviewed the PDM test data and agrees that for those particular tests, the TUBESEAL® system appeared to be more efficient than the metallic shoe seal system. However, as stated earlier, the efficiency results for the secondary seal over the shoe seal were unusually low (50 percent efficiency) when compared to the CBI test data. With a secondary seal efficiency of 88 percent based on CBI tests, the emissions of 17.3 lbs per day from the metallic shoe seal system would be reduced to 2.1 lbs per day or 1.8 times *more* efficient than the TUBESEAL® Weathershield.

The second part of PDM's comment—that if temperatures under the shoe seal had approached the boiling point of the product, it would have been even less efficient than the TUBESEAL®—is not supported by the data. During the 106-day TUBESEAL® system test, there were only about 9 days (days 49–52 and 73–77) when the highest *peak* temperatures of the liquid 1 inch under the seal were near the boiling point (95°F to 97°F). The average temperature was from 17°F to 20°F lower. The test of the metallic shoe seal without a secondary seal was also conducted during warm weather. During the warmest 36 consecutive test days, the peak temperature 1 inch below the liquid surface was 84°F, and the average temperature was only about 10°F lower. These data suggest that possibly, the higher temperatures recorded for the TUBESEAL® are a result of seal design rather than atmospheric conditions. The TUBESEAL® resting on the liquid surface in the rim space may allow a high rate of heat transfer through the seal to the liquid underneath. In any case, the data do not support the contention that emissions for the metallic shoe seal would have been higher if both seals had been tested under the same conditions, but do suggest that under similar atmospheric conditions, the temperature of the liquid stored may peak at a higher level when the TUBESEAL® is used.

General

PDM commented that EPA should consider factors other than emission reduction effectiveness in evaluating the TUBESEAL® system. Specifically, PDM asked for consideration of the TUBESEAL® system's lower cost relative to an NSPS seal system, the lessened risk of rim fires with a TUBESEAL® due to the absence of a vapor space, and the noncorrosive TUBESEAL® material. Section 111(h)(3) of the Act specifies that a determination of equivalency is based on whether a system's reduction in emissions is equivalent to that required by an NSPS. Other factors are irrelevant. Therefore, the Administrator does not consider the factors mentioned by PDM to be applicable to this equivalency determination.

R.F.I. Corporation's Weather-Guard Single Seal

In the original request for equivalency, R.F.I. submitted data from leak rate tests to estimate emissions from the R.F.I. Weather-Guard single seal. R.F.I.'s

request and subsequent comments were primarily based on its interpretation of the leak rate data and calculations of VOC emission rates from the leak rate data. All of R.F.I.'s data and calculations were also based on the assumption that the Weather-Guard single seal would be able to be operated with no gaps between the seal and the tank wall. In the proposed determination that the R.F.I. seal is not equivalent to equipment required in 40 CFR 60, Subpart Ka, EPA concluded that leak rate data cannot be used to compare emissions from the R.F.I. seal to those from a double seal required by Subpart Ka, and that the R.F.I. seal can be expected to develop gaps during its service life.

During the public comment period, R.F.I. submitted comments to support its positions concerning the lack of gaps with a Weather-Guard single seal, the use of leak rate data to calculate emissions, and the low cost of the Weather-Guard single seal in comparison to a double-seal system. R.F.I. also requested that its Volume-Maximizing Seal system be approved as equivalent to the standards of performance for petroleum liquid storage vessels. Several oil companies submitted comments in support of R.F.I.'s request for equivalency for the single seal, and two air pollution control agencies commented in support of EPA's determination. The major issues raised in the comments are discussed below. A more detailed summary of comments and EPA's responses are included in Docket No. A–80–58.

Gaps in the Weather-Guard Single Seal

R.F.I. disagreed with EPA's main reason for proposing the denial of equivalency for the Weather-Guard single seal—that the seal can be expected to have gaps during normal operation between inspections. R.F.I. stated that the seal is specifically designed to maintain a no-gap condition at all times. In support of this position, R.F.I. states that worst-case testing conducted on specially prepared surface defects and out-of-round shell surfaces, and lifetime equivalent testing conducted for contact, wear resistance, and continued integrity indicated that the seal will not have gaps as long as the plates are intact and easily seen in a visual inspection. Inspection results for nine in-service tanks were submitted by tank owners in support of R.F.I.'s position. Not all of the seals inspected were gap-free, but the commenters explained that the gaps could be eliminated through minor repair or tank design change.

The information provided by the commenters indicated that all of the nine seals inspected had been in service from 1 month to less than 2 years, whereas R.F.I. predicts a Weather-Guard seal life of 15 years. Thus, EPA believes that the condition of this small sampling of seals cannot necessarily be considered representative of what might occur over a 15-year period.

The California Air Resources Board commented in support of EPA's proposed determination on the Weather-Guard single seal. The San Diego Air Pollution Control District also provided comments and inspection data supporting the position that the Weather-Guard cannot maintain a gap-free condition except under unusually favorable tank conditions. During the 6-month period from June to December 1980, the San Diego District made 14 individual inspections on a Weather-Guard seal installed in a tank that was off-level and out-of-round, conditions that commonly develop in many tanks over a period of time. Gaps were found in almost all of the inspections. The District recommended, therefore, that EPA not grant equivalency to the Weather-Guard single seal. The District's inspection data conflict with R.F.I.'s claim that the Weather-Guard will not gap even under worst-case conditions. After carefully considering all the inspection data submitted by commenters, EPA continues to believe that the R.F.I. Weather-Guard single seal cannot routinely be maintained in a gap-free condition.

Calculating VOC Emissions from Leak Rate Data

R.F.I. attempted to compare emissions from the Weather-Guard single seal to those from a primary vapor-mounted foam seal with a secondary flapper seal by injecting nitrogen under the single seal and under the foam seal and measuring the quantity of nitrogen required to maintain the same constant fixed pressure under each seal. EPA had concluded that these leak-rate tests did not create annular circumferential flows of air and hydrocarbon caused by wind-induced pressure differentials on the floating roof resulting from wind flow over the tank and, therefore, cannot be used to compare a single seal to a double seal. R.F.I. commented that EPA's conclusion is incorrect and, to support its position, submitted data and hydrocarbon concentrations measured with an explosimeter in the vapor space under the Weather-Guard in several in-service tanks. The data did not reflect the effect of wind-induced air flow under the seal on hydrocarbon concentrations. R.F.I. concluded, therefore, that there was no air flow under the tight-fitting Weather-Guard single seal; and that a leak-rate test, therefore, does represent a realistic evaluation of emission potential for seals with no gaps.

EPA has reviewed R.F.I.'s comments and information. However, it remains EPA's conclusion that the leak rate tests performed by R.F.I. do not provide a valid comparison of the performance of the R.F.I. Weather-Guard single seal and the vapor-mounted foam log primary seal with a secondary flapper seal (double seal). As discussed in the following paragraphs, there are several reasons for this conclusion.

The principal factors which affect the rate of vapor leakage from an external floating roof tank with vapor-mounted seals are (1) the size of any gaps which exist in the seal or between the seal and tank wall, and (2) the pressure differential across the gaps. Pressure differentials across a gap are primarily caused by the wind moving across the surface of the storage tank's external floating roof. The wind causes negative pressures along a part of the seal circumference and positive pressures along other portions of the seal. Positive pressures force air into gaps and negative pressures force vapors out of gaps into the atmosphere, causing the air to flow circumferentially around the seal in the vapor space. While smaller gap areas produce smaller leak rates, even tight or so-called "no gap" seals have finite gaps and are thus affected by wind-induced pressure on the seal. The concentration measurements made by R.F.I. in the vapor space under the Weather-Guard single seal cannot be used as an indicator of wind-induced airflow under the seal (or lack thereof) as R.F.I. attempted to do. The data from the measurements showed that hydrocarbon concentrations did not increase in the direction of the flow path as R.F.I. expected they would if there were wind-induced circumferential flow. However, the windsweep is very low under a tight seal, and the hydrocarbon concentration in the vapor space is essentially at the 100 percent saturation level. As a result, concentrations would be fairly constant at all locations in the vapor space. Therefore, the concentration data taken by R.F.I. are not useful as an indicator of wind-induced airflow under a vapor-mounted seal caused by pressure differentials along the seal circumference.

In the case of vapor-mounted single seals, the pressure differentials induced by the wind are similar from seal to seal. As a result, it is possible to compare the performance of different vapor-mounted single seals by using leak rate tests. However, it has not been

shown that double seals can be compared in this way; nor can single seal performance be compared to double seal performance using a leak rate test. The reason is that the secondary seal in a double seal system tends to insulate the primary seal from the pressure effects and wind-sweep caused by wind moving across the top of the tank. As such, for any given wind condition the pressure differential and wind-sweep effects across a primary seal in a double seal system would probably be less than for a single seal. Since the leak rate tests performed by R.F.I. compared single versus double seals at equal pressures under the primary vapor-mounted seals, the results are unrepresentative of actual conditions and yield invalid comparisons.

Moreover, the R.F.I. leak rate tests were performed on tanks with seals having essentially no gaps. As described in the previous section, this is not representative of expected field conditions and serves primarily to show only the relative tightness of the two seals.

Miscellaneous

R.F.I. and other commenters stated that EPA should consider the Weather-Guard's lower cost relative to the NSPS seal system in determining equivalency. Section 111(h)(3) of the Act specifies that a determination of equivalency is based on whether a system's reduction in emissions is equivalent to that required by an NSPS. Other factors are irrelevant. Therefore, the Administrator does not consider cost considerations to be applicable to this equivalency determination.

One commenter stated that EPA should establish test criteria for determining equivalency under the NSPS for petroleum liquid storage vessels so that innovative and cost-effective control technology may be evaluated expeditiously without subsequent questioning of the test parameters and scope. R.F.I. said that if EPA contends that "emission test data such as obtained on specific seal and seal systems in the Chicago Bridge and Iron (CBI) test facility can serve as the best technological basis * * *," then it must also concede that only those seal genders tested in the CBI facility will be available for use because that test facility is the only one in existence.

EPA agrees that a simple and quick means of determining equivalency is desirable. However, at this time specific test criteria that would be applicable for every type of seal technology for which equivalency may be requested are not feasible. Ideally, actual emission data should be used to make equivalency determinations. EPA recognizes, however, that emission testing either in a facility similar to CBI's or by actual field testing is very expensive and time-consuming. The generic seal systems tested by CBI do represent the best measurements of VOC emissions available for equivalency determinations. However, EPA will consider other information such as leak rate data, engineering specifications, and inspection data to be used in conjunction with CBI or similar tests in making determinations. For example, the leak rate data from the R.F.I. field test on the Weather-Guard single seal was essentially the same as the CBI leak rate test on a primary vapor-mounted foam log seal without a secondary seal. EPA concluded that the leak rate data could be used to compare the effectiveness of these single seals and used the CBI vapor-mounted foam seal emissions data for evaluation. There were no CBI or other data relating emissions from a vapor-mounted foam log seal with a rim-mounted continuous secondary seal to leak rate. On this basis, EPA rejected leak rate data on the double-seal system as a basis for the determination.

Several commenters noted that EPA's proposed denial of NSPS equivalency has caused concern by many companies that State regulations which permit installation of the Weather-Guard single seal on existing tanks will be negated. They requested EPA to make it clear that the NSPS determination in no way affects equivalency determinations made by States relative to CTG requirements for existing tanks. EPA agrees that this determination only pertains to new tanks and does not involve consideration of tanks which have an existing Weather-Guard seal system in place.

A related comment made by R.F.I. was that EPA should allow the use of the Weather-Guard single seal over a "nonconforming" (not in compliance with CTG requirements) primary seal on existing tanks. Again, this would be a determination to be made by individual States and is not related to this equivalency determination. In making such a determination, it is expected that a State would consider the information presented in this notice but would also consider other information such as the condition and gap status of the tank and the existing primary seal.

The R.F.I. Volume-Maximizing Seal

In the letter containing comments on the equivalency determination for the Weather-Guard single seal, R.F.I. requested equivalency for its Weather-Guard Volume-Maximizing Seal (VMS). The VMS uses an inverted Weather-Guard single seal as a lower seal and an upper or secondary seal (also a Weather-Guard single seal, but not inverted) to protect the lower seal from water and debris so a no-gap condition can be maintained. R.F.I. commented that the lower seal should be more than equivalent to a metallic shoe seal and the VMS equivalent to a shoe seal with a rim-mounted secondary seal. The equivalency determination for the VMS is discussed earlier in this document.

Docket

The docket is an organized and complete file of all the information considered by EPA in these determinations of equivalency. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents readily so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and final determinations and EPA responses to significant comments, the contents of the docket will serve as the record in cases of judicial review (Sec. 307(d)(7)(A)).

Miscellaneous

The Administrator certifies that a regulatory flexibility analysis under 5 U.S.C. 601 et seq. is not required for these determinations. The determinations will not have a significant impact on a substantial number of small entities because they do not impose any new requirements. In addition, since the determinations do no more than deny requests for Agency action, they are not "rules" for the purposes of 5 U.S.C 601 *et seq.*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. These equivalency determinations are not major because they would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule."

This action was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Dated: November 22, 1982.

Anne M. Gorsuch,

Administrator.

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federal register

Wednesday
December 1, 1982

Part V

Department of Health and Human Services

Office of Human Development Services

SCAN Data Bases; Activity Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Administration on Aging; SCAN Data Bases; Activity Notice

AGENCY: Office of Human Development Services, HHS.

SUBJECT: Announcement of availability of certain data bases for assumption at no cost to the Federal Government.

SUMMARY: The Administration on Aging (AoA) announces that applications are now being accepted for assumption, dissemination and utilization of information in the SCAN Information System.

DATE: Closing date for receipt of applications is January 7, 1983.

SUPPLEMENTARY INFORMATION: The Administration on Aging is interested in soliciting applications from organizations one of which, if chosen, would assume responsibility and maintain key elements of a gerontology information system. Since 1978, the Administration on Aging has sponsored the development and operation of an information system, formerly the Service Center for Aging Information (SCAN), through contracts and interagency agreements. This sponsorship was part of the response to the mandate in the Older Americans Act, Section 204, to establish a National Information and Resource Clearing House for the Aging. The Older Americans Act Amendments of 1981 repealed Section 204 in December, 1981.

The existing SCAN system contains the following information: (1) Information regarding discretionary projects sponsored by the Administration on Aging; (2) bibliographic information regarding documents which have resulted from projects sponsored by the Administration on Aging; (3) bibliographic information regarding documents other than those sponsored by the Administration on Aging; (4) information regarding exemplary programs at the State and local level; (5) information relevant to education and training; (6) information regarding research on aging sponsored by many Federal government organizations; (7) a thesaurus of terms used for the indexing and retrieval of information; and (8) a mailing list of those interested in learning more about the services and products of the system.

The existing SCAN system was designed to provide several services and products as follows: (1) A periodic journal containing abstracts of the bibliographic information with indexes to subject, personal author, corporate author, and title, suitable for publication; (2) an annual cumulative index of the bibliographic information, suitable for publication; (3) a cumulative index of the discretionary projects sponsored by the Administration on Aging including indexes to performing organization, investigators, State and locality, and key words from the project title, suitable for publication; (4) individual microfiche and paper copies of the full text of the bibliographic source documents, including all of those resulting from discretionary projects supported by the Administration on Aging; (5) automatic provision of a microfiche copy of the full text of the bibliographic source documents to each of some 240 organizations including State Agencies on Aging, DHHS Regional Offices on Aging, and 170 organizations which have volunteered to provide public access to the microfiche at the local level; (6) and updated thesaurus suitable for publication; (7) a users' guide to the system, and its services and products, including an explanation of how to access them, the service policy and any user charges, suitable for publication; (8) a service to purchase documents for the Administration on Aging on request; (9) a service which produces and markets individual paper copies of the full text of the source documents relevant to education and training; (10) a service which produces and markets individual computer tapes of the bibliographic information and provides technical assistance to the users of the tapes; (11) preparation of bibliographies, including one on educational and training materials, suitable for publication; (12) an inventory of Federally-funded research on aging, with abstracts and a subject index, suitable for publication; and (13) a service providing responses to inquiries and to request for custom-tailored searches of all of the types of information, except the thesaurus and the mailing list, that are received in writing or by a toll-free incoming telephone line.

The key elements of the SCAN system include all types of information contained in the existing system, except the mailing list, plus the following services and products:

(1) A periodic journal containing abstracts of the bibliographic information with indexes to subject, personal author, corporate author, and title;

(2) An annual cumulative index of the bibliographic information;

(3) A cumulative index of the discretionary projects sponsored by the Administration on Aging with indexes to performing organizations, investigators, State and locality, and key words from the project title;

(4) An updated thesaurus;

(5) A service which produces and markets individual paper copies of the full text of the source documents relevant to education and training that are not available elsewhere;

(6) An updated inventory of Federally-funded research on aging; and

(7) A service which provides responses to inquiries and to requests for custom-tailored searches of all types of information controlled by the solicited system.

The Government will make the following materials available for copying by the successful offeror: (1) Information on computer tape citing more than 2,000 projects sponsored by the Administration on Aging; (2) computer tapes with bibliographic information (including abstracts) for up to approximately 7,400 documents; (3) more than 4,000 documents with bibliographic information (including typed abstracts) recorded on forms; (4) descriptive information on computer tape regarding more than 100 exemplary programs at the State and local level; (5) more than 200 typed descriptive profiles of other exemplary programs; (6) more than 400 hard copy curricula or course outlines relevant to education and training, and a bibliography of them; (7) descriptive information on computer tape regarding more than 2,000 research projects on aging sponsored by Federal government organizations; (8) several cartons of information regarding research projects on aging that were not suitable for processing; (9) information on computer tape from a data base used to update a thesaurus on aging; (10) a mailing list of approximately 4,000 persons interested in learning more about the services and products of the system; (11) a hard copy of 11 documents prepared for publication and more than 300 subject bibliographies and resource lists; (12) a hard copy of documentation regarding the specifications and procedures for each data base; (13) a microfiche copy of at least 2900 bibliographic documents which are referenced on computer tape; and (14) a hard copy of any printed publications which AoA may produce, such as a thesaurus, bibliographies, directories, indexes, etc. The "originals" of all of the above-mentioned materials remain the property of the U.S. Government. The Administration on Aging expects the successful applicant

to propose activities which will at least: (1) Make *all* of the bibliographic and research project information accessible for on-line intractive search and retrieval through at least one of the major existing U.S. vendors of bibliographic data bases, such as Bibliographic Retrieval Services (BRS), Dialog Information Retrieval Service, and System Development Corporation (SDC), in one or more of their files; and (2) ensure that the bibliographic information is in a public file (it has been in a private file on BRS); and (3) update the bibliographic information at least with new AoA publications and grant reports.

Applicants should propose activities for this and, optionally, any other key elements.

Nothing in this notice is intended to preclude the applicant from proposing to charge fees for services.

Notice of Meeting

The Administration on Aging will conduct an information sharing meeting on December 10, 1982 for those organizations that are interested in submitting applications under this notice. The purpose of the meeting is to discuss the objectives of the activity notice and to answer questions. Organizations which send representatives to the meeting shall do so at their own expense. The meeting will be held at 9:30 a.m. in the HHS-North Building, Room 4273, 330 Independence Avenue SW., Washington, D.C.

Eligible Applicants

Any organization is eligible to apply for this activity. The Administration on Aging recognizes that the various types of information, services, and products are related or relatable. Further, few organizations have the capability of performing all of these activities, yet many may have innovative approaches to them. Therefore, the Administration on Aging invites and encourages such groups to collaborate in this project. Collaboration, for example, may be in the form of combining resources, sharing resources, jointly undertaking a project, providing technical or consultative services, and/or forming consortiums for the purpose of applying for and operating the project.

Available Funds

No Federal Funds Are Available for This Activity

The Government expects to sign a written agreement with the successful offeror. The agreement would continue until terminated by either party. Under the agreement, the Administration on Aging (AoA) would provide, at no cost to the successful applicant: (1) Copies of documents which it originates through contracts, grants, or in-house authorship; and (2) access to its literature collection. AoA would grant the exclusive right to carry out the agreed program to the successful applicant. In consideration for this right, the successful applicant shall bear all costs of the tasks required to carry out the program. In addition, the successful applicant would grant to AoA a royalty-free license to reproduce and disseminate printed copies of information from the data base(s).

Application Process

Applications may be submitted in any format to: Department of Health and Human Services, Office of Human Development Services, Administration on Aging, Attn: Commisssioner Lennie-Marie P. Tolliver, Ph.D. (Re: *SCAN PROPOSAL*), HHS North Building, Room 4146, 330 Independence Avenue, SW., Washington, D.C. 20201.

Applications must be clearly labelled SCAN Proposal.

Application Submission

One (1) typed and signed original and two (2) copies of the application, including all attachments, must be submitted.

A–95 Notification Process

Not Applicable.

Application Consideration

The Commissioner on Aging will make the final decision on each application. Applications which are complete and conform to the requirements of this notice will be subjected to a competitive review and evaluation by qualified persons. The results of the review and evaluation will assist the Commissioner in considering competing applications and making decisions. The Commissioner will take into account the comments of other cooperating components of the Office of Human Development Services, as well as the comments of the State Agencies on Aging, the Regional Offices of the Administration on Aging, and the Administration on Aging Central Office staff. The successful applicant and unsuccessful applicants will be notified in writing.

Review Criteria

Applications for this activity will be evaluated on the basis of the following criteria:

I. *Technical Approach and Implementation Plan* (40 points).

A. Technical Approach. The application provides a well defined technical approach covering the need for the project and the objectives to be achieved, including:

1. Potential for improving the dissemination of information on aging, and relevance to the needs addressed by this notice.

2. Completeness and feasibility of proposed project design including a presentation of the state-of-the-art practice.

3. Adequacy of plans for information collection and processing.

4. Compatibility and continuity of the proposed project with the existing SCAN system, and its products, services and usage reporting features.

B. Project Implementation. The application specifies a sound plan for task accomplishment, including a reasonable staff-loading by task, and:

1. Plans to make a description of the proposed project, as soon as awarded, accessible in the Smithsonian Science Information Exchange (SSIE) system operated by National Technical Information Service (NTIS).

2. Plans to market the services and products of the system.

3. Plans to make proposed publications, substantive reports, and data in machine-readable form permanently accessible to the public.

II. *Organizational Capability* (20 points).

The applicant organization has adequate experience, resources, and facilities to carry out the project, including:

A. Demonstrated experience in conducting proposed activities.

B. Commitment from any collaborating agencies and organizations where such could be expected to contribute to the success of the project.

III. Staffing and Management (20 points).

A. Proposed staff are well qualified to implement project objectives and tasks (resumes of key personnel are to be included); and

B. Assignment of project responsibilities and allocation of staff is clear and appropriate to achieving the objectives of the project with adequate supervision and clerical support to assure the success of the project.

IV. *Budget* (20 points).

The proposed budget is:

A. Commensurate with the level of effort needed to accomplish project objectives;

B. Feasible; and

C. Adequate to ensure the long-term support and maintenance of the proposed activities.

Closing Date for Receipt of Applications

The closing date for receipt of applications is January 7, 1983.

Mailed Applications

Applications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they are either:

1. Received on or before the closing date; or

2. Sent by first class mail, postmarked on or before the closing date, and received in time for submission to the review group. (Applicants are cautioned to request a legible U.S. Postal Service postmark or to use express mail or certified or registered mail and obtain a legibly dated mailing receipt from the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

Applications Submitted by Other Means

Applications submitted by any means except mailing first class through the U.S. Postal Service shall be considered as meeting the deadline only if they are physically received before the close of business on or before the closing date.

Late Applications

Applications which do not meet these criteria are considered late applications and will not be considered in the current competition.

Dated: November 23, 1982.

Lennie-Marie P. Tolliver,

Commissioner on Aging.

Dated: November 24, 1982.

Approved:

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 82-32744 Filed 11-30-82; 8:45 am]

BILLING CODE 4130-01-M

Reader Aids

Federal Register
Vol. 47, No. 231
Wednesday, December 1, 1982

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations	
CFR Unit	202-523-3419
	523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419
Federal Register	
Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-5237
Public Inspection Desk	523-5215
Scheduling of documents	523-3187
Laws	
Indexes	523-5282
Law numbers and dates	523-5282
	523-5266
Slip law orders (GPO)	275-3030
Presidential Documents	
Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235
United States Government Manual	523-5230

SERVICES

Agency services	523-5237
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

54053-54268.....1

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

TABLE OF EFFECTIVE DATES AND TIME PERIODS—DECEMBER 1982

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (see 1 CFR 18.17)

A new table will be published in the first issue of each month.

All January, February, and March dates are in 1983

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
December 1	December 16	January 3	January 17	January 31	March 1
December 2	December 17	January 3	January 17	January 31	March 2
December 3	December 20	January 3	January 17	February 1	March 3
December 6	December 21	January 5	January 20	February 4	March 7
December 7	December 22	January 6	January 21	February 7	March 7
December 8	December 23	January 7	January 24	February 7	March 8
December 9	December 27	January 10	January 24	February 7	March 9
December 10	December 27	January 10	January 24	February 8	March 10
December 13	December 28	January 12	January 27	February 11	March 14
December 14	December 29	January 13	January 28	February 14	March 14
December 15	December 30	January 14	January 31	February 14	March 15
December 16	January 3	January 17	January 31	February 14	March 16
December 17	January 3	January 17	January 31	February 15	March 17
December 20	January 4	January 19	February 3	February 18	March 21
December 21	January 5	January 20	February 4	February 22	March 21
December 22	January 6	January 21	February 7	February 22	March 22
December 23	January 7	January 24	February 7	February 22	March 23
December 27	January 11	January 26	February 10	February 25	March 28
December 28	January 12	January 27	February 11	February 28	March 28
December 29	January 13	January 28	February 14	February 28	March 29
December 30	January 14	January 31	February 14	February 28	March 30

CFR CHECKLIST; 1981–82 ISSUANCES

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal Regulations issued to date for 1981/82. New units issued during the month are announced on the back cover of the daily **Federal Register** as they become available.

For a checklist of current CFR volumes comprising a complete CFR set, see the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $615 domestic, $153.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

CFR Unit (Rev. as of Jan. 1, 1982):

Title	Price
1–2	$5.50
3	7.00
4	7.50
5 Parts:	
1–1199	8.00
1200–end	6.00
7 Parts:	
0–45	8.50
46–51	7.50
52	8.50
53–209	8.50
210–299	8.00
300–399	6.50
400–699	7.50
700–899	7.50
900–999	9.50
1000–1059	7.50
1060–1119	7.50
1120–1199	6.50
1200–1499	7.50
1500–1899	6.50
1900–1944	8.50
1945–end	8.00
8	6.00
9 Parts:	
1–199	7.50
200–end	7.50
10 Parts:	
0–199	8.50
200–399	7.50
400–499	8.00
500–end	8.00
12 Parts:	
1–199	6.50
200–299	14.00
300–499	7.00
500–end	8.50
13	8.00
14 Parts:	
1–59	8.00
60–139	8.00
140–199	6.50
200–1199	8.50
1200–end	6.50
15 Parts:	
0–299	6.50
300–399	7.50
400–end	7.50
16 Parts:	
0–149	7.00
150–999	7.00
1000–end	7.50
CFR Index	9.50

CFR Unit (Rev. as of Apr. 1, 1982):

Title	Price
17 Parts:	
0–239	8.50
240–end	8.00
18 Parts:	
1–149	8.00
150–399	8.50
400–end	7.50
19	9.50
20 Parts:	
1–399	6.50
400–499	8.00
500–end	8.50
21 Parts:	
1–99	7.00
100–169	7.50
170–199	7.50
200–299	5.50
300–499	8.50
500–599	8.00
600–799	6.00
800–1299	7.00
1300–end	5.50
22	9.00
23	7.50
24 Parts:	
0–199	7.00
200–499	8.50
500–799	7.00
800–1699	7.50
1700–end	7.00
25	8.50
26 Parts:	
1 (§§ 1.0–1.169)	9.00
1 (§§ 1.170–1.300)	7.50
1 (§§ 1.301–1.400)	7.00
1 (§§ 1.401–1.500)	7.50
1 (§§ 1.501–1.640)	7.50
1 (§§ 1.641–1.850)	7.50
1 (§§ 1.851–1.1200)	8.50
1 (§§ 1.1201–end)	9.00
2–29	7.50
30–39	7.00
40–299	8.50
300–499	7.00
600–end	5.50
27 Parts:	
1–199	7.50
200–end	7.50

CFR Unit (Rev. as of July 1, 1982):

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29 Parts:	
100–499	6.00
500–899	8.50
900–1899	6.50
1911–1919	6.00
31 Parts:	
0–199	7.00
32 Parts:	
700–799	8.50
800–999	8.00
35	6.50
38 Parts:	
0–17	8.00
18–end	7.00
39	7.00
40 Parts:	
0–51	8.50
100–149	7.50
150–189	7.50
190–399	7.50
400–424	8.00
41 Chapters:	
8	5.50
102–end	7.00

CFR Unit (Rev. as of Oct. 1, 1981):

Title	Price
42 Parts:	
1–60	7.50
61–399	6.50
400–end	9.00
43 Parts:	
1–999	7.00
1000–3999	8.50
4000–end	6.50
44	7.50
45 Parts:	
1–199	7.00
200–499	6.00
500–1199	7.50
1200–end	7.00
46 Parts:	
1–29	5.50
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47 Parts:	
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70–79	8.00
80–end	8.50
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1–99	6.00
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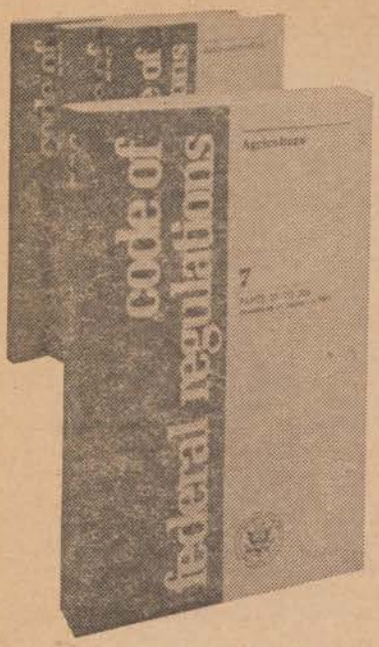
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List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing October 28, 1982





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Revised as of July 1, 1982

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A Cumulative checklist of CFR issuances for 1981–82 appears in the back of the first issue of the Federal Register each month in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

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